

European Added Value Assessment

on a EU legislative instrument on information and consultation of workers, anticipation and management of restructuring processes

ANNEX I

Legal and consistency aspects

Research paper
by Prof. Edoardo Ales

Abstract

The legislative initiative here assessed, if approved, will improve substantially the level of protection of workers in case of restructuring by imposing proportionate legal obligations on companies. However, in order to be legally sustainable, it needs to be checked as far as its juridical basis and its coordination with other EU Law and policies are concerned. This could be done also at this very early stage according to the suggestions contained within the technical note attached to this report.

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A. Legislative action vs. non regulatory action

1. Is there a solid justification for the choice of the instrument of the directive?

The choice of the instrument of the directive is coherent with the juridical basis¹ that have been chosen for the proposed action (Article 153(1) (e)² TFEU). As a matter of fact, according to art. 153(2) (b) TFEU “(..) the European Parliament and the Council: (..) b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation (..)”.

The choice of the instrument of the directive is furthermore justified by the fact that, at transnational level – where the most of restructuring is now taking place, self-regulatory instruments are lacking legally binding effect. It is not a case that in the Social Agenda 2005³ the Commission launched a proposal for an optional legal framework on transnational collective bargaining and asked a group of expert to make a juridical study in order to ascertain whether a regulatory intervention by the Council and the Parliament was needed taking into account the state of art of transnational collective bargaining. The results of the study⁴ as well as of the industrial relations and legal doctrine⁵ who has analysed that matter in these years, was and is that, although spontaneously developed, transnational tools are of voluntary nature and cannot be enforced before court in case of non-compliance of one of the party.

This is even more true, if one takes into account the fact that many of these transnational tools are structured as code of conduct unilaterally drafted by the companies and accepted as such by workers representatives.

For this reason the idea to have a soft law instrument such as a European Code of conduct on restructuring will not correspond to the aim pursued by the Proposal, i.e. to strengthen legally enforceable workers rights in case of restructuring.

Furthermore, the added value of a European Code of conduct (issued by the Parliament and the Council on which juridical basis?) would be questionable, taking into account the capacity of European Social Partners to adopt such a code by themselves or to provide action to coordinate restructuring within an anticipatory perspective⁶.

¹ On the soundness of the juridical basis provided by the proposal, see below point 5.

² ‘The information and consultation of workers’.

³ COM (2005) 33.

⁴ Available at <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPagelId=214> where a comprehensive dossier on transnational collective agreement can also be found.

⁵ For all, see the special Issue on Transnational Collective Bargaining of the *European Journal of Industrial Relations*, 2012 (18) 2, edited by E. Ales and A. Dufresne.

⁶ See for instance, in the automotive sector the project “Anticipation of change II” (<http://www.anticipationofchange.eu/>) as followed up by the “Skill Councils Project” (<http://www.clepa.eu/strategic-issues/skills-council/>) initiated by CLEPA, ACEA and EMF, with the support of the European Commission.

To sum up my view, transfused into a non-legally binding instrument the Proposal, as it is now, will lose its own sense.

2. Alternative methods regulatory and non regulatory (such as self-regulation) have been carefully considered?

The wording of Recommendations 5(4) (“The provisions of paragraphs 1 to 3 do not apply to companies and employees covered by an agreement, concluded at the relevant level and with the relevant parties, on the procedures for anticipating and forward-looking planning of employment and skills needs.”) and of Recommendation 9 (“The provisions of Recommendations 6 and 7 shall not apply to companies and employees covered by an agreement concluded at the relevant level and with the relevant parties on the procedures and mechanism for preparing, managing in a socially responsible way and minimising internal social costs of restructuring operations”) shows that the legally binding regulatory framework will produce its effects only in case the Social Partners at the relevant level have not adopted self-regulatory instruments, named by the Proposal “agreements” (“concluded at the relevant level (European, national, sectoral, regional or company-level) by, on one hand, representatives of the companies or their organisations, and, on the other hand, representatives of the employees with the capacity to conclude collective agreements under national law or practice or under the procedures laid down by the competent trade union organisations at European level”).

