

Position Paper

UEAPME¹ reply to the Green Paper on “Restructuring and anticipation of change: what lessons from recent experience?”

General remarks:

UEAPME would like to start by recalling that adaptation to change and restructuring is a necessary part of daily business life and that most of the changes do not lead to job losses. Adaptation to change and restructuring is a natural feature inherent to the economy and a dynamic process for all companies, whatever their size or sector, in order to increase their competitiveness, to maintain or expand their market shares and to invest in new global markets.

Talking about restructuring cannot be limited to highly emblematic cases of large-scale redundancies. SMEs also are experiencing restructuring in a more silent manner in order to adapt to change, and their specificities should be better taken into account. In fact, even if the majority of small businesses tend to be more active locally, they are now more and more confronted with the global competition and they have to constantly adapt in order to remain competitive even on their local market.

The real European challenge at stake is to create the best environment for reinforcing the competitiveness of companies and workers. Therefore the European Union should facilitate and optimise the adaptation to change while reducing as much as possible its negative consequences.

However, adaptation to change and restructuring is not a new topic. The acceleration of pace of change which took place in parallel with the globalisation process has triggered new initiatives at the beginning of the year two thousand with the creation in 2002 of the European Monitoring Centre on Change to promote and understand how to anticipate and manage industrial change.

On their side, during the last ten years the European Social Partners have also been constantly active in this field:

- In 2002 the European social partners started to address this issue with the organisations of a series of seminars based on company cases ending-up with their joint “Orientations for reference in managing change and its social consequences” in 2003.
- Between 2005 and 2009 we have deepened our analysis of the role of social partners in restructuring by conducting a five-year joint project including the organisation of 26 national seminars. This ambitious project has led to the study on “Improving the anticipation and management of restructuring” published in 2010.

In addition, the topic has been regularly addressed through seminars, fora from part of the European Commission with the active participation of the European and national social partners.

¹ UEAPME subscribes to the European Commission’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transparency/regexp1/index.cfm?do=entity.entityDetail&entityId=55820581197-35).

In the Green paper on restructuring and anticipation of change published on 17 January 2011 the European Commission makes the correct diagnosis that “the structural weaknesses pre-dating the crisis which had not been tackled adequately are becoming glaringly obvious” and rightly recalls the Annual Growth Survey recommendation that “the EU needs to use the crisis to address decisively the issue of its global competitiveness”.

However, the Commission does not sufficiently distinguish the part related to restructuring as a natural phenomenon and the part related to the crisis, even if the crisis has clearly accelerated some underlying problems and structural weaknesses.

Even if it is largely recognised that it can take very different forms such as relocation, delocalisation, outsourcing, closure but also internal restructuring and business expansions as explained in the working paper, in the case of small businesses, one of the main consequences of the very severe financial and economic crisis has been a clear increase of bankruptcies and closures of companies despite the comprehensive anti-crisis packages introduced by many member States and the genuine capacity of small businesses to be more reactive and more able to adapt to change.

Measures to cushion the social consequences of restructuring should not hamper businesses adjustment, adaptation capacity and growth potential for job creation and wealth. Delivering change also means convincing workers who enjoy considerable levels of job security that things need to change while improving their employability, facilitating mobility and making best use of active labour market policies.

Reply to the questions:

1 - The lessons from the crisis

Are the policy measures and practices outlined above in relation to restructuring, with special references to short-time working schemes during the crisis appropriate? In what specific contexts? Are they able to cope with persistently weak demand? Finally, what can Member States, the Commission or the social partners do to exchange, disseminate and encourage wider application of the best practices in this domain?

The Green paper shows several examples of measures taken at national level to support companies to overcome the current crisis, most of them touching upon flexible organisation or reduction of working time (overtime, short time working schemes, banking time account, different types of leaves, etc..).

However, in order to cope with restructuring and even more in time of crisis and job losses companies require internal and external flexibility notably on work organisation and working time. This is particularly relevant for small businesses which have less leeway for applying internal flexibility due to their limited number of employees, taking into account that the vast majority of companies in Europe - over 90% - are micro-businesses with 4.5 people in average.

In this context, short-time working schemes has proved its efficiency to avoid mass redundancies notably in Germany or Belgium as a tool to tackle crisis consequences in times of a weak demand. However, in several countries (Austria, France...) small businesses could not make full use of this type of schemes due to the excessive complexity of administrative requirements. In France, for example, this has been recently explicitly recognised and new simplification measures for micro-businesses have been agreed on between social partners in an interprofessional agreement in January 2012.

