CHAPTER 5

OECD
We do beauty contest line-ups. We have a graph with countries, good ones and bad ones. Exactly what the OECD is always doing. And they are quite good at it: they have to be because it’s their only power.

Respondent #8.
1. INTRODUCTION

The OECD is an international organization that exemplifies how compliance with rules can be induced without the existence of a dispute settlement or judicial system, or indeed any type of official compliance mechanism for that matter. This section sets out the history and goal of the organization, its functioning, legal instruments and organizational set-up as well as its manner of inducing compliance with the organization’s rules and regulations, insofar as these exist.

2. ABOUT THE OECD: HISTORY AND FUNCTIONING

After the Second World War the Organization for European Economic Cooperation (OEEC) was established in 1948 to administer American and Canadian aid under the Marshall Plan for the reconstruction of Europe. In 1960 the organization was reformed and given the new name of Organization for Economic Cooperation and Development (OECD). By then its scope had developed from reconstructing Europe to helping its Members achieve sustainable economic growth and employment, as well as offering assistance and expertise to over 100 developing and emerging market economies. Article 1 of the OECD convention sets as the aims of the organization: “to promote policies that support economic growth, boost employment, raise living standards, maintain financial stability, assist other countries’ economic development, and contribute to growth in world trade”. The aims of the organization are thus no longer European, as at the time of the Marshall Plan, but rather global. This is also reflected in the Membership of the Organization. Whereas the OEEC Convention was open to “any signatory European Country”, the OECD allows for Membership by “any Government” by unanimous invitation of the Council. The Organization now includes countries such as Mexico, New Zealand and the United States.

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1 Convention on the Organisation for European Economic Cooperation, April 16, 1948, 888 UNTS 141 (OEEC Convention). The Marshall Plan, officially known as the European Recovery Program, provided administrative, technical and financial assistance (worth $13 billion) to 16 European nations (including Germany) after the Second World War.


3 Ibid.


5 OEEC Convention, Article 25.

6 OECD Convention, Article 16.
PART III  Compliance Mechanisms in International Organizations

In order to achieve the aims mentioned in Article 1 of the Convention, the OECD engages in identifying good practices while providing a setting where governments can compare policy experiences, seek answers to common problems, and co-ordinate domestic and international policies. The organization has several instruments to induce compliance, with mutual examination by governments, multilateral surveillance and peer pressure to “conform or reform” as its most effective instruments.8

The OECD can be seen as a forum where peer review can act as a powerful incentive to improve policy and implement “soft law” — non-binding instruments that can occasionally lead to binding treaties. For example, the OECD conducts in-depth research and investigation, drafting and composing commentaries and other written documents, which are often used as the basis for treaties of other international organizations (such as, for example, the Model Tax Convention), or are treaties in their own right (such as the OECD Convention on Bribery, for example).9 In this manner the OECD performs the preliminary tasks leading to new international treaties. However, the main tasks of the OECD lie in the regular drafting of reports on the general economic situation in its member countries as well as other publications totaling more than 250 per year. Examples of these reports are the Economic Survey, Economic Outlook, OECD Factbook, Going for Growth, the working papers of the different departments and many more.

2.1. Institutional Structure

To understand how the peer review method in the OECD works, a brief overview of the organization’s institutional structure and its main organs is needed. The

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8 Ibid., p. 13.
9 The OECD members as well as other States use the regularly updated “OECD Model Tax Convention on Income and Capital” as a model convention on how to mitigate the effects of double taxation. The pattern of the Convention, and in most cases also most of its provisions, are used as a basis for bi- and multilateral tax treaties regulating issues of double taxation.
10 The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions contains standards to criminalize bribery of foreign public officials, and measures to effectively implement these standards. It has currently been ratified by the 34 OECD Member Countries (Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States), as well as six non-member countries (Argentina, Brazil, Bulgaria, Colombia, Russia and South Africa).
OECD currently has 34 Member States. Each Member State is represented by an OECD delegation, which is composed of high-ranking national officials and headed by an OECD ambassador. The principal organs of the organization are the Council, the Committees and the Secretariat.

The Council is the organization’s principal decision-making organ: Comprising all Members as well as a representative from the European Commission, it is “the body from which all acts of the Organization derive.”

The Committees are composed of experts and specialists representing Member States. They provide the possibility for consultation between the Member States on specific topics, which contributes to shaping the policies of the Members in these areas. The OECD currently has about 250 Committees, working groups and expert groups, which meet to advance ideas and review progress in specific policy areas, such as economics or trade.

The Secretariat, then, supports the activities of the Committees and provides research and analysis. The head of the Secretariat is the Secretary-General, who also serves as chair of the Council, and can submit its own proposals to the Council or any other body of the organization. The Secretariat has 11 Directorates, the most important of which is the Economics Department – which some call “the very essence of the OECD staff’s self-definition.”

Marcussen makes a distinction between two layers of the OECD organizational structure, where the first layer is political, deliberative and consultative, with national civil servants and national politicians as its main actors. The OECD itself has described this layer as a permanent intergovernmental conference with an increasingly complex structure of groups, parties and committees. The second layer is administrative, analytical and data-processing – meaning the OECD Secretariat. The interaction between the political and administrative layers becomes clear when the peer review process of the Country Surveys is examined. In this process, the administrative level in the shape of the Country Studies Branch of the Economics Department has the responsibility for writing the country surveys. The Economic and Development Review Committee, part of the organization’s political layer, has the responsibility for the multilateral surveillance procedure.

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11 See previous footnote.
12 OECD Convention, Article 7.
13 Article 10(2) OECD Convention.
15 Ibid.
Before this process is examined in more detail, a brief discussion is warranted of the peer review process in the OECD in general.

