

Sub-national authorities and the Open Method of Coordination: a new opportunity or the same old community?

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Introduction

The Open Method of Coordination (OMC) is currently under intense academic scrutiny, with attempts to assess its nature as a mode of governance (De la Porte et al 2001; Dehousse 2002; Scott and Trubek 2002) and the extent to which it can be seen as a 'new' mode of governance (Laffan and Shaw 2005, Smismans 2006). The OMC does exhibit some clearly different characteristics from what is termed the classic 'Community Method'; however, with the recent re-launch of the Lisbon Strategy emphasising the need for streamlining and greater coordination of EU policies, the distinctions between 'old' and 'new' governance are becoming ever more blurred.

The OMC tends to be seen as a largely inter-governmental method but its 'open' nature was designed to facilitate the involvement of a wide range of actors, including sub-national authorities (SNAs). Despite the OMC being used in a wide range of policy areas, many of which have a direct impact on the competence of SNAs, their role has not been sufficiently explored, with the focus of most research on SNAs traditionally based on regional policy. One department of a sub-national authority, in this case the Enterprise, Transport and Lifelong Learning Department of the Scottish Executive, will be used here as a case study to analyse the role of SNAs in European policy-making, due to its competence covering policies dealt with by both the OMC, in terms of some elements of the European Employment Strategy, and more 'traditional' types of EU policy, in the form of the European Structural Funds.

Given the overlapping nature of issues dealt with by both methods, this paper will attempt to address the differences between sub-national involvement in the OMC processes and the more traditional EU policy-making processes. In view of the importance of these different instruments for the overall Lisbon Strategy, this paper considers whether the OMC can really be seen as a new opportunity for SNAs to play a greater role in EU policy-making or whether existing institutional structures and policy characteristics mean that the actors involved and the extent of participation differ little from traditional EU modes of governance.

Governance, SNAs and the European Union

'Governance'

'Governance' as a term is 'mostly used to indicate a new mode of governing, different from the old hierarchical model in which state authorities exert sovereign control over the people and groups making up civil society' (Mayntz 2003). In a general sense, 'governance' has been used as a broader and more encompassing term than 'government' (see Rosenau 2004). As it encapsulates a less hierarchical way of ruling, it is therefore unsurprising that 'governance' has become such an important notion in the field of European Union studies, given the unique nature of the EU in terms of the dispersion of authority between different levels and actors.

While debates between 'intergovernmentalists' (Hoffman 1966, Moravcsik 1993) and 'neofunctionalists' (Haas 1958) and analyses of the process of European integration have been the backbone of European integration studies, they have been supplemented in the last decade by other approaches which aim to study not only the fundamental nature of the EU, but also its day-to-day governance structures and how the EU works as a decision-making system (Marks, Scharpf et al 1996, Hix 1998, NEWGOV 2004¹). The advantage of this 'governance' approach is that it contributes to an understanding of the routine functioning of the EU, with different strands of the literature emphasising actor constellations, institutional properties or policy instruments; this may be classified as the 'politics, polity and policy' dimensions of governance (Treib, Bahr and Falkner 2005).

The 'governance' approach to studying the EU has contributed to the analysis of the role of 'sub-national authorities' (SNAs) through the development of the concept of 'multi-level governance' (MLG) (Marks 1993; Marks, Hooghe and Blank 1996). MLG places the emphasis on how authority is dispersed between different levels and actors within the EU system, neglected by traditional conceptions of the European polity which focused largely on the role of member state governments and supranational institutions. While MLG has succeeded in highlighting the fact that SNAs have mobilised and now play a role in a number of EU policies, research on the nature and extent of this mobilisation has been limited to a small number of policy areas.

With the EU attempting to move further into hitherto strictly national competences through the use of new governance mechanisms, the potential for impact upon the competence of SNAs is growing. As Marks, Scharpf et al highlight, 'it seems commonsensical that SNAs will seek to mobilise and influence European decision-making processes to the extent that those processes impinge on their internal functions and responsibilities, however broad, narrow, extensive or inconsequential these might be (1996: 58-59). Given that in many EU member states, local and regional governments have extensive responsibilities in employment policy, as well as in areas of traditional Community responsibility such as regional and environmental policy, there is a clear need to assess the role of SNAs in a range of policy areas and where differing governance mechanisms are used.

SNAs and 'traditional' EU policy-making

The literature on sub-national 'mobilisation' has, to date, been focused largely on the 'first pillar' of the EU, and, implicitly if not explicitly, relates to the traditional Community Method of policy-making. This mobilisation can take place through various channels, categorised by Jeffery as 'intra-state' or 'extra-state' channels (2000). Intra-state channels include informal contacts and the establishment of formal mechanisms by central government to involve sub-national authorities in EU policy-making; for example, allowing for the participation of SNAs in the Council of Ministers, albeit on behalf of the Member State. Extra-state channels involve the SNAs taking a

direct route, bypassing central government, in order to communicate directly with the European level; this can be through participation in organisations like Committee of the Regions, or by establishing their own representations in Brussels.