By nature short time working schemes should remain a tool in times of crisis and should not become of permanent use. Otherwise, we run the risk to artificially subsidise non viable jobs and non viable companies and limit the necessary adaptation to change which is absolutely key to remain on the market.

In order to tackle long term labour market challenges, structural reforms are absolutely key and notably the policy elements mentioned in the Green Paper along the flexicurity principles, such as:

- revising tax and benefit systems,
- making work pay,
- implementing activation policies,
- applying better balanced employment protection systems,
- setting-up wage setting mechanisms and wage developments consistent with productivity and adjustment needs
- investing in continuous training for updating or upgrading skills

There are the right components to work on for a strong competitive economy and lower unemployment levels.

2 - The competitiveness challenge: the importance of fostering economic and industrial adjustment

What types of framework conditions are most appropriate in order to enable successful industrial adjustment?
 What existing measures on access to finance to accompany structural adjustment constitute good practice?
 What further measures need to be taken to improve bankruptcy proceedings?

On framework conditions to tackle the competitiveness challenge:

Adaptation to change, adjustment and restructuring are all linked to the crucial question of the competitiveness of the European economy. The competitiveness challenge is not only a key topic for industry but is equally relevant for all the other economic activities including services.

Restructuring and relocation of complete sectors such as agriculture, fishery, defence, tourism, services, etc... which are not only industrial sectors, has generally a strong direct and indirect impact at local and regional level on the rest of the economy and in particular on craft and micro-companies which represent the backbone of the local economy all over Europe and which are in addition one of the key components of industry.

Companies and notably small businesses are very much depending on a **friendly business environment to be more competitive** and finally successful on local and global markets.

They need an **adequate, predictable and non-bureaucratic regulatory environment:**

- on labour law legislation ensuring flexibility and adaptability,
- on adequate wage setting mechanisms and wage levels in line with productivity,
- on financial and fiscal rules,
- on access to relevant skills.

Furthermore, they strongly rely on quality infrastructure, efficient public services, responsive education and training systems and a strong support in the field of innovation, research and development as well as access to international markets.

The supportive environment at all levels starting from the local level to the regional, national and European level requires an active involvement of all stakeholders, starting with employers and employees themselves, their representatives, the social partners, the financial stakeholders and public authorities at all levels.

Clearly, the competitiveness and restructuring challenges will not be overcome through additional European legislative measures or the contrary.

Further legislative measures in the field of restructuring are neither necessary nor desirable. The existing European legal framework is sufficiently robust (see list below) and does not need to be further expanded:

- Directive 2002/14/EC on information and consultation
- Directive 2001/86/EC on involvement of employees in the SE
- Directive 2001/23/EC on transfers of undertakings
- Directive 2009/38/EC on EWC
- Directive 2008/94/EC protection of employees in the event of insolvency of employer
- Directive 98/59/EC on collective redundancies

On access to finance:

Access to finance is one of the main conditions for small businesses to develop and in case of restructuring to adequately react to change in order to survive. Despite the fact that Crafts and SMEs play a fundamental role in economic growth, social cohesion and job creation, SMEs suffered significantly during the crisis from the attitude of banks to strongly restrict access to credits even for healthy companies.

Adequate financial tools are absolutely necessary and should be better adapted to the diversity of small businesses. As a matter of fact, Craft and SMEs are heterogeneous and include a vast number of micro-enterprises, family businesses that are working successfully in traditional sectors as well as a growing number of new start-ups, fast-growing high-tech and highly innovative enterprises. They also vary as regards their size, the sectors and their business models. They have different needs and problems as regards financing and these differences have to be respected by European programmes aiming to support access to finance for SMEs as explained in details in the UEAPME position².

Small and traditional enterprises need credit and loan guarantee schemes to exploit their growth and job potential. Start-ups and innovative enterprises should have better access to equity and quasi-equity financial instruments while riskier SMEs projects should be supported by mezzanine financial instruments and risk sharing funds and facilities. Highly innovative and fast growing companies which are crucial for the future competitiveness of Europe's economy need access to venture capital and bond markets and for which a real European market is missing. The future SME finance programme (COSME) should include initiatives to remove barriers for a European venture capital market, to enlarge risk-sharing facilities for investments in equity and to support the issuance of pooled corporate bonds.

