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EMPLOYMENT AND SOCIAL AFFAIRS

**Report on the revision
of the procedure
for the integrated guidelines**

Executive Summary

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This report was requested by the European Parliament's Committee on Employment and Social Affairs (EMPL).

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EXECUTIVE SUMMARY

1. The development of the coordination cycles between the European Union institutions for the Employment Guidelines

The Committee on Employment and Social Affairs of the EP commissioned a report on 'the revision of the procedure for the integrated guidelines', focusing on the EP's right to be consulted on proposals for guidelines for the Member States' employment policies (Employment Guidelines) in time.

The involvement of the European Parliament (EP) in these cycles could be clarified through a short analysis of several periods and by considering different approaches: on the one hand, the implementation of its treaty-based consultation right of Article 128 (2) of the EC Treaty and its advisory role in the adoption of the Broad Economic Policy Guidelines (BEPG) and, on the other hand, the adoption of the Lisbon package at the Spring Council.

1. First, before the entry into force of the Treaty of Amsterdam two Council Resolutions on Employment Guidelines (EG) were adopted¹ after duly examining the EP Resolution on an employment initiative². Because of the exceptional legal basis of the first application of these coordination cycles – actually founded on points I.20 to I.24 of the Presidency Conclusions of the Luxembourg Jobs Summit³ – *there were no time constraints for the EP*.

2. Second, from 2000 to 2002 the EP *gave its opinion within an overall delay of one month and a half*. Although the three decisions adopted by the Council during this period complied with the requirement of consistency and synergy between the EG and the BEPG⁴, the EG and the BEPG were adopted under different schedules and procedures according to the specific proposals from the Commission.

3. Third, between 2003 and 2005 the Commission decided to consider simultaneously both the EG and the BEPG on the grounds of an improvement of its working method (simplification by reducing the number of the EG and streamlining with the BEPG)⁵. Regarding the new calendar, the Parliament *had scarcely two months to deliver an opinion on the guidelines' package proposed by the Commission*. Thus, the EP warned about the risk that the implementation of the Commission's calendar created to its Treaty based consultation right⁶.

¹ Council Resolution of 15 December 1997 on the 1998 EG, OJ n° C 30 of 28.1.1998, p. 1, and Council Resolution of 22 February 1999 on the 1999 EG, OJ n° C 69 of 12.3.1999, p. 2.

² Resolution on an employment initiative to the Extraordinary European Council Meeting on Employment, Luxembourg 20/21.11.1997, Bull. EU 11-1997, point I.47.

³ See points I.3 and I.20 Presidency Conclusions, Bull. EU 11-1997.

⁴ See Council Decision of 13 March 2000, OJ n° L 72 of 21.3.2000, p. 15; Council Decision of 19 January 2001, OJ n° L 22 of 24.1.2001; and Council Decision of 18 February 2002, OJ n° L 60 of 1.3.2002, p. 61.

⁵ See Points 3.2, 3.3 and 3.4 of the Communication from the Commission of 17 July 2002, "Taking stock of five years of the EES: mid-term review (2002)", COM (2002) 416 final; Point 3 of the Appendix 2 of the Communication from the Commission of Coordination cycles", COM (2002) 487 final.

⁶ See Points 8-14 of the EP Resolution P5-TA 82002) 0583.

Acting on a proposal from the Commission of 8 April 2003, the Parliament delivered its opinion on 3 June 2003, facing a very limited time span⁷. *A tighter deadline was granted to the Parliament for the adoption of its opinion in 2004⁸*, the year when the EP election took place in June. Therefore, the implementation of the streamlining timetable for the period 2003-2005 resulted in a shortening of the time frame for the Parliament to deliver its opinion, on average less than two months during the three years' cycle. *This schedule cut down the consultation period by two weeks on average compared to the calendar 2000-2002.*

4. Fourth, from 2005 to 2007: In 2005, with the beginning of a three year coordination cycle, a «strategic review» of the guidelines was carried out. Hence, a longer time frame should have been given to the EP for a thorough assessment of the Commission's proposal due to the complexity of the changes of the institutional organisation of the entire Lisbon Strategy package. However, the Parliament had less than two months to give its opinion⁹.

