

Working Group XI

Working Document 24

Working Group XI “Social Europe”

Subject: “Open Coordination”
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Members of Working Group XI on “Social Europe” will find hereafter a paper by Mr Joachim Wuermeling, alternate member of the Convention.

“Open Coordination”

1. What does “open coordination” mean?

At its special meeting in **Lisbon** (March 2000) the European Council formulated the goal of making the Union “the most competitive and dynamic knowledge-based economy in the world” by 2010.

In order to be able to realise this goal more easily the application of a new policy method, “open coordination” was decided – following the model of the European Employment Strategy enshrined in the Treaties. Basically, this means that **guidelines or targets** (where appropriate each with a precise timetable for realisation) that have to be **implemented** by national and regional policy are set at European level.

Although the targets are not legally binding due to the **regular monitoring and assessment** at EU level (sometimes combined with ranking among the Member States) de facto they develop a high degree of political effectiveness. As a result, the EU is given power to shape policy, especially in areas where it has no legislative powers under the Treaties.

2. Current example of “open coordination”?

“Open coordination” is being applied to a growing number of policy areas. In this connection, a distinction can be made between various forms of “open coordination”:

a) European Employment Strategy pursuant to Article 126 EC Treaty as a “model”

“Open coordination” was developed in the field of employment policy. Unlike other areas of policy, there is a legal foundation for this in Article 128 of the EC Treaty.

According to this, every year the Council passes guidelines on the basis of which the Member States draw up national plans of action. Implementation is subject to assessment at European level in the Joint Employment Report of the Council and Commission.

However, what is problematic is that – going beyond actual employment policy – targets for other areas, especially education, family, pensions and tax policy, are formulated within this context.

For example, the Lisbon European Council (March 2000) set itself the following goals, among others:

- by 2010, halving the number of 18 to 24 year-olds with a level I secondary-school leaving qualification who do not undergo any further education or vocational training
- further developing schools into “local multipurpose learning centres” open to all
- specifying a “European framework” for the new basic skills to be imparted by lifelong learning.

The Barcelona European Council (March 2002) formulated the following goals, among others:

- teaching at least two foreign languages from the youngest age onwards
- by 2010 the Member States should create nursery places for at least 90% of all children between three and school-age and for at least 33% of children under three
- Member States should reduce the tax burden, especially on low-wage earners
- the average pensionable age should rise by around 5 years by 2010.

b) “Open coordination” with guideline process

Following the model of the European Employment Strategy, “open coordination” with the guideline process described above (passing guidelines at European level, national plans of action and assessment of implementation at European level) is primarily applied in the following areas:

- Fighting poverty and social exclusion:
Specific objectives and measures were agreed in the Council (Social Affairs and Employment) on 17 October 2000 (e.g. encouraging going out to work and access for all to resources, rights, goods and services, e.g. to a decent home; political measures to prevent exclusion, e.g. due to debt, expulsion from school (!), loss of a home).
To this end, the Member States are currently drawing up **National Plans of Action** that are assessed on the basis of the **indicators** defined at European level.
The Barcelona European Council (March 2002) called upon the Member States to define goals for considerably reducing the number of people under threat of poverty and social exclusion by 2010 in the National Plans of Action.
- Future of the pensions systems:
After agreement in the European Council on objectives (adequate pensions; financial sustainability; modernisation of the pensions system) and working methods, the national strategy reports and, at European level at the same time, the indicators are currently being drafted. The acceptance of a first Joint Report of the Council and Commission on Implementation is expected in spring 2003.

c) “Open coordination” – (still) without guideline process

“Open coordination” is applied in a number of areas (or should be applied) without – according to the current state of affairs – a comprehensive guideline process being introduced or carried out. These include:

- The future of the health system and care for the elderly:
Basic goals (ensuring accessibility to, the quality of and the long-term ability to finance the health systems) are formulated in a Commission report approved by the Barcelona European Council (March 2002). Currently the Member States are completing a Commission questionnaire on the basis of which political orientations are to be decided in the spring of 2003.