2.2. OECD Instruments

The primary purpose of the OECD is not to produce legal norms. However, various legal instruments do exist within the organization in several different forms. In order to achieve the aims set out in the OECD Convention, the organization may take binding decisions, make recommendations and enter into agreements with Members, non-Member States and other international organizations.\(^{18}\) The Acts of the Organization, as they are called, thus consist of decisions and recommendations.\(^{19}\)

The OECD does not often take decisions,\(^{20}\) but when they are taken by mutual agreement they are binding on the Members.\(^{21}\) However, these decisions are binding only upon those Members that have voted for them, as according to Article 6(2): “If a Member abstains from voting on a decision or recommendation, such abstention shall not invalidate the decision or recommendation, which shall be applicable to the other Members but not to the abstaining Member”.\(^{22}\) In fact, one could say that the decisions of the OECD are not really binding as such, but more akin to conventions drafted by the organization and subsequently submitted to its Members for ratification.\(^{23}\) This is even more so given the fact that decisions are only binding until the Member State has complied with the requirements of its own constitutional provisions.\(^{24}\)

There are four types of OECD decisions: decisions which are binding on the Members once implemented; decisions approving agreements with its Members, non-Members and international organizations; decisions on internal matters concerning the work of the Organization (called Resolutions); and decisions providing for communications to non-Members or to international organizations.\(^{25}\)

\(^{18}\) Article 5 of the OECD Convention.


\(^{20}\) A total of 29 Decisions are recorded on the OECD website: (<http://webnet.oecd.org/OECDACTS/Instruments/ListByTypeView.aspx>, accessed May 2013).

\(^{21}\) OECD Convention, Article 6(1).

\(^{22}\) There are a few exceptions to this rule, e.g. Article 16 dictates that decisions on membership shall be taken unanimously. Members can abstain from voting, but the decision will apply notwithstanding to the abstaining Member, in derogation of Article 6.


\(^{24}\) OECD Convention, Article 6(3).

\(^{25}\) Rule 18a, OECD Rules of Procedure.
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The second type of Act of the Organization is the OECD Recommendation. Such Recommendations are “submitted to the members for Consideration in order that they may, if they consider it opportune, provide for their implementation”. 26 Recommendations are not legally binding, but there is an expectation that Member Countries will do their best to implement Recommendations, since they can be seen as representing the political will of the Member States. The moral force that ensues from a Recommendation, therefore, usually entails that a Member State will abstain from voting when a Recommendation is adopted if they do not plan to comply with it. 27

Recommendations in general are usually defined as “non-binding suggestions of international organs”, thereby emphasizing their non-legally binding nature. 28 A definition that puts more focus on the possibilities a recommendation offers, refers to “une invitation à adopter un comportement déterminé, action ou abstention”. 29 These recommendations are thus of a soft-law nature, not enforceable in any court, but aim to have a strong influence on the Member countries’ policies and actions. The fact that recommendations are not legally binding does not mean they have no effect on the Member State’s behavior at all – otherwise, what would the rationale for adopting recommendations be? As Schermers put it: “The existence of a legal obligation provides merely one of many reasons for observing a rule and indeed, in international law, where sanctions often prove to be illusory, the legal obligation may not even be the prime motivation behind norm compliance”. He lists several factors contributing to the adherence to a non-binding norm such as a recommendation, such as the constitutional provisions underlying the powers of the organ that adopted the recommendation, the structure of the organization, the method of enactment (the participation, voting manners and the status of the individuals voting), formal acceptance of recommendations, the need for a rule, others’ application of a certain rule, the moral or legitimizing effect of the adoption of recommendations by international organizations, or the restatement of previous resolutions or recommendations. 30 This issue of compliance with non-binding norms will be addressed below in the

29 Virally, M., ‘La valeur juridique des recommandations des organisations internationales’ (1956) 2 Annuaire français de droit international, as quoted by Schermers and Blokker (2011) on p. 767.
section on compliance.\textsuperscript{31} For now it is important to realize that the OECD uses as its main instrument a soft-law and thus legally non-binding recommendation.

Other OECD instruments are Declarations, Arrangements and Understandings, Treaties and Conventions, Agreements and Guidelines.\textsuperscript{32} Except for Treaties/Conventions, these instruments do not constitute formal acts of the organization and are not intended to be legally binding, but are noted by the OECD Council, while their implementation is monitored. Treaties and Conventions, while concluded in the Organization’s framework, are free-standing Agreements that are legally binding on the Parties, which may include non-OECD Members.\textsuperscript{33}

Given the soft-law nature of the recommendation and most other instruments used by the organization, it is logical that the OECD uses compliance mechanisms that fit this soft-law nature. The OECD can be seen as the prime example of an organization working almost exclusively through the use of peer review and mutual surveillance instruments. Even the accession process for new members applies a peer review method: A prospective member’s policies in various areas are reviewed to assess its position with respect to relevant OECD instruments, standards and benchmarks.

3. PEER REVIEW

We have seen in the earlier sections that the main instrument used by the OECD is the Recommendation. The prevalence of this legally non-binding, soft-law instrument to some extent explains the use of soft compliance mechanisms like peer review and mutual surveillance. The type of underlying obligations within an international organization determines the effectiveness of the compliance mechanism in that organization to a large part. In general: Soft obligations call for soft(er) mechanisms.\textsuperscript{34} Given the importance of soft-law mechanisms in the OECD, this section will discuss firstly the general notion of peer review and its

\textsuperscript{31} Section 5.

\textsuperscript{32} The OECD website lists the adoption of 179 recommendations since 1961, as well as 29 Decisions, 1 Agreement, 3 Arrangements, 6 Conventions, 4 DAC Recommendations, 25 Declarations and 2 Guidelines (http://webnet.oecd.org/OECDACTS/Instruments/ListView.aspx, accessed June 2013).

\textsuperscript{33} Bonucci (2004), p. 2. An important example of such a Treaty concluded in the framework of the Organization is the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 17 December 1997 (Bribery Convention). This Convention has currently been ratified by 40 Countries, including 6 non-Member States.

\textsuperscript{34} See chapter 1, Theoretical Background.
application within the Organization, and secondly one particular example of a peer review system: the Economic Survey.

