

# **Restructuring - ETUC's comments: Anticipating and accompanying restructuring in order to develop employment: the role of the European Union**

## *Introductory remarks*

In its Communication, the European Commission deals with the questions of restructuring and employment and at the same time launches the second phase of consultation of the European social partners on company restructuring and European Works Councils.

The following comments separate both issues, with a view to enabling separate debates on the aspects related to the political content of the Communication and the procedural aspects linked with the second phase of the Commission's consultation of the European social partners.

## *General Comments*

The ETUC is happy to note that the Commission Communication puts back on the EU agenda the issue of restructuring, its links to employment and to other relevant policies, and social dialogue within companies, both at EU and at national level. The Communication places the issue of restructuring in the context of economic growth and job creation, but also recognises that restructuring involves high costs for workers and the regional and local economy. In this context, it highlights the need for adjustment to change coupled with a concern to preserve workers' employability and facilitate their transition to jobs of equivalent quality.

Restructuring is, amongst other things, closely linked to delocalisation, a concept which is close to the top of concerns in many EU countries. Today, we are seeing threats of delocalisation being used to wring concessions from workers and their representatives. The problem is just as important for the new Member States, which are currently experiencing substantial changes in the structure of employment.

The Communication addresses the problems associated with the negative fallout of restructuring, delocalisation, fusions and mergers, not just for workers themselves, who in every country share a sense of insecurity prompted by fear that their jobs will disappear or go abroad, but also for different sectors of the economy that are directly or indirectly exposed to the consequences of restructuring and for entire local and regional economies. These consequences are often incompatible with the Lisbon objectives, namely those related to promoting full employment and the quality of jobs, social and territorial cohesion and sustainable development.

If the European Union is to respond successfully to the challenges posed by globalisation and the swift pace of change affecting society in general and the workplace in particular, it needs to develop a strategic and pro-active approach with regard to restructuring. It is stressed that the Commission is committed to placing the debate relating to anticipation, guidance and adaptability in a context of shared responsibility between employers, authorities and workers, rather than expecting the effort to be made solely by workers or those with social security cover. Anticipating, managing and accompanying restructuring processes requires the active participation of all relevant actors and

must be based on clear synergies between political, legislative, contractual and financial instruments. In addition, action must be taken at all relevant levels, including the European level.

Trade unions have integrated constant change as an ever more present feature of their daily action in order to maintain a certain level of performance in the European sectors of activity and to remain competitive in the global market. This can only be achieved if we are able to establish the right balance between the interests of the different stakeholders, namely those of the enterprise and its workforce. We know that this is seldom the case! Trade unions do not resist change, as long as it is justified, negotiated and well managed in a socially responsible way. But what we will always resist is a scenario in which the negative consequences are borne exclusively by workers, whilst many managers who have failed to live up to their responsibilities receive a 'golden handshake' in return. At this level, trade unions expect the Commission to support the evidence that restructuring is 'essential' for companies' survival by analysing the fallout of past instances of restructuring.

ETUC stresses that trade unions do not merely wish to play a role in managing the social consequences of restructuring. They also want to play an active and pro-active role in anticipating restructuring. For this to be the case, workers and their representatives must be actively involved in the daily life of their companies so that they can influence any decisions taken and make sure that information and consultation procedures do not only target questions related to restructuring, but also cover all areas of the company's activity, its strategic choices and decisions and anticipate their effects on employment.

In this respect, it is essential that the existing legal instruments on information and consultation are fully respected and made more coherent, and that companies which do not respect these instruments are sanctioned. The ETUC notes with interest the promised consolidation of the various provisions on worker information and consultation, and insists that this should be made to improve the effectiveness of these rights, namely in terms of the timing and the quality of information and consultation. However, we would also have liked to see a reference to participation, as well as information and consultation, as is the case in directives 10 and 14 of EU company law. Furthermore, we miss any guidelines as to how European companies should behave when they delocalise. Our view is that they should reflect their country of origin and not simply adopt the culture of the destination country.

### *Specific comments*

There are a number of positive, encouraging and pro-active messages in the Commission Communication, which suggests that the European executive will not merely play the role of spectator, but rather play an active role in setting a positive agenda that will result in a more positive anticipation, management and monitoring of restructuring processes within the European Union.

Some of the **positive proposals** are:

- ▶ The reaffirmation of the important role played by the social partners at the interprofessional but also at the sectoral level, including the contribution by sectoral social dialogue committees, but also at the national, regional and local levels. ETUC is of the opinion that the public and private sectors must both be covered and that employers in every sector and of all sizes must agree to discuss the issues.
- ▶ The Commission's establishment of an internal task force, involving all relevant DGs. This will enable better coordination and the development of synergies between the different policies that will

have the joint task of minimising the negative social consequences of restructuring. Links and coherence between the work of this task force and industrial or competition policies are extremely important.

