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NOTE

From: The Secretariat

To: Members of Working Group on Economic Governance

Subject: Coordination of national policies: the open method of coordination

Members of the Working Group will find attached a discussion paper from the Secretariat on the coordination of national policies: the open method of coordination.

THE COORDINATION OF NATIONAL POLICIES: THE OPEN METHOD OF COORDINATION

"How do we reconcile the will of Europeans to combat unemployment with the fact that employment policies are a matter of national competence and should be implemented at grassroots level? To overcome this contradiction, António Guterres proposed to the last European Council an open method of coordination seeking to reconcile the convergence of the objectives with the diversity of the means and traditions of each country" ¹.

FOREWORD

The aim of this note is to supplement CONV 47/02 and CONV 162/02 which respectively deal with delimitation of competence between the Union and its Member States, and the legal instruments.

CONV 47/02 emphasised that *"the new open methods of coordination, which set objectives without taking account of the allocation of powers, contribute to the system's lack of clarity and give the impression that the Community's powers are very broad where this is not in fact the case. Thus misunderstandings and false ideas about the extent of the Union's legislative competence often exist because of the system's lack of clarity. Cases in point are culture, health and education, areas mentioned by several members of the Convention during the debates on 15 and 16 April. Although these are areas in which the Community's activities are limited to complementing the actions of the Member States, particularly by means of support programmes financed through the Community budget, and in which the Treaties expressly forbid the Community from legislating, the erroneous notion exists that the Community is competent to legislate in these areas"* (p. 12).

CONV 162/02 recalls that some have argued that *"Community legal instruments should go hand-in-hand with other solutions. The open method of coordination launched in Lisbon, intended for experience-sharing, is one example (...)"* (p. 19).

¹ J. Delors in "Pardon and promise. The living heritage of Robert Schuman", speech delivered on the occasion of the commemoration of the fiftieth anniversary of the Schuman Declaration, Luxembourg, 9 May 2000.

INTRODUCTION

Among the tools of Community integration, the processes for coordinating national policies, known today as the "open method of coordination", lie midway between pure interstate cooperation and the establishment of common rules at Union level.²

I. WHAT ARE THE AIMS OF THE COORDINATION OF NATIONAL POLICIES?

The coordination of the policies of the Member States of the Union aims to ensure compatibility, consistency and/or convergence of national options in the context of European integration.

The compatibility of national policies involves ensuring that the policies independently framed by the Member States do not have serious negative effects for the other Member States or for the achievement of other objectives set at European level.

The concept of consistency of policies entails an additional dimension which mutually enhances and increases the effectiveness of the national policies concerned and transcends a mere desire for compatibility.

Mention must also be made of the concept of convergence contained in the TEC solely in relation to Economic and Monetary Union (EMU) - Articles 2 and 121 TEC and Protocol No 21 on the convergence criteria. Convergence concerns the performance of the Member States rather than the policies implemented by them.

² Enhanced cooperation has a separate place, insofar as it is used in areas in which provision is made for harmonisation and the classic Community method, but in which specific difficulties occur, which prevent all the Member States from concurring. This note will not deal with the conditions for using that instrument.

II. HOW DOES THE COORDINATION OF NATIONAL POLICIES FIT INTO THE CURRENT SYSTEM OF SHARED COMPETENCE BETWEEN THE UNION AND THE MEMBER STATES?

Coordination of national policies is relevant only outside the areas in which the Community has exclusive competence and in which, as a result, Community action requires a single rule which is applied uniformly throughout the territory of the Community.

Consequently, in the case of concurrent (or shared) competence between the Community and the Member States, national policies continue to exist but cannot contradict the rules adopted at Community level. This leads to a requisite approximation of legislation and therefore of national policies to bring about their mutual recognition, without requiring that they should be merged or identical.

In relation to complementary competence, the Treaty rules out the possibility of the approximation of policies resulting in Community legislative action since the Community cannot intervene in harmonising national legislative and regulatory provisions. The role conferred upon it is merely to support and encourage the action of the Member States, including cooperation between Member States with due regard for their absolute autonomy and responsibilities. In such areas, any convergence of policies can be brought about only by coordination of national policies.

