

# THE OPEN METHOD OF COORDINATION AS STANDARD SETTING INSTRUMENT

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## **INTRODUCTION**

The Open method of coordination is since the beginning of 2000 the most used instrument in European Social policy. However, the open method of coordination is more than just an instrument for European social policy, it could also have the effect that the broad common objectives defined within this method would become material standards of a European social model in the future.

In this contribution, we want to highlight this process of Open Method of Coordination in two selected fields: pensions and

health care. In this respect we may not forget that in general it is considered that social security belongs to the national competences of each state. Through the Open method of Coordination the national debates taken place in these fields, are however more and more influenced.

## **PENSIONS**

In a Communication to the Council, European parliament and Economic and Social Committee, in July 2001, the Commission

repeats the Göteborg European Council conclusions of June 2001 that stressed the need for a comprehensive approach in order to meet the challenges of an ageing society and endorsed the three broad principles for securing the long-term sustainability of pension systems:

- to safeguard the capacity of pension systems to meet their social aims of providing safe and adequate incomes to retired persons and their dependants and ensuring, in combination with health and long-term care systems, decent living conditions for all elderly persons;

- to ensure the financial sustainability of pension systems, so that the future impact of ageing does not jeopardise the long-term sustainability of public finances or the ability to meet fundamental goals of budgetary policy (in terms of overall tax burdens or spending priorities) and does not lead to an unfair sharing of resources between generations;

- to enhance the ability of pension systems to respond to the changing needs of society and individuals, thereby contributing to enhanced labour market flexibility, equal opportunities for men and women with regard to employment and social protection and a better adaptation of pension systems to individual needs.

The appropriate approach at EU-level is considered to combine the existing policy processes that are relevant for the future of pension systems with the open method of co-ordination in a way that does not change the respective responsibilities of policy makers at European and national level.

The Commission proposes therefore a set of 11 objectives for supporting integrated national strategies for securing the future of pension systems and this around the three central objectives of European pension policy:

- adequacy of pensions,
- financial sustainability of public and private pension schemes and
- modernisation of pension systems in response to changing needs of society and individuals.

### **Adequacy of pensions**

Member States should safeguard the capacity of pension systems to meet their social objectives. To this end against the background of their specific national circumstances they should:

- 1) ensure that older people are not placed at risk of poverty and can enjoy a decent standard of living; that they share in the economic well-being of their country and can accordingly participate actively in public, social and cultural life;

- 2) provide access for all individuals to appropriate pension arrangements, public and/or private, which allow them to earn pension entitlements enabling them to maintain, to a reasonable degree, their living standard after retirement; and

- 3) promote solidarity within and between generations.

### **Financial sustainability of pension systems**

Member States should follow a multi-faceted strategy to place pension systems on a sound financial footing, including a suitable combination of policies to:

- 4) achieve a high level of employment through, where necessary, comprehensive labour market reforms, as provided by the European Employment Strategy and in a way consistent with the Broad Economic Policy Guidelines;

- 5) ensure that, alongside labour market and economic policies, all relevant branches of social protection, in particular pension systems, offer effective incentives for the participation of older workers; that workers are not encouraged to take up early retirement and are not penalised for staying in the labour market beyond the standard retirement age; and that pension systems facilitate the option of gradual retirement;

- 6) reform pension systems in appropriate ways taking into account the overall objective of maintaining the sustainability of

public finances. At the same time sustainability of pension systems needs to be accompanied by sound fiscal policies, including, where necessary, a reduction of debt. Strategies adopted to meet this objective may also include setting up dedicated pension reserve funds;

- 7) ensure that pension provisions and reforms maintain a fair balance between the active and the retired by not overburdening the former and by maintaining adequate pensions for the latter; and

- 8) ensure, through appropriate regulatory frameworks and through sound management, that private and public funded pension schemes can provide pensions with the required efficiency, affordability, portability and security.