- **Public health policy (first approaches):**
The Commission (DG SANCO) and the Council of Health Ministers want to set up a coordination of health policies, especially in order to “take back” from the European Court of Justice the legislative function in matters of the free movement of patients and the freedom of services in the health sector.
- **Industrial safety:**
The Community Strategy for Health and Safety at the Workplace (2002-2006) mentions open coordination as an instrument of cooperation between the social partners in this field.
- **Immigration and asylum policy**
The Commission believes that the EU legal acts decided within the framework of the existing powers should be supplemented with guidelines adopted by the Council and these, in turn, should be taken up in national plans of action. However, the Council has not yet taken up the Commission’s considerations.
- **Youth policy:**
In the “White Paper on Youth” notification of 21 November 2001 the Commission proposes the use of “open coordination” including a guideline process. The proposals include the establishment of regional and national youth councils.
- **Tourism:**
In a resolution of 21 May 2002 the Council (Internal Market) advocated open coordination in this field between the Commission, the Member States and the tourism industry. The priorities should include the drawing up of quality standards (benchmarking), sustainable development, the use of new technologies and the compilation of reliable statistics.
- **Education policy:**
The Commission believes that indicator-based benchmarking should be used to compare the Member States when implementing the programme of work on the future objectives of the systems for general education and vocational training within the framework of open coordination – above and beyond the exchange of experience. The political pressure that would then arise should bring about convergence of the education systems in Europe.

3. **My position:**

- a) In a first stage, the use of “open coordination” should be based on an assessment of whether the EU has legislative powers in the area concerned. If this is the case – as in immigration and asylum policy, for example – under certain circumstances, open coordination can be an appropriate and – within the meaning of the principle of subsidiarity – a milder instrument of Community policy than legislation.
- b) In the above-mentioned fields, with the exception of immigration and asylum policy, however, the Community at best has the power to encourage cooperation between the Member States. Harmonisation of the statutory and administrative provisions by means of Community legislation is, however, expressly ruled out according to the Treaties. In particular, with regard to questions relating to the modernisation of social protection systems and fighting social exclusion there is still no legislative power for the EU in the form of EC directives –not even under the Nice Treaty (which still has to be ratified).

If there are no legislative powers at European level in the area concerned, the use of open

coordination should be assessed with discrimination.

- An exchange of experience between the Member States in order to learn from each other and to identify best practice can also be appropriate in these areas. The heads of state and government in the European Council and the specialist ministers in the various councils can certainly give impetus to this.
- But “open coordination”, as it is currently practised, often goes far beyond this. By means of specific guidelines or targets, whose implementation by the Member States is at least partially subject to revision and assessment by the institutions of the EU, it is becoming a sort of “substitute legislation”, mostly while exceeding the scope of powers laid down in the EC Treaty. “Open coordination” in this sense should be rejected for the following reasons:
 - * It is democratically questionable: the Members of the European Parliament and the national parliaments elected by the people are mostly bypassed; they are only allowed to implement the targets that have been set by the (European) Council.
 - * It undermines the efforts for a clearer separation of the powers of the EU on the one hand and the Member States on the other because it does not respect the limits on the EU’s powers laid down in the Treaties. The various decision-making levels are mixed. The citizens, by contrast, are entitled to be able to clearly assign responsibility for political decisions. Only then can they also accept decisions of this kind.
 - * Competition between the Member States for the best policies and the best ideas is the right response to globalisation. Targets that have been harmonised throughout Europe weaken this competition instead of strengthening it.
 - * “Open coordination” is bureaucratic and opaque. A complex system of guidelines, plans of action, reports and evaluation ties up an enormous administrative machine at all levels.
 - * “Open coordination” is centralised and does not respect the independence and difference of the Member States and regions.
Examples:
 - The number of nursery places for children depends on the varying starting situations in the various Member States and regions. Central targets from Brussels are therefore not sensible.
 - The target to make provision for the teaching of two foreign languages from the youngest age onwards disregards the expressly protected responsibility of the Member States for curricula and the shape of the education system in Article 149 (1) of the EC Treaty.
- In this connection, it must be pointed out that criticism of the method of open coordination does not necessarily mean criticism of the objectives pursued by it: for example, the fight against poverty and social exclusion is undisputedly a major political goal.

However, we should critically question whether these objectives should be defined at

European level and whether “open coordination” as it is currently practised is the right instrument for achieving them.

- In the meantime, the criticism of various Member States who fear a broad restriction of their scope for action has become clear. In its conclusions, the Barcelona European Council therefore avoids the term “open coordination”, but without noticeably diluting the process.
- The German Länder, whose powers are greatly affected by the use of open coordination, have criticised this in numerous Bundesrat resolution (most recently in the run-up to the Barcelona European Council on 1 March 2002) and pointed out that “open coordination” must not become a method for exceeding the scope of the EU’s powers.

4. Summary:

We should therefore call for “open coordination” in areas in which the EU has not legislative powers,

- to use it for an exchange of experience and information between the Member States to identify best practice;
- but to leave substantial targets to the Member States and regions and to waive control and assessment by the Member States. Coordination that takes on a binding nature – even if only de fact – must be rejected.