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DRAFT REPORT

with recommendations to the Commission on Information and consultation of workers, anticipation and management of restructuring
(2012/2061(INI))

Committee on Employment and Social Affairs

Rapporteur: Alejandro Cercas

(Initiative – Rule 42 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on Information and consultation of workers, anticipation and management of restructuring (2012/2061(INI))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union, and in particular Articles 9 and 151 and Article 153(1)(e) of the Treaty on the Functioning of the European Union,
- having regard to Articles 14, 27 and 30 of the Charter of Fundamental Rights of the European Union,
- having regard to 'Managing change - Final report of the High Level Group on economic and social implications of industrial change, set up by the Luxembourg Employment Summit of November 1997'¹,
- having regard to Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of participation by employed persons in profits and enterprise results (including equity participation)²,
- having regard to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE)³,
- having regard to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁴,
- having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses⁵,
- having regard to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees⁶,
- having regard to European Parliament and Council Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community,
- having regard to Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute

¹ OJ C 258, 10.9.1999, p.p. 1-5.

² OJ L 245, 26.8.1992, p.p. 0053-0055.

³ OJ L 294, 10.11.2001, p. 1.

⁴ OJ L 225, 12.8.1998, p.16,

⁵ OJ L 82, 22.3.2001, p. 16-20.

⁶ OJ L 294, 10.11.2001, p. 22.

for a European Cooperative Society with regard to the involvement of employees¹,

- having regard to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids²,
- having regard to Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies³,
- having regard to Directive 2009/38/EC of the European Parliament and of the Council of 6 May on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁴,
- having regard to the Commission communication of 31 March 2005 on 'Restructuring and employment: Anticipating and accompanying restructuring in order to develop employment: the role of the European Union' (COM(2005)0120) and the opinion of the European Economic and Social Committee of 14 December 2005 (CESE 1495/2005)⁵,
- having regard to the Commission communication on the Social Agenda (COM(2005)0033),
- having regard to the Commission communication on a Council decision on guidelines for the employment policies of the Member States (COM (2010)0193) and the Council decision of 21 October 2010 establishing guidelines for the employment policies of the Member States⁶,
- having regard to the Commission communication on 'An Integrated Industrial Policy for the Globalised Era Putting Competitiveness and Sustainability at Centre Stage' (COM(2010)0614),
- having regard to the Commission communication on "Towards a Single Market Act" (COM(2010)0608 final/2)
- having regard to the Commission communication on "An Agenda for New Skills and Jobs" (COM (2010)0682),
- having regard to the Commission communication on "Green Paper on Restructuring and anticipation of change: what lessons from recent experience?" (COM(2012)0007),
- having regard to the Commission communication on "Towards a job rich recovery" (COM (2012)0173),

¹ OJ L 207, 18.8.2003, p. 25.

² OJ L 142, 30.04.2004, p. 0012 - 0013

³ OJL 310, 25.11.2005, p . 0001 - 0009

⁴ OJ L 122, 16.5.2009, p.28-44.

⁵ EESC, CCAI/027.

⁶ Council of the European Union, 15184/10, Presse 283, 21.10.2010.

