



Council of European Employers  
of the Metal, Engineering and  
Technology-based industries

## **CEEMET comments on the EP draft report with recommendations to the Commission on Information and consultation of workers, anticipation and management of restructuring**

CEEMET<sup>1</sup> has learned that the European Parliament is discussing a possible resolution under article 225 TFEU, recommending that the Commission should propose a directive on “Information and consultation of workers, anticipation and management of restructuring”. A draft report (ref: 2012/2061(INI)) has been presented by the EP rapporteur Mr Alejandro Cercas at the Employment Committee on 20<sup>th</sup> of June 2012.

CEEMET is deeply concerned by both the procedure of the European Parliament with regard to the proposal and the contents of the proposal itself.

### **Comments regarding the process**

On the 17<sup>th</sup> of January 2012 the Commission presented the green paper “Restructuring and anticipation of change: what lessons from recent experience?”. The green paper was sent out for consultation with stakeholders until the 30<sup>th</sup> of March 2012. CEEMET responded to the green paper stating that it was opposed to legislative initiatives on this area as there is already a considerable amount of legislation on restructuring at both EU and national level, and that it saw no need for a legislative initiative on an anticipative approach as outlined in the Green Paper.

Taking into account that the outcome of the consultation process has not yet been presented by the Commission, it comes as a surprise to CEEMET that the European Parliament is considering an initiative under article 225 TFEU, including a very detailed proposal for a directive.

CEEMET is aware that a Commission legislative initiative that may follow an article 225 TFEU initiative by the European Parliament would include a consultation with the Social Partners, as provided for by the Treaty. However, a process according to which the European Parliament were to present a detailed proposal for a directive on restructuring before hearing the views of the Social Partners would not be in line with often repeated claims by the EU Co-Legislators that they attach great

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<sup>1</sup> CEEMET (Council of European Employers of the Metal, Engineering and Technology-Based Industries) is the European employers’ organisation representing the interests of the metal, engineering and technology-based industries. Its members are national employers’ organisations and federations, representing 200 000 member companies across Europe. The vast majority of them are SMEs, providing over 13 million jobs of direct employment. The Metal Engineering and Technology based industries is the largest industrial sector in Europe in terms of employment and added value. Moreover the industry is one of Europe’s prime exporters with a wide range of engineering services and products, which are at the leading edge of technology.

importance to Social Dialogue and to the opinions of the Social Partners as regards social policy. Such an action could very well have repercussions on the willingness of the Social Partners to continue to take part in such a Social Dialogue at the European level.

### Comments regarding the content

As regards the content of the proposal presented by Mr Cercas, CEEMET is of the opinion that many of the provisions would have devastating effects for the operations of companies active in the manufacturing, engineering and technology industries (MET) in Europe as they would

- make restructuring processes lengthier,
- make restructuring processes more cumbersome,
- make restructuring processes more costly,
- put employers in a situation of legal uncertainty, and
- substantially limit the freedom to take entrepreneurial decisions.

This would lead to more company activities, in particular production, being moved out of Europe and would thus hamper economic growth and job creation in Europe. This would also go in the direct opposite of what some Member States, hard hit by the economic crisis and recession, are currently doing. It would also be in direct conflict with article 173 TFEU, according to which article, the actions of the Union and the Member States shall be aimed at “speeding up the adjustment of industry to structural changes”.

### Examples of problems in the proposals

European companies which are active in the MET-sector are more subjected to international competition than companies in most other sectors. Since European companies will most often find themselves at a disadvantage when it comes to wage costs as compared to companies in other countries, they have to compete with other factors. In this regard it is of course vital for European companies to be able to adapt swiftly to change, such as new customer demands, technological changes or new competitors.

On-going restructuring processes are crucial for companies to stay competitive and it is part of their daily business. Frameworks of rules on restructuring must thus facilitate swiftness of the restructuring procedure and not involve additional costs for companies.

The proposals presented by Mr Cercas do not take this into consideration.

As mentioned previously, the proposals would also introduce an unnecessarily lengthy, costly and cumbersome procedure. As examples of this, the following can be mentioned.

CEEMET is very concerned about the very wide **scope** of the proposal. According to the proposal the draft directive would be applicable if restructuring operations would affect 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 (Recommendation 3). As “dependent companies” could include any subcontractor and supplier this proposal would lead to a very high degree of legal uncertainty for any employer in Europe. The **very wide definition of restructuring** in the proposal (Recommendation 3) would mean that an employer would have to go through this whole process not

only where employees are made redundant but also in the case of “any re-organisation of the structure, of work processes and organisation, of the location with a quantitative or qualitative impact on employment”. This definition is so very wide that it would include many activities which are occurring in day-to-day operations of any company in the MET-sector and which are vital to business, for example changes in shift-schedules or in distribution of working hours.

According to the proposals the restructuring company would be obliged to give an **early explanation and justification** to “**all relevant stakeholders**” (Recommendation 7), and then follow a **checklist** of alternatives which would have to be considered before a restructuring would take place (Recommendation 8). The employer would also be made responsible for **retraining** redundant employees for employment with new jobs with other employers (Recommendation 8).

The proposals do not reflect business reality, as they assume that any restructuring measure can be integrated into a **long-term strategy** (Recommendation 4), ignoring the fact that many changes cannot be predicted by companies, e.g. consumer behaviour or collapse of demand, as demonstrated by the 2008 crisis and recession.

This process would also be the subject of **judicial scrutiny** (Recommendation 16). That is to say that a trade union or employee should be able to take their restructuring employer to court to try case of, for example, whether or not the employer has really thought through all the elements in the checklist of Recommendation 8. Such a system would go against the traditions in many Member States, where the courts are not charged with ruling over purely financial decisions made by companies. It is true that such systems do exist in some Member States with other traditions. The experience of such systems has however from an employers’ point of view been that companies can end up in an uncertain legal situations with examples of cases where restructuring process have been suspended for long periods of time, in some cases for years, due to on-going legal proceedings.

### Effects of the proposals

Against this background, CEEMET very much doubts the conclusion of the EP rapporteur, that the proposal would have no **financial implications** (point 3 in the proposed Request to the Commission by the European Parliament).

Furthermore, Member States with very strict Labour Law regulations as regards restructuring have not fared well in recovering from the unemployment caused by the 2008 economic crisis and recession. A number of those Member States have also started reforming their legislation and create less restrictive Labour Market regulation, after having seen clear negative effects during the crisis. The proposals in the draft are going in the opposite direction by creating a lengthy, cumbersome, costly and legally uncertain situation for employers.

Most Member States have arranged their Labour Markets in other ways than the detailed legislative approach proposed in the draft proposal, often with a far reaching autonomy for the Social Partners and with well working systems which have evolved over decades.

This means that if the proposals were to be passed as legislation, not only would growth and job creation be hampered, but many Member States would also have to carry out far reaching changes to their Labour Market systems regarding issues at the very core of Labour Law, limiting the

autonomy of the Social Partners and risk destroying well working systems, This is not in the interest of employers, employees, of the Member States or of the European Union.

## **Conclusion**

Against the background of the aforementioned, CEEMET urges the European Parliament to

- not adopt the proposed resolution,
- wait for the outcome of the consultation on the Commission Green Paper to be presented before taking an initiative on restructuring, so that the voice of the Social Partners, employers as well as employees, can be heard and be taken into account.

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