On improvement of bankruptcy proceedings:

Many activities took place in this field as a consequence of the current crisis. One good example is Austria where several new initiatives have been taken in order to tackle restructuring in many sectors and regions either in view of facilitating access to finance or supporting restructuring and avoiding insolvency including the setting up of counselling services in case of financial difficulties and insolvency.

² [UEAPME position on the next generation of European SME Finance Programmes](http://www.ueapme.com/spip.php?rubrique155), February 2011
<http://www.ueapme.com/spip.php?rubrique155>

3 - The challenge of adaptability of business and employability of workers- companies at centre stage of the restructuring process

Is the anticipative approach feasible with regard to management of change and 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?

As stated by the European Commission, companies are at the centre of restructuring process because restructuring takes place at company level, on the ground and the responsibility of managing change lies primarily in managers' competences. However, they also need to strongly involve workers and/or their representatives by notably informing them timely about changes, preparing and managing job transitions, etc... Furthermore besides the decisive role of managers, companies should also be supported by workers through a positive approach combating resistance to change. And this should be strongly encouraged by workers representatives and/or trade unions. Delivering change means also convincing workers who have been used to job security that things need to change, that jobs for life is no more a current feature and that they have to accept to move towards employment security. A high level of engagement and positive attitude from workers and their representatives is therefore required.

Anticipation of change belongs to the main challenges ahead. Even if it is always desirable to be proactive instead of reactive and therefore to anticipate instead of catching-up, changes can only be predicted to a certain extent. So it is easier said than implemented in practice notably for Crafts and SMEs which have less human and financial resources for developing such anticipation strategies on their own.

Furthermore, anticipation is even more problematic for small businesses acting as subcontractors of larger companies. Very often they don't get information sufficiently in advance to act accordingly and are forced to react more than to anticipate. Whatever their role in the value chain, Crafts and SMEs need strong local and regional external support and advice for anticipating change and coping with adaptability of companies and workers and employability of workforce.

It is all about market changes, regulatory changes, technical changes, climate changes, work organisation changes, evolving marketing methods, developing network approaches, etc..., and their direct impact on jobs transformation and new skills needs. Anticipation is therefore closely related to investments in human resources and in continuous training of entrepreneurs and employees. However, one of the main challenges is to clearly define the new skills needs and to make the right choices in terms of investments.

As fully recognised by the European social partners in their "Framework of actions on the lifelong development of competencies and qualifications" in 2002, the lifelong development of competencies is a shared responsibility of employers, employees and public authorities.

For Crafts and small businesses defining strategies for investing in continuous training is still a multifaceted challenge because of their size, the need for tailored-made training offer and the lack of adapted financial incentives. Furthermore they need clear guidance and support services for defining their skills needs and getting best return on investment, as explained in details in the following UEAPME background note³.

³ UEAPME Background Note: [Learning while Working - How skills development in SMEs can be supported](http://www.ueapme.com/spip.php?rubrique72), Nov 2011

Last but not least, there is a general trend for not sufficiently considering small businesses as major players. Very often they act as a buffer for larger companies. In good economic times their best qualified and on-the-job-well trained people are poached by large businesses and in bad times small businesses are considered as the best mean to absorb people dismissed in the case of large scale-redundancies.

Proactive strategy can help to minimise social impacts linked to restructuring process and once again small businesses need to be accompanied in such strategies. Business organisations as intermediary bodies have a key role to play. They are the best placed to pool resources and capitalise on experiences and can have a decisive role in supporting small businesses to put in place dynamic and forward looking strategies for anticipating and more easily mastering the rapid pace of change.

Possible further improvement of existing orientations and guidelines

The basic principles identified by the European social partners in their “Orientations for reference in managing change and its social consequences” from 2003 are still valid despite the challenges created by crisis. However, we cannot deny that the crisis has brought further a need for renewed reflections about adaptation to change and new development models.

Furthermore the findings of the study of European Social Partners project “Improving the anticipation and management of restructuring” are still very accurate and served as lessons:

- Anticipating change and developing a shared diagnosis and agenda
- Assuring timely and relevant information and consultation
- Managing job transitions
- Preparing the workforce of the future
- Taking into account the specificity of small and micro-companies
- Transformational change in public services
- Linking restructuring, social dialogue and the crisis.