- having regard to its resolution of 26 May 2005 on the Social Agenda for the period 2006-2010¹,
 - having regard to its resolution of 10 May 2007 on strengthening European legislation in the field of information and consultation of workers²,
 - having regard to its resolution of 9 March 2011 on an Industrial Policy for the Globalised Era³,
 - having regard to Rules 42 and 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A7-0000/2012),
- A. whereas restructuring is not a new phenomenon but one which in recent years has taken on new forms, becoming more prevalent with a broader geographical and sectorial coverage in Europe;
- B. whereas the crisis which began in 2008 has served to speed up the rate of change sharply; whereas it has added to the structural pressures to adapt to change resulting from globalisation's more immediate constraints which subject undertakings, workers, territories and governments to critical tensions;
- C. whereas, as consistently highlighted in recent policy papers from the Commission, especially the Europe 2020 Strategy and the Industrial Policy Communication of 27 October 2010, "Better anticipating and managing restructuring would help employees and companies to adapt to transitions imposed by excess capacities and by modernisation and structural adjustment". (...) "Management and employees' representatives are the key players to agree on restructuring strategies at company level. Policy interventions should accompany such restructuring to avoid social hardship and promote new skills and jobs, thus avoiding mass redundancies and the decline of entire regions or the relocation of entire industries, by facilitating economic conversion and professional transition.";
- D. whereas the number of jobs losses were almost double the number of jobs created in the third quarter 2011, this trend is likely to increase in view of the announcement of major restructurings in strategic fields;;
- E. whereas, as stated in the Annual Growth Survey: advancing the Union's comprehensive response to the crisis, "the positive export performance of some Member States shows that success in global markets relies on wider factors such as sector specialisation, innovation, and skills levels that enhance real competitiveness";
- F. whereas in its Communication on An Agenda for New Skills and Jobs of 23 November 2010, the Commission also recognises that "adaptability and pro-activity when moving jobs or occupations may however be hampered by insecurity because transitions bear a potential hazard of unemployment, lower wages and social insecurity; whereas positive

¹ OJ C 117E, 18.5.2006, p. 256-262.

² OJ C 76 E, 27.3.2008, p. 138.

³ Texts adopted, P7_TA(2011)0093.

transitions along people's career paths are therefore essential in order to adapt constantly, maintaining and increasing employability while providing security for individuals and fluidity in labour markets.";

- G. whereas, as stated in the Single Market Act, "The Lisbon Treaty, and the affirmation of the concept of a 'highly competitive social market economy' as one of its key objectives, require the Union to adopt a more all-embracing view of the single market (...) A European framework for restructuring exercises would make for an environment based on mutual trust.";
 - H. whereas, the "Orientations for reference in managing change and its social consequences" drawn up by the social partners in October 2003 have however not been followed by any significant measure leading to the practical implementation and concrete application of those guidelines;
 - I. whereas the Commission has looked for concrete contributions on how to further develop policy in this area through its "Green Paper on Restructuring and anticipation of change: what lessons from recent experience?" of 17 January 2012;
 - J. whereas, in spite of the strong statements referred to above, the Commission has delivered disappointing responses to parliamentary resolutions on information, consultation and restructuring, highlighting the need for urgent and concrete steps in this area, and to requests coming from other economic and social players;
 - K. whereas this resolution is without prejudice to information and consultation obligations resulting from other Union and national law; insofar as Union and national law so provide, information and consultation procedures should be fully used to apply the rules laid down in the present Resolution";
 - L. whereas, despite consulting the European social partners twice in the previous decade, the Commission has failed to take practical steps to ensure the wide application throughout the Union of the anticipative and proactive approaches and socially responsible restructuring practices that it recalls in so many policy documents (see above);
 - M. whereas good information and consultation in relation to restructuring means a more intelligent, proactive, responsible and strategic manner, which will contribute to making undertakings and the Union more competitive, as well as sending out a message of certainty and transparency to European citizens at a time of crisis;
1. Requests the Commission to submit to the Parliament within three months of the date of adoption of this resolution on the basis of Article 225 of the Treaty, a legislative proposal for a directive as recommended in the Annex;
 2. Confirms that the recommendations respect the principle of subsidiarity and proportionality and the fundamental rights of citizens;
 3. Considers that the requested proposal will have no financial implications;

4. Instructs its President to forward this legislative proposal and the accompanying detailed recommendations to the Commission and the Council.

