

30 March 2012

## Response to Green Paper: Restructuring and anticipation of change: what lessons from recent experience?

### KEY MESSAGES

- 1 Companies must continually adapt in response to new technologies, changing consumer demands, and competitive forces. The smooth reallocation of resources and ability to adjust is fundamental to succeeding in the modern, complex and fast-moving business environment.
- 2 Sluggish labour productivity growth in the EU and the difficulties experienced in getting out of the economic crisis emphasise structural weaknesses of European economies. In this context, it is crucial to facilitate job creation, helping companies adjust to new competitiveness challenges and workers to adapt to change.
- 3 Social consequences of restructuring are managed locally. Employers and employees at company level are best placed to discuss and negotiate effective solutions. An adequate EU legal framework on consultation and information of workers is already in place. Further EU legal obligations on restructuring should be avoided.

### WHAT DOES BUSINESSEUROPE AIM FOR?

- The green paper provides an opportunity to reshape the European debate on restructuring. BUSINESSEUROPE aims to achieve a more balanced discussion, which takes into account the need for competitive companies to create jobs.
- In order to achieve an effective policy on restructuring, the Commission should focus on better mobilising employment, education, innovation, and industrial policies to facilitate industrial adjustment and smooth labour market transitions.
- The nexus between restructuring and massive layoffs that has been used as the main justification for Commission's activities in this area so far does not provide a complete picture and should be reconsidered.

### KEY FACTS AND FIGURES

<p>72% of companies in the EU check the need for training of their staff in a systematic way. 32% of workers in the EU participated in training financed by their employers in 2010</p>	<p>EU productivity growth over 2001-2007 was +1.45% per year and -0.23% per year in 2008-2010. US productivity growth over the 2000-2007 period was +2.5% per year and +1.8% per year for 2008-2010.</p>	<p>Since 1975 only 6% of high-growth innovative start-ups have been formed in the EU, with more than 70% in the US</p>
---	--	--



## **Response to Green Paper: Restructuring and anticipation of change: what lessons from recent experience?**

### **INTRODUCTION**

On 17 January 2012 the European Commission published the Green Paper: *Restructuring and anticipation of change: what lessons from recent experience?* BUSINESSEUROPE welcomes the opportunity to respond to the issues raised by the Commission in its public consultation document and highlights the important role of social partners in this debate.

### **GENERAL REMARKS**

Restructuring is a core element of businesses strategic development. It is an essential process that leads to higher productivity and growth. Companies can expand to new markets, change technology of production or introduce new management processes. They may need to restructure in response to changing consumer demands or as a result of a merger or acquisition. Whatever the reason, the ability to adapt quickly to change is fundamental if companies are to remain competitive and grow in the fast-changing, complex business environment. It is also important to recognise that some businesses will fail and allowing them to do so when the circumstances mean it is inevitable is crucial. Trying to use policy measures to prevent or limit restructuring – rather than allowing innovation or adaptation to use resources in the most productive way – would be economically counterproductive. BUSINESSEUROPE welcomes the fact the Commission's Green Paper recognises this.

The EU has experienced a sluggish labour productivity growth for over a decade – the gap vis-à-vis the US has been widening steadily since mid-1990s. Economic and sovereign debt crises as well as rising global competition have emphasised structural weaknesses in European economies and highlighted the need for reforms. Against this backdrop, the EU debate on restructuring must be reshaped too. On one hand, it is important to create framework conditions which help companies adjust to change smoothly, driving innovation and boosting productivity. On the other, adaptability of workers should be facilitated, so that even if they face redundancy they can feel confident that they have possibilities and skills to access opportunities available in other jobs and sectors.

EU's top priority must be to restore growth and boost job creation. Throughout the EU public finances are severely constrained and the recovery must be private-led. In this context, it is extremely important not to place disproportionate or unnecessary regulatory burdens on companies. BUSINESSEUROPE reemphasises the importance of the smart regulation agenda. EU initiatives must be preceded by impact assessments and robust competitiveness tests.