3.1. OECD Peer Review

Above peer review was defined as “the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles.”\(^{35}\) Peer review in the OECD is used for several purposes, which include i) *Policy dialogue*, where information and views on policy decisions are exchanged between participating countries; and ii) *Transparency*, where the reviewed country has the opportunity to present and clarify national rules, practices and procedures, and to explain why and how the country applies these. The information gained from these reviews is usually kept in a database and made available to both other member countries and the public through, for example, the OECD website; iii) *Capacity building*, where peer review is used as a mutual learning process in which best practices and methodologies are exchanged between Member States; iv) *Compliance*, where the soft nature of the peer review system and its corollary, peer pressure,\(^{36}\) can induce compliance through assessing and encouraging trends towards compliance, rather than a static view of the situation at a certain moment in time. This dynamic interpretation, which is usually absent from harder enforcement systems,\(^{37}\) allows for a more flexible approach towards non-compliance. Moreover, the enhanced communications and information sharing between countries during the peer review process can help to clarify and explain differences, thereby creating the opportunity to rectify instances of non-compliance before they actually occur.\(^{38}\)

Peer reviews are held in several different areas in the OECD. The most notable are: the Economic Surveys by the Economic and Development Review Committee (EDRC), focusing on economic performance; the peer review of the


\(^{36}\) “A soft means of persuasion” which is the result of Member States’ scrutiny and review of their peers through a mix of formal recommendations and informal dialogue, public scrutiny, comparisons and ranking, usually combined with the involvement of the press and other media in making the results of the peer reviews public (see ibid., p. 263).

\(^{37}\) Although e.g. the Commission has a certain amount of discretion in the different steps of the infringement procedures, which also offers the possibility to take certain trends towards compliance (e.g. implementation) into account. The line between soft and hard systems itself may thus be seen as flexible.

\(^{38}\) OECD (2008), pp. 271-272.
Development Assistance Committee (DAC), which revolves around the characteristics of effective development cooperation systems in order to make donor action more coherent and effective\(^{39}\); the OECD Environmental Performance Reviews Program, which aims to improve countries’ performance in meeting environmental (domestic and international) objectives\(^{40}\); or the Country Reviews on Regulatory Reforms, which seek to help countries develop, implement and maintain good regulatory practices.\(^{41} \)\(^{42}\) Other OECD publications and reports often include quantitative studies such as the Economic Outlook, which provides economic projections (forecasts) twice a year for OECD countries and regions. These are short-term projections, usually for the next two to two-and-a half years. The different departments within the OECD also focus on different areas in several publications, where special working groups may be established to investigate a particular area at the request of a member country. Areas besides economics include the environment, governance, innovation, employment, finance, education, and so on. At the core of all these publications is the interaction and cooperation between all Members of the OECD, the countries examined as well as their peers, and the fact that comparisons are made between all countries, which are examined either in light of each other’s performance, against certain objective benchmarks or against established scoreboards.

Usually the peer review process has three basic phases:

- **Preparation**: The first phase of review consists of background analysis and some form of self-evaluation by the relevant country, including the gather-

\(^{39}\) OECD donor countries that make part of DAC account for more than 90% of official development assistance worldwide. The Development Co-operation Directorate assists with policy formulation and coordination, as well as information systems for development (see The OECD: Organisation for Co-operation and Development, p. 18).

\(^{40}\) Supported by the Environment Directorate which e.g. compiles environmental data and indicators and produces future-oriented outlooks of environmental conditions (ibid., pp. 22-23).

\(^{41}\) As part of the tasks of the Public Governance and Territorial Development Directorate, the OECD works with members as well as non-members to support countries to develop and implement good regulatory practices, and to assist governments in improving regulatory quality (see OECD website on regulatory policy: <http://www.oecd.org/gov/regulatory-policy/>), accessed June 2013.

\(^{42}\) These are four examples of peer review processes within the OECD. There are many more; the OECD in its study on peer review lists a total of 68 different types of peer review mechanisms within 12 different areas (Economics; Environment; Development; Public Management; Trade; Financial, Fiscal and Enterprise Affairs; Science, Technology and Industry; Education, Labor and Social Affairs; Agriculture/Fisheries; Territorial Development; Nuclear Energy; and International Energy), Annex A of OECD (2003) *L'examen par les Pairs: un Instrument de l'OCDE Pour La Coopération et le Changement*, pp. 23-33.
ing of documentation and data, as well as the filling out of an (elaborate) questionnaire.

- **Consultation:** In this second phase, the examiners together with the Secretariat perform consultations, in contact with the Member State, carrying out on-site visits that sometimes include consultations with interest groups, civil society and academics. In the end, a draft report is written by the Secretariat.

- **Assessment:** The final phase of review is where the elements of peer review and mutual examination are most explicit. Here the draft report is discussed in the plenary meeting of the body responsible for review; it may be adapted following discussions or sometimes even negotiations, and is finally adopted (or merely noted) by the body as a whole – including the examined country itself.⁴³

In order to show how the OECD works in practice, the next section discusses the Organization’s most important and well-known publication: the Economic Survey.

### 3.2. An Example: The Economic Survey

One of the goals of the OECD is “to promote the highest sustainable growth of [Member State] economies and improve the economic and social well-being of their peoples” through “consultation and co-operation”.⁴⁴ In order to achieve the aims of the organization, the Members of the Organization have agreed to keep each other informed and provide relevant information to the OECD, to consult together, carry out studies and to cooperate closely.⁴⁵ The Economic Surveys are an important example of how this cooperative and informational obligation is implemented by the Member States.

The Economic Surveys are individual country surveys⁴⁶ that are published every 12 to 18 months. They identify the main economic challenges faced by the country in question, analyze the policy options the country faces, and assess a

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⁴³ Pagani (2002).
⁴⁴ Pre-amble, and also rephrased in Article 1 of the OECD Convention.
⁴⁵ Article 3 OECD Convention.
⁴⁶ The countries surveyed are the OECD Members, although similar reports (Economic Assessments) are made for the Accession Counties (Chile, Estonia, Israel, Slovenia and Russia), and the so-called Enhanced Engagement Countries (Brazil, China, India, Indonesia and South Africa). There is also a special Survey for the Euro area.
country’s performance in relation to broad economic guidelines. The Surveys evaluate national performance in light of international best practice and provide specific policy recommendations based on empirical analysis. The surveys are coordinated by the EDRC, which is composed of one member from each OECD country plus the European Commission. The Economic Surveys, also called country reviews, are at the basis of the OECD’s peer review system. Every two years a country’s policies are reviewed by the EDRC, often with a detailed analysis of one specific structural area (such as housing, health, or education). Usually two members of the EDRC are appointed as lead examiners for each review, who work together with the member country’s permanent delegates to the OECD, sometimes assisted by government experts.