Empirical work on the role of SNAs in EU policy-making has tended to focus on a limited range of policy sectors, with the majority of research based on the EU's Regional Policy, which is unsurprising given the rationale behind the policy. Regional Policy has been in existence in some form or another since the creation of the EU: two funds intended to help the regions, the European Social Fund (ESF) and the European Agricultural Guidance and Guarantee Fund (EAGGF), were supplemented by a European Regional Development Fund in 1975 and soon became known collectively as the 'Structural Funds' (SF). Reforms of the EU structural funds will enter into force on January 1st 2007 with the current Objectives 1, 2 and 3 being replaced by three new objectives: Convergence; Regional Competitiveness and Employment; and European Territorial Cooperation. One reason for this is that there is now more limited funding available to older Member States following the recent enlargement of the EU to include the historically poorer Eastern European countries; it is hoped that these reforms will allow for greater concentration on a more limited number of Community priorities. A second reason is to tie in more closely with the agenda of the Lisbon European Council in March 2000, which announced the goal of making the EU 'the world's most competitive and dynamic knowledge-based economy by 2010, with more and better jobs and greater social cohesion'.²

SNAs and The Open Method of Co-ordination (OMC)

The Lisbon European Council not only marked the announcement of a new strategic goal, it also codified a 'new' mode of governance in the 'Open Method of Coordination' (OMC). The OMC was strongly inspired by the Economic and Monetary Union (EMU) process and the Luxembourg process which had led to the formal adoption of the European Employment Strategy in the Amsterdam Treaty of 1997. Indeed, a European Commission Working Group on the subject found that 'the innovation of Lisbon was simply to give a name to the method enshrined in the EC's treaty Title on Employment, with the avowed aim of extending it...to other fields' (European Commission Working Group 4a 2001:11). The most developed OMC processes to date are in Employment and Social Inclusion, but it has also been applied in varying degrees to the fields of education, social protection, R&D, immigration, enterprise and the environment.

The OMC is said to represent a new form of 'soft law'.³ Unlike the traditional Community legislative approach, there is no attempt at harmonisation, but the emphasis is placed instead on co-ordination of member state policies by the Commission, via National Action Plans/ National Reform Programmes, common guidelines, benchmarking, and peer review. However, there is no one single OMC process as variations exist between the OMC processes in different policy fields, in terms of their treaty base, participation and steering approaches (Armstrong 2006, Borrás and Jacobsson 2004, European Commission Working Group 4a 2001).

The European Employment Strategy (EES) encourages member states to transpose specific objectives in the Employment Guidelines to national level programmes, and to submit an annual progress report, formerly known as a National Action Plan (NAP), now adapted as a National Reform Programme (NRP). The EES was reviewed in 2005 with the aim of improving coordination between EU processes and it is now presented with the macro- and micro- economic guidelines covering a three-year period (from 2005-2008). This recent reform of the Lisbon process is liable to have an impact on the potential for sub-national involvement. Given that three broad areas are now subsumed into one report and that most macro and micro economic responsibilities are likely to lie with central government, the revised process may leave less room for engagement of different levels and actors. It is therefore particularly interesting at the moment to compare the role of SNAs in the Structural Funds with their role in the EES given that both processes will now

be more tightly focused on achieving the aims of the revised Lisbon Strategy, but by apparently different methods.

Analysing Modes of Governance

'Community Method' and 'OMC'

In analysing 'new' modes of governance like the OMC, the baseline for contrast is usually deemed to be the most long established mode of governance in the EU, the 'classic' 'Community method' of the first 'pillar' of the Treaty on European Union. The most important aspects of this method include the Commission's exclusive right of legislative initiative, the legislative and budgetary powers of the Council of Ministers and the European Parliament, the use of qualified majority voting and the power of the European Court of Justice to punish breaches of Community law (European Commission 2001, see also Dehousse 2002). The Community Method is often regarded as synonymous with the 'hard law' approach, given its tendency to lead to binding legislative and executive acts at the EU level and for these to impose more or less uniform rules for all Member States (Scott and Trubek 2002).

The Structural Fund process could be argued to be an example of the Community Method, given that a number of the principal features described above are met by the SF, including the Commission's right of initiative, the role of the European Parliament (in signing off the budget) and the Nice Treaty also extended the use of QMV to the Structural Funds from 2007. Helen Wallace claims that the Community Method includes examples of policy-making 'where the EU is the preferred collective actor' and 'where there is clear delegation of the primary responsibility to the EU system' (Wallace 2004). While she gives the examples of the Common Agricultural Policy and the Common Fisheries Policy, this would appear to be relevant also to the Structural Funds, in that member states' regional policy is primarily governed by that of the EU.

However, in the same way as there is no single 'OMC' process, referring to the 'Community Method' as a single all-encompassing framework is not helpful in analysing different modes of governance. Helen Wallace distinguishes between the 'Community Method', 'legislation', 'distribution and money' (where she places the Structural Funds), 'policy coordination' and 'transgovernmentalism'. From the definitions given by Dehousse (2002) and Scott and Trubek (2002) above, it could be argued that Wallace's 'legislation' and 'distribution' could be generally subsumed under the Community Method, particularly as the example of the CAP – which Wallace sees as an example of the Community Method – could also be classed as 'distributive'. However, although questionable, what Wallace's categorisations show is that different EU policy processes display different attributes and cannot be simply divided into Community Method and Open Method of Coordination. A different organising framework would therefore be helpful.

'New' and 'old' governance

A potential alternative to the dichotomy of 'Community Method' versus 'OMC' is to analyse the shift between 'old' and 'new' modes of governance. Theoretical work is still developing on the nature of 'new' and 'old' modes of governance (Diedrichs 2005; Kilpatrick 2006; Scott and Trubek 2002). It is not always clear from the literature what is meant by the term 'new'; this may sometimes refer simply to the time-frame, while other authors use the term to imply an innovative character. The term 'old' governance is often used to refer to long-standing governance mechanisms; this does not necessarily mean that they are outdated or have been overcome by new modes of governance, but that they exist in parallel to them (Diedrichs 2005).