Social consequences of restructuring, if they occur, are managed locally. Employers and employees at company level are best placed to discuss and negotiate effective solutions. Adequate EU legal framework on consultation and information of workers to facilitate such a dialogue is already in place.



BUSINESSEUROPE remains convinced that there is no added value in imposing further EU legal obligations on restructuring. A top-down approach that would oblige companies and other actors to follow rigid “best practices” identified at the EU level must be avoided.

Rather than trying to develop a specific framework for restructuring, the Commission should focus on the better integration of policies that facilitate industrial adjustment and smooth job transitions. An effective policy response to restructuring challenges requires an integrated approach covering multiple policy areas (e.g. employment, education, innovation and industrial policies) as well as close cooperation between various Commission Directorates General.

In 2003 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. For example, BUSINESSEUROPE continues to believe that the “existence of a good social dialogue in a climate of confidence and a positive attitude to change are important factors to prevent or limit the negative social consequences”. However, to be effective, solutions must be adapted to local context. Over-prescriptive rules would be counterproductive, as they would reduce the need for communication and weaken workplace dialogue.

Finally, we see the value in further exchange of experience between social partners and amongst employers to get a better understanding of how recent events have impacted on restructuring practices.



### RESPONSES TO SPECIFIC QUESTIONS

#### LESSONS FROM THE CRISIS

**Are the policy measures and practices outlined above in relation to restructuring, with special reference to short-time working schemes during the crisis appropriate? In what specific contexts? Are they able to cope with persistently weak demand?**

1. Short-time working (STW) schemes are support schemes intended to help maintain jobs when a company experiences a temporary drop in demand. The purpose of these schemes is precisely to avoid restructuring based on the assumption that the jobs in question will be economically viable in the long term. During the recent recession STW schemes helped to limit the level of unemployment so that in many countries the increase in unemployment has been modest compared with expectations given the size of the fall in GDP. For example, in Germany in 2009 1.1 million employees benefited from STW allowances (“Kurzarbeit”), which helped to save around 330 000 jobs (on the basis that working time was reduced by one third on average). STW schemes helped companies to keep skilled employees instead of laying them off during the economic crisis and hiring them again during the recovery. This is particularly important in view of skills shortages in the European labour markets. Furthermore, during STW many employees participated in training measures offered by employers, maintaining or improving their employability.
2. Thus, STW schemes are useful tools when they are properly used to address short-term cyclical variations in demand. However, these measures cannot be treated as tools to deal with a permanent decline in demand. Long-term subsidised STW measures risk supporting jobs that would not become economically viable without subsidies. In other words, they may lock workers into unproductive activities, limit mobility and prevent companies from engaging in necessary restructuring processes. Therefore, it is necessary to distinguish between short-term measures like STW and strategically motivated restructuring measures as both categories need different solutions and approaches. Unfortunately, the Green Paper seems to disregard this fundamental difference.
3. Apart from STW measures it is of utmost importance to underline the role of other flexible working time arrangements e.g. reduction of regular working time, reduction of overtime and working time accounts. These instruments have helped considerably to prevent job losses during the crisis and such forms of flexibility should be facilitated. For example, in Germany the different instruments to reduce working time have helped to save 1.2 million jobs in 2009.



