

# **The OMC and Social Protection: Constructing an EU Social Model?**

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# Plan of the course

- 1. What is the Open Method of Coordination?
- 2. OMC and Social Protection:  
Why, How, and with What Results?
- **3. OMC and the Future of Social Europe**

# Plan of the lecture

- I. Streamlining and Synchronization:  
The New Shape of EU Socio-Economic  
Policy Coordination
- II. Social Europe and the Convention:  
Towards a New Constitutional  
Compromise?

# **I. Streamlining and Synchronization: The New Shape of EU Coordination**

- Coordination of coordination as an EU policy problem
  - Multiplication of sectoral policy coordination processes
  - Lack of synchronization between BEPGs, employment guidelines, and social protection OMCs
  - Duplication of effort, administrative overload, and non-transparency
  - Mixed and conflicting policy messages
  - Need for better integration of employment and social protection OMCs into BEPGs and spring socio-economic summit
  - Need to take more explicit account of interactions between the three legs of the ‘socio-economic policy triangle’

# Who's in charge?

- Synchronization of coordination processes highlights questions about role and authority of different actors
- Employment guidelines and social protection OMCs to be consistent with and feed into BEPGs
- But who has the decisive say?
  - Ecofin/DG ECFIN/EPC
  - Employment & Social Policy Council/DG EMPL/EMCO, SPC
  - General Affairs Council/Heads of government/European Council
- Changing political constellation since Lisbon
  - Replacement of social democratic by right-wing governments in many Member States

# Streamlining of EES

- Revision of EES following 2002 mid-term review
- Medium-term stability of guidelines (triennial cycle)
- Simplification of guidelines and indicators
  - Fewer, less detailed
- Stronger emphasis on implementation and results
  - Continued annual reporting (NAPs/Empl)
  - More quantitative targets
- Synchronization with BEPGs from 2003
  - Better alignment of NAPs/Empl with national budgetary cycles
  - European Council confirms ‘leading role’ of EES in implementing employment and labor market objectives of Lisbon Strategy

# Revised objectives

- Three overarching, interrelated objectives
  - Full employment
  - Improving quality and productivity at work
  - Strengthening social cohesion and inclusion

# **10 specific guidelines/ priorities for action**

- Active and preventative measures for unemployed and inactive
- Job creation and entrepreneurship
- Promote adaptability and mobility in the labor market
- Promote development of human capital and lifelong learning
- Increase labor supply and promote active ageing
- Gender equality (mainstreaming approach across all guidelines)
- Promote integration of and combat discrimination against people at a disadvantage in the labor market
- Make work pay through incentives to enhance its attractiveness
- Transform undeclared work into regular employment
- Address regional employment disparities

# Governance (1)

- Commission proposals for revised employment guidelines
  - Response to mid-term review criticism from EP, regional/local authorities, NGOs, academics
- Mobilize all relevant actors and stakeholders
  - National parliaments
  - Civil society as well as social partners
  - Involve regional and local actors in development as well as implementation of strategy
  - All with due respect for different national traditions and practices (subsidiarity)

# Governance (2)

- Guidelines revised by EMCO
  - Insist that responsibility for implementation of the employment strategy lies with Member States
  - European Parliament to play an ‘important role’
  - Emphasis on contribution to implementation of social partners at EU and national level
  - Specific references to participation by civil society eliminated
  - ‘In accordance with national traditions, relevant parliamentary bodies as well as relevant actors in the field of employment at national and regional level have important contributions to make.’

# **Streamlining open coordination in social protection**

- Mandated by spring 2003 Commission synthesis report and European Council
- Presented as a means of strengthening social dimension of Lisbon Strategy
- Social protection OMCs to be integrated into a single overarching framework and synchronized with BEPGs and employment guidelines in 2006

# Proposed structure

- Three sectoral pillars
  - Social inclusion
  - Pensions
  - Health care and long-term care (pending current policy reviews)
- Cross-cutting issues
  - Gender mainstreaming
  - Make work pay
- Definition of an integrated set of common objectives
- Development of common indicators
  - Including for pensions and health care
- New annual Joint Report on Social Protection

# Proposed working methods

- Continued initiating and catalytic role of Commission in maintaining ambition of process and drafting Joint Reports
- Greater role for European Parliament through periodic reporting and consultation on definition of common objectives
- Openness and involvement of actors
  - Extend social inclusion approach to involvement of social partners and consultation with NGOs and sub-national authorities across the entire range of the future social protection process

# Opportunities and risks

- Opportunities
  - Greater coherence of social protection policies
  - Reinforcement of coordination mechanisms in pensions and health care
  - Better integration of social protection priorities and perspectives into EU socio-economic policy making
- Risks
  - Potential loss of distinctive identity and momentum of individual OMCs, especially social inclusion
  - EU policy making may continue to be dominated by economically oriented actors and priorities

## **II. Social Europe and the Convention: A New Constitutional Compromise?**

- Should the OMC be incorporated into the draft Constitutional Treaty, prepared by the Convention on the Future of Europe for the upcoming IGC?
- Question closely bound up with broader constitutional debates over Social Europe and EU governance
- Convention could have formally endorsed an emergent constitutional compromise, but failed to do so
- Convention also avoided taking any steps which would have obstructed the EU from informally continuing to pursue the key components of this emergent compromise

