9. Quality in European Community Industrial Relations

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1. THE EUROPEAN EMPLOYMENT STRATEGY: AN INSTITUTIONAL ASSESSMENT

The impact of the European Employment Strategy (hereinafter simply EES) has been visible in both labour law and industrial relations, although mainly from a methodological point of view. For the first time, the "open process of coordination" (hereinafter simply OPC) has been applied also to matters which are heavily regulated through the bargaining activity of social parties, rather than via Government intervention.

The Employment Guidelines (hereinafter simply EGLs) represent a highly innovative example of "convergence criteria", although not explicitly provided by the Treaty, as in monetary affairs. The first years of implementation of the EES have seen the Commission interpreting the implementation of EGLs in a logic of convergence, rather than simply of coordination, with special reference to measurable EGLs under the Employability Pillar.

For the first time, at least in labour matters, a "soft law" mechanism has been applied on a Community-wide scale. Instead of long-awaited and watered-down directives, there is an implicit assumption that OPC methodology might contribute more effectively to innovations in labour law and industrial relations.

EES represents a fundamental change of perspective, moving from the traditional management by regulation towards the highly innovative management by objectives. This perspective has been largely neglected in the past at the level of single Member States, when there was still the ambition to harmonise social and employment regulations across the EU. The strategy of further EU enlargement confirms that the OPC methodology seems to be quite promising, not to say indispensable, taking into account the huge differences between the economic systems of current Member States and candidate countries.

The 2001 EGLs reflect some important innovations in terms of methodology, as compared with the three previous years. First of all the mandate of the Lisbon summit ("more and better jobs") is no longer simply a political commitment but it has been explicitly made part of the "soft law" mechanism. Secondly, EGL 14 openly speaks of "subjects to be covered", which corresponds to the US-style notion (in part accepted by the French labour code) of "mandatory topics" of bargaining. This view is confirmed by the subsequent duty, equally provided in EGL 14, for the social parties "to report annually" on their efforts to modernise work organisation.

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2. INDUSTRIAL RELATIONS AND THE EUROPEAN EMPLOYMENT STRATEGY

Industrial relations, at least as they are conceived in the context of the Employment Title of the Treaty, are increasingly supposed to play a new role at the Community level, shifting from employment protection towards employment promotion. The two profiles do not seem to be in contradiction; truly, they represent two sides of the same coin. Social parties have received a mandate under Pillar 3 (adaptability) in order to cooperate in creating new jobs, hopefully employment of good quality. To what extent this mission has been successful, looking at the first years of the Luxembourg process, is highly debatable.

To reinforce the above-mentioned conclusion, one should look at the 2001 employment guidelines. In the second indent of the new GL 13, we now read that "the social partners are invited ... within the context of the Luxembourg Process to report annually on which aspects of the modernisation of the organisation of work have been covered by the negotiations as well as the status of their implementation and impact on employment and labour market functioning". In other words, management and labour are now under an obligation to report to the Council and the Commission (in view of the "joint employment report") on the outcome of their bargaining activity in terms of promoting employees' adaptability.

The monitoring role of the Commission should address directly this new perspective concerning the role of collective bargaining in the context of the European employment strategy. The 2001 employment guidelines confirm that "in order to promote the modernisation of work organisation and forms of work, a strong partnership should be developed at all appropriate levels (European, national, sectoral, local and enterprise levels)".

This means – according to GL 13 – that "the social partners are invited ... to negotiate and implement at all appropriate levels agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive, achieving the required balance between flexibility and security, and increasing the quality of jobs. Subjects to be covered may, for example, include the introduction of new technologies, new forms of work and working time issues such as the expression of working time as an annual figure, the reduction of working hours, the reduction of overtime, the development of part-time working, access to career breaks, and associated job security issues".

Also GL 14 includes a mandate for the Member States to carry out jointly with the social parties. "Member States will, where appropriate in partnership with the social partners or drawing upon agreements negotiated by the social partners, review the existing regulatory framework ... at the same time ... examine the possibility of incorporating into national law more flexible types of contract." Furthermore, management and labour are invited to support adaptability in enterprises as a component of lifelong learning. GL 15 invites them "to conclude agreements, where appropriate, on lifelong learning to facilitate adaptability and innovation, particularly in the field of information and communication technologies. In this context, the conditions for giving every worker the opportunity to achieve information society literacy by 2003 should be established".