Lastly, the coordination of national policies is possible in the areas falling outside Community competence, albeit within the institutional framework of the Union. As outlined in CONV 162/02 (p. 7), the Common Foreign and Security Policy (CFSP) falls within that context.

III. THE VARIOUS FORMS OF INTERGOVERNMENTAL COOPERATION AND OF COORDINATION OF NATIONAL POLICIES

A. INTERGOVERNMENTAL COOPERATION AND COORDINATION OF NATIONAL POLICIES PROVIDED FOR BY THE TREATIES

The Treaties sometimes refer to intergovernmental cooperation and sometimes to coordination of national policies. While the methods are different, the objective is the same. Nevertheless, each method entails a specific procedure and has specific instruments. CONV 162/02 has shown how this excess of instruments and methods has contributed to the lack of clarity of both the Treaties themselves and the institutional system today.

1. Intergovernmental cooperation enshrined in the EC Treaty³

In the areas in which the Community has only complementary competence (see CONV 47/02, p. 8), the TEC provides for encouragement and supporting action by the Community, determined in accordance with the codecision procedure laid down in Article 251 TEC. The sectors concerned are education and vocational training (Articles 149 and 150 TEC), combating social exclusion (Article 137(2) TEC) and culture (Article 151 TEC). It is on that basis that the decisions relating to the adoption of the three major Community programmes, *Socrates*, *Leonardo da Vinci* and *Jeunesse*, were taken.

2. Forms of coordination of national policies enshrined in the EC Treaty

(a) Areas concerned

The TEC makes provision for the coordination of national policies in the following areas:

- trans-European networks (Article 155 TEC, inserted by the Maastricht Treaty),

³ This note will not look into the area of the CFSP, which goes beyond intergovernmental cooperation, as Article 12 TEU provides for specific instruments, i.e. "common strategies", "joint actions" and "common positions" with a view to bringing about convergence of the Member States' foreign and security policies.

- enterprise policy (Article 157 TEC inserted by the Maastricht Treaty),
 - R & D (Article 165 TEC inserted by the Single European Act),
- economic policies of the Member States (Articles 98 *et seq.* TEC, as amended by the Maastricht Treaty): the aim is to ensure the consistency of national systems in the framework of Monetary Union, because of the repercussions which the economic policy of each Member State can have on the rest of the Union on account of single monetary policy. This aim is pursued in particular by setting up a system of economic coordination, *the broad economic policy guidelines* (BEPGs), which is founded on the periodic setting of objectives via guidelines for the economic policies conducted by the Member States and on multilateral surveillance. To the BEPGs must be added the *Stability and Growth Pact*, adopted at the Dublin European Council (December 1996) and definitively adopted by the Amsterdam European Council (June 1997) in a resolution and two regulations; the Stability Pact complements and clarifies Article 104 TEC on excessive government deficits. It seeks to strengthen budgetary discipline and multilateral surveillance during the third stage of EMU by means of a two-tiered strategy: a preventive mechanism aiming to identify and correct circumstances which might lead to budgetary slippage, and a package of dissuasive rules.
- employment policy (Articles 126 and 128 TEC inserted by the Amsterdam Treaty): coordination in this area, drawing essentially on the same concepts as those used for coordinating the economic policies of the Member States, is in keeping with the *European employment strategy* (also known as the *Luxembourg process*)⁴ which was institutionalised by the Amsterdam Treaty as part of a new Title VIII on Employment. The Treaty stipulates that the Member States shall consider promoting employment as a matter of common concern and shall coordinate their action within the Council. Following the extraordinary European Council meeting on employment in Luxembourg in November 1997, the first annual round of coordination of labour market policies was initiated by the Member States even before the Amsterdam Treaty was ratified. The aim

⁴ The European employment strategy dates back to J. Delors's White Paper of 1993 (Commission White Paper "*Growth, Competitiveness and Employment*", COM (93) 700) and to the practices for multilateral surveillance of employment initiated by the Essen European Council in 1994.

of the process is to implement a coordinated employment strategy on the basis of common guidelines which do not advocate the harmonisation of national provisions, but instead aim to exert indirect influence on Member States' policy.