Some authors are critical of the use of the terms 'new' and 'old' governance, arguing that while some modes of governance may be historically relatively new in some policy areas, the same governing modes may be long-established practice in other areas (Treib, Bahr and Falkner 2005). Claire Kilpatrick agrees that temporal categorisations are not always coherent, given that within EU Employment Policy 'old governance' tools, such as the legal bases to create directives, and 'new governance' tools, such as the OMC, were all created within the same short time span; therefore, 'almost all EU employment governance is new' (Kilpatrick 2006: 5).

Rather than looking solely at the temporal aspects, an alternative is to examine certain attributes of 'old' and 'new' governance, with the aim of identifying analytical categories that may help to explain the differing natures of modes of governance. Scott and Trubek (2002) have attempted to define characteristics of 'new' governance, which contrast with the 'Classic Community Method'. These are identified as: participation, multi-level integration, diversity and decentralisation, deliberation, experimentation and flexibility. They are also keen to emphasise that there is not a simple dichotomy between 'new' and 'old' modes, but more of a continuum, in which there is an intermediate category which they term 'New Old Governance' (NOG). This presents elements of continuity with the classic Community Method, but departs from it in important respects in terms of flexibility and Member State discretion; an example they give is that of framework directives (Scott and Trubek 2002: 2).

Treib, Bahr and Falkner (2005) have gone further in identifying categories to help analyse the differences between 'new' and 'old' governance, which distinguish between the policy, polity and politics dimensions of governance. These categories will be used to inform the discussion in this paper, with the focus placed on the policy and polity dimensions.⁴ In terms of the polity dimension, firstly, Treib et al point to the question of whether authority is centralised or dispersed (2005: 9): both the Structural Funds and the EES could be claimed to encourage more dispersed authority. One of the key aims of the OMC is to involve a wide range of actors, with the term 'open' said to refer, not only to the open-ended character of the policy aims and the flexibility allowed to member states to reach desired outcomes, but to an 'open' policy process - policy-making through the involvement of a multiplicity of actors (Smismans 2004, Kohl and Cahlpahl 2004, Pochet 2001). Indeed, the outline of the OMC process stresses the importance of a 'fully decentralised approach, applied in line with the principle of subsidiarity in which the Union, the Member States, the regional and local levels, as well as the social partners and civil society will be actively involved, using variable forms of partnership'.⁵

The Structural Funds process also aims to disperse authority to different levels. Introduced in 1988, the partnership principle encouraged the creation of partnership committees which would be responsible for the implementation of structural programmes and would comprise not only representatives of the Commission and Member States but also other bodies designated by the Member State such as regional and local authorities or economic and social partners. This encouraged SNAs to play a stronger role; 'the notion of partnership confers on SNAs a certain legitimacy they lacked before the principle was adopted' (Peterson and Bomberg, 1999: 166). Interestingly, Scott and Trubek argue that the partnership principle in the Structural Funds process is an early example of 'new' governance, given that it should 'take shape according to national rules and current practices', with the result that it remains an 'open-ended' concept with its 'character and identity being formed against the political and constitutional backdrop of the Member State in question' (Scott and Trubek 2002: 4). However, while the partnership principle may be one element that the Structural Funds have in common with the OMC, as we shall see it is clearly misleading in other ways to classify both as 'new' governance.

Secondly, Treib et al point to the concept of 'institutionalisation' of interactions (2005:9). As previously noted, given the nature of the OMC, with its emphasis on non-binding structures and voluntarism, the OMC processes would be expected to be categorised by less institutionalised procedures governing interactions. Despite the EES having a treaty base, the decision-making

and implementation procedures are 'not constitutionally specified' (Treib et al 2005: 9). Informal 'institutions' and norms are also likely to be less institutionalised given the relatively recent development of the process. By contrast, the Structural Funds process is now quite firmly embedded and has clear rules determining how decisions are made, who is involved and who monitors compliance.

Finally in terms of the polity dimension, Treib et al (2005:9) point out differences in the nature of interactions, identifying a continuum between a hierarchical structure, which gives certain actors the power to make decisions without significant consultation with others, with a 'market' style structure, which suggests that every actor remains free to choose their own course of action. Somewhere in the middle would be a network structure that denotes a 'non-hierarchical constellation of interdependent actors with varying power resources' (Treib et al 2005: 9). The case study of the Scottish situation will explore where the EES and the SF sit on this continuum and on the other elements of the polity dimension.

Within the policy dimension, further marked differences appear. Firstly, Treib et al distinguish between legal bindingness and soft law; there is clearly a firm legal basis and a distinct budget for the Structural Funds, while the guidelines issued in the framework of the EES only have the character of non-binding recommendations. Moreover, while the SF clearly set out the need for SNA involvement in terms of the partnership principle, in terms of the Employment Strategy, although the treaty recognises the need for regard to national practices, there is no treaty recognition of the role of the regional or local level in the Employment title (Smismans 2004).

Secondly, in terms of the rigidity or flexibility of implementation, the Structural Fund process is based on long-term preparation and a programming period of six years which is relatively inflexible, in contrast to the open and voluntary nature of implementation of the EES. Thirdly, Treib et al identify the presence or absence of sanctions as a determiner between 'old' and 'new' governance (2005: 8): the existence of the binding rules in the Structural Funds process means that Member States are obliged to adhere to a range of principles and obtain approval by the Commission before funds can be released, unlike the EES where instruments for ensuring compliance are weak (Danish Technological Institute, 2005).