These matters may be considered now as mandatory topics of bargaining. Social parties in Europe must engage in negotiations addressing these issues, in the logic of modernisation and adaptability. The Commission has to assess the way in which management and labour would conform to this mandate. The annual report on industrial relations (in addition to the joint employment report) is the first opportunity to perform this function.

3. THE 'QUALITY' FACTOR IN EMPLOYMENT RELATIONS

It is of great interest that the Commission has decided to include industrial relations among the matters to be periodically monitored through an annual report. Undoubtedly, it is useful to assess the trends in industrial relations in order to develop the social dimension of the European Union. By exchanging information and "best practices", it is possible to help the social actors to improve the quality of their relationships and to identify appropriate rules to discipline their relationships.

The Nice European Council reinforced the political mandate of the Lisbon summit, providing, in the context of the "European Social Agenda", for "the promotion of quality in all areas of social policy", including "quality of training, quality in work, quality of industrial relations". The Stockholm European Council invited Governments as well as the Council to "define common approaches to maintaining and improving the quality of work which should be included as a general objective in the 2002 employment guidelines". Indicators on quality of work should be developed by the Council and the Commission in time for the Laeken European Council in 2001.

The social parties have received the mandate, according to the 2001 guidelines of the European Employment Strategy, to contribute for "an improved level and quality of employment ... increasing the quality of jobs". Speaking of *quality of jobs* is not at all a new topic, at least at Community level, and one cannot believe that this is a perspective to be tackled only in terms of "soft laws", such as the "employment guidelines". The more and better jobs principle, combining employment-friendly and quality-oriented provisions may already be found in "hard laws", such as the fixed-term and part-time work directives.

Social parties have agreed to "improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination" (Purpose – clause 1). The employment-friendly provision is founded on the fact that "objective reasons" are not requested for the first fixed-term agreement. The parties have agreed "measures to prevent abuse" of such contracts or relationships, i.e. to preserve their quality, by requiring "objective reasons justifying the renewal".

Management and labour have also agreed to regulate part-time work. Their aim is "to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work". After this quality-oriented provision, the social parties recognised the employment potential of this work arrangement and also agreed "to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers" (Clause 1: Purpose).

Both agreements, as transformed into directives, belong to a generation which is clearly inspired by the European employment strategy. They aim at reconciling job promotion with job protection. "Atypical" employment relationships proved to be effective in creating new jobs and should consequently be encouraged (*more jobs*). At the same time the political mandate – mainly after the Lisbon summit – is clear enough in requiring the preservation of a level of protection so as to guarantee the quality of these forms of employment, preventing possible abuses (*better jobs*). Far from every deregulatory temptation, the strategy of re-regulation via social dialogue is confirmed.

The social parties at all levels have been invited to step up their action in support of the Luxembourg process. So far, results have been rather disappointing, at least in substantial terms. The 2000 joint employment report rightly emphasises that "progress on the incorporation of more adaptable forms of contract into Member States' labour law remains limited, with great majority of Member States adopting only piecemeal or incremental reforms ... with the emphasis on a single or, at most, a handful of topics rather than overall reform of labour legislation". The Council and the Commission also agreed that "contractual modernisation ... includes piecemeal review of regulatory provisions, e.g. temporary contracts, agency work, dismissals, etc. building up holistic reform of legislative and collective arrangements governing employment relations".

The strategy – recommended by the 2000 joint employment report, a key for interpreting the 2001 EGLs – should aim at regulating "new forms of work organisation". The "implementation of new forms of work organisation includes e.g. arrangements supporting participation (both decision making and financial), new rewards systems, multi tasking and team working, introduced by collective agreements and supported by government". On the basis of this political mandate the Commission is presently engaged in the consultation process of social parties on modernising and improving employment relations.