Of course, Social Partners will be called to negotiate ‘in the shadow of the directive’, i.e. knowing that if they do not reach an agreement the directive will apply.

3. Does the proposed action go beyond what is necessary to achieve the objectives satisfactorily? In particular, is the scope of the proposed measure limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Due to its scale and effects, the proposed action is in line with the principles of proportionality and subsidiarity. As a matter of fact it aims at introducing common minimum requirements in national legislations on anticipation, preparation and management of restructuring processes that, at the moment, highly differ, being, moreover regulated by a plurality of sources (law, case-law, collective agreements, administrative provisions)⁷.

4. Is the action proposed as simple as possible?

From a technical point of view the proposal seems to be simple enough. Nevertheless, as it will be detailed in the following, some points have to be clarified.

⁷ For a detailed analysis of the different regulations on restructuring in Europe see European Labour Law Network, Thematic report 2010, *Protection, involvement and adaptation: Labour Law in time of crisis, restructuring and transition*, available at http://www.labourlawnetwork.eu/publications/prm/73/size_1/index.html

5. Is the action proposed coherent with the satisfactory achievement of the objectives and effective enforcement?

If one looks at Recommendation 2 (1) – Objectives (“The purpose of the Directive is to promote and facilitate information and consultation in economic change and improve the way in which companies, employees’ representatives, public authorities and other relevant stakeholders throughout the Union anticipate, prepare and manage in a socially responsible way corporate restructuring.”) one has to remark that the real focus of the Proposal seems to be the improvement of the way in which companies, employees’ representatives, public authorities and other relevant stakeholders throughout the Union anticipate, prepare and manage in a socially responsible way corporate restructuring.

In such a perspective and in the light of what is provided in the Proposal (Recommendation 1 “- having regard to the Treaty on the Functioning of the European Union and in particular to Article 153(1) (e) thereof”), the directive risks to have no juridical basis as far as its crucial aim is concerned. On the other hand, it is difficult to find under article 153(1) TFEU a community competence to which the aim of anticipating, preparing and managing restructuring will perfectly suit. One can wonder whether such an aim can fall within the scope of article 153(1) (b) TFEU which recognises a community competence as far as “working conditions” are concerned.

Remaining within the Social Chapter, one could also refer to article 153(1) (f) TFEU which recognises a community competence in the field of “representation and collective defence of the interests of workers and employers, including co-determination”. Yet, in this case unanimity within the Council is required.

Alternatively, one may switch from the Social to the Market Chapter of the TFEU referring to art. 115⁸. Or admit that the main aim of the directive falls outside the community competence and therefore making reference to article 352 TFEU⁹, as it happened for Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. In both cases unanimity within the Council is required.

⁸ ‘Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.’

⁹ ‘1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.’

6. Will the EU action leave as much scope as possible for national decision while achieving satisfactorily the objectives set?

Scope for national decision is left in the following domains:

- a) Recommendation 3 - Definitions “c) ‘employees’ representatives’ mean the ones provided for by national law and/or practice”;
- b) Recommendation 5 - Anticipation of employment and skills needs “3. Every employee shall be offered a given number of hours of training per year to be determined by law or collective agreement (..)”;
- c) Recommendation 13 - Designation of the relevant public authorities “Member States shall designate the public authorities, at national, regional or local level that are responsible for the purposes of the Directive.”;
- d) Recommendation 15 - Confidential information “1. Member States shall provide that employees’ representatives and any other persons who accede to information which has been provided to them expressly as a result of this Directive are not authorised to reveal it if it has been delivered on a confidential basis. 2. Each Member State shall provide, in specific cases and subject to the conditions and limitations laid down by national legislation, that companies are not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm their functioning or would be prejudicial to them. A Member State may provide that such dispensation is to be subject to prior administrative or judicial authorisation.”.
- e) Recommendation 16 - Compliance with the Directive “1. Member States shall provide for appropriate measures in the event of failure to comply with the Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from the Directive to be enforced. 2. Member States shall provide that companies that do not comply with the provisions resulting from the Directive shall not benefit from any funding in provenance of European