Therefore, despite Scott and Trubek's claim that the partnership element of the Structural Funds may represent a form of 'new' governance, there remain a number of significant attributes of the Structural Fund process that suggest that it is in contrast to the OMC process in Employment and remains intrinsically an 'old' mode of governance. This paper will use Treib, Bahr and Falkner's classification to determine the differences between the two types of governance. Focusing largely on the nature of the policy processes and the modes of interaction between actors within them, mainly at the sub-national and national level, the aim will be to determine whether these characteristics of 'old' and 'new' governance identified by Treib et al have an impact on the role of sub-national authorities in these policy areas, in order to analyse to what extent the so-called 'new' modes of governance present a new opportunity for greater sub-national involvement.

SNAs and EU Governance: the Scottish Experience

The Scottish Executive

The Scottish Executive was established in 1999, following the first elections to the Scottish Parliament. It is led by a First Minister and Cabinet, with a civil service that is accountable to Scottish Ministers. The Scottish Executive has responsibility for health, education and training, local government, social work, housing, planning, economic development, home affairs, justice and most criminal law, the environment, agriculture, fisheries and forestry, sport and the arts. Some

of these areas, like education, are fully devolved, while in others, like economic development, parts are reserved (Keating 2005: 21).

The Scottish Executive is one of a number of sub-national authorities being increasingly affected by the EU; indeed, approximately 80 per cent of devolved competencies are affected by European legislation. Moreover, as Keating highlights: 'As the EU expands its sphere of activity, both through Commission initiatives and through the 'open method of coordination' whereby governments agree on parallel policies, it impinges more on Scottish devolved matters' (2005: 129).

Despite the officially 'reserved' status of UK foreign policy and European affairs (Evans 2003: 475), there are a number of mechanisms in place to deal with Scottish input into EU policy. It was acknowledged in the Memorandum of Understanding (MoU) agreed between the UK government and the Scottish Executive that, despite their reserved status, the devolved administrations would be involved in UK international and EU policy-making where these issues affect devolved competencies. In addition to the MoU, devolution led to the introduction of other mechanisms to co-ordinate intra-state channels for European affairs; Bilateral Concordats, Devolution Guidance Notes (DGN) and a 'Joint Ministerial Committee' (JMC). An External Affairs Division (formerly the Executive Secretariat (External)) now exists within the Scottish Executive to deal with all aspects of external affairs, including administering and mediating the EU concordat and servicing the JMC.

The aim of these internal coordination measures was to ensure a high degree of communication and lessen the scope for disloyalty, given that adherence to an agreed negotiating principle was no longer ensured by collective ministerial responsibility (Carter 2002: 5). While there remains a unified civil service, constitutionally, ministers and officials in the Scottish Executive are no longer part of the formal central machinery and so lie outside of the formal UK European policy loop (Carter 2002: 3). As a result, both the Cabinet Office and Whitehall 'department-led' pathway for co-ordinating responses to EU issues now rely mostly on informal mechanisms, with the result that contact varies from department to department.

In terms of extra-state channels, since devolution there have been a number of changes to pre-existing channels. A significant development was the creation of Scotland House, the Scottish Executive's EU Office in Brussels (SEEUO). The Executive has also attempted to play a more prominent role in the European Group of Regions with Legislative Powers (REGLEG) and the Committee of the Regions since devolution, while a number of bilateral 'Cooperation Agreements' have been concluded with other SNAs.

The Scottish Executive's Enterprise, Transport and Lifelong Learning Department (ETLLD) was derived from the former Scottish Office Education and Industry Department and in May 2003, it was extended to include Transport.⁶ The Enterprise and Lifelong Learning staff are divided into four groups: Enterprise and Industrial Affairs, Lifelong Learning, Enterprise Networks and Scottish Development International, which reports jointly to Scottish Enterprise. Its responsibilities focus mainly around the aim of growing the economy, which is stated as the Scottish Executive's top priority in its Partnership Agreement.⁷ The ETLLD claims it will help to achieve this aim principally 'by supporting business, encouraging enterprise, building on the excellence of our universities and colleges, and improving skills and employability' (Scottish Executive 2005). The department has been responsible for the publication of Scotland's key strategic economic development documents: Framework for Economic Development in Scotland⁸ (revised 2004), Smart Successful Scotland⁹ (revised 2004) and Life through Learning; Learning through Life¹⁰ (2003).

This department presents an interesting case for study in the context of new governance, not just because its policy responsibilities cover areas which are dealt with by differing governance

methods (the European Structural Funds and the European Employment Strategy). It is also of interest in terms of the MLG and devolution literature given the overlap of matters which fall under the aegis of the 'welfare state'. As Keating highlights, employment in particular is problematic, given that the unemployment benefits scheme is reserved while labour market policy is partly devolved (2005: 21).