(b) Coordination procedures

Economic and employment policies are the only areas in which the Treaty describes the procedures for the coordination of national policies at European level. Since these are the only established models, a brief outline of them is useful.

(i) Coordination of the economic policies of the Member States:

The procedure for the BEPGs is described in Article 99 TEC. It comprises:

- a four-stage *drafting/approval* phase: the Commission draws up a recommendation on the BEPGs on the basis of which the Ecofin Council, acting by a qualified majority, adopts a draft for the broad guidelines which the June European Council approves. The Ecofin Council then adopts the BEPGs and informs the European Parliament thereof;
- a process of *multilateral surveillance*: throughout the year the Member States forward to the Commission information on the measures they are implementing in the area of economic policy. On that basis, the Commission submits reports to the Council and, if necessary, proposes to make recommendations to the Member States, thus allowing the Council to monitor the development of the economic situation in each Member State and, if the Council finds that the policies conducted by a Member State risk jeopardising the smooth functioning of EMU or are not consistent with the BEPGs, to make recommendations to the Member State concerned.

The procedure for the Stability and Growth Pact also has two aspects: a *preventive aspect* during which the stability and convergence plans of the Member States⁵, outlining their strategy and budgetary objectives for three years, are drawn up and implemented and a *dissuasive aspect* aimed at countering excessive government deficits.

(ii) Coordination of employment policies:

⁵ Reference is made to stability plans for those Member States which have adopted the euro and to convergence plans, which are similar in content to stabilising programmes, in the case of those States not participating in the euro zone.

The procedure is described in Articles 126 and 128 TEC and entails:

- a phase of *drafting/approval of the guidelines* during which the Commission, in the autumn, draws up the guidelines for employment policies which are adopted by the Council, acting by a qualified majority, following consultation of the European Parliament, the Economic and Social Committee, the Committee of the Regions, and the Employment Committee⁶. The December European Council approves the guidelines;
- a phase of *monitoring the process*, during which each Member States forwards to the Commission and the Council its national employment action plan. The Commission then prepares a draft joint report (Council-Commission) which the Council, acting by a qualified majority, adopts. Should the Council consider it necessary, it may make recommendations to the Member States.

The Treaty does not lay down coordination procedures for any areas other than the economic and employment policies, which means that the procedure must be implemented empirically, which does help to improve the clarity of the system.

B. FORMS OF INTERGOVERNMENTAL COOPERATION BEYOND THE TREATIES

Forms of intergovernmental cooperation exist - or have existed at certain stages of the European enterprise - in parallel to the TEC provisions, albeit in areas covered by the latter.

Education is one example. Starting with the three major Community programmes, *Socrates*, *Leonardo da Vinci* and *Jeunesse* (see above), the Member States decided to move forward in this area outside the institutional framework of the Community by setting up an intergovernmental initiative in 1998 known as the "Bologna process", aimed at the convergence of national policies and the creation of a European area of higher education. The Commission, without being the originator of the process, was called on to play a role in it by providing expertise and support. Moreover, in November 1999, the Ministers for Education decided to programme their proceedings so as to define a limited number of long-term priorities and methods for promoting cooperation in the fields of education and vocational training. In March 2000, the European Council, meeting in

⁶ An Advisory Committee, set up by the Council, by virtue of Article 130 TEC and made up of two members from each Member State and two members from the Commission.

Lisbon, decided that education and vocational training would be fields in which an open method of coordination would apply (see below).

A further example is the coordination of national economic policies insofar as an informal body, the *Euro Group*, composed of the Ministers for Economic Affairs or Finance of the countries participating in the euro zone and the Commissioner with responsibility for economic and monetary affairs, facilitates the coordination of the economic policies of the members of the euro zone.