- ▶ The creation of a “Restructuring” Forum, although its success will be highly dependent on its composition, its ability to avoid confusion regarding the roles of the different actors, and whether or not employers use it as an excuse not to discuss the subject within the framework of social dialogue. The social partners should be able to influence the setting of the Forum’s agenda, and this should not be exclusively restricted to the social aspects of restructuring.
- ▶ The refocusing of the revised European Employment Strategy on priorities that will support the different phases of restructuring (it remains to be seen how the final ‘restructuring’ guidelines will be worded).
- ▶ The intention of using the Community’s financial instruments to more efficiently anticipate and manage restructuring. These instruments include in particular the Structural Funds, where the role of the social partners should be further strengthened, but also the 7th Framework Programme on R&D, the future lifelong-learning programme and the creation of contingency reserves in the case of unforeseen events.
- ▶ The sector-focused approach, the promotion of forward-looking studies and its link with employment and a revamped industrial policy. The identification of three relevant sectors for analysis in 2005 should not be interpreted as suggesting that this will only be done for sectors in crisis. Furthermore, the sectoral social partners should be closely involved in the work done in this area.
- ▶ The promotion of social rights and social dialogue in the context of the EU’s external policies, with the aims of promoting better working and social conditions worldwide and fighting unfair trade.
- ▶ Making the most of the role played by the EMCC, though this will have to be accompanied by the appropriate financial and human resources, means allowing for better monitoring at both the sectoral and territorial levels.

There are also several points that give us **cause for concern**:

- ▶ The degree of ambition is poor if compared to the trade union objective of achieving zero unemployment through a restructuring process and the need to find an appropriate solution for each and every worker. Preconditions for an anticipatory policy include the promotion of and right of access to lifelong learning for all workers. The appropriate reply to the consequences of a restructuring process must include support mechanisms for workers who fall victim to restructuring. These mechanisms must be clearly defined, both prior to the restructuring process itself, throughout that process and by monitoring it over an appropriate period of time in a bid to analyse the sustainability of the steps taken. These steps should include job cuts as a last resort, an active search for alternative solutions to redundancy, tailor-made measures in the areas of job counselling, training, support in finding a new job, placements in another company, support for the creation of new activities with access to necessary loans, adequate social protection during unemployment and a job search period -all this with a view to promoting geographical and career mobility in a context of non-discrimination . These measures should be co-financed by the EU’s Structural Funds.

- ▶ The involvement of workers' representatives in the area of competition policy is far from an adequate response to trade unions' interests and aspirations in this area. In this respect, a clear reference should be made to the fact that in the event of merger control procedures, DG Competition should take decisions on the basis of a number of different aspects, namely those related to employment and industrial policy. This confirms the need for better interaction between the relevant EU policies when designing an appropriate strategy for managing restructuring.
- ▶ In the case of mergers, no reference is made to management's obligation to consult and inform the EWC. At present workers are unable to exercise their rights, since they are notified only after the decision has been taken by the European Commission.
- ▶ A certain contradiction between the announcements of a bigger role for the EU and the strong emphasis on national responsibility.
- ▶ It remains to be seen how effectively European financial instruments will contribute to the process in the light of the difficult debates concerning financial perspectives.
- ▶ The intention to redirect State aid to areas making the greatest contributions to growth and employment is not clear, since no concrete proposals are mentioned.
- ▶ In view of the need to collect more information to gain a better understanding of restructuring processes, one important step would be to develop mechanisms for measuring the social, territorial or industrial impact of restructuring.
- ▶ The unclear link with voluntary Corporate Social Responsibility that has no European framework of reference and can in no way replace the exercising of workers' rights to information and consultation.
- ▶ No mention is made of a possible EU instrument on companies' obligation to produce an annual report on changes affecting employment, working conditions and the environment.
- ▶ The real content of the "regulatory modernisation and simplification measures" in relation to the regulatory framework, since most of the processes of 'simplification' we have experienced are equivalent to a reduction of workers' rights.
- ▶ The same comment in relation to the Green Paper on the Development of Labour Law: The trade unions will be prepared to discuss and negotiate measures leading to a balanced approach, to the promotion of flexi-security, but they will oppose any measures that will result in even more deregulation.
- ▶ Despite the fact that currently, as there is no possibility of real preventive involvement, managing the negative consequences of restructuring is one of the issues covered in negotiations between the social partners, the Communication says nothing about a pan-European framework for collective bargaining in the broadest sense at company level.