When the OECD had just been founded in the early 1960s, the focus of the surveys was mostly on short-term macroeconomic developments. Over the years the focus has shifted more towards the Members’ structural policies and linkages with macroeconomic performance. This shift in focus has also entailed a shift in the goals and aims of the peer reviews. No longer is the motive to gain a better understanding of how individual country experiences fit into the international outlook; it is rather to learn from particular national experiences. The detailed analyses in the country reports are based, among other things, on cross-country analysis. This way, the reviewed country can learn from the experience in other Member States, while at the same time serving as an example for its peers. For a Member State to have its policies examined in a comparative and quantitative framework can be quite helpful in setting a country’s policies towards better and sustainable macroeconomic performance. One possible drawback of this cross-country analysis is its relative simplicity, as these types of reports are not always able to properly account for country-specific situations.

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49 This involves a wide range of policy areas including labor markets, competition, innovation, human capital, financial markets, sustainable development, social security, taxation, health care and public spending. The Economic Surveys aim to clarify links between structural policies in these areas and macroeconomic performance (OECD website: <http://www.oecd.org/eco/surveys/aboutecomicsurveysandtheedrc.htm> (accessed May 2013).
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The EDRC’s multilateral surveillance process can be split into five stages.\(^{50}\)

1. The country desk economists of the country studies branch of the Economics Department investigate which topics should be focused on during the review, taking the political, organizational and functional conditions in the OECD and the country under review into account.\(^{51}\)

2. Data are collected in the surveyed country, also involving the national civil servants of the country under review. During this stage, several questionnaires are sent to the surveyed country, and on-site visits are made to carry out interviews and in-depth discussion with national authorities.

3. A first complete draft survey is drawn up, consisting of three parts: one part of assessment and recommendations; an annex showing the actions taken to follow the policy recommendations of the last review; and one or more in-depth structural chapters.\(^{52}\)

4. The EDRC meets, and after some introductory statements the actual examination begins. Two selected examining countries ask critical questions of the delegates of the country under review, first on the macroeconomic issues, then on the structural issues. At the end of all discussions, conclusions are drawn as to the consensus that has arisen on the issues. After the examination, the draft is revised in consultation with the country under review and the recommendations of the Committee.

5. The permanent members of the EDRC can comment on the revised report, which in the end will be adopted unanimously by the committee. The final report is thus one on which all members of the OECD agree. This means that the country under review also agrees with the policy recommendations in the report, and thus retains shared “ownership” of the report.\(^{53}\) By endorsing the findings and recommendations in the publication, the country under review also commits itself to acting on the recommendations. This is not only

\(^{50}\) Corresponding to, but a more detailed version of, the three phases mentioned earlier: preparation, consultation and assessment.

\(^{51}\) Typically, this means that a list of interesting topics is composed, which can be investigated for several countries in order to make cross-country comparisons possible (Marcussen (2004), p. 26).

\(^{52}\) See e.g. the last survey for the Netherlands, which includes a chapter on Assessment and Reforms highlighting trends and prospects; an annex on the progress on structural reform, showing that on some points the policy recommendations have been followed up and on other points no or other action has been taken; and three structural chapters on the business sector, the Dutch labor market and health care reform (OECD (2012) OECD Economic Surveys: Netherlands ).

\(^{53}\) OECD website:  
due to pressure from its peers in the OECD, or wanting to do better than its neighbors (since comparisons are made with one’s peers), but also due to the stimulus of domestic public opinion, since almost all results of OECD peer reviews are made publicly available.

The Economic Survey is thus a collaborative effort of the country under review, examiners from other Member States, the Secretariat as well as all OECD Member States as represented in the EDRC. The question is of course in how far the reports are able to influence a country’s policies in the areas where recommendations are made. Is the method of mutual surveillance and peer review as is practiced in the OECD (and exemplified by the Economic Survey) an effective method to induce compliance with or adherence to the recommendations and other instruments of the organization?

4. OECD COMPLIANCE

The OECD Convention does not refer to compliance as such. This is not surprising, seeing as the OECD is an organization driven by mechanisms such as peer review, transparency, recommendations, dialogue, in-depth analyses or mutual surveillance. These softer techniques, intended to steer Member States in a certain direction, are a good match with the softer, non-binding type of obligations under OECD rules – as opposed to hardcore enforcement.

The OECD Convention comprises 21 articles, only a few of which contain some kind of obligation, and then usually worded in such terms as “the Members agree to promote”, “achieve”, “contribute”, “pursue policies” and so on. The only article that comes close to conferring binding obligations on the Members, and where non-compliance could thus occur, would be Article 3, where Members are to keep each other informed, consult together and cooperate closely.\footnote{Article 3 OECD Convention, “With a view to achieving the aims set out in Article 1 and to fulfilling the undertakings contained in Article 2, the Members agree that they will: (a) keep each other informed and furnish the Organisation with the information necessary for the accomplishment of its tasks; (b) consult together on a continuing basis, carry out studies and participate in agreed projects; and (c) cooperate closely and where appropriate take co-ordinated action”.

However, even these obligations would be hard to put into enforceable terms, since it is impossible to state unambiguously what exactly constitutes cooperation, consultation or information. Furthermore, even if a Member were in non-compliance with these obligations, there is no dispute settlement system or a supranational body that decides on the issue of non-compliance.
Despite the lack of an enforcement system within the OECD, compliance with the rules and recommendations of the organization itself is believed to be surprisingly large:

The organization has been able to impose a general standard of concurrence in its activities which is not without its impressive qualities.\(^{55}\)

Adherence to [the OECD’s non-binding instruments] is not legally required, but, in practice, those instruments are among the most successful (in terms of compliance) international legal instruments.\(^{56}\)

On a pu constater que la faiblesse de ses pouvoirs ne faisait pas obstacle à l’efficacité de [ses] action[s].\(^{57}\)

However, no studies can be found that actually evaluate the effectiveness of the procedures applied by the OECD.\(^{58}\) It can be said that OECD studies do have some impact on the policies of the Member States, but it is unclear whether this is due to the persuasive force of the content of the policy advice and the outcomes of the studies the organization performs, or rather due to the effective workings of the OECD’s soft compliance mechanisms. Furthermore, as a part of the review process the Member State under review works together with the reviewers, as can be seen for example with the Economic Survey process. This gives the Member State some measure of ownership of the report, thereby increasing the chances of the report’s policy recommendations actually being implemented in the Member State. In fact, the final report also needs to be approved and adopted by the relevant examining body as a whole – including the examined Member State itself, given the OECD method of decision-making by consensus.