Lastly, the developments that have taken place in the field of justice and home affairs (JHA): intergovernmental cooperation developed from the mid eighties with, in particular, the signing by a limited number of Community Member States of the Schengen Agreement and the Schengen Convention applying it. This form of cooperation was to remain at a purely inter-State level and would develop entirely outside the interinstitutional framework of the Community. Other forms of cooperation would also appear in the police, judicial or asylum and immigration spheres in particular, some being closer to the Community framework. With the Maastricht Treaty, cooperation in the field of justice and home affairs would be enshrined in the TEU and would change from purely intergovernmental cooperation to a framework in which aspects of the harmonisation of legislation and of the coordination of national policies would co-exist, alongside intergovernmental legacies (such as the right of initiative being shared by the Commission and the Member States). Similarly, the Treaty of Amsterdam would integrate the Schengen acquis into the European Union and partly bring it into the Community framework. In other fields, cooperation was institutionalised in the context of the "third pillar" (Title IV of the TEU), now limited to police and judicial cooperation in criminal matters, and the Union has set itself a general and "inter-pillar" objective (gradual creation of an area of freedom, security and justice within which the free movement of persons is assured).

C. THE CARDIFF AND COLOGNE PROCESSES

To give a full picture of these procedures, a few words should be said about what are known as the "*Cardiff and Cologne processes*".

The aim of the Cardiff Process adopted under the United Kingdom Presidency of the Cardiff European Council in June 1998 is to give an impetus to economic reforms aimed at improving the operation of goods, services and capital markets by exchanging information through the Commission concerning structural reforms initiated by the Member States.

The Cologne Process means the process launched by the European Council in Cologne in June 1999, at the same time as the *European Employment Pact*, aimed at establishing direct dialogue between the three main groups of players in the macroeconomic policy field, namely the social partners, governments and the Central Bank, in the context of an informal and confidential exchange of ideas. The Commission is invited to participate.

D. THE OPEN METHOD OF COORDINATION

The European Council meeting held in Lisbon on 23 and 24 March 2000 created a new form of coordination of national policies which it called the open method of coordination (OMC).

Closely following the model laid down for coordination of employment policies, the European Council defined this method as follows: *"the means of spreading best practice and achieving greater convergence towards the main EU goals. This method, which is designed to help Member States to progressively develop their own policies, involves:*

- *fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms;*
- *establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice;*
- *translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;*

- *periodic monitoring, evaluation and peer review organised as mutual learning processes.*

A fully decentralised approach will be 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. A method of benchmarking best practices on managing change will be devised by the European Commission networking with different providers and users, namely the social partners, companies and NGOs". (Presidency conclusions, Lisbon European Council, 23 and 24 March 2000, paragraph 37).

In Lisbon, the European Council thereby gave a name to the method laid down in the Employment title of the TEC and expressed its intention to extend the application of such a method to other fields such as the information society and research policy, enterprise policy, educational and vocational training policy, combating social exclusion and social protection.

An empirical approach has been used to develop and adapt this method to the special characteristics of each field of action. The method is therefore applied differently to cater for each specific field of action, an ad hoc procedure being devised in each case. That is why reference is sometimes made to open methods of coordination in the plural.

The following achievements and proposals made in the various fields may be mentioned:

1. Information society

Following the request made by the European Council meeting in Lisbon (paragraph 11 of the conclusions), an eEurope Action Plan applying the open method of coordination was approved by the Santa Maria da Feira European Council on 19 and 20 June 2000. It sets out the priorities, best practices, indicators and responsibilities at the national and European levels. At the European Council in Nice, the Council submitted a list of indicators for monitoring the Action Plan whilst the Commission presented an initial report on implementation of the Action Plan. In response to the request made by the European Council in Barcelona, the Commission drafted a second Action Plan entitled "eEurope 2005: An information society for all" which was approved by the Seville European Council on 21 and 22 June 2002.