As regards both 2006 and 2007, the years of the so called «light» review of the guidelines, the Parliament was granted longer consultation periods¹⁰. This is surprising given that the Commission did not propose any changes to the guidelines.

It must be underlined that a new consultation calendar was established after 2006 according to which the European Parliament was consulted in January on both the EG and BEPG, as well as on the Lisbon Strategy.

This calendar has seriously damaged the consultation right of the Parliament in several ways: firstly, it shortened the time for the European Parliament to consider the proposal; secondly, it has been applied to every year of the cycle without making a distinction between the years of the so-called «light» review and the year when a "strategic" review takes place; thirdly, according to the calendar, the Parliament's right to be consulted on the Employment Guidelines is considered on an equal footing as its assessment of the Annual Progress Report on the Lisbon Strategy.

5. Fifth, the current cycle shows the same tendency observed in the precedent cycle of 2005-2007, as regards the shortening of the Parliament's consultation period. This means a time of about two months which is granted to the Parliament to deliver its opinion every year of the cycle¹¹. But, even for this year 2009, the time frame will be shortened because the Commission presented its proposal at the very end of January¹².

⁷ The guidelines were finally adopted by the Council in July 2003, see Council Decision of 22 July 2003, OJ n° L 197 of 5.8.2003, p. 13.

⁸ On the 16 April 2004 the Parliament was consulted on the proposal for the adoption of the Guidelines 2004, and the Opinion was delivered the 22 April 2004. See the Council Decision of 4 October 2004, OJ n° L 326 of 29.10.2004, p. 45.

⁹ Opinion delivered on 26 May 2005, just six weeks later than the proposal from the Commission of 12.4.2005, which was sent to the Parliament the 22.4.2005. The Guidelines were adopted by the Council on the 12 July 2005, see Council Decision n° 2005/600/EC, OJ n° L 205 of 6.8.2005, p. 21.

¹⁰ In 2006 the Commission proposed the Guidelines in January and the Opinion of the EP was given the 4 April 2006. The Council adopted its Decision on the 18 July 2006, OJ n° L 215 of 5.8.2006, p. 26. In 2007, the EP gave the Opinion the 15 of February, two months later of the adoption of the Proposal from the Commission. The Council adopted its Decision the 10 July 2007, OJ n° L 183 of 13.7.2007, p. 25.

¹¹ The Parliament delivered its Opinion on the 2008 Guidelines the 20 May 2008, and the Council Decision was adopted the 15 July 2008, OJ n° L 198 of 26.7.2007, p. 47.

¹² See COM (2009) 34/2, Volume I.

II. Legal and political remedies that should be handled by the Parliament in order to preserve its legislative role

1. Preservation of the EP consultation right

As regards the preservation of the Treaty-based consultation right for the adoption of the EG, it must be underlined that the Parliament could profit from the legal scope of Article 128 (2) TEC.

Regarding existing case law of the Court of Justice, the opinion adopted by the Parliament on the basis of this provision must be accorded due regard. Therefore, the Parliament must be granted the necessary time to study the Commission's proposal to express an informed view. This right can only be repealed in very exceptional circumstances.

The fact that the coordination procedure on employment according to Article 126 TEC is complementary to the coordination procedure on the BEPG (Article 99 (2) TEC) doesn't change the situation.

Compliance with the procedure provided for by Article 128 (2) TEC may in no circumstances be left to the discretion of the institution enacting the measure. This Treaty-based right of the Parliament cannot be blurred on the basis of pure organisational constraints and policy making considerations.

The Parliament should develop different strategies depending on the feasibility of inter-institutional dialogue.