The Structural Funds

The Department of Trade and Industry (DTI) is the lead department for dealing with Structural Funds in the UK. Although the Treasury and Foreign and Commonwealth Office are responsible for negotiations concerning funding the EU budget, it is DTI who is responsible for determining the policy line. In terms of coordinating the implementation of the Structural Funds, there is a clear organisational structure. While the DTI are responsible for overall coordination, there are also Managing Authorities and Paying Authorities. Paying Authorities are those that certify the cash spend. Managing Authorities have wider role; they run operational programmes to deliver Structural Fund support. As an official in DTI's REG E explains, 'the Office of the Deputy Prime Minister (ODPM) is the Managing Authority for England for all regional programmes (ERDF) and for ESF (Objective 3) which covers the whole of Great Britain; DWP are the Managing Authority for the English part of the ESF...Structural Fund delivery outside England is devolved - the Scottish Executive are responsible for delivering and reporting back to Brussels.'¹¹

While the process for implementation is quite clearly prescribed, it is interesting also to examine the role of different actors in the formulation of the UK line on EU regional policy, which is not so straightforward. The UK government in March 2003 produced a consultation document outlining its position on the reform of the Structural Funds, with the view that the SF should be smaller and concentrated on the new member states but in the face of increased domestic funding. This consultation was led jointly by DTI and Treasury and officials from both departments claimed that there was official and ministerial level discussion with the Scottish Executive. They were keen to point out that 'it was a reserved matter so it was a UK government responsibility' but nevertheless 'the eventual consultation document was an agreed document', which 'wasn't hugely problematic'.¹² This lies in contrast to the views of officials in the Scottish Executive as we shall see later.

A similar issue arises as a result of recent reforms to the SF process and the need for the creation of a National Strategic Reference Framework (NSRF). This document is aimed at establishing the broad priorities for future SF programmes in the UK. Again it is the responsibility of DTI, but a draft consultation document launched on February 28th 2006 notes that it has been compiled 'in close collaboration with' ODPM, DWP, DfES, Department for the Environment, Food and Rural Affairs (DEFRA) and the Treasury. It claims that 'we have also worked closely with the Scottish Executive...' (DTI 2006: 5). There is a separate Scottish Chapter to this draft NSRF, written by the Scottish Executive. Even prior to completion of this document, DTI officials were of the view that, while there would have to be consistency as it is a UK document, 'everybody within the UK knows what the criteria and underlying principles are so nobody is ever too far out of joint.'¹³

The Scottish Executive has a European Structural Funds Division which is responsible for administering the funds; as noted above, the Scottish Executive is both the Managing and Paying Authority for Scotland. The Structural Funds Division was formerly based in the Finance and Central Services Department, but in June 2004 it was re-located from Edinburgh to Glasgow and is now part of the Enterprise and Industrial Affairs Group of the ETLLD. As one official remarked, 'it now has a better fit with policy people dealing with similar areas...the EU was originally seen as machine for giving out money...it's now important to make every euro count...'¹⁴

In terms of implementation of the SF, the Scottish Executive, as Managing and Paying Authority, is largely free from central government interference in day-to-day operations. Below this level are Programme Monitoring Committees (responsible for strategic management) and Programme Management Committees (responsible for Operational management), in addition to various advisory groups and partner organisations. However, the current reform process may lead to a change in delivery mechanisms in Scotland, given that when the current programme was invented there was no devolved authority, which led policies to be legend at a low local level. Officials feel that a change in delivery mechanisms may lead to a better strategic fit with Scottish Executive policy priorities and a better use of limited resources.¹⁵ The fact that the Scottish Executive is able to shape these mechanisms independently reflects the relative autonomy it enjoys in delivery of the Structural Funds.

However, formulation of general policy orientations remains a process in which the devolved authorities do not feel they are greatly involved. The 'Modern Regional Policy for the UK' consultation document shows how member-state-centric this process is, as one official in the Structural Funds Division highlighted: 'I don't remember a great deal of consultation on that – I think Treasury was more or less clear on what they wanted... the original Treasury stance of having nothing at all for the UK was not entirely popular across the devolved areas, but it is a Member State negotiation and that would be true in Germany, France etc.'¹⁶ However, in the case of the National Strategic Reference Framework, the devolved authorities are able to provide a separate chapter on their strategy and priorities.

The recent reforms to the Structural Fund process have been largely as a result of decreased levels of funding for original member states due to enlargement but also had the aim of more closely aligning the fit with the overall Lisbon Strategy. There is a danger that this shift may undermine the partnership elements of the Structural Funds and lead to greater central government control. However, officials dealing with the Structural Funds in the Executive appear to have a clear overview of the links between the European Employment Strategy and the Structural Funds (and the Executive strategy documents which link in to these). There remains a strong sense of 'ownership' of the Structural Funds process and a distinct 'Scottish' perspective on how to achieve their aims. Officials view all of these areas as being driven by the Scottish ministerial agenda and by 'what is best for Scotland' (which in turn feeds into the NRP and the NSRF). However, they, in common with their colleagues who deal with domestic policy, argue that the EU, UK and Scottish agenda is essentially the same and not incompatible.¹⁷

In sum, coordination between levels of government in the UK in dealing with the Structural Funds is long-established, and this is reflected in the clear understandings of the relative roles of the actors involved. While formerly the funds were delivered in accordance with local structures, the Scottish Executive is beginning to assert its authority and intends to take advantage of recent reforms to ensure that the SF are delivered more according to their strategic priorities. It is able to do so relatively autonomously, with central government content to relinquish control of the implementation process, despite still maintaining its gatekeeper status in terms of policy formulation and 'history-making' decisions on the size and distribution of the SF budget. The strong sense of Scottish 'ownership' of the process due to the long-standing partnership principle is unlikely to be easily diminished.