The consultation document builds on the approach outlined in the Green Paper "Partnership for a new organisation of work", the Communication "Modernising the organisation of work – A positive approach to change" and the Adaptability Pillar of the employment guidelines. The social parties have been invited to express their views on the principles to be followed in order to modernise and improve employment relations. In this respect, the Commission has rightly underlined that "many of the laws and collective agreements ... were designed for an organisation of work which is no longer adapted to the increased diversity of situations, contractual relations and work practices emerging in the labour market".

An interesting point is made in relation to the notion of "mandatory rules" which allows for no derogation at a lower level. The Commission – again in light of combining quality and quantity in employment policies – recommends that this technique should be limited to fundamental rights, plus health and safety matters. This proposal is strongly rejected by ETUC, while it seems to be supported by UNICE.

Despite the Commission's highly innovative approach, it seems that social parties are having trouble reaching new agreements. Social dialogue is in serious difficulty. The European Council of Stockholm was well aware of this situation and stated that it welcomed "a positive outcome to current

negotiations between the social partners on temporary agency work and teleworking". The European Council has never taken such a firm position in connection with industrial relations in the past. The message is clear: the adaptation of the work organisation in the context of a knowledge-based economy should progress faster.

In any case one should build on the fundamental decision of the Lisbon European Council, under the heading "More and better jobs: developing an active employment policy", which stated: "The social parties need to be more closely involved in drawing up, implementing and following up the appropriate guidelines". It is time now to recommend not so much whether, but rather *how* social parties should be more closely involved. Some reflections will be offered in this regard in the following paragraphs.

4. THE 'OPEN METHOD OF COORDINATION' AS APPLIED TO INDUSTRIAL RELATIONS

The conclusions reached in the previous paragraphs imply that the *quality of employment* depends also on the activity of the social parties, i.e. on the *quality of industrial relations*.

At this point, one might raise the question as to what extent it is really possible to extend OPC to the subject matter. The key issue is to develop appropriate indicators to measure progress so as to promote quality in industrial relations, following the recommendation provided by the Commission's Communication "Social Policy Agenda". Building on the relevant EGLs and taking into account other profiles, one could brainstorm and endeavour to identify some qualitative criteria for concluding that a system of industrial relations is of a good quality.

A system of industrial relations might be considered of good quality if it:

(1) contributes to establish social cohesion as well as to increase competitiveness, making possible a socially sustainable economic growth;
(2) considers full employment as an overarching objective and prepares the transition to a knowledge-based economy, reaping the benefits of the information and communication technologies;
(3) supports policy changes, by shifting the focus of social and labour market policies towards raising standards, while continuing to defend minimum standards;
(4) is able to favour the creation of employment of a good quality, by fostering employability and developing the modernisation of the regulatory framework according to the changing work organisation;
(5) is based on the assumption that the issue of job quality is not independent from that of flexible or adaptable labour markets, but rather that more adaptable labour markets and workforces are a guarantee for obtaining more and better jobs;
(6) is founded on the belief that job quality is not dependent primarily on pay levels, but on the correspondence between professional expectations of employees, linked with their qualifications as well as personal interests, on the one hand, and characteristics of specific employment opportunities, on the other;
(7) ensures intrinsic quality of jobs, by making job interest and work

motivation, as well as spirit of initiative, actually implemented, jointly with skill development and career prospects;

(8) develops a policy for active ageing with the aim of enhancing the capacity of and incentives for older workers to remain in the labour force as long as possible;

(9) promotes conditions to facilitate better access of adults, including those with atypical contracts, to lifelong learning, so as to increase the proportion of adult working-age population (25–64 years old) participating at any given time in education and training;

(10) contributes to the development of policies to prevent skills shortages, also by promoting occupational and geographical mobility;

(11) develops pathways consisting of effective preventive and active policy measures to promote the integration into the labour market of groups and individuals at risk or with a disadvantage, in order to avoid marginalisation, the emergence of "working poor" and a drift into exclusion;

(12) implements appropriate measures to meet the needs of the disabled, ethnic minorities and migrant workers as regards their integration into the labour market;

(13) is family-friendly in that it aims at reconciling working life, family responsibilities (including the care of the elderly) and personal activities, for example through flexible arrangements of working time, including voluntary part-time;

(14) removes barriers to exploit fully the employment potential of the services sector, with special reference to the knowledge society and the environmental sector;

(15) contributes to preparing the enlargement of the European Union under conditions of balanced and social development;