In the very **short term**, the Parliament should consider keeping its current practice of asking the Commission and the Council for the necessary time to carry out its consultative role, emphasising «inter alia» the following:

- (1) The Commission should be called upon to establish a different track on the proposed calendar for the Parliament to deliver its opinion, depending on the year of the cycle:
 - For the year when a «strategic» review takes place, the Parliament shall have at its disposal at least **five months** to allow Members to make a thorough assessment of the proposal without compromising its right to work in one of the official languages of the Union. According to the new rules of the Lisbon Treaty on the subsidiarity principle, National Parliaments will be involved in the decision making process. Thus, this procedure will require longer delays than those established within the existing timetable.
 - For the years of the «light» review the consultation period must be at least **three months**.
- (2) The Commission should be called upon to express a commitment for every year of the cycle stating that policy making considerations for the adoption of the Lisbon package will not hamper the consultation right of the Parliament as provided by Article 128 (2) TEC.

This specific institutional commitment is addressed to remark and guarantee the different legal nature of the consultation right of the Parliament from the procedure established by Article 99 TEC.

2. The advisory role of the EP

The Parliament is fully aware of the positive approach provided by the streamlining process of the Integrated Guidelines since it is clear that the employment strategy is interlinked with and complementary to micro and macro economic guidelines.

However, as regards the advisory role of the EP both in the adoption of the BEPG and the Lisbon Strategy, the Parliament should keep urging the Commission to work under due diligence during the year before the launch of a new coordination cycle.

Therefore, the Commission should be called upon to present in December, at the latest, the Annual Strategic Report (including draft Joint Employment Report and BEPG), after duly considering any political orientations delivered by the Parliament on the Lisbon Strategy at the end of the last quarter. The Parliament could then express its views on the Annual Strategic Report before the Spring European Council.

3. Suggestions for possible arrangements for cooperation under the Lisbon Treaty

In the mid-term, the EP, the Council and the Commission should consider translating the abovementioned institutional commitments and arrangements for cooperation into an Inter-Institutional Agreement which, based on the provisions of the Lisbon Treaty (if the Treaty comes into force) should be concluded in 2010 at the latest so as to avoid further constraints during the following revision of the guidelines. According to Article 295 of the Treaty on the Functioning of the European Union (TFEU)¹³, the Parliament should call for an explicit recognition of the binding nature of the Agreement.

4. Other means available

Should the Council or the Commission, either in the short term (2009) or in the mid term (2010) ignore these pleas from the Parliament, the EP could consider an appeal to the European Court of Justice. The main legal ground of such an appeal would be the failure of the Commission or the Council to meet the obligation of genuine cooperation between institutions.

Effective participation of the Parliament in the legislative process of the European Union, in accordance with Article 128 (2) TEC, is an essential principle which cannot be fulfilled under the time constraints existing since the implementation of the streamlining timetable in 2003. This situation has become fully unacceptable since 2006 when a new consultation calendar was established, according to which the EP is consulted on both the EG and the BEPG as well as on the Lisbon Strategy in December.

The lack of political will from both the Council and the Commission to adopt institutional remedies for the fulfilment of the commitments expressed in their exchange of letters with the Parliament in 2003 and 2005 must be also underlined.

¹³ Article 295 of the Treaty on the Functioning of the European Union (TFEU), introduced «*ex novo*» by the Lisbon Treaty, provides «*inter alia*» that the European Parliament, the Council and the Commission shall, by common agreement, make arrangements for their cooperation and, to that end, may conclude inter-institutional agreements which may be of a binding nature.

There are two possible ways for the introduction of an appeal before the European Court of Justice:

a) Article 230 TEC¹⁴, if the Council adopts the EG either without awaiting the outcome of consultation of the Parliament, or if the text finally adopted departs substantially from the text on which the Parliament was already consulted;

b) Article 232 TEC¹⁵, should the Commission or the Council fail to adopt a new calendar with feasible and specific timing arrangements for the appropriate involvement of the Parliament.

¹⁴ Article 230: "The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

.....

The proceedings provided for in this article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

¹⁵ Article 232: "Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months."