Based on the previous European social partners seminars concerning restructuring practices and the role of social partners conducted in a series of European countries, UEAPME proposes as part of the next European Social Partners joint projects, a new round of events such as seminars on restructuring in relation to the crisis but also to the situation after the crisis and in order to exchange about company practices in view of better understanding the new specific challenges and the best way to tackle them.

4 - Creating synergy in the process of industrial change

What could be done to encourage strategic long-term and innovative approaches to the management of change, including employment and skills issues? How can synergy be improved between companies, local authorities and other local actors? How should specific responsibilities and roles among companies, social partners and public authorities be distributed in this field?

Strategic long-term and innovative approaches to the management of change should essentially take place at local and national level. It should be based on dialogue, exchanges of views within social partners organisations and between social partners at all levels. It should help to reach joint understanding, facilitate adaptation and avoid confrontation.

Essential for small businesses in this context is to find the right balance between the need for each individual company to have sufficient leeway to react to change and the necessity to call for some external support such as legal advice, activation measures, training support, reconversion services, financial support, access to finance.

According to the diversity of traditions and practices at national level, there is no one size fits all solutions and the division of tasks might differ from country to country between social partners, public employment services, public authorities but **one key element is to work in close ad efficient partnership**.

However, as one of the key lessons learned from the European Social Partners projects is stating, it is important to recall that” whatever the national framework for the management of change, the active engagement of the social partners in the anticipation and management of change at all levels improved performance in the design of change management architecture and in restructuring practice”.

5 - Early anticipation of employment and skills needs

How can effective practices for anticipating employment and skills needs within companies be further encouraged? How can training be developed as a permanent feature of human resources management?
 How can synergy between action taken by companies and public sector initiatives be promoted to facilitate appropriate employment and skills policies?
 How can companies and their workforces be encouraged to engage in early and adequate preparation of restructuring process favouring acceptance of change? What best practices exist in this field?

Once has to be clear that early anticipation of employment and skills needs is always difficult because change is taking place at a very quick pace and sometimes hard to follow. However, the setting up of observatories at local, regional, national but also sectoral levels are indispensable for contributing to the anticipation of skills needs and jobs evolution. Companies are looking for a combination of horizontal and vertical skills. Workers should possess generic skills such as learning to learn, team work, communication capacities, solving problems, entrepreneurial spirit, sense of creativity and at the same time dispose of technical competences.

At European level, initiatives to coordinate actions taken at national and sectoral levels are also welcome such as sectoral skills councils or European alliances. In parallel research and studies work to forecast future skills needs done notably by the CEDEFOP are extremely valuable for showing the main trends and initiate more in depth reflections.

At the same time education and training systems have to become more reactive and should be more open to closely work with businesses and businesses organisations as well as social partners in order to design initial and continuous education and training contents and curricula fitting the labour market needs. They also need to be more turned towards learning outcomes focusing on acquired competences and skills instead of formal qualifications as introduced in the European Qualifications Framework as well as to facilitate permeability between the various systems.

In this context, demand led work- based-learning and apprenticeships are one of the best means to facilitate the anticipation of skills needs and avoiding skills mismatch on the labour markets. Germany and Austria are two successful examples of how this type of education is best serving the needs of companies and learners and how they contribute maintaining the youth unemployment at a low level despite the crisis.

The key elements are the complementary dimensions of adaptability and employability. Companies and workers should be able to understand the necessity to accept change and therefore to be ready to adapt. It is all about acceptance of change on both sides and workers and citizens should take a positive stance towards change.

6 - Building mutual trust and shared diagnostic

To what extent can mutual trust and shared diagnosis play a role in good management of restructuring how can this be promoted within companies and in broader contexts?

The key stakeholders for building mutual trust and shared diagnosis are clearly social partners. They are the best placed to achieve this because on the one hand they represent the interests of their members but on the other hand they also share as partners the responsibility of a good functioning of companies and of labour markets. Representing the two sides of the economy, they should have a joint interest to define a shared diagnosis and do their outmost for a good management of restructuring.

Of course, specific legislations must be respected as well as managers' prerogatives to take the final decisions. As already mentioned before, the active engagement of social partners and a positive attitude towards change has a favourable impact on performance of anticipation and management of restructuring practices.

7 - Minimising the social impact

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?