The European Employment Strategy

The process for dealing with the European Employment Strategy in the UK involves bringing together the four major Whitehall departments with major interests in the Lisbon agenda: the Treasury, the Department for Trade and Industry (DTI), the Department for Work and Pensions (DWP) and the Department for Education and Skills (DfES). Until the recent reform, DWP was responsible for producing the NAP on Employment, while the Treasury and DTI worked together

to report on the Cardiff process dealing with macro- and micro-economic performance. The NRP brings these two processes together with responsibility for each section remaining the same; however, the process now involves cross-Whitehall co-ordination by the Cabinet Office and European Secretariat, whereas previous liaison was largely inter-departmental.¹⁸ Once the guidelines had been agreed at EU level, preliminary meetings took place in the Cabinet Office between DWP, DTI, Treasury, DfES, DEFRA and the Cabinet Office European Secretariat. A 'plot' or narrative was decided at this high level, focusing on the priorities highlighted by the Commission at a bilateral meeting, with the Treasury then drafting a preliminary timetable stating when they expected drafts from each department.¹⁹

DWP is responsible for ensuring the input of the devolved authorities to NAP and now to the Employment chapter of the NRP. This involves informal 'annual or quarterly' contacts where an official in the ETLLD is contacted by the DWP/JIU and 'shown early drafts of what to expect, storylines, what we thought was going to be covered...and then final comments, final examples and things that they wanted in, came in before the final draft. The final draft went out for them to have a look at so they were aware of what was coming.'²⁰ While an official at the devolved authority would be responsible for pulling relevant information from Scotland's economic strategy documents and consulting people, 'messages were put out to the devolved administrations' on the areas that the Commission was keen for the UK to work on.

Participation of the devolved authorities in the NRP process is restricted due to a number of features of central government. There is no devolved authority input in the early stages of the process coordinated by the Cabinet Office. This reflects the short time-scale and physical distance which separates Whitehall and the Scottish civil service. The devolved input was further delayed and thus restricted this year due to the late decision on the Commission guidelines following reform of the process. In addition, the NAP and the Cardiff documents were traditionally sent round the EP Ministerial network on European issues, of which the Scottish Executive is no longer a part. The fact that the Scotland Office continues to be copied into EP communications such as this (although it is not responsible for devolved input into the NAP/NRP), while the reverse is true of the Scottish Executive, appears to be an anomaly of the devolution settlement.

The NRPs/ NAPs are clearly the most prominent element of the EES; it is therefore important to analyse the UK central government view on the role and significance of the NRP itself. The UK sees itself as a leader in terms of the Lisbon Strategy: 'the refocusing last year was in order, quite bluntly, to close a gap – in that context you have to understand that certain countries such as the UK, Denmark, Sweden, Holland, don't have a gap so we are in effect the leaders'.²¹ As a result, as Jacobsson (2005) also found in Denmark and Sweden, the NRP is seen in the UK as a report to Brussels and the rest of Europe, rather than as a steering document or 'action plan'. It is therefore anticipated by actors at central government level that the Scottish Executive input would take a similar approach and would be restricted to reflecting previously formulated strategies.

The NRP is not viewed in the same way by all actors. Officials working on the NRP felt that stakeholders saw the reform as an opportunity to debate with the government on what it should do in the employment field. One official also felt that some Scottish actors, including the Scottish Parliament's European Committee and Scottish Enterprise, 'misunderstood what the Employment Strategy is' and were keen 'to develop a local action plan for Scotland so that they could all be involved in it and all drive it...to my mind/our mind here and to the Scottish Executive mind that was not the point because it is a report not a policy document...you've already got the policy document, the strategic document...'²² Moreover, given that officials in the Joint International Unit (JIU) had to go to colleagues to explain the nature of the new NRP, this would suggest that, as Jacobsson (2005) found in Sweden, there is limited interaction between officials working on domestic labour market policy and those dealing with the NAP/NRP and EU policy networks.

Scottish Executive involvement in the NRP element of the EES is coordinated by an official in the ETLLD currently based in the Enterprise and Industry Division. When the NAPs were first developed, this official was based in the former 'Employment and Welfare to Work Division', which was seen to be 'the best home for it'.²³ With the reorganisation of the Department, this responsibility remained with the same individual. Given that contributions to the NAP/NRP in recent years have come largely from the Transitions to Work Division,²⁴ which is now responsible for much of the work that the 'Employment and Welfare to Work Division' used to do, it would appear logical that coordination of the process should take place within this division. The fact that it does not may reflect the lack of strategic priority accorded to the NAP/NRP process.

As the same official has been responsible since the inception of the NAPs/NRP, the process appears to be well established. The view from the Scottish Executive perspective is the same as that of central government; they accept that it is easier for colleagues in Whitehall to draw in UK government departments first, before consulting the devolved administrations. The Executive waits for the 'commissioning email' from the JIU and then start preparations from there; this usually involves consultation with the Transitions to Work division and some elements of Social Inclusion. The submission tends to be based on the employment guidelines and JIU information which is sent to the Executive to advise on 'what bits Scotland can feed into'. However, with the shift to the NRP and the delay in beginning coordination, 'this year...[I think] they may have had it [a first draft] already prepared, but in previous years they've waited a bit, got the contributions, put out a first draft for comment and then it has gone one or two rounds of re-draft.'²⁵

Therefore, the Executive's contribution is limited in terms of time and space pressures. Scottish Executive officials do not consult previous strategy documents when preparing the submission; this is because the aim is seen as 'to give a broad overview' and so the contribution 'cannot go into that level of detail', with an official admitting that 'we are constrained by space in the first instance and then it may be cut down further'.²⁶ With the NRP being an even broader policy document than the NAP, there is even less space now for a differentiated Scottish input. Less than three pages, covering three different guidelines, were submitted for the 2005 NRP on behalf of the Scottish Executive.²⁷