On the other hand, given the involvement of the Member State in question, the advice regarding certain (sometimes critical) elements may also have been adapted precisely due to this influence of the Member State. It is not unlikely that this sometimes means that certain advice fits the current behavior of the relevant Member State, or its planned future behavior, rather than modifying...

\(^{55}\) Sands and Klein (2009).


\(^{58}\) Only one study comes close to such an analysis, where an evaluation was made of the extent to which OECD recommendations were followed by the Member States, see Armingeon and Beyeler (eds) (2004).
When the OECD Convention is examined in light of the theories discussed in this dissertation, it could be stated that the *depth of coordination* (the extent to which a treaty requires states to depart from what they would have done in its absence) is quite small. Just as the OECD convention itself in fact codified existing behavior, as well as the intention to intensify this existing behavior of sharing information and coordinating certain policies, the same may hold true for the OECD country reports and other peer reviews. These reports may reflect to some extent the already existing economic policies and intended future economic policies of the country under review.

Another explanation for the allegedly high effectiveness of OECD recommendations in achieving policy changes in the Member States can be found in the so-called *degree of misfit* between the policy advice on the one hand and the domestic policies, politics and institutional arrangements on the other. The higher the degree of misfit, the larger the adaptational pressure on the Member State: A certain degree of misfit is necessary for any change in policy to occur. In other words, when the domestic arrangements and plans already entail or foresee certain policy changes, a recommendation concerning similar policy changes will seem highly effective. In reality, though, the recommendation contained no real new advice, and thus yields a false positive. This idea of a degree of misfit differs from the concept of depth of coordination in that it concerns the fit with not only the content of the policy recommendations, but with the institutional processes and reception as well.

There are two elements to the misfit concept. First, policy misfit; this concerns the rules and regulations of the organization versus domestic policies. The content of this element largely corresponds to the depth of coordination concept. Second, institutional misfit; this challenges domestic rules and procedures and the collective understanding attached to them. One could thus argue that the degree of misfit between policy and institutional aspects between the OECD and the Member States may be very low, thereby explaining the concordance between the OECD policy recommendations and the domestic policy changes. When the degree of misfit is greater, the adaptational pressure on the Member States should also be greater. However, in the OECD there is no such corresponding increase. It is shown that in those areas where the misfit is greatest between

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60 See chapter 1, Theoretical Framework.


62 Ibid.
the OECD and the Member State, the necessary corresponding policy changes are least observed. This is most evident when looking at the institutional misfit. For example: In those countries where trade unions traditionally have strong positions, recommendations regarding the flexibilization and decentralization of wage bargaining is most opposed (e.g. in France, Belgium and the Netherlands); wage policies are opposed that are not in accordance with procedures of institutionalized cooperation between social partners and the government (e.g. in Belgium, the Netherlands and Ireland); recommendations concerning the reduction of public regulations are opposed in those countries where the regulations are seen to belong to the realm of state responsibilities (e.g. the health sector in France, or the inflow of low-skilled foreign labor in Switzerland).

Practically speaking, one could attempt to gain some insight into the effectiveness of the OECD instruments by examining in how far their policy recommendations and other advice and suggestions have been followed up by the country under review. In fact, this is also something that the OECD does itself, for example in the Annex to their Economic Surveys on structural reform. Taking a look at the recommendations made for the Netherlands in the Economic Surveys for that country between 2004 and 2012, it is evident that the OECD indicates what action has been undertaken on certain past recommendations as well as a current assessment of these actions. In 2012, for example, the Dutch authorities had undertaken no action for 16 out of the 41 recommendations from the previous Survey.

Moreover, the OECD criticizes several similar policy issues in multiple or all surveys between 2004 and 2012. For example, the issue of childcare has been a recurring theme for the past ten years. In 2004, the OECD recommended implementing a unified subsidy for childcare and implementing national regulation in order to make childcare more affordable. In 2006, it advised reducing the taper rate for withdrawing childcare subsidies in relation to household income. In 2008 it was recommended to lower the marginal effective tax rates over the income spectrum. In 2012, it was recommended to reduce the effective marginal tax rate for second earners by making childcare support provisions more dependent on secondary earner’s income than family income. Given the lack of action taken on all these points except for the first of 2004, it is not clear in how far the OECD was able to influence Dutch policy on the issue of childcare, and the corresponding theme of women’s labor participation.

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63 For these and other examples, see Armingeon (2004), pp. 235-236.
64 Given the current plans for reductions in childcare support, one could say that the follow-up on the 2004 recommendation has been short-lived.
### Table 5.1: Non-implemented OECD Recommendations (for 14 selected MS)\(^1\)