# **Social Europe: Stalemate at the Convention**

- Reflects limits of traditional EU political agendas
- Right tried to keep Social Europe off the agenda, and block any extension of EU powers and competences
- Left pressed for historic goal of single Social Europe, based on parity of EU social and economic objectives, and extension of competences and QMV to all areas of social and employment policy
- Right couldn't prevent formation of a Social Europe WG
- But Left couldn't get WG to support major new powers or competences for the EU in social and employment policy
- Internal political divisions and cross-camp alliances

# Components of an emergent compromise

- Two key components
  - Strengthen constitutional recognition of EU's social values and objectives, placing them on an equal footing with economic goals
  - Anchor in the Treaty new governance mechanisms like the OMC, which enhance the EU's capacities to take effective action in pursuit of its social objectives while respecting national diversity
- These steps would redefine the EU's historic compromise between deliberative agenda setting and relaxation of sovereign veto powers by constitutionalizing the new Community Method of experimental governance (lecture 1)

# **Strengthening the EU's social values and objectives**

- Social Europe WG proposed a long catalogue of values and objectives to be added to Treaty articles 2 and 3
- Presidium proposed a much shorter list
- Amended draft goes a long way towards constitutional parity between EU social and economic goals
- Reinforced by incorporation of Charter of Fundamental Rights as Part II of draft Constitutional Treaty
- Likely to have significant impact on ECJ jurisprudence as well as on EU policy making

# **The Union's objectives (Article I-3, selections)**

- The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.
- The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at full employment and social progress.
- It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.
- It shall promote economic, social and territorial cohesion, and solidarity among Member States

# Constitutionalizing the OMC?

- Anchoring the OMC in the draft Constitutional Treaty endorsed by four Convention WGs, including Social Europe, provided that this ‘would not replace existing normative procedures or make OMC rigid where there is no specific legislative method of procedure’
- Reflected fears among some members of Convention that constitutionalizing OMC could undermine its flexibility and among others that it could subvert the use of the EU’s existing Treaty powers to legislate in the social field
- Majority of Social Europe WG therefore insisted on specifying the scope and limits of OMC, as well as the procedural roles of different actors, in ways that might threaten its practical viability if enacted

# Contours of a potential solution

- Define only the fundamental aims and basic elements of OMC in a generic clause of the Constitutional Treaty
- Include a declaration that OMC should not be used to undermine or weaken existing EU law, nor as a permanent substitute for Union legislative action permitted under the Constitutional Treaty
- Leave precise procedures to be worked out experimentally for each policy area, except where these are already specified in the Treaty
- Avoid prescribing in detail the role of different institutional actors
- Ensure the ‘transparency and democratic character’ of the OMC by including explicit constitutional requirements for openness and broad participation in all OMC processes in accordance with national laws and practices (De Búrca and Zeitlin proposal)

# Anatomy of a non-decision

- Convention Presidium decided not to bring forward a proposal for incorporating OMC into the draft Constitutional Treaty
- Blocked by unholy alliance between defenders of the Member States' prerogatives and those who fear dilution of hard *acquis communautaire* by soft-law processes
- Proposed amendments by Convention members call for inclusion of OMC in the Constitution
- Supported by Employment Committee of the EP
- Question may be reopened at IGC
- But non-inclusion most likely outcome

# Would non-inclusion matter?

- First, do no harm
- Authority for EU policy coordination conferred elsewhere in the draft Constitutional Treaty
- Article I-14
  - Union shall adopt measures to ensure coordination of Member States' economic and employment policies (through guidelines)
  - The Union may adopt initiatives to ensure coordination of Member States' social policies.
- Article I-16
  - The Union may take supporting, coordinating or complementary action in the following fields: industry; protection/improvement of human health; education, vocational training, youth, sport; culture; civil protection
- Powers and procedures in each area set out in Part III

# Constitutional status as a source of legitimacy

- OMC would benefit from added legitimacy conferred by explicit inclusion in the Constitutional Treaty
  - Example of EES
- But other OMC processes with a weaker treaty base (like social inclusion) have also taken off rapidly, eliciting broader participation from civil society at both national and European level

# Open coordination as the prose of EU policy making

- Even where Member States remain reluctant to acknowledge the Europeanization of sensitive domestic policy areas by formally creating new OMC processes, they increasingly make use of its procedures in tackling urgent common problems
  - ‘policy cooperation’ in health care
  - peer evaluation of national anti-terrorism arrangements
- Open coordination as the unacknowledged prose of EU policy making

# Guaranteeing openness and participation

- Most significant contribution of constitutionalizing OMC could be to guarantee openness and participation
  - Cf. controversy over governance section of employment guidelines
- But Presidium also rejected proposals from Convention members and EP to include an article on greater transparency (access to documents and meetings) in the Constitution
- Commission proposals to extend inclusion approach to involvement of social partners and consultation with NGOs and sub-national authorities across social protection OMC suggest that, as in so many other areas of EU governance and constitutionalism, the future remains open