### **Modernisation of pension systems in response to changing needs of the economy, society and individuals**

- 9) ensure that pension systems are compatible with the requirements of flexibility and security on the labour market; that, without prejudice to the coherence of Member States tax systems, labour market mobility within Member States and across borders and non-standard employment forms do not penalise people's pension entitlements and that self-employment is not discouraged by pension systems;

- 10) review pension provisions with a view to ensuring the principle of equal treatment between women and men, taking into account obligations under EU law; and

- 11) make pension systems more transparent and adaptable to changing circumstances, so that citizens can continue to have confidence in them. Reliable and easy-to-understand information on the long-term perspectives of pension systems should be developed, notably with regard to the likely evolution of benefit levels and contribution rates. Further the broadest possible consensus regarding pension policies and reforms must be promoted as well as the methodological basis for efficient monitoring of pension reforms and policies improved.

The prime goal for the European Union in the field of pensions is to reconcile the social and financial sustainability. This balance between social and financial concerns is indeed the key for the political success of pensions reforms. Out of this process, it can be noticed that the application of the open method of coordination, is not trying to promote convergence towards a common pension blueprint but takes the diversity of pension designs across the Union as given. The open method of coordination concentrates exactly on improving the performance of the various systems in relation to 11 commonly agreed objectives for socially and economically sustainable pensions. Crucial here is to make pensions employment friendly, not so much whether they are public or private, pre-funded or pay-as-you go. Making Pensions sustainable is therefore about making them promote longer work lives. Crucial changes are those that enable and motivate older workers to work longer and opt for later and more gradual exit.

### **HEALTH CARE**

Also in the framework of health the open method of coordination started to play a role. Here we noticed however some more hesitation, as even more than is the case in pensions, it is general believed that health care and health policy belong to the national competences. The organisation of health systems is the responsibility of the Member States, covering issues such as how the health system is financed; internal allocation of resources, setting of overall priorities for health expenditure and the right to determine the scope of public funded care; prioritisation of individual's access to the system (if being paid for by the national scheme) with regard to clinical need, management strategies within set budgets; and issues of quality, effectiveness and efficiency of health care such as clinical guidelines. However, whilst respecting

the responsibilities of Member States in this area, there is nevertheless great potential for cooperation at European level to bring benefits to patients, to health professionals, and to those responsible for health systems overall.

Health systems and health policies across the EU are more interconnected than in the past. This is due to a wide range of factors, including the impact of judgements of the European Court of Justice on cross-border health care, but also shared culture and information technology allowing dissemination of medical technologies and information across borders. Just by the fact that health systems involve interactions with people, such as staff and patients are looking across the border for medical treatment, as goods (pharmaceuticals and devices) and services (health care funders and providers), all of whose freedom to move across borders is guaranteed by this same treaty, it is increasingly apparent that many of their activities are subject to European law. The lack of a common understanding at European level made it difficult to respond proactively to these pressures. Greater European collaboration was therefore necessary.

Co-operation among Member States in the field of healthcare has however only recently been formalised. The awareness of the potential impact of the single market on national health care systems, without the involvement of those responsible for public health, made public authorities responsible for health policy accept some EU co-operation in this domain. In spring 2004 the European Commission launched a Communication on the application of the "open method of co-ordination" to healthcare and long-term care, and on patient mobility.

To drive this process of cooperation, the Commission DG Sanco, responsible for public health created a High Level Group on Health Services and Medical Care, bringing together Member State representatives and the Commission. This Committee would closely work together with the Social Protection Committee on these issues. This could become a new Health Committee.

The first discussions in the field of Health however started in 2003 with the creation of a High Level Reflection Process. What the European Commission wanted, as Commissioner Byrne made clear, was not as such changing the primary responsibility of Member States for their healthcare systems, but rather developing a shared vision to help to actively tackle these issues.

For that reason a high level reflection process was started to develop on these ideas.

This high level reflection process focussed on 5 themes.

### **European cooperation to enable better use of resources**

This theme deals with the following topics: sharing spare capacity and cross-border care, including how far there would be European added value over bilateral arrangements, information issues and related legal questions; the creation of centres of excellence, the evaluation of health technology and cross-border cooperation.