<table>
<thead>
<tr>
<th>Recommendations which were not followed</th>
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<th>de</th>
<th>fi</th>
<th>fr</th>
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<tr>
<td>Introduce greater wage differentials</td>
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<td>Decentralize/deregulate wage setting/flexibility of collective agreed wages</td>
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<td>Abolish wage indexation</td>
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<td>Offer less early retirements</td>
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<td>Encourage a more flexible labor market</td>
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<td>Cut back minimum wage</td>
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<td>Scale back social security benefits/duration of benefits</td>
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<td>Reduce government spending</td>
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<td>Tax the self-employed sector</td>
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<td>Renegotiate wage settlements for reducing consumer spending</td>
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<td>Introduce premiums/limits to overtime in respective collective agreements</td>
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<td>Tackle fiscal crisis and unemployment (wage constraints, cuts to health and education transfers)</td>
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<td>Introduce residential property taxes</td>
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<td>Require rationalization for labor market training schemes</td>
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<td>Introduce wage moderation measures</td>
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<td>Put in place measures to reduce expenditures and inequalities</td>
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<td>Reduce taxes</td>
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<td>Reform unemployment insurance/offfer shorter duration of benefits</td>
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<td>Liberalize employment protection regulation</td>
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<td>Introduce various tax reforms</td>
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<td>Increase share of foreign labour</td>
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<td>Remove obstacles to part-time employment</td>
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<td>Raise participation of women and support family policies</td>
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<td>Introduce immediate pension reforms</td>
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<td>Introduce better linkages between contributions and benefits in the pension system</td>
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<td>Control social security tax evasion</td>
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<td>Increase the standard/effective age of retirement</td>
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<td>Increase funding rate of pension</td>
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<td>Reform the housing market (more labor mobility)</td>
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<td>Reduce cost of public pension schemes by minimum pension</td>
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<td>Introduce estate charges to finance institutional care services</td>
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<td>Introduce more competition and market rules in health services</td>
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<td>Introduce active purchasing of health care</td>
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<td>Collect fees for training</td>
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<td>Provide students with loans instead of grants</td>
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Limited research has been done on the extent to which actual policy developments in a country are in accordance with the OECD policy recommendations.\footnote{Armingeron and Beyeler (eds) (2004).} One study examined the recommendations made by the OECD in its Economic Surveys and contrasted them with reforms actually realized in 14 Western European welfare states over the span of 30 years. The objective was to give an impression of the extent to which ideas put forward by the OECD could have been received and accepted by national governments. Table 5.1 shows which OECD Recommendations were not implemented by these 14 Member States in those years.

The studies found that 8 of the examined Member States adhered to half or more of the recommendations, while the other 6 corresponded with the advice 50\% or less of the time. Overall, however, these results are not that bad: Only a total of 66 times were recommendations not followed out of a total of 658 possible follow-ups (47 recommendations × 14 countries). This means that in fact, recommendations were followed in about 90\% of all cases, which is quite a good result.

When asked what national authorities actually do with the OECD recommendations, once the Economic Survey has come out, one government official stated:

> We duly receive the OECD [delegation]. We are grateful for their good work, which helps us in keeping our own analyses at a high level. We say that we are very much reform-minded, while we are also in a political situation where support for reform is very important. We point out that the OECD’s analysis could need some improvement on several aspects. Then we discuss

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Country adherence</th>
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<tbody>
<tr>
<td>Review structure of student loans and grants</td>
<td>x</td>
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<tr>
<td>Cut grants available to students</td>
<td>x</td>
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<tr>
<td>Reduce period during which students receive state support</td>
<td>x</td>
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<tr>
<td>Offer performance-based financial incentives to vocational training</td>
<td>x</td>
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<tr>
<td>Introduce a private apprenticeship system</td>
<td>x</td>
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<tr>
<td>Improve labor qualifications</td>
<td>x</td>
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<tr>
<td>Introduce fees in higher education</td>
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<tr>
<td>Reduce central state influence in education, enforce stricter rules on promotion</td>
<td>x</td>
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<tr>
<td>Introduce time limits for obtaining university degrees</td>
<td>x</td>
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<tr>
<td>Introduce loans to student, require repayment through tax system</td>
<td>x</td>
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<tr>
<td>Introduce various reforms to primary and secondary education</td>
<td>x</td>
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<tr>
<td>Reform the educational system</td>
<td>x</td>
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</table>

1 Table (in adapted version) taken from Armingeron (2004), pp. 232-234.
for a bit and say our friendly goodbyes. Two years later we do the same thing all over again.\textsuperscript{66}

The theories explained above on depth of coordination and the need for a degree of misfit can explain to some extent how in many cases the policy recommendations made by the OECD seem to be implemented, while in fact such policy changes might also have been observed without the OECD’s advice. However, it can also be argued that the degree of misfit, at least on the policy side, or the depth of coordination is so small precisely \textit{due to} the influence of the OECD. Maybe the impact of the policy advice should not be analyzed as outlined in the reports and recommendations after they are published; rather, the focus should be more on what happens during the process of drafting and discussing while the review takes place. This process can take up to 18 months in total, and is repeated every two years. One could say it is an almost continuous process of review.

As a national government official stated: “the more important part of the review may be the review itself in Paris, where the Netherlands has to defend itself against critical questions from its peers”.\textsuperscript{67} Academic literature refers to this process phenomenon as “playing the idea game”\textsuperscript{68} or the “power of ideas”\textsuperscript{69}, where a process of learning takes place, and where exposure to and discussion of new ideas can alter beliefs and conceptions on what one’s own beliefs are or should be.

Marcussen defines three dimensions of OECD governance: cognitive, normative and legal. The legal dimension is rather weak, as only a small number of authoritative instruments (such as decisions) are passed by the OECD Council and these are binding only on those countries that voted for them. The OECD’s strength rather lies in the cognitive and normative dimensions. The cognitive dimension refers to the OECD’s capacity to forge a sense of identity among its members, creating a club of like-minded countries. Normative governance, then, is about the development and diffusion of ideas and norms through discussions and peer review.\textsuperscript{70} These two dimensions together create an environment where

\textsuperscript{66} Respondent #10.
\textsuperscript{67} Ibid.
\textsuperscript{68} Armingeon (2004).
\textsuperscript{69} Grinvalds, H.S., \textit{The Power of Ideas: The OECD and Labour Market Policy in Canada, Denmark and Sweden}, PhD Dissertation, Department of Political Studies, Queen’s University, Kingston, Ontario, Canada (2011).
adherence to the policy advice and suggestions by the OECD is the most likely, given the softness of the underlying obligations – as the next section will show.

5. THE EFFECTIVENESS OF OECD COMPLIANCE MECHANISMS

Now that the workings and character of the OECD’s compliance mechanism has been examined, an analysis of its effectiveness may be undertaken. In chapter 2.1 of this dissertation, three steps were formulated that help to determine the effectiveness of compliance mechanisms: A: the goal, B: the compliance, C: the effectiveness, and D: the comparison. As was done in previous chapters, A and B and C will be applied here, while D will be addressed for all different mechanisms in the final chapter in this thesis.