2. Education policy

In compliance with the conclusions of the Lisbon summit (paragraph 27), the Commission has submitted a communication entitled *e-Learning - Designing tomorrow's education* (COM(2000) 318 final, 24 May 2000).

3. Research policy

Following the conclusions of the Lisbon summit (paragraph 13, third indent), the Nice European Council asked the Commission to submit a first report to it in Stockholm on progress made in establishing a *European Area of Research and Innovation*.

4. Combating social exclusion

Following the conclusions of the Lisbon summit (paragraph 32), on 7 December 2001 the European Parliament and the Council adopted a Decision establishing a programme of Community action to encourage cooperation between Member States to combat social exclusion. That programme, based on Article 137(2) of the TEC (see page 4 of this note), applies the open method of coordination.

5. Immigration policy

In its communication COM(2001) 387 final of 11.7.2001, the Commission considers *that "the adoption of an open method of coordination would be the most appropriate way to support the development of the Community immigration policy"*.

6. Common asylum policy

In a communication on the common asylum policy (COM(2001) of 28.11.2001), the Commission recommends developing an open method of coordination in the sphere of the common asylum policy.

IV. THE PLAYERS INVOLVED IN THE OPEN MEHOD OF COORDINATION

The European Council is now the central body for political impetus in the government of the Union. It has in fact become a genuine political decision-making body for defining broad strategic guidelines and monitoring their implementation. This development is explicit in the areas covered

by the open method of coordination. Beyond the OMCs themselves, the task of the spring European Council is in particular to verify each year the progress of the Union's economic and social modernisation strategy and to update its content.

The Council (of Ministers) is required to play a "governmental" role in the framework of the OMCs. The Council's areas of intervention have in fact multiplied, in particular by the gradual extension of "governmental" functions in sectors covered by the coordination process, alongside its traditional legislative function. This has resulted in a multiplication of formations and preparatory bodies, in particular the Employment Committee provided for by Article 130 TEC, the Economic and Financial Committee provided for by Article 114 TEC, the Economic Policy Committee provided for by Article 272 TEC and the Social Protection Committee set up by Council Decision of 19 June 2000.

The Commission, generally assisted by committees, plays a central role of giving an impetus and acting as a catalyst in the framework of the open method of coordination by presenting guiding principles and broad guidelines, organising the exchange of best practices, proposing indicators, managing follow-up and peer review.

The European Parliament is present in a limited, unsystematic way in the new processes for coordinating national policies. The European Parliament is not expressly mentioned by the Treaty in connection with coordinating economic policies. The practice has nevertheless developed of requesting Parliament's prior Opinion in reply to the annual review of the Union's economy produced by the Commission and with a view to the latter's annual recommendation concerning broad economic policy guidelines. A meeting between a delegation from the Parliament's *Committee on Economic and Monetary Affairs* and the *ECOFIN* Council "Troika"⁷ is also held, normally on the occasion of the latter's meetings. Parliament's involvement is therefore ensured informally. It is in connection with coordination of national employment policies that the Treaty provides for formal consultation of the European Parliament by the Council on the proposed guidelines presented every year by the Commission, which may result in an amended Commission proposal for Employment Guidelines.

⁷ The Troika groups together the representatives of the outgoing, current and forthcoming Presidencies.

Greater involvement of national parliaments as bodies for supervision and democratic legitimisation of the national policies adopted in the framework of the OMCs, has been called for⁸, in particular with regard to coordination of economic policies.

The Lisbon European Council has called for the involvement of regional entities in the method. In practice, however, the OMC is based on the assessment of the Member States' national positions: the place of the local authorities composing them is not defined, their organisation being left to the national level. This creates problems, in particular in greatly decentralised countries in which the regions have real legislative and budgetary powers.

V. WHAT PLACE SHOULD BE HELD BY THE OPEN METHOD OF COORDINATION?

The open method of consideration and the traditional legislative approach are not alternative but complementary tools for integration.