### **Information requirements for patients, professionals and policy-makers**

Here we deal with information including possibilities of cross-border treatment, treatment comparisons, comparable nomenclature, and e-health.

### **Access to and quality of care**

This theme particularly focuses on quality aspects, describing a quality framework and identifying possible European issues, while stressing the need to be proportionate when considering what was needed at European level. Information-gathering on

cross-border patient flows and quality assurance in Member States were proposed.

### **Reconciling national health policy with European obligations**

Issues in four areas are identified: protecting common goals of equity, universality and solidarity, a horizontal approach of taking health into account in relevant processes, guaranteeing legal certainty, and institutional needs, though focusing in particular on ensuring legal certainty and clarification of competence.

Without any doubt, it is clear that exactly this issue is the real problem. Within this debate, following conclusions could be taken:

- national health systems share the same basic principles and face the same challenges;
- attention should be paid to the fact that there are differences between services within the health care sector and services within the commercial market;
- CJEC judgments may limit MS' possibilities to control costs;
- that there is uncertainty on the interaction between the internal market rules and the national competence in regulating health care services and that therefore there is need to improve legal certainty as well that the Health Ministers should be "at the steering wheel".

### **Health related issues and the EU's cohesion and structural funds**

This high level reflection process resulted in 19 recommendations dealing with these 5 themes.

#### **European cooperation**

- Rights and duties of patients:
  - to explore further the possibility of reaching a common understanding on patients' rights, entitlements and duties, both individual and social, at European level, starting by bringing together existing information on these issues and how they are addressed within the Member and acceding States.
- Sharing spare capacity and trans-national care:
  - to invite the Commission to facilitate information sharing at European level on possible available healthcare, existing supply of care, entitlements and procedures, costs, prices, adverse incidents, patient records, nomenclature of conditions, treatments and products, and continuity and quality of care across the Union, as part of the overall framework for information. Action could include support to networking and developing databases;
  - to evaluate existing cross-border health projects, in particular Euregio projects, and to develop networking between projects in order to share best practice;
  - to invite the Commission to explore whether it is possible to draw up a clear and transparent framework for healthcare purchasing which competent bodies in Member States could use when entering into agreements with each other, and to make any appropriate proposals;
  - to encourage ongoing work by the Commission, Council and Parliament to ensure clear, simple and transparent recognition procedures incorporating a high degree of automatic recognition as with the current sectoral rules in order to facilitate and develop mobility of health professionals.

- European centres of reference:
  - to invite the Commission, in collaboration with the Member and acceding States, to carry out a mapping exercise relating to centres of reference, and to explore how to foster networking and cooperation on these issues, including the organisation, designation and development of centres.

- Health technology assessment:
  - to invite the Commission to consider how a sustainable network and co-ordination function for health technology assessment could be organised and funded, and to make any appropriate proposals.

### **Information**

- EU framework for information:
  - to invite the Commission to develop a framework for health information at EU level building on the results of the public health programme, including identifying different information needs from the perspective of policy-makers, patients and professionals; how that information can be provided and the responsibilities of the different actors concerned, and taking account of relevant work by the WHO and the OECD;
  - to invite the Commission to address issues concerning data protection and sharing of confidential data between Member States and at EU level;
  - to invite the Commission to consider establishing European principles concerning the competence and the responsibilities of all those involved in e-health service provision.

### **Access and quality**

- Improving knowledge on access and quality issues:
  - to invite the Commission to explore how to set up a framework for systematic data collection across the enlarged Union on the volume and nature of patient movement, both within and outside the systems established by Regulation 1408/71 and including data on tourism-related flows and long-term stay;
  - to invite the Commission to carry out a study to establish the motivation for patients to move across borders, the specialities affected, the nature of bilateral agreements, the information requirements of patients and clinicians and the patient experience, with particular regard to enlargement;
  - to invite Member and acceding States to provide their views on how the different access routes for healthcare in other Member States operate in their country and their impact, and to invite the Commission and the Member States to consider any appropriate options for responding;
  - to invite Member and acceding States and the Commission to develop and reinforce the system of gathering accurate data about the mobility of health professionals and to encourage Member and acceding States to collect and share comparable workforce data regarding health professionals, in collaboration with the Commission and relevant international organisations.
- Analysing the impact of European activities on access and quality:
  - to invite the Commission to prepare an analysis of Community activities to see how these can better contribute to access and quality in healthcare, taking account of relevant activities in other international organisations.