5.1. The Goal of the OECD Compliance Procedures

The underlying goal of the OECD peer review systems is to fulfill the tasks laid upon the Member States according to Article 3 of the OECD Convention, where the Member States are to keep each other informed, to consult together and to cooperate closely. The fulfillment of these tasks is necessary in order to reach not only the goals of the Organization as set out in Article 1 OECD, but also the undertakings in Article 2 OECD. In this last article Member States agree to several soft commitments, such as promoting the efficient use of resources or pursuing policies designed to achieve economic growth. The soft character of these obligations makes enforcement impossible, but fits very well with the soft methods of the peer review system.

The purpose of the OECD peer review systems is thus to promote policy dialogue, transparency, capacity building, as well as compliance through assessing and encouraging trends towards compliance, and in some cases preventing non-compliance. The goal is therefore quite diverse and not easily defined in one category. Compliance is part of the goals of the OECD compliance mechanism, but not the only one. However, it can be said that at the heart of every procedure lies the idea of influencing Member States through informing and comparing them with other economies. Through cooperating, Member States can see the added value of the OECD studies and conclusions, and may ultimately conform to the suggestions and advice advanced by the organization. By softly pushing Mem-
ber States in a certain direction through information, cooperation and advice, by changing the ideas and the mindset of the country under review, the OECD can reach its ultimate goal of achieving higher economic growth in the Member States.\textsuperscript{71}

5.2. Compliance

According to the compliance model developed in this thesis, four compliance-related questions now need to be asked regarding the Member State obligations, the character of these obligations, the definition of non-compliance and the causes of non-compliant behavior.

Expected Behavior
The first question regards the obligations the Member States are expected to adhere to. The peer reviews in the OECD are quite diverse, covering many different topics that fall under the general purposes of the organization. However, all peer reviews are an implementation of the general obligation under Article 3 OECD Convention to inform, consult and cooperate. The behavior expected from the Member State is thus to participate actively in the peer review process and to provide information to the organization regarding its (economic) policies. There is no obligation to conform to the conclusions of these reports.

Hard or Soft Obligations
The second question deals with the character of the underlying obligations. Almost all obligations under the OECD Conventions are of a soft character. One example of a hard obligation is Article 3, which forms the basis for the OECD peer reviews, where Member States have agreed to furnish the organization with the information necessary for the accomplishment of its tasks. However, most other obligations are worded in terms such as “promote”, “pursue”, or “contribute”, which are obligations of effort rather than result, and thus should be regarded as soft obligations. Other binding legal obligations of the OECD, with a hard character, are the Council Decisions. However, these decisions are binding only on those Member States that voted for them. They are thus usually applicable to those Member States that intend to adhere to them anyway. Moreover, these decisions usually include references to the route to be taken in case of divergence of views on the interpretation and application of the decision – the usual way is to find

\textsuperscript{71} Article 1, OECD Convention.
consensus between the parties, with the help of the (Chair of the) Council or the specific Committee that occupies itself with the relevant topic if needs be.  

**Actual Behavior Given the Element of Discretion**

The third question regards the actual behavior of the Member States: When is a Member State non-compliant? The last section concluded that compliance is only part of the ultimate goal of the OECD mechanisms. However, the peer review systems are set up to assess the performance of the Member States, thereby helping the reviewed state improve its policy making and comply with existing standards and principles. The conclusions of the peer review reports take the form of recommendations and guidelines, offering the reviewed state ways to improve its performance. Compliance in the context of the OECD can thus best be described as the extent to which Member States follow the advice of the organization, or take the road laid before them in the reports.

Surveillance over adherence to these guiding documents is the task of both the Organization as well as the Member States, throughout the peer review process and the adoption and publication of the reports. This surveillance takes place continually, and can be seen for example in the discussions of the reports in the EDRC, or the inclusion of a section on “Follow-up to previous OECD Recommendations” in these reports. The determination of this non-compliance with OECD rules is at the same time the organization’s only compliance mechanism: peer review is a way to establish non-compliance, and through establishing this in a public, transparent, comparative and interactive manner, peer review also induces increased compliance with the organization’s ideas.

The obligation of providing the organization with information to enable it to perform its tasks under the OECD Convention is also evaluated throughout the peer review process itself. Without the relevant information, no determination on the economic progress of the Member State can be made other than on the basis of publicly available information.

**Intentional or Non-Intentional Non-Compliance**

The fourth compliance question refers to the underlying reasons for non-compliant behavior. Peer review systems in general, and especially the OECD peer review system where the organization has no enforcement mechanism available as “back-up”, rely strongly on the lower steps of the compliance pyramid that was discussed in chapter 1.

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72 The Agriculture Council or Trade Council, for example.
73 See Peer review: merits and approaches in a trade and competition context.
Prevention, the lowest step, was described by Tallberg as preventive capacity building and rule clarification that reduce the risk of violations due to incapacity or inadvertence. This is the area where peer review thrives – in fact, it was mentioned before that the specific purposes of the OECD mechanism include policy dialogue (the exchange of information and ideas), transparency (the presentation, clarification and explanation of national rules), and capacity building (the exchange of best practices and methodologies between Member States). These elements work together in preventing non-compliance with the ideas and advice of the OECD.

Monitoring, step two, is in fact done continuously throughout the peer review process, which itself is a continuous process. OECD delegates investigate the current state of the policies of the Member State under review; they assess the impact of new policies as well as the adherence to previous policy advice from the organization, among other things. They send out questionnaires, go to the Member States in person, discuss with policy makers in the Member State, and draft the reports that are discussed by all Member States, including the reviewed country. In this sense, monitoring is at the core of the peer review process. However, the follow-up steps of a legal system and sanctions do not exist in the OECD. There is no possibility of bringing cases that further clarify existing rules against non-compliant states, nor the possibility of “punishing” or penalizing non-compliance. Given the soft character of the underlying obligations, this is logical.

The focus of the peer review systems on the two lower levels of the compliance pyramid and the absence of the two upper steps show that the causes for non-compliance are mostly assumed to be non-intentional, and thus able to be solved through more transparency, information, dialogue and so forth. The idea is that Member States will adhere to the recommendations and advice of the OECD when they understand the rationale behind these recommendations, and see how such adherence has worked to the advantage of other countries. As mentioned above, the OECD works through the power of ideas. There are no right or wrong ideas – but one can convince the other of the superiority of one idea over another. The Member State may be able to show the organization that their own ideas work better for their own state, while in other cases following the advice of the OECD may be in their interest. There are no strict rules to be followed by the Member States, and through mutual cooperation and information, ideas may
also change through time. Non-adherence to OECD recommendations may very well be intentional, but also may be necessary due to underlying political, historical or societal constructions.

