



Brussels, 4 September 2012

Mr Dimitrios Dimitriou
DG Employment
European Commission
1049 Brussels

Dear Mr Dimitriou

In response to Muriel Guin's e-mail of 12 July in which she invited the ETUC to comment on the conclusions of Deloitte concerning the operation and effects of information and consultation directives in the EU/EEA countries, we would ask you to take into account the following observations.

Already in the past the ETUC raised questions on the methodology of Deloitte – the ETUC was sceptical about the “better regulation agenda” as such and in particular about the applied methodology of Deloitte, the cost-benefit-approach. This approach in principle asks if the procedures for information and consultation established by the Directives or already in place are worth the money it costs. In the social field, there is not an enormously big *acquis* and in the context of lacking social (policy) agenda, the ETUC suspects the fitness check which takes place in the framework of the better regulation agenda, to be a tool for deregulation.

The ETUC disagrees with the recommendations that non legislative action and more information is necessary now. The ETUC thinks that it is not necessary to establish new reporting systems and to collect best practice examples, in other words: to introduce the open method of coordination in the field of information and consultation.

The Commission in any case has to monitor the transposition of the directives and in case there are problems, the Commission has to take action. However, some of these directives had not to be implemented in several countries as the national legislation in place was already more ambitious than the Commission proposed minimum standards. In these cases, it does not make sense to monitor. The ETUC is not convinced that more reporting and “routine actions” to review are necessary.

The fact that many respondents said that they want more information is either due to a lack of information by the member states or it is an indicator that the Deloitte approach is not adequate: If you ask on company level if a European directive is efficient, you have to clarify beforehand if the respondent is aware that the national legislation in place might be based on European directives. It might be also the case that the minimum standard of the directive had no impact at all on the national legislation and therefore the question does not make sense. So, it should not be over interpreted that respondents to an online research click on the response, that more information is needed.

The ETUC regretted previously that the Deloitte study was unable to build cluster of countries along the lines of the Warwick study (a Warwick-based research team currently prepares a report on the basis of 12 company-level case studies on the Directive 2002/14; the author presented this Eurofound research project at the last meeting of the ICW Commission working group, 10 July 2012) : Member States in which the information and consultation – directives had no impact /minor impact / major impact.

With relief, the ETUC now sees that the Deloitte study presents as a conclusion that the three directives are „fit for purpose“ and the ETUC agrees with this conclusion. However, with this conclusion we are back to square one.

The ETUC disagrees with Deloitte that there are no incoherencies between the 3 directives and no gaps. This conclusion of Deloitte is the outflow of the cost benefit approach which does not look at the content. The ETUC detects incoherencies in the content of the directives, for instance: the definitions of information, consultation, transnational, cross-border are not the same.

We imagine that it would be useful to do a feasibility study or to reflect about the possibility of a recast by taking the better definitions of the EWC- or SE-Directive and use them for all directives. This would improve the situation instead of continuing with new studies to have even more fitness checks which seems the intention of the Commission.

Looking at tables 11, 12 from the Deloitte study (page 10), the employees' representatives give answers which show the need for improvement of the directives:

- 40.1% of employees want additional legislation and 61.6% a rationalisation (47.6% of employer representatives as well)
- 54.3% see gaps
- 50.6% inconsistencies and uncertainties and
- 54.7% practical problems in using the legislation (tables 11, 12)

Even in the Deloitte study you can detect that in Ireland, Iceland and Estonia which are in the centre of the crisis, there is disappointment about the inefficiency of the collective redundancies directive. In Deloitte's reading this shows that the expectations are too high (“This appears to be particularly the case in Estonia, Ireland and Iceland, given that these countries have suffered badly in the crisis, and may have over-estimated the protective benefits of EU I&C legislation.”), in our view it shows that there is room to improve the Directives. DG EMPL should make a step forward and not continue with more of the same, more fitness checks.

The ETUC therefore considers that the European Commission should draw its conclusions from the Deloitte study and not continue by setting up new fitness checks. Instead, the ICW working group should consider possible ways to improve the existing Directives.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Menne'.

Claudia Menne
Confederal Secretary