### **Reconciling national objectives with european obligations**

- to invite the Commission to provide a review of evidence relevant to the issues raised by the interaction of Community rules and national health policy objectives;
- to invite the Commission in consultation with the Member States to explore how legal certainty could be improved following the Court of Justice jurisprudence concerning the right of patients to benefit from medical treatment in another Member State and to bring forward any appropriate proposals:
  - to invite the Commission to consider the development of a permanent mechanism at EU level to support European cooperation in the field of health care and to monitor the impact of the EU on health systems, and to bring forward any appropriate proposals.

### **Health-related issues and the Union's cohesion and structural funds**

- to invite the Commission, Member and acceding States to consider how to facilitate the inclusion of investment in health, health infrastructure development and skills development as priority areas for funding under existing Community financial instruments, in particular in objective one areas.

As a follow up of this High level Reflection Process, the Commission launched on April 20<sup>th</sup> of 2004 a Communication, leading to some proposals as:

- ensuring greater legal certainty with the Bolkenstein-directive as a basis;
- a better provision of information;
- making the most of technology by creating networks;
- creating a clear and transparent framework for cross-border sharing of spare capacity;
- systematic exchange of best practices.

It has to be admitted that there is a growing awareness that European law can also have a positive influence on the field of health. Indeed, the calls for greater European influence are growing louder.

There is however an absolute need to develop an European legal framework. After the cases of the Court of Justice dealing with cross-border health care, the European Court of Justice has been heavily criticised. The European Court had however no choice. Achievement of the single market, through the promotion of free movement, must proceed, but where policies have implications for national health care systems, legislators in the European Court have no framework of reference with which to work, other than general statements about ensuring high levels of health protection. This increases the importance of elaborating a European framework, a remarkable and perhaps unexpected contradiction. Those who want guarantees that the national member states will remain competent to develop and shape their national welfare states, should realise that this cannot be achieved without greater European action. Guarantees for national competence require broader European action.

What is absolutely necessary is the development of an European legal framework.

In the Communication from the European Commission of April 2004, the Commission is of the opinion that the Bolkenstein Directive should form the legal basis.

It was in January 2004 that the European Commission launched a proposal for a Directive on Services in the Internal Market, liberalising extensively the services sector. This Directive establishes a general legal framework for all kinds of services provided against remuneration and includes explicitly health care services and services provided by regulated professions, such as medicine.

The Directive applies when:

- the patient moves to the country where the provider is established to receive care;
- the health care provider travels to the Member State of the patient to provide care;
- care is provided at a distance (e.g. telemedicine).

Although this proposal of Directive, has many positive elements, the risk is that if this proposal were to become law, it could lead to a deregulation of the health care sector. The proposal does indeed not take into account the specificity of the health care sector, where information asymmetry is a characteristic feature of the relationship between the provider and the patient and where price fixing mechanisms based on supply and demand are hardly applicable, because of the payment mainly by a third party. The proposal does not take into account at all the involvement of the latter, the financier of the care in public health care systems, in the definition of prices, content and quality of care. Nor does

the proposal take account of the complexity of the health care sector, with its complex interplay between so many involved partners. If this proposal would be accepted as such without any modification, the proposal could have a serious deregulating effect in the health care sector and thus hinder seriously the steering capacity of Member States on human resources management, on regulating and controlling quality, planning, rules of conduct, payment, etc.

## CONCLUSION

It is very clear that today the European union is playing an important role in the discussions about reforming national social security schemes, even when it is still accepted that these schemes fall in the first place under the national competences. The idea of Europe is however not to create a common pension or health blueprint, but to respect the great diversity in systems that exist all over Europe. Through the open method of coordination however, Europe is showing the way in which direction these reforms should go. We can notice here the first appearances of European social standards.

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