The above analysis shows that the soft character of the underlying obligations goes hand in hand with the idea of unintentional non-compliance. In those cases where non-compliance is intentional, it is usually perceived not as non-compliance, but as an acceptable difference of opinion between the organization and the Member State. Through continued discussions and transparency, the OECD aims to, in the end, change the opinion of the Member State. The OECD thus relies almost completely on the managerial-type efforts as explained in chapter 1.

5.3. Conclusions on Effectiveness

The previous sections have shown that the goal of the OECD peer review system is not compliance as such, but rather to change the mindset of the Member States through managerial efforts. By encouraging the Member States to incorporate OECD recommendations and advice and apply them, the ultimate purposes of the Organization concerning, for example, economic growth or trade may be achieved. In order to ascertain the effectiveness of the OECD compliance mechanism, it needs to be determined in how far the system is in fact capable of achieving its objectives.

It is generally thought that the OECD is quite effective in making its Member States comply with its recommendations and other advice. Nowhere, however, is evidence found for this assumption. For a large part, this can be explained by the fact that the OECD’s purpose is not so much to induce compliance with its rules and recommendations, but – as was just said – to change the mindset of the Member States concerning which economic policy is best for the country. Changing a mindset or ideas and thoughts takes time, occurs gradually, and the change can usually not be pinpointed to a specific time or action. The fact that a Member State does not incorporate the OECD’s advice as laid down in their country reports, for example, does not mean that they do not take the advice into account. It could very well be that over the course of the following years, after repeated discussions with OECD representatives and other Member States, the
country concerned slowly changes its ideas in the area where the advice had been given previously. Moreover, some changes just take time to occur. For example, “the Japanese government has found that some recommendations require more time before it can translate them into effectively implemented policy reform”.74

It is, of course, impossible to measure exactly how the OECD has effectively changed the mindset and ideas of its Member States over the years. One way to gauge its influence, however, is by analyzing how often and in what context OECD reports and Recommendations are referred to by national policymakers or in national publications. Academic studies, for example, make frequent use of OECD reports and statistics. National policymakers often refer to OECD recommendations to support national policy. Other national stakeholders also use OECD publications when promoting their own ideas as examples of supporting qualitative documentation in order to convince policymakers. Through these channels, OECD ideas make their way into national policy as well.

On the other hand, there are inherent limits to how much influence ideas can have on national policy, given the interplay between existing beliefs and values as well as existing power structures.75 It is a fact that the OECD recommendations are not followed in about 50% of all cases, as explained in the earlier sections. Nevertheless, the recommendations, policy advice and ensuing discussions do contribute to the policymaking in the national states.76 The outcome of the national debates may not be in line with the OECD recommendations, but is nevertheless not without effect. It may therefore be better not to speak of the effectiveness of the OECD in actually changing the ideas of the Member States, but rather the effectiveness of introducing new ideas and contributing to the policy debates in the Member States. Academics, national policy makers, economists and others generally acknowledge the high quality and the unequaled availability of data that the OECD studies provide to the Member States.77 The OECD can thus be said to be quite effective in achieving its goals of information dissemination, cooperation, policy dialogue and transparency.

The fact that there is no enforcement mechanism to back up the peer review system may even be beneficial to the purposes of the organization. As will be seen in the next chapter, the existence of a hard mechanism that oversees adherence

76 See the analyses and results in e.g. OECD (2008) or The Power of Ideas: The OECD and Labour Market Policy in Canada, Denmark and Sweden, which show the impact of OECD recommendations in certain areas in specific countries.
77 Ibid.
OECD obligations are of a soft character, they are best served by a managerial mechanism. The hard obligation of Article 3 OECD (the obligation to cooperate, consult and inform), which could theoretically be subjected to a hard enforcement mechanism since it is legally binding, is supposed to keep a certain degree of voluntariness. The purpose for which this obligation exists is to be able to perform the soft peer reviews – it would not be logical to force Member States to cooperate in order to use this cooperation to formulate non-binding recommendations.

6. CONCLUSIONS

The OECD peer review mechanism is generally regarded as an effective system. The reason for this perceived effectiveness probably lies in the fact that the system is not meant as an enforcement or even compliance mechanism, but rather as a way to introduce new thoughts and ideas into national policy-making. Changing one’s ideas, or mindset, takes effort and time. The many meetings and discussions between the OECD and the Member States help in making the countries more receptive to the organization’s policy advice. Moreover, the involvement of the Member States in the peer review process gives them a sense of ownership of the recommendation, which increases the possibility of winning national support for policy decisions.

What the OECD studies and recommendations aim to achieve is increased information sharing, transparency and policy analysis of and between the Member States. This is exactly what lies at the heart of the peer review process, and what makes the studies successful: not so much the recommendations themselves, but rather the process leading up to the formulation of the advice is what matters. In this regard a managerial system, which according to Chayes and Chayes relies on reciprocity, transparency and accountability, is the logical choice to achieve the goals of the OECD as laid out in Article 1 to 3 of the Convention.

The expected behavior of the Member States, the soft character of the underlying obligations, the involvement of the Member States in the surveillance process as well as the underlying mostly non-intentional causes for non-compliant behavior all support the rationale for a managerial system in the OECD. An

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78 The fact that the policy recommendations are not legally binding adds to the feeling of government ownership (Hirono (2008), p. 248).
79 See chapter 1 in this dissertation for more on Management and Enforcement.
enforcement element would not be possible for inducing compliance with the mostly soft obligations of the OECD. On the contrary: It would probably not help achieve the OECD goals of consultation and cooperation, and could even have a detrimental effect on compliance. The study of the WTO mechanisms in the next chapter shows how a lack of interaction between a hard mechanism and a soft mechanism, both overseeing compliance with the same obligations, can have adverse effects on adherence to the rules of an organization.