(16) is based on a strong partnership developed at all appropriate levels (European, national, sectoral, local and enterprise);

(17) is aimed at creating an adaptable workforce, reconciling flexibility and security of employment via adequate training and educational measures;

(18) ensures a better application at workplace level of health and safety legislation, by improving training and by promoting measures for the reduction of occupational accidents and diseases in traditionally high-risk sectors;

(19) is environment-friendly, thus paying attention to the impact of collectively agreed rules on the quality of living conditions;

(20) aims at implementing a lifelong learning strategy, to facilitate adaptability and innovation, particularly in the field of information and communication technologies, including giving every worker the opportunity to achieve information society literacy by 2003;

(21) is inspired by a gender mainstreaming approach, in order to meet the objective of equal opportunity and in any case increasing the employment rate, particularly for women;

(22) is founded on highly representative social parties, i.e. is able to represent most of employers and employees, either through direct membership or via other channels (e.g. support in industrial action);

(23) is characterised by a wide coverage of collective bargaining, both in terms of corporations (size, industry, etc.) and workers (full vs. part time, open-ended vs. fixed-terms, etc.);

(24) promotes the use of ways of preventing and/or settling labour disputes,

via non-judicial mechanisms, such as mediation, conciliation and arbitration, in both collective and individual cases;

(25) develops employee involvement, from the viewpoint of the decision-making process as well as in financial terms, so enhancing the productivity of the workforce.

Needless to say, there is a need to develop comparable indicators to make it possible to assess the implementation and the impact of the above-mentioned qualitative criteria, mainly of those drawn on the basis of the employment GLs, and to elaborate further on the targets, in order to facilitate the identification and exchange of the best practices.

The social parties should be invited to develop appropriate indicators and benchmarks and supporting statistical databases to measure progress in the actions for which they are responsible.

Since the above-mentioned criteria could not be implemented in the short run, one might argue, in the meantime, that industrial relations of good quality are characterised by their ability to achieve the objects as provided by EGLs. Above all, the "six employment gaps" should be mandatorily addressed, i.e. (1) gender, (2) services, (3) regional imbalances, (4) long-term unemployment, (5) skills), (6) age.

5. RECOMMENDATIONS FOR FURTHER ACTION

It seems to be highly advisable first of all to develop a monitoring system on the way in which directives in social as well as employment affairs are actually transposed at the domestic level. The OPC methodology should be extended to the activity of the social parties when engaging in the transposition process, as provided by the Treaty. Industrial relations in this context play a role which may be considered a quasi-public one, in that the traditional Government intervention is replaced by the activity of social parties. Since this is not simply a bargaining process, belonging exclusively to their private autonomy, social parties should be subject to a monitoring process to avoid, along with the transposition process, distortions of competition, intended to be removed by the directive, actually being reproduced nationally.

At the moment it also seems that this monitoring function might be exercised by the Commission, which may eventually start infringement proceedings. Nevertheless, this remedy is certainly limited to special circumstances where the violation of Community law is to some extent remarkable (e.g. lack of transposition by a Member State). No mechanism is currently available to ensure the quality of the transposition process, supposedly aimed at guaranteeing the quality of employment, rather than simply its creation.

Social parties, at various levels, should be involved in this process of coordinating the transposition of social directives, as well as in the strategy of modernisation of work organisation. The transferability of OPC to social affairs seems to be recommendable on the basis of the limited action taken by social parties in implementing Pillar 3 of the EES, considered to be of primary, if not exclusive, responsibility of Governments. The "process within the process", as presently regulated in Pillar 3 of the Luxembourg process, proved to be unable to produce desirable outcomes.

The Lisbon Summit Conclusions have encouraged the adoption of OPC, not so much to define a general ranking of Member States in each policy but rather to organise a learning process at European level in order to stimulate exchange and the emulation of best practices, in order to help Member States to improve their own national policies. OPC is more than simple benchmarking, since it strengthens management by objectives by adapting guidelines to national diversity. OPC makes a clear distinction between reference indicators to be adopted at European level and concrete targets to be set up by each Member State for each indicator, taking into account their starting point (see Rodrigues 2001).