### COMPETITIVENESS CHALLENGE

#### What types of framework conditions are most appropriate in order to enable successful industrial adjustment?

4. BUSINESSEUROPE welcomes the attention given in the Commission's Green Paper to the competitiveness challenges faced by European companies. Europe needs to recover from one of the most acute recessions in history while the global environment is becoming increasingly competitive. According to the 2012 Annual Growth Survey, over the next 10 years average growth rate in the EU will reach only 1.25% annually. In contrast, emerging economies are expected to grow at a much faster rate. It is clear that without reform, Europe will fall behind its competitors for technological and economic progress, and face a future of low productivity, lack of jobs and relative economic decline.
5. Framework conditions enabling companies adapt to change, innovate, and grow should focus on the following:
  - Well functioning EU single market and improved access to international markets. EU single market is a key element of Europe's global strength. Easy access to a wide pool of customers, workers, suppliers and contractors helps companies adapt to changing market circumstances, specialise in what they do best, and prevents labour shortages. It is especially important to further strengthen single market in services, build a digital single market, and encourage intra EU labour mobility including through faster recognition of professional qualifications.
  - Regulatory stability and less burdensome legislation. All EU institutions must ensure that legislative initiatives do not entail disproportionate or unnecessary burdens on businesses. The existing impact assessment framework should always be applied, looking as well at sectoral and national impacts. The Council and the Parliament should make better use of impact assessments. Crucially, the EU and national authorities should put in place regulatory and policy frameworks conducive to entrepreneurship (e.g. simple procedures to set up and close a company, improved e-administration services, improved access to finance)
  - Flexicurity on labour markets. Member States have made insufficient and uneven progress in implementation of reforms in line with the flexicurity concept and Europe 2020 strategy. Greater efforts should be made to move from passive protection of jobs to active measures. Employment protection legislation as well as tax and benefit systems must be further reformed to encourage people to work and companies to hire.
  - Adequately skilled workforce. Member States need to upgrade their education and training systems to raise the quality of education. Links between business and educational providers need to be further encouraged to make education systems more responsive to labour market needs. It is also necessary to develop apprenticeships and traineeships systems for youth, promote lifelong



learning and encourage older workers to stay in employment. Efforts by Member States are of primary importance, but the EU can contribute too, including through European funds.

- Support for innovation. Investment in R&D should be increased through the development of EU venture capital market and by deploying a larger share of EU budget to research. The efficiency of EU research schemes need to be enhanced by reducing the red tape involved and better aligning with national programmes. Finalising the creation of a balanced and non-discriminatory unitary patent that meets the needs of all European companies should be a priority too.
- Integration of EU climate, energy and industrial policies. BUSINESSEUROPE supports transition to a low carbon economy and emphasises that a comprehensive approach to climate issues is necessary. EU climate action should not compromise industrial competitiveness, but rather enhance it. To that end, it is necessary the EU supports investment and research into low-carbon technologies (keeping in mind all energy options should be kept open), promote further energy efficiency and integrate the EU energy market. Also, the well-functioning ETS system that protects competitiveness of energy- and trade-intensive industries, and supports long-term business confidence in the value of low-carbon investments is needed.

## REVIEW OF EMPLOYMENT PROTECTION SYSTEMS

**While fully taking into account the huge differences between Member States in this regard, the Commission would like to hear the views of stakeholders (in particular national authorities and social partners' organisations) on whether some aspects of the employment protection systems need to be reviewed in the light of this intended transition towards anticipation and proactive protection of employment.**

6. BUSINESSEUROPE supports the Commission's view that employment policies and regulations should aim at facilitating labour market transitions and fostering employability rather than safeguarding *particular jobs*. Such an approach will improve adjustment capacity of European labour markets but training and lifelong learning policies may come at a cost for employers.
7. As rightly acknowledged by the Commission in the 2012 Annual Growth Survey it is vital that Member States review employment protection legislation, especially for permanent contracts, and lighten it where it is excessive. Not only will this stimulate job creation but also it will help limit labour market segmentation and facilitate transitions. At the same time, disproportionate barriers to the use of other contractual arrangements (e.g. fixed-term contracts, temporary agency work) should be lifted too. The flexibility provided by such contracts is crucial if companies are to adapt to changing circumstances (e.g. one-off need for employees with specific skills or fluctuations in demand), enabling them to grow and create jobs.



