



30 September 2013

## Restructuring and managing change

### KEY MESSAGES

- 1** Restructuring processes and managing change are a normal business practice and absolutely necessary for EU competitiveness, economic growth and job creation. They are a precondition for increasing the prosperity of EU society.
- 2** In the recent years a few Member States have taken steps to facilitate adaptation to change. But in many parts of the EU it is still too difficult for companies to restructure.
- 3** When restructuring occurs, a constructive social dialogue can facilitate finding solutions that meet the needs for restructuring and help employees and companies deal with change successfully. Timely restructuring decisions can save jobs in the longer term.
- 4** The EU has a comprehensive legal framework providing for employee rights in times of change. EU Directives supplement various national rules and social partners' activities. There is no need for additional EU legislation.
- 5** The focus of restructuring-related policies should be on creating environment conducive to job creation as well as enabling and encouraging redundant workers get back to work quickly.

### WHAT DOES BUSINESSEUROPE AIM FOR?

- With this paper, BUSINESSEUROPE aims to contribute to EU discussions on restructuring-related policy framework, in particular its employment aspects, with a view to refocusing the EU debate on what companies need to foster competitiveness, growth and employment.



## Introduction

1. In January 2013, the European Parliament adopted a resolution calling for EU rules on corporate restructuring.
2. In June 2013, the European Commission announced it will publish a Communication on a quality framework for restructuring, while in August 2013 it published the results of its assessment of Information and Consultation Directives.
3. This position argues that the Commission and the European Parliament should take a competitiveness-based approach to restructuring and focus its efforts on creating policy environment fostering growth and employment.

## General comments

4. Restructuring processes reflect the necessity to adapt to changing market developments, consumer preferences, technological innovations etc. They are necessary for companies to enhance competitiveness and productivity, and consequently to create jobs and increase prosperity of the society.
5. Change is widespread in today's economies. In 2010 about 2.3 million companies were created in the EU, while similar number closed. More than 50 out of 100 world's largest corporations in 1912 have vanished by today. And roughly 90% of hi-tech start-ups disappear within 5 years after being founded. Many jobs stop to exist, while many others are being created every day.
6. There have been some discussions in the EU about anticipatory approach to change and restructuring. It is important to recognise that companies are best placed to anticipate market developments affecting them, including how to assess future skills and employment needs. Companies do it in the best way they can as it is in their economic interest. However, there will always be limits to anticipation: the future market, regulatory or technological developments sometimes cannot be predicted.
7. Restructuring is necessary also in profitable companies, as it is a managerial responsibility to adapt corporate strategy to current and anticipated market developments. Some roles may become redundant and others created as company refocuses its activities or as a result of a merger. The purpose of restructuring processes is to make companies stronger and more successful in the future, thereby ultimately also to create jobs.
8. Last few years have witnessed an increase in redundancies across the EU and a rise in unemployment rates from 7.1% in 2008 to 11% in July 2013. This has reignited policy debate on restructuring and on the extent of companies' responsibilities towards employees.



9. It is worth underlining that companies resorted to more lay-offs because of unprecedented recession. Massive redundancies were a necessity, as demand dropped significantly and financing became scarce. It was, and still is, a very difficult time to do business. At the same time, managers and employees went to great lengths to limit the number of job losses. Temporary reductions in working time and changes in compensation, often agreed in the collective bargaining processes, helped to save jobs endangered by a temporary fall in demand.
10. Of course, the fact that people are worried about their employment prospects should not be underestimated. But the way forward for policy makers cannot be to try to deter companies from restructuring by making redundancy regulations more stringent and complex. On the contrary, the focus should be on creating conditions facilitating creation of new jobs and labour market transitions. According to the 2011 Eurobarometer survey, 77% of Europeans agree that a job for life is a thing of the past. And 72% believe that work contracts should become more flexible to encourage job creation.
11. Policy makers are increasingly taking into account these realities and realise that increasing the burden on companies is not the right approach. In recent years a few Member States have taken steps to reduce excessive requirements linked to dismissals. This will encourage job creation and limit segmentation on the labour markets. A similar approach should be followed at European level.
12. A policy framework on restructuring should focus on lifting obstacles to economic and employment growth. Against this background, BUSINESSEUROPE highlights its full support for the EU goal of increasing industry's share of production to 20% by 2020 set in the EC Industrial Policy Communication from October 2012. This would create at least 400.000 new jobs a year, reversing the losses of recent years.
13. But for new industrial jobs, what we need is not legislation on restructuring but a framework conducive to industrial growth. In its Industrial Compact from May 2013 BUSINESSEUROPE outlined a pro-industrial growth framework for the EU focused on:
  - A competitiveness-oriented external and internal trade policy agenda
  - An EU energy policy that addresses security of supply and climate/environmental concerns in a cost-competitive manner
  - Improving access to corporate finance
  - Securing the access to raw materials at competitive prices
  - Ensuring the availability of skilled workforce.
14. Services are also crucial for EU economic development. At present 9 out of 10 new jobs in Europe are created in services. Establishing a well-functioning EU single market for all service sectors is key to further enhance job growth and productivity in services.
15. With regard to employment policies, the aim should be to create open, dynamic and mobile labour markets. Europe 2020 strategy has rightly prioritised reforms to improve flexibility and security of employment, thereby contributing to job growth



and smooth labour market transitions. To support adaptation to change among companies and workers it is important to:

