

ETUC complaint to EU Ombudsman on European Commission's actions in relation to restructuring and the anticipation of change

Background to the complaint

Within the October 2010 Flagship Initiative on Industrial Policy for the Globalisation Era, the Commission set out its plan to undertake a social partner consultation on restructuring, and explicitly recognised that “Companies and social partners have the primary responsibility for restructuring to ensure their future competitiveness and viability, since experience has shown that competitive-driven structural adaptation is quickest and most efficient” (ANNEX 1 pp.21). For the union movement, this initiative was seen as a crucial pillar of the Europe 2020 strategy.

The European social partners were first asked to consider the issue of restructuring through a first stage social partner consultation in 2002 (then article 137 TEU), resulting from the 1998 Gyllenhammar Report ‘Managing Change’.

The 2003 “orientations for reference” negotiated in the framework of the European social dialogue were not formally adopted by ETUC (ANNEX 2). As a result of its weakness, the ETUC Executive Committee only noted the document. Consequently, it is not a formal agreement of the social dialogue. Since then, ETUC has called consistently for a 2nd stage social partner consultation and EU action on a European framework on restructuring.

In the meantime, the pace of restructuring has increased in Europe, most clearly in the context of the crisis particularly since 2008. Therefore, the initiative proposed in the 2010 Flagship Initiative should have been a second stage social partner consultation within the meaning of the Treaty (now article 154(2) TFEU).

It became clear in autumn 2011, that due to employer opposition, the Commission had reduced its own obligations from a second stage social partner consultation to a public Green Paper consultation on best practices. ETUC raised its concerns directly with the President of the Commission about this development in October 2011 (ANNEX 3).

On the 17 January 2012, the Commission produced a new Green Paper on the issue¹, open to full on-line consultation. The ETUC responded to the consultation setting out its concerns about the Commission's treatment of this crucial issue and the areas needed for action (ANNEX 4).

Members of the European Parliament took the decision to use their new powers of initiative included in the Lisbon Treaty in their response to the Commission's Green Paper. On the 15 January 2013, the European Parliament adopted their report calling for a legal instrument on

¹ <http://ec.europa.eu/social/main.jsp?langId=en&catId=699&consultId=9&furtherConsult=yes>

anticipation of change and restructuring, proposed under the Article 225 (Treaty of Lisbon) (ANNEX 5). The report had a massive majority of support in the EP (503 for, 107 against and 72 abstentions). This was recognition by directly elected representatives that legislative action is urgently needed at European level to address the anticipation of change and ensure effective management of restructuring. The costs to business of poorly managed restructuring or non-anticipation, both in terms of the costs of those made redundant as well as the impact on those remaining in the company or workplace have significant negative economic impacts for firms, as well as the costs for individual workers and the impact on regional and local economies in Europe (as demonstrated by the EP's EAVA report – ANNEX 6).

Under the Treaty, the Commission has three months to present the legal instrument to the European Parliament and Council of Ministers.

The three month period passed on 15 April 2013 without an initiative being presented. When challenged in the following plenary session (15-18 April 2013), Commissioners responded that a Communication would be produced in autumn 2013 setting out best practices without any recommendations. Legally, this action does not constitute a legal instrument under EU law – neither Recommendation, Directive nor Regulation.

The ETUC believes that this is a clear catalogue of maladministration by the European Commission, violates the spirit and letter of the Treaty and calls into question the role of democratic actors in the EU framework.