## **SECOND PHASE OF CONSULTATION OF THE EUROPEAN SOCIAL PARTNERS ON COMPANY RESTRUCTURING AND EUROPEAN WORKS COUNCILS**

Several comments can be made regarding the launch of the second phase of consultation, concerning both its procedure and its content:

On the procedure:

- ▶ For the first time, the Commission is launching a consultation of the social partners in a Communication that is intended for the public at large;
- ▶ For the first time, the Commission is launching a joint consultation on two separate issues. In reality, EWCs do not deal exclusively with restructuring, and restructuring is not only an issue for EWCs or happening at cross-border level;
- ▶ The ETUC criticises the fact that the Commission brings together in a second stage consultation two subjects very different in substance as regards levels, intensity and procedures;
- ▶ The ETUC considers that Article 138(3) EC only applies if two conditions are fulfilled: “the Commission considers Community action advisable” and the Commission produces “the envisaged proposal”: (1) the “Community action” which the Commission considers advisable in COM 120 is “encouraging the European social partners to intensify ongoing work and to start negotiations with a view to reaching an agreement among themselves”. It is questionable whether any of these constitute “Community action” within the meaning of Article 138(3) EC, which requires much more concrete and specific “Community action”, specifically, by the Commission; (2) as stated before, the Commission does not produce “the envisaged proposal”;
- ▶ In our view, neither of the two conditions of article 138(3) is fulfilled by the Commission’s communication.

Where content is concerned, the following should be remembered:

- ▶ Where restructuring is concerned, following the first stage of consultation in 2002, the European social partners discussed "orientations for reference in managing change and its social consequences" following an analysis of a number of examples. That document was noted by ETUC’s Executive Committee in October 2003 and considered as a first example of the joint work done by the European social partners on restructuring. We also agreed that the sectoral social partners should continue their discussions of this issue.
- ▶ In the meantime, and following the social dialogue work programme 2003-2005, together with the employers we have launched the action on restructuring in the new Member States, a project that will end in June 2006.
- ▶ Where EWCs and following up on the first stage of consultation in 2004 are concerned, ETUC urgently requested the Commission to revise the directive. This request remains valid.
- ▶ Together with the employers, following the joint work programme, we agreed that a number of lessons had been learned from the joint analysis of a number of cases of good practice.
- ▶ None of these documents foresees any follow-up measures, which is a clear indication of the difficulty of reaching agreement with the employers. Both where restructuring and EWCs were concerned, no agreement could be reached on a joint statement by the social partners on further commitments. Where EWCs are concerned, the employers reject any revision of the directive.
- ▶ It is clear from the Commission’s document, and also in view of the political situation within the Commission, that no legislative proposal will be presented on either topic. The Commission is ready to promote good practice and the rest of the work must be done by the social partners. There

is no indication of what the European Commission will do if, by the 2006 Spring Council, nothing has happened with regard to interprofessional or sectoral social dialogue.

► The social partners are asked "to intensify ongoing work and to start negotiations with a view to reaching an agreement among themselves on the requisite ways and means for: implementing mechanisms for applying and monitoring existing guidelines on restructuring, and a discussion on the way forward; encouraging adoption of the best practices set out in the existing guidelines on restructuring; promoting best practice in the way that European works councils operate, with a view to making them more effective, more especially as regards their role as agents for change; devising a common approach to the other points in this Communication which are of concern to them, more especially training, mobility, the sectoral dimension and the anticipatory aspect."

It is clear from ETUC's internal discussions about these issues that no option should be excluded.

At the same time, it is confirmed that with regard to EWCs, ETUC is maintaining its long-standing demand for the revision of the directive. Our main priorities regarding such a revision are the following: a precise definition of the content and means of exercising the right to information and consultation which should be provided by companies before decision-taking; the formal recognition of the trade union role; reinforcement of the right of EWC representatives to language training and to the implementation of specific training programmes with respect to the carrying out of their duties; the right of recourse to experts with adequate financial cover of their expenses; the non-applicability of decisions taken by companies in the event that the respective information and consultation procedures are not respected or that false or deliberately imprecise information is circulated. The possibility should not be ruled out of getting back together with the employers in a social dialogue to jointly analyse more cases that illustrate the good or bad implementation of the directive.

As for restructuring, several options can be considered in order to make progress on this question: the Commission should submit urgently its proposal on the harmonisation of information and consultation rights; progress made at the sectoral social dialogue level must be evaluated; the current situation at national level must be assessed, especially in the light of the 2002/2003 debate within the framework of European social dialogue. In any case, restructuring will be back on the agenda of the interprofessional social dialogue as a result of the joint project being developed with the employers in the new Member States.