8. Member States should also look at their tax and benefit systems, and make them more conducive to employment. According to Eurostat, the average tax wedge for people with low earnings still reaches almost 40% in the EU. In Belgium it is almost 50% while in the US it is only 27%. High tax wedges make it unaffordable for companies to take on workers, and are a disincentive for the unemployed to start work. Eurostat figures show that for a one-person, low-wage household, 75% of the extra income when an unemployed person finds a job is “taxed away” through higher tax and social security contributions combined with the withdrawal of unemployment and other benefits. Reforms are thus needed to make work pay.
9. Unemployment benefit systems play an important role in delivering income support to the unemployed, but in some Member States they must be adjusted to better incentivise job-seeking. This is especially important in the current economic context as high levels of unemployment during the recession may have discouraged many of those without jobs from searching. Welfare policies should not contribute to this disincentive effect. Support should not be unconditional, especially if provided for a long period of time. Tighter eligibility criteria (job search requirements, obligatory participation in activation measures) and stronger incentives to comply are tools that could be used to keep the unemployed in contact with the labour market and in the habit of work.
10. Over the last few years a number of Member States have taken efforts to restructure their public employment agencies in order to rationalise and modernise their services. These actions led to more individualised activation strategies for the unemployed and a wider range of services offered, including career and job searching advice, training, and job brokering. However, further measures are needed to increase effectiveness and efficiency of the support provided. To that end, it is important to fully open up for the private sector possibilities to provide employment services as competition in this field is likely to bring more quality, lower costs and better results. The potential of public-private cooperation in employment services provision should also be fully exploited.

## ANTICIPATION OF CHANGE

### Is anticipative approach to change and restructuring feasible?

11. Anticipation of change is core to strategic corporate management. Managers regularly make projections (e.g. sales, costs, profits) and review business performance. Therefore they are best placed to assess whether and when to restructure company’s activities and the EU should not interfere with this. However anticipative strategic management cannot cover all eventualities: natural disasters, technological breakthroughs, or financial crises, to name but a few. So, in addition to focusing on *anticipation* of change it is even more important to facilitate *adaptation* to change. Companies and societies which are flexible and able to adapt to change smoothly are the ones to succeed in a modern, complex and fast-changing world.



### **How can effective practices for anticipating employment and skill needs within companies be further encouraged?**

12. Human capital and brain power is increasingly important in our economies. Companies compete for talent to ensure they have the right skills required to operate effectively and innovate. Anticipation of employment and skill needs is widespread amongst companies when planning their activities and human resources strategies. In some countries this is regulated, but in majority of Member States such initiatives are entirely voluntary.
13. BUSINESSEUROPE reiterates its opposition to any obligations in this area, especially at the EU level. Companies know best whether and how to monitor their skill and employment needs. It is the role of managers to assess the feasibility of such assessments, as well as costs and benefits involved.

### **How can training be developed as a permanent feature of human resources management?**

14. BUSINESSEUROPE believes lifelong learning is already a feature of human resources management. Evidence shows companies are committed to provide training to their employees. Data from 2009 European Company Survey indicate that 72% of companies check the need for further training of their staff in a systematic way and 62% give employees time off to undertake training. According to the latest European Working Conditions Survey, training financed by employers in 2010 reached 34% of workers – highest level since 1995. In the UK for example employers spend £ 39 billion per year on training. This is 3% of GDP and equal to the state budget for schools. In Germany, companies spend on training EUR 27 billion each year.
15. BUSINESSEUROPE opposes creating any new legal entitlement to training at the EU level which would fall outside the scope of EU competences. Depending on national industrial relations systems, social partners agree on training measures at national, sectoral or company level. The EU action should not attempt to change this.

### **How can synergy between action taken by companies and public sector initiatives be promoted to facilitate appropriate employment and skills policies?**

16. BUSINESSEUROPE agrees public authorities, educational providers and companies should join forces to improve employment and skills policies. The high rate of youth unemployment calls for decisive actions. It is also clear that a lack of students and workers skilled in science, technology, engineering and mathematics will be one of the key obstacles to growth in Europe in the coming years.
17. The best way to reduce mismatches between skills supply and demand is to involve employers in the development of courses, teaching methods, assessment of qualifications as well as in the management of educational institutions. This will allow labour market needs to shape the education and vocational training systems as they develop.