The duty of management and labour to report annually to the Council on the outcome of their action in modernising labour law and industrial relations, as stated by the Lisbon Council and translated into the 2001 EGLs, seems to be a good step in the right direction. This obligation possibly paves the way for a connection between social dialogue and OPC, although a more solid institutional framework seems to be indispensable. On the grounds of the multiannual experience of the Luxembourg process, the risk is there that social parties take no action in this respect, a danger confirmed by the recent Stockholm summit. In this light, amendments of the Treaty in the context of the 2004 Intergovernmental Conference would be desirable.

A further reason supporting the transferability of OPC methodology to social affairs, to employment matters and, more recently, to social protection, is based on the rather limited effect of social parties in addressing the topic of work modernisation at Community level. Real innovative arrangements should be done at domestic level, in conformity with national practices. The speed of social parties in making innovative deals to meet the needs of a knowledge-based economy is not adequate and representatives of national social parties should be involved in this new Committee (possibly called "Employment Relations Committee" or otherwise "Social Dialogue Committee"), made up only of representatives of management and labour, at domestic level, plus obviously representatives of major Community-scale actors.

Once a year, a report should be jointly drafted by the Commission, major social actors at Community level and the Council, according to a process similar to that of the Employment Title. In this way social parties would not simply perform as actors, but would also bear the responsibility of assessing the achievements of their affiliated national organisations over the previous 12 months.

OPC should in other words become a new way of making regulations by the social parties, in addition to traditional techniques basically linked with collective bargaining and in any case with social dialogue. Rather than framework-agreement, according to the present experience of the Treaty's Social Chapter, we might more frequently have "guidelines", a kind of "soft deal", following the recent experience of telework in the telecommunication sector. All in all, recent developments in the dialogue between UNICE and ETUC on the same subject demonstrate that this perspective may be viable.

EU enlargement offers further reasons to recommend amendments to the present Social Chapter of the Treaty. It seems very unlikely that candidate countries will be able to harmonise with present Member States, at least at the speed necessary to take advantage of the opportunities of a knowledge-based economy. Instead of directives and/or framework agreements, "soft deals",

under a logic of coordination managed by the social parties themselves, would probably fit better and speed up the evolution of industrial relations systems of candidate countries. EU enlargement requires institutional innovations in social affairs.

Planning to create not simply more but also better jobs implies, as already stated, the consideration of quality in employment a priority. As anticipated above (see § 4), some criteria may be identified for that purpose. However, the mandate of the Lisbon summit, confirmed in Nice and Stockholm, to get appropriately implemented, requires an appropriate institutional forum, which cannot be identified with the Employment Committee only, since it is made up exclusively of representatives of Member States. An assessment of quality should preferably be made by the new Committee which would gradually identify appropriate criteria and/or indicators. Quality in employment and social affairs cannot be seen as an instant creation, but rather a gradual process to be stimulated by a logic of coordination.

Conclusively, it seems appropriate to recommend the establishment of a special Committee empowered to implement the OPC methodology also in social affairs, including labour law and industrial relations. The Committee should be set up via a Council decision (agreed politically at the Barcelona European Council in March 2002) and later, openly laid down by a revised Social Policy Chapter of the Treaty, providing for the extension of the OPC to social affairs. Special guidelines should be issued on a yearly basis by the Council, on the recommendation of the Commission after extensive consultation with social parties at Community level. In this way legal obstacles for developing quality in labour law and industrial relations could be gradually removed.

Needless to say, such an innovation would be much favoured by a wide agreement between major social actors at Community level, somehow imitating the experience of the birth of the Social Chapter at Maastricht. The meeting between social parties and the Troika on the eve of the Barcelona summit might represent a good time to launch such an innovative project.

If the above-mentioned recommendations are not deemed to be viable, it might at least be advisable to build on the Stockholm Conclusions which have endorsed the "setting up as soon as possible of the European Observatory for Industrial Change as part of the Dublin Foundation". The main mission of the "Observatory" should be that of drafting an annual report in order to monitor the activity of social parties in dealing with the EES Adaptability Pillar. In other words the "Observatory" might stimulate the voluntary adoption by the social parties of OPC methodology, to be supervised by the Employment Committee within the Luxembourg process.

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