In many ways, Scottish Executive officials see the NAP/NRP in the same way as officials in central government. It is viewed strictly as a UK policy document, with the purpose of reporting what is being done towards the goals of the Lisbon Strategy. They are careful to emphasise only matters which are clearly devolved competences and only where policy differences exist from the rest of the UK. There is also an awareness of the DWP view of the NAP/NRP: 'I think in DWP there is generally a feeling that in terms of welfare to work the UK is a leader not a follower...I don't have the feeling that it's something that they expect to learn from at DWP level...I think it's something that they do to report what they're doing and how they're meeting what was agreed at Lisbon...'²⁸

Moreover, the Scottish Executive officials interviewed were of the same opinion as their DWP/ JIU counterparts as regards external stakeholders. In the past, external stakeholders had felt that they should have some kind of feed-in to the process; however, as one of the officials noted: 'the way it's structured from DWP to ourselves, one: they don't provide enough time for us to go out and consult and, two: I don't think they have any expectation that we will go out and consult'.²⁹

However, officials also pointed to a number of areas where divergences on the role and nature of the NAP/NRP existed. It was highlighted that 'the Welsh had raised the comment that the NAP was quite Anglo-centric...[that the DWP] give most weight to the things they can report from England and then just cherry-pick from there for the rest of the devolved authorities, picking good examples of best practice.'³⁰ There was also a tentative suggestion that 'there may be a political will to see the Scottish programmes within it, to raise Scotland's profile... that's the noises the First

Minister has been making over the last few years...raising Scotland's profile internationally...'³¹
If this is the case, it would refute the idea that the NAP/NRPs were not seen as strategically or politically significant.

As in the cases of UK central government, Denmark and Sweden, there appears to be less involvement and interest in the EES, and the Lisbon Strategy more generally, from officials mainly involved in domestic labour market policy. They would appear to be more sceptical of the Lisbon Strategy and NAP/NRP process, admitting that they 'don't live and breathe the Lisbon Strategy'.³²

There has been no attempt to use extra-state channels to secure an influence in the OMC processes: although there could be the possibility for direct cooperation of SNAs through the exchange of best practice or policy learning, so far the Scottish Executive has not done this through the EES. Even if they do look across Europe to draw lessons, they have not used the Action Plan or Employment Strategy to do that; as one official stated, 'there's not going to be enough there [in the NAP/NRP] from any nation that gives you enough to work on'. This lack of interest is further reflected in the fact that there does not appear to be a reference to the EES by those involved in creating the new 'Employability Framework' for Scotland, despite 'employability' being one of the four key pillars of the original Employment Strategy.

There is, therefore, a coherent approach to the NAP/NRP between the sub-national and central government levels with both levels sharing similar views on the nature and purpose of the document. However, as the change from the NAP to the NRP has incorporated a wider range of issues so it has led to a squeezing of the potential for sub-national involvement, particularly given that their competence stretches only to some employment-related issues and not to the wider macro- and micro-economic concerns dealt with by the NRP. Effective coordination exists between the different levels but involves a limited number of officials and no formal coordination mechanisms. Moreover, knowledge and interest in the NAP/NRP and EES in general appears to be rather limited to those policy officials which deal directly with it.

Conclusion

By focusing on one policy area and on one department of a sub-national authority, this paper has aimed to assess whether sub-national involvement differs depending on the nature of EU governance mode and whether 'new' governance methods like the OMC present a new opportunity for sub-national actors to play a greater role in EU policy-making. It is clear that at present sub-national involvement in the EES is rather limited, in contrast to the relatively autonomous role that they are able to play in the implementation of the structural funds. Treib et al's (2005) analytical categories may help shed some light on the impact that different characteristics of old and new governance modes may have on the possibilities for sub-national involvement.

In terms of the polity dimension and the nature of institutional structures, both the EES and the SF process in theory encourage the dispersal of authority to different levels and actors. However, in practice, the case study found that in the OMC Employment process, central government actors in Whitehall are able to keep a tight hold of the policy process and there remains a clear hierarchical structure with central government actors retaining the key role, something which appears to be in contradiction to the normative expectations for the OMC. Information is passed only directly through DWP to a very small number of actors at sub-national level, whose involvement represents only a very small part of their job and no formal institutional arrangements have been made for devolved involvement in the EES, which relies on informal co-operation between civil servants. Moreover, the recent reforms to the process have meant further limitation to the time and space allowed for sub-national participation. Even the European Commission noted in its assessment of

the UK's 2005 NRP that although 'some consultation took place, for example with the devolved administrations responsible for Scotland, Northern Ireland and Wales...wider consultation could have strengthened the integration and ownership of the NRP' (2006: 1). This hierarchical structure, lack of institutionalisation and restricted dispersal of authority has resulted in a limited interest in the EES being taken by SNAs. As Zeitlin points out, 'the limited integration of OMC processes into domestic policy-making forms a crucial disincentive to greater participation' (2005:24).

By contrast, the Structural Fund process allows for a greater degree of decentralisation and autonomy of sub-national actors. The Scottish Executive is able to play a role not only in implementation, but also in contributing to the development of the National Strategic Reference Framework which will set the priorities for the future funding period, despite the UK government continuing to play a gatekeeper role when it comes to history-making decisions on the future of the Structural Funds. The process is strongly institutionalised, with the partnership principle long established and the actors involved clear on the nature of their roles and responsibilities. In contrast to the hierarchical nature of the OMC in Employment, the Structural Fund process presents more of a network structure, with interactions between national, regional and local level taking a more interdependent nature. Actors dealing with Structural Funds in the Scottish Executive have close relations not only with DTI but also with local and European level actors. Indeed, Hooghe argues that 'partnership' has 'spawned a dynamic web of networks, communication exchanges and patterns of influence stretching from Brussels to the remotest community' (Hooghe 1996: 121).