**ANNEX TO THE MOTION FOR A RESOLUTION
DETAILED RECOMMENDATIONS AS TO THE CONTENT
OF THE PROPOSAL REQUESTED**

Recommendation 1

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION ,

- having regard to the Treaty on the Functioning of the European Union and in particular to Article 153(1)(e) thereof ,

Whereas:

- (1) When dealing with anticipation, preparation and management of restructuring, companies, workers' representatives and the other stakeholders act in a spirit of cooperation, based on timely and comprehensive information and consultation.
- (2) Anticipation, preparation and management of change must take place in the context of strengthening social dialogue and with a view to promoting change in a manner compatible with the preservation of the priority objective of employment.
- (3) There is a need to envisage, promote and enhance anticipatory measures concerning the company situation and likely development of employment, in particular where employment may be under threat.
- (4) Restructuring is facilitated and its impact softened when companies develop on a permanent basis the skills and competences of their workers.
- (5) Good restructuring practices require preparation as early as possible and starting as soon as the need to restructure is envisaged, making it possible to avoid or to reduce to a minimum its economic, social and territorial impact.
- (6) It is a widely recognised that any restructuring operation should be subject to an explanation and of justification to the stakeholders,
- (7) Serious action aimed at limiting the impact of restructuring requires companies to envisage redundancies as a last resort and only after having considered all possible alternative options and/or having implemented possible supporting measures.
- (8) The active involvement of public authorities at the relevant level in the preparation and management of restructuring operations contributes greatly to limiting their negative impact.
- (9) It is important that companies, in conjunction with employees' representatives, create tools for regular evaluation and reporting on their restructuring practices.

- (10) Such an Union framework should apply to major companies and groups of companies, those which employ on the territory of the Union at least 500 workers, and to restructuring operations of a certain dimension, covering at least 100 workers in a single company or 500 employees in a company and its dependent companies or one or more Member States over a period of three months.
- (11) Any Union framework on anticipation, preparation and management of change and restructuring should encourage and give precedent to agreement between the most concerned parties, only in the absence of such agreement should standard rules apply.

SECTION I

GENERAL

Recommendation 2

Objective

1. The purpose of the Directive is to promote and facilitate information and consultation in economic change and improve the way in which companies, employees' representatives, public authorities and other relevant stakeholders throughout the Union anticipate, prepare and manage in a socially responsible way corporate restructuring.
2. To that end, companies and employees' representatives, when dealing with restructuring, in a spirit of cooperation, shall recognise that these processes aim to protect both the interests of companies as regards competitiveness and sustainability, and those of their employees.

Recommendation 3

Definitions and scope

1. For the purposes of the Directive:
 - a) "companies" mean companies and groups of companies employing at least 500 employees in the Union, as well as any company part of the group referred to above;
 - b) "dependent companies" mean companies in a situation of dependence on the ones above by reasons of subcontracting, supply contract and others;
 - c) "employees' representatives" mean the ones provided for by national law and/or practice;
 - d) "agreements" mean agreements concluded at the relevant level (European, national, sectoral, regional or company-level) by, on one hand, representatives of the companies or their organisations, and, on the other hand, representatives of the employees with

the capacity to conclude collective agreements under national law or practice or under the procedures laid down by the competent trade union organisations at European level;

- e) "employees" mean the employees of the companies covered by the Directive, irrespective of the type of employment contract;
- f) "public authorities" mean bodies of the public administration at the relevant level, as designated by Member States;
- g) "restructuring operation" means any re-organisation of the structure, of work processes and organisation, of the location with a quantitative or qualitative impact on employment;

2. The present Directive covers restructuring operations affecting at least 100 employees in a single company or 500 employees in a company and its dependent companies in one or more Member States over a period of three months.

SECTION II

ANTICIPATION OF CHANGE

Recommendation 4

Long-term strategic planning, adaptability and employability

1. Any restructuring operation shall be integrated into a long-term strategy that aims to ensure and strengthening the long-term sustainability and competitiveness of the company.
2. Long-term strategic planning shall include human resources, employment and skills objectives that focus on developing, on a permanent basis, the skills and competences of the workforce in order to increase the competitiveness of the company and its capacity of adaptation, as well as to increase the employability of employees and to manage their internal and external mobility.
3. To that end, companies shall recognise the right of every employee to benefit from appropriate training. Employees shall recognise that education and lifelong learning are necessary to enhance their employability and shall accept relevant training offers.