- ensure availability of different contractual arrangements in the labour markets;
  - provide for necessary working time and wage flexibility, while respecting the autonomy of social partners in the collective bargaining process;
  - recognise skills are crucial for both competitiveness and employment security;
  - promote a culture of constructive employee involvement in the workplace, while ensuring legal framework for information and consultation is clear and manageable;
  - ensure that any conflicts that may arise during restructuring processes are resolved efficiently.
16. The EU has a comprehensive legal framework concerning employees' and companies' rights and responsibilities in times of change. It includes European Works Council Directive (2009/38/EC); Directive establishing a general framework for informing and consulting employees (2002/14/EC), Transfer of Undertakings Directive (2001/23/EC) and Collective Redundancies Directive (98/59/EC). Various national rules and support instruments aimed at providing protection for workers in case of termination of contract are also in place. There is no need for further EU legislation.
17. In 2003 cross-industry social partners negotiated "Orientations for reference in managing change and its social consequences". BUSINESSEUROPE believes the principles enshrined in them are still valid and is committed to promoting them. Moreover, various restructuring-related projects including elaboration of toolkits and guidance have been undertaken by EU sectoral social partners e.g. in steel, printing, electricity and textile industries.

### Specific comments

#### **I. Contractual arrangements**

18. It is vital that all contractual arrangements in the labour markets are designed to contribute to job creation. Member States should continue evaluating their regulatory frameworks against this objective. In many countries, the rules governing termination of open-ended contracts (grounds for dismissals, severance pay, notice period, outplacement assistance, judicial aspects) may discourage companies to take on employees.
19. Flexible regulations regarding dismissals do not necessarily make people feel insecure about their employment. According to the 2011 Eurobarometer survey, in Denmark for example, more than 90% of respondents felt confident that they would be able to keep their jobs in the coming months and 78% believed they would have a job in 2 years time. Dynamic labour markets, with high levels of job creation, mobility, and active assistance for the unemployed can effectively lead to the feeling of job security.



20. It must also be recognised that flexible forms of employment such as fixed-term, agency and part-time work are crucial for companies to adapt smoothly to changing circumstances (e.g. temporary need for employees with specific skills, absences of staff, and fluctuations in demand). In this context, it is essential that all Member States transpose and implement correctly Temporary Agency Work Directive, which requires lifting unjustified restrictions to the use of agency work.

## **II. Internal flexibility**

21. The experience of recent recession has highlighted the benefits of internal flexibility. Thanks to flexible working time arrangements (such as but not limited to subsidized short-time work schemes) many companies affected by cyclical fall in demand have been successful in retaining workers. In Germany alone various flexible working time arrangements helped to save 1.2 million jobs in 2009.

## **III. Skill development**

22. Having employees with relevant skills is key for companies to operate effectively and stay competitive. At the same time, having skills and competences which are in demand by employers is crucial for employees to feel confident in changing labour markets. Ensuring educational systems respond to labour market needs and developing a culture of life-long learning are thus central elements of successful policy framework facilitating adaptation to change.

23. Companies are committed to develop skills of their employees and have continued to support training even in the recession. In 2010, 66% of companies with ten or more employees provided vocational training to the employees, compared with 60% in 2005. According to the latest European Working Conditions Survey, training financed by employers reached 34% of workers in 2010 – highest level since 1995. And 72% of companies check the need for further training of their staff in a systematic way.

24. Given high amount of resources spent on training in companies and growing importance of knowledge in the economy, it is important to ensure that training measures are efficient and employees are incentivised to update and upgrade their skills. BUSINESSEUROPE is open to explore with the trade unions (as part of the next Social Partners Integrated Programme) different ways in which workplace learning is organised, with the view of elaborating principles for efficient employee training,

## **IV. Constructive employee engagement**

25. Companies see high levels of employee engagement as important to success. There is a wide understanding among managers that a regular communication with employees is important to build mutual trust and foster positive attitude to change.

26. Constructive dialogue with employees can help find solutions that meet management's objectives and help employees, for example through well-tailored assistance to those made redundant. EU legislation on consultation and information



of workers provides a comprehensive regulatory framework for such a dialogue. This legislation does not require changes, as highlighted in the “fitness check” conducted by the European Commission<sup>1</sup>. What is needed is promotion of a culture of constructive employee involvement in the workplace.

27. At the same time, Member States should ensure that their national legal frameworks for information and consultation of workers are clear and manageable. Decision-making processes should not be unnecessarily delayed by over-prescriptive rules and any conflicts between management and employees that may inevitably arise should be resolved efficiently.

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<sup>1</sup> SWD(2013) 293 final