The characteristics of the policy dimension may also have an impact on sub-national involvement. The EES relies on voluntary participation, 'soft', flexible procedures and has no sanctions mechanisms attached to it. Given that it is seen by both UK central government and the Scottish Executive as a mere reporting mechanism rather than as a 'strategy' or 'plan' in its own right, it is unsurprising that little effort is made by SNAs to have a greater input. There appears to be a view from the devolved administration that there is currently little added value in using this process. The principal incentive for the Scottish Executive to participate in the NAP/NRP process is judged to be the possibility to increase Scotland's profile internationally, but for this to be the case, there is a need for the NAP/NRP process itself to gain significance in the UK, and for the Scottish input to be more significant than one or two paragraphs in the final document. It is rightly claimed that SNAs will not invest time, energy and resources in the process unless it leads to forward policy commitments with real practical and financial consequences (Zeitlin 2005: 24).

By contrast, the Structural Funds process provides strong incentives for participation of sub-national authorities in the form of financial resources. There are clear 'rules' on participation and monitoring of the process, a strong treaty base and the possibility of finances being withheld if the process is not carried out correctly. The recent reform of the funds, rather than leading to a decrease in interest in the SF, has led to discussions over the organisation of sub-national delivery mechanisms and a strong sense of Scottish Executive 'ownership' of the policy. Furthermore, it appears to have stimulated Scottish Executive interest in the wider Lisbon Strategy, with the latest policy documents emphasising the links between the SF programmes and EES priorities

At present, it is hard to see the OMC in Employment as a new opportunity for sub-national authorities to play a greater role in European policy-making. The current functioning of the EES in terms of the involvement of a range of actors does not appear to be meeting normative expectations. Sub-national actors are failing to see any added value from participation and are offered only limited involvement by central government. By contrast, the Structural Fund process, given its strong legal basis, rigid rules on participation and obvious financial incentives, remains a significant area of sub-national involvement in European policy-making. In Scotland, Structural Fund officials are keen to use the Lisbon Strategy and the EES to more strategically align policies in the employment field. Rather than an opportunity for new actors and institutional structures, the OMC in Employment could result in the development of the same sub-national policy communities as existed to deal with previous EU modes of governance, with the Structural Funds being used

as a lever to increase sub-national participation in the EES, and mixed forms of governance being used to achieve the same aims.

Notes

- 1) NEWGOV New Modes of Governance Project 2004-2008, Funded by the EU 6th Framework Programme
- 2) European Council Conclusions 2000: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm
- 3) See Borrás and Jacobsson (2004) for a classification of the difference between the OMC and traditional soft law
- 4) The 'politics' dimension relates to the varying involvement of private and public actors: given space constraints and the fact that the case study is based on interviews with public actors (civil servants), it would seem more fruitful to concentrate on only the two most relevant areas.
- 5) European Commission: http://europa.eu.int/comm/employment_social/employment_strategy/local_en.htm
- 6) Scottish Executive ETLLD Homepage <http://www.scotland.gov.uk/About/Departments/ETLLD>
- 7) A Partnership for a Better Scotland: Partnership Agreement <http://www.scotland.gov.uk/library5/government/pfbs-00.asp>
- 8) Framework for Economic Development in Scotland <http://www.scotland.gov.uk/library5/government/fedsm-00.asp>
- 9) Smart Successful Scotland <http://www.scotland.gov.uk/library5/enterprise/MP%20Report%202004.pdf>
- 10) Life through Learning; Learning through Life <http://www.scotland.gov.uk/library5/lifelong/lism-00.asp>
- 11) Interview 1, DTI, Regional European Funds Directorate, 19th January 2006
- 12) Interview 2, Treasury, Devolved countries and regions team, 17th January 2006
- 13) Interview 3, DTI, Regional European Funds Directorate, 19th January 2006
- 14) Interview 4, ETLLD, European Structural Funds Division, 6th February 2006
- 15) Interview 4, ETLLD, European Structural Funds Division, 6th February 2006
- 16) Interview 4, ETLLD, European Structural Funds Division, 6th February 2006
- 17) Interviews 4 & 5, ETLLD, 6th February 2006
- 18) Interview 6, DTI, European Economic Reform Unit, 18th January 2006
- 19) Interview 7, DWP/Joint International Unit, 18th January 2006
- 20) Interview 7, DWP/Joint International Unit, 18th January 2006
- 21) Interview 8, DWP/Joint International Unit, 18th January 2006
- 22) Interview 8, DWP/Joint International Unit, 18th January 2006
- 23) Interview 9, ETLLD, 6th February 2006
- 24) Interview 9, ETLLD, 6th February 2006
- 25) Interview 9, ETLLD, 6th February 2006
- 26) Interview 9, ETLLD, 6th February 2006
- 27) Scottish Executive NRP Submission Document 2005 shown to me at interview 4, ETLLD, 6th Feb 2006
- 28) Interview 5, ETLLD, 6th February 2006
- 29) Interview 5, ETLLD, 6th February 2006
- 30) Interview 9, ETLLD, 6th February 2006
- 31) Interview 9, ETLLD, 6th February 2006
- 32) Interview 5, ETLLD, 6th February 2006

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Policy Convergence', June, Brussels http://europa.eu.int/comm/governance/areas/group8/report_en.pdf.

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