Recommendation 5

Anticipation of employment and skills needs

1. Companies shall develop, in cooperation with employees' representatives and, where applicable, with public authorities and other relevant stake-holders, mechanisms that anticipate and plan for future employment and skills needs.

2. To that end, companies shall establish, in co-operation with employees' representatives and other relevant stakeholders:

- a) mechanisms for the long-term planning of quantitative and qualitative employment and skills needs that are linked to innovation and development strategies and that take into account the foreseeable evolution of employment and skills, both positive and negative;
- b) multiannual plans of employment and skills development covering the following areas:
 - support for the creation of learning advisors to help employees select adequate training;
 - regular individual skills assessment leading to individual training maps;
 - individual training plans with quantitative targets;
 - an annual training budget;
 - individual learning accounts;
 - training packages, if needed, in co-operation with external stakeholders;
 - leave of absence for educational purposes;
 - specific training measures to tackle possible negative or problematic developments.

3. Every employee shall be offered a given number of hours of training per year to be determined by law or collective agreement. Any refusal to accept that offer by employees shall only be permitted on justified grounds.

4. The provisions of paragraphs 1 to 3 above do not apply to companies and employees covered by an agreement, concluded at the relevant level and with the relevant parties, on the procedures for anticipating and forward-looking planning of employment and skills needs.

5. Dependent companies shall be informed of the mechanisms and plans provided for in paragraph 2. Their employees shall be covered by those mechanisms and plans upon the request of the dependent company, justified on the grounds that those mechanisms and plans are required or useful for their own adaptation and development.

SECTION III

PREPARATION AND MANAGEMENT OF RESTRUCTURING PROCESSES

Recommendation 6

Early preparation

1. Except in circumstances where restructuring is triggered by unforeseen or sudden events, any restructuring operation shall be preceded by an appropriate preparation with all the stakeholders concerned with a view to preventing or alleviating its economic, social and local impact.

2. This preparation shall be carried out as early as possible and shall start as soon as the need to restructure is contemplated. except in the exceptional circumstances referred to in paragraph 1 above, it shall be carried out within a timeframe that allows for the adoption of measures making it possible to avoid or to mitigate to the minimum its economic, social and local impact.

Recommendation 7

Information and consultation concerning business decisions

1. Any restructuring operation shall be subject to an early explanation and justification to all the relevant stakeholders on the basis of either long-term strategic goals and requirements or short-term constraints.
2. The dialogue provided for in paragraph 1 shall include the justification of the choice of the measures envisaged in order to achieve the objectives and of other possible options, in the light of all the interests concerned.
3. Companies shall from the beginning inform the public authorities at the relevant level, in particular at local level, and involve them in the preparation of the restructuring process.
4. The local economic actors, in particular companies and their employees in a situation of dependence in relation to the restructuring company shall also be informed from the beginning and actively involved in the process.

Recommendation 8

Minimising internal social costs through a social plan

1. When the need to restructure occurs as a result of the need to preserve their competitiveness and long-term prosperity, companies shall consider redundancies only as last resort and only after considering all possible alternative options and identifying and, where available, implementing supporting measures.
2. In particular, companies shall consider the following options as alternatives for redundancies:
 - (a) phasing planned measures over time;
 - (b) reduction in work intensification;
 - (c) working-time reduction or re-organisation;
 - (d) re-negotiation of working conditions;
 - (e) internal or external redeployment;
 - (f) in-sourcing of external activities;
 - (g) negotiated departures; and
 - (h) natural departures
3. When redundancies cannot be avoided or as part of the package to be implemented in the context of alternative options, companies shall make available to the employees concerned

measures that aim to enhance their employability and help them to re-enter the labour market as quickly as possible.

Recommendation 9

Agreements on managing restructuring processes

The provisions of Recommendations 6 and 7 shall not apply to companies and employees covered by an agreement concluded at the relevant level and with the relevant parties on the procedures and mechanism for preparing, managing in a socially responsible way and minimising internal social costs of restructuring operations.

Recommendation 10

Minimising external economic and social impacts

1. When a restructuring operation has major local effects, companies shall seek to develop complementarities and synergies between their preparatory action and the actions of the all the other actors, with a view to maximising the re-employment opportunities of employees at risk of being or to be made redundant, in order to encouraging economic and social re-conversion and to developing new economic activities generating jobs.

2. The measures referred to in Recommendation 7 shall cover, as far as possible, the employees of companies that are dependent, in particular as a result of subcontracting or a supply contract. Dependent companies and their workers shall, in any event, be informed of those measures insofar as such information is required or useful for their own adaptation and for the management of the restructuring process within those companies.

SECTION IV

PUBLIC SUPPORT MEASURES

Recommendation 11

Public support

1. Public authorities at different levels shall intervene in an anticipation and management capacity by:

- a) Promoting the co-ordination of the work of external stakeholders with the work developed within companies
- b) Supporting the anticipation of processes and particular restructuring operations, with a view to alleviating their economic and social impact

2. Public authorities shall monitor the mechanisms for long-term planning and multi-annual plans of employment and skills needs developed within companies.

3. In regions affected by structural change, public authorities shall:

- a) create permanent bodies, networks or observatories to monitor change processes;
- b) promote territorial employment pacts aimed at favouring employment creation and adaptation;
- c) promote or create mechanisms facilitating employment transitions;
- d) implement training actions benefiting small and medium-sized companies and their employees and support dialogue and co-operation between these and large companies;
- e) favour regional employment and economic and social re-conversion.

Recommendation 12

Financial support

1. Without prejudice to the obligations of companies resulting from national laws or practices, public authorities shall co-finance employability measures that favour employees of companies undergoing restructuring, insofar as this type of support is necessary or appropriate for allowing them to quickly re-enter the labour market.

2. In accordance with the rules governing them, European Union Funds, and in particular ERDF, ESF and EGF funds, may be used in supporting integrated action to anticipate and to prepare for restructuring, as well as to help employers to adapt to change for the purposes of paragraphs 1 and 2.

Recommendation 13

Designation of the relevant public authorities

Member States shall designate the public authorities, at national, regional or local level that are responsible for the purposes of the Directive.

SECTION V

FOLLOW-UP, EVALUATION AND REPORTING OF RESTRUCTURING PROCESSES

Recommendation 14

Follow-up, evaluation and reporting

1. Companies shall monitor, on a permanent basis, in co-operation with external bodies and authorities, the psycho-social health of employees affected by restructuring processes, both

redundant employees and those staying in the company.

2. Companies shall create tools for the regular evaluation and reporting on their restructuring practices, in co-operation with employees' representatives and the external organisations involved in that process.

SECTION VI

MISCELANEOUS PROVISIONS

Recommendation 15

Confidential information

1. Member States shall provide that employees' representatives and any other persons who accede to information which has been provided to them expressly as a result of this Directive are not authorised to reveal it if it has been delivered on a confidential basis.

2. Each Member State shall provide, in specific cases and subject to the conditions and limitations laid down by national legislation, that companies are not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm their functioning or would be prejudicial to them.

A Member State may provide that such dispensation is to be subject to prior administrative or judicial authorisation.

Recommendation 16

Compliance with the Directive

1. Member States shall provide for appropriate measures in the event of failure to comply with the Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from the Directive to be enforced.

2. Member States shall provide that companies that do not comply with the provisions resulting from the Directive shall not benefit from any funding in provenance of European Union budget in the five-year period following a judicial decision recognising the breach.

3. Member States shall exclude from the benefit of public aids from the national budgets during the same period the companies referred to in paragraph 2.

4. Notwithstanding paragraphs 2 and 3, nothing shall preclude the use of funds from the general budget of the European Union and from national budgets for the direct benefit of the employees of the companies referred to in those paragraphs.