The OMC is in fact less binding than a legislative provision. It is however more than mere cooperation because it involves the emergence of a really European dimension, participation by Community bodies and a system of regular verification with the establishment of strategic guidelines, the setting of common indicators, the definition of objectives adapted to specific national and local characteristics and the establishment of a monitoring system by benchmarking and the evaluation of progress.

The open method of coordination may therefore prove to be a useful instrument:

- where the area of work is closely connected with national identity or culture and the Community instrument of legislative harmonisation is therefore inappropriate, for example in the context of education or culture;
- where the instruments for implementing policies at national level are so diverse and/or complex that harmonisation seems disproportionate in relation to the objectives to be achieved. The coordination process concerning social protection at European level and the European employment strategy may be mentioned as examples;

⁸ See paragraph 40 of the report from the *ECOFIN* Council to the December 1999 Helsinki European Council on economic policy coordination.

- finally, coordination may precede Community legislative action when Member States do not yet want common legislation in a given sphere but nevertheless have the political will to make progress together. Common visa or asylum and immigration policies in which action of limited duration to coordinate national policies precedes Community legislative action may be mentioned as examples.

The existence of Community legislation in a given area does not however necessarily rule out recourse to policy coordination. In the sphere of the environment, the Community has therefore adopted various directives governing, for example, the treatment of industrial waste in the context of which, under the relevant Community policy, reduction of the quantities of waste to be treated is a matter of coordinated intent, rather than a matter for legislation.

The open method of coordination therefore proves to be an instrument of integration among others. For the same subject-matter and within the limits of the Treaties, it can therefore be combined with and linked to other instruments of Community action, including traditional Community legislative instruments. It does not however compete with the latter and is not intended to replace them.

VI. HOW SHOULD THE OPEN METHOD OF COORDINATION BE ASSESSED?

1. Better coordination is desirable, as emphasised by the Lisbon and Barcelona European Councils: *"The existing Broad Economic Policy Guidelines and the Luxembourg, Cardiff and Cologne processes offer the necessary instruments, provided they are simplified and better coordinated"* (paragraph 35 of the Lisbon conclusions) and *"it is necessary to strengthen the equilibrium, coherence, coordination and synchronisation between the social and economic dimensions in the Lisbon Strategy framework"* (paragraph 5 of the employment and social policy chapter of the Barcelona conclusions). The great number of instruments in fact makes the system very opaque and hinders coordination of the various démarches undertaken.
2. The open method of coordination itself invites the following criticism:
 - It is sometimes applied indiscriminately in the context of the same action to spheres in which the Community has no competence and others in which it is competent. The result of this is to create confusion in the exercise of competence while sidelining

the Parliament, although the exercise involves Community matters for which referral is provided for by the Treaty.

- As emphasised in CONV 47/02, when the open method of coordination is applied in areas where the Community is not competent, this helps to give the Community an omnipotent image. The result is an unclear system raising considerable expectations on the part of citizens when they are led to believe that the Community is competent whenever the open method of coordination is applied, even though it is limited to non-binding coordination and ultimately subject to the Member States' goodwill.
- In addition to this, there is the difficulty of identifying the players involved in the method, the procedure being in practice essentially in the hands of high-level committees devoid of democratic legitimacy which formulate almost the entire content of the guidelines to be adopted by the European Council. This is therefore an expert process incorporated into the Community mechanism at a time when it has a poor public image.
- The Commission has a tendency to propose the method in very many areas, thereby increasing its influence (due to its central role) in areas where the Community is not competent, which lays it open to criticism that it acts outside its sphere of competence.

CONCLUSION

In conclusion, although the open method of coordination is unquestionably a useful instrument, its boundaries must be demarcated and the procedure must be fixed by enshrining it in the Treaty. On that occasion, care must be taken to state precisely the principle that the open method of coordination cannot be used to replace more binding Community regulatory methods in order to evade them, without necessarily having to rule out the possibility of the open method of coordination accompanying legislative measures in order to supplement their scope.