Minimising the social impact of restructuring is clearly be the role of public authorities and social partners through a predictable and reasonable legislative framework complemented by various accompanying tools such as social plans, mobility schemes supports, retraining and upskilling measures for facilitating reconversion, support to enterprises creation, active labour market policies, etc.... However, in most cases these tools are not designed and even not accessible to workers of small businesses and not only in the Members States but also at European level. This is also the case with the EGF rules (European Globalisation Adjustment Fund) where small businesses have not been eligible or only under very specific conditions. Strong efforts are needed to better take into account the small business dimension in case of restructuring for minimising the social impact on entrepreneurs and workers alike.

8 - Minimising external economic, social, environmental and regional impacts

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

The best way to minimise the economic, social, environmental and regional impact is to diversify the economic activities, to facilitate the creation of clusters, to ensure a good mix of companies of all sizes and so avoiding to depend too much on one single large business or on a mono-activity. Another good way is to continuously invest in infrastructures and innovation and to ensure a good partnership between businesses, education and training providers at all levels.

9 - The role of social partners

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

It goes without saying that be it bipartite social dialogue or tripartite concertation have a central role to play in addressing restructuring issues through agreements at national, sectoral, regional but also company levels which is already the case in many Member states and in many sectors. Against this background specific efforts should be done at all levels to better take SME's points of view into account and notably at national level.

Furthermore during the crisis several "Employment Pacts" have been agreed by social partners at national level with a positive contribution on anticipation or management of restructuring. They also proved to be useful tools for ensuring competitiveness of companies through extraordinary measures on increasing working time or revising wage agreements in order to ensure workplaces.

Social partners should share their practices at all levels among countries, regions and sectors but also between Member States at sectoral and cross-industry levels.

However, the transferability of practices is not always possible because of differences in national settings and legal frameworks on the management of change. It should mainly serve as useful sources of inspiration for triggering new reflections and solutions.

11 - Reviewing passive protection

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 pro-active protection of employment

The flexicurity principles constitute the best tool to find the right balance between flexibility and security and to tackle the employment protection systems.

In order to ensure the sustainability of social protection systems, there is no alternative to activation measures and to more efficient active labour market policies. The current paradox on the labour market with very high unemployment rates and at the same time permanent uncovered vacancies should seriously considered. Unemployed and inactive people benefiting from social benefits should accept the fair principle of rights and duties. However, solutions should be adapted to the reality of each Member States and the balance between rights and obligations on social protection systems should be found either by the social partners themselves or by the government in close cooperation and in agreement with social partners.

Furthermore, in order to tackle the skills mismatch existing in most Member States, efforts should be done to invest in continuous training and facilitate transitions between different types of jobs and different status such as employees, self-employed, unemployed are more than ever necessary.

The second most urgent problem is about revising the level of employment protection including hiring and firing rules. This will have a clear impact on highly segmented labour markets. However, the new type of "open ended contracts" as put forward by the European Commission in its various documents is not the way forward. Maintaining a variety of flexible work contracts is essential for small businesses to continue to hire new staff at a time where companies have less visibility and certainty about their economic prospects.

Imposing new obligations on companies will in no case be the solution for limiting restructuring and job losses. On the contrary, companies should be encouraged to creating new jobs and investing in new activities with high added value jobs.

12 - The role of regional and local authorities

How can a supporting role be encouraged for public authorities, particularly at regional level in anticipation processes, as well as in particular restructuring events, taking into account differing national traditions regarding the involvement of public authorities in company-level processes?

As political decision makers, regional and local authorities are key stakeholders at the heart of restructuring challenges. They are best placed to decide on local economic and social investments policies as well as on education and training infrastructures and to provide the adequate environment for companies to adapt to change and for workers to maintain their employability through a facilitated access to lifelong learning and continuous training. Being at the crossroad between the national and the company levels, they have to ensure the cohesive and harmonious economic and social development of their territories.

Therefore, regional authorities should have a keen interest in supporting small businesses along their full life cycle (support to entrepreneurship, creation of jobs, companies development, internationalisation, networking, etc...) including in case of restructuring for the quick reintegration of people on the labour market. However, they should not interfere in the restructuring process as such but help to cushion their social consequences.

Last but not least, regional authorities should strongly rely on a partnership approach with social partners and business organisations in view of anticipating skills needs and possible job creations.

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