18. Good practices in this area already exist. In some Member States companies are actively cooperating with educational providers, e.g. 64% of employers in the UK declare being in close contacts with schools. In some Member States such links are hampered by red tape and sceptical attitudes among authorities and schools themselves. We believe such negative attitudes should be overcome, e.g. through information campaigns and sharing best practices. Companies' involvement is extremely important in case of vocational education. As set out in "Creating Opportunities for Youth", BUSINESSEUROPE has drawn up a set of policy recommendations on promoting apprenticeships and dual learning systems.
19. At the EU level, we recognise the role played by CEDEFOP in developing skills forecasts and providing opportunities to exchange best practice on education and training policies between policy makers, academics, educational institutions and social partners. However, it is important to recognise the limits of skills forecasting: reliable long term predictions are almost impossible, so efforts should focus on short to medium term forecasts and ensuring there is no duplication of the work done at national and regional levels. More generally, it is necessary to rationalise EU tools and initiatives in the education and employment policy field (European skills passport, EU skills panorama, etc.). Above all, the priority must be to eliminate the real obstacles at national level.

## MANAGEMENT OF CHANGE

### **How can companies and their workforces be encouraged to engage in early and adequate preparation of restructuring processes favouring acceptance of change? What best practices exist in this field?**

20. BUSINESSEUROPE underlines that in the area of consultation and information of workers with regard to restructuring processes, a comprehensive and sufficient legal framework already exists at the EU and national levels. This 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). There is no need for any new EU legal initiatives in this area.
21. Companies see high levels of employee engagement as important to success. For example, according to the CBI surveys from 2010 and 2011 more than 60% companies in the UK declare that maintaining high levels of employee engagement was their top HR priority. There is a wide understanding among managers that a regular communication with employees, either through their representatives or directly, is important to build mutual trust and foster positive attitude to change. It is important to underline that for this communication to be productive, employees need to engage in a dialogue in a constructive manner. Along with a traditional social dialogue a variety of more informal, direct communication tools are used. These include employee opinion surveys, focus groups, face-to-face meetings with employees. But solutions differ between companies and proposing more



harmonisation at the European level on how best to inform, consult and engage workers would be counterproductive.

### **What can companies and employees do to minimise the employment and social impact of restructuring operations? What role can public policies play in facilitating these changes?**

22. It is important to recognise that restructuring operations can have a *positive* social impact. Restructuring cannot be associated only with large scale redundancies. A company may expand their activities, increase product lines and change processes, resulting in job creation. If adverse social consequences occur, they should indeed be minimised, where possible. But the role of public policies should never be to make it difficult for companies to restructure, as this would undermine competitiveness and could lead to further job losses in the long term. Similar remark refers to the question below, on regional impact of restructuring operations.
23. As stated in the “Orientations for reference in managing change and its social consequences” negotiated by social partners in 2003 it is important to carefully consider alternatives to dismissals when planning restructuring operations that may include redundancies. These could include e.g. reassignment, training, natural departures, and temporary lay-offs. Good employee engagement at company level will help to find most effective solutions adapted to the specific circumstances. BUSINESSEUROPE believes that EU and national legislation on consultation and information of workers provides an adequate framework for such a dialogue.
24. It is important to recognise the diversity of solutions that exist in Member States when discussing division of responsibilities between different actors (employers, employees, public authorities) with respect to assisting workers who face losing jobs as part of a large scale redundancy. This must be respected. Firstly, support can take various forms, e.g. in the UK on-site Rapid Response Services make tailored employment services easily available to potentially unemployed workers, and in Germany transfer companies provide retraining opportunities and facilitate job transitions. Secondly, the extent of obligations on companies whose restructuring operations impact negatively on employment also varies. Some Member States assume that affected workers should be placed under the responsibility of employment services and benefit from social protection. Others impose more onerous obligations such as the duty to negotiate social plans including payments of severance pay, retraining measures and, e.g. in France, “revitalisation costs” to support local economies.
25. European funds, especially ESF and EGF, can play a role in minimising any social consequences of dismissals and increasing employability of workers. However, to achieve this, the effectiveness of these instruments must be improved.
26. BUSINESSEUROPE believes the key role of the EU in the area of “social impact” of restructuring is to facilitate and oversee the implementation of national labour markets reforms in line with the flexicurity concept and Europe 2020, as argued in paragraphs 6-10 of this reply. The main objective should be to achieve smooth transitions within labour markets.



### **What can companies, local authorities and all the other stakeholders usefully do to minimise the regional impacts of restructuring?**

27. Economic and social changes may have repercussions for an entire region. If this is the case, cooperation between different actors – companies, local authorities, employment agencies, will bring added value, and can be tailored to the situation in question. For example, in Germany territorial pacts engaging social partners, local authorities, employment services and training providers are used while in Sweden so-called “employer circles” exist when a number of employers within a region agree to jointly provide a variety of services to employees such as mobility opportunities, coaching, redundancy redeployment services.
28. However, BUSINESSEUROPE opposes any attempts at the EU level to oblige companies to make a commitment to regenerate regions or industrial sites where they operate in the case of a closure or relocation. Any such proposal would go against the subsidiarity principle, discourage investment and undermine competitiveness.

### **How can companies affected as a result of the restructuring of another company be supported in their own adjustment process? In particular, how can SMEs be better informed and assisted in the restructuring process?**

29. The concept of distinguishing cases of restructuring resulting from “restructuring of another company” would be highly impractical. In any case, the policy response in such cases of restructuring should not be principally different that of any other restructuring process.
30. BUSINESSEUROPE agrees adaptation to and management of change can be particularly challenging for SMEs. In recognition of this various tools have been developed by public authorities to help SMEs with restructuring. For example, some Member States focus on providing easy to understand and user-friendly guidance on the legal requirements related to restructuring and redundancies. Some offer subsidised training vouchers while in other cases public support is given to helplines providing free legal and economic advice to SMEs facing the risk of insolvency.
31. The best way for the EU to assist SMEs in restructuring processes is to develop supportive framework conditions as described in paragraph 5 of this reply. BUSINESSEUROPE opposes introducing new information obligations on companies towards their suppliers or contractors beyond contractual terms, as this could create disproportionate administrative burdens while also being incompatible with requirements to respect confidentiality.

### **What role can evaluation and reporting of past restructuring operations play in increasing knowledge and improving stakeholders’ practices?**



32. Evaluation of past restructuring operations is a valuable tool to improve change management process in the future, but it is companies who are best placed to assess whether, when and how to perform such evaluations. We would be against any new obligations in this area.
33. BUSINESSEUROPE also reiterates that employers who find it necessary to undertake mass redundancies are already obliged, under the Directive 98/59/EC, to report to public authorities on their plans. However, this information is not used effectively and efforts should be made to make it more easily available.

### ROLE OF SOCIAL PARTNERS

**What role social dialogue could play in better disseminating and encouraging best practices for the anticipation and management of restructuring?**

**How can the existing orientations and guidelines on restructuring be improved in light of the lessons learned from the crisis and the new economic and social challenges? How can the lessons from the crisis be disseminated and implemented?**

34. European social partners have addressed the issue of restructuring in detail in the last few years. BUSINESSEUROPE and its member federations are committed to promoting the “Orientations for reference in managing change and its social consequences” negotiated by social partners in 2003 as the contents remain valid. Moreover, we recall that a “Joint study on restructuring in the EU” prepared by cross-industry social partners between 2004 – 2010 gathered further evidence on restructuring practices and social partners involvement in management of change.
35. At the same time we recognise that the economic circumstances have changed. European economies are struggling to recover from the deep financial and economic crisis, while also addressing demographic challenges and fierce global competition. We judge it would be beneficial to get a better understanding of how the above factors have affected restructuring processes at company level and what we can learn from these experiences. To that end, BUSINESSEUROPE would support the launch – within a joint programme of cross industry social partners – of a series of practical seminars exchanging experience on restructuring among social partners. Moreover, we propose to create a space for European dialogue among employers. BUSINESSEUROPE will consider organising a number of capacity building workshops for companies and employers organisations to exchange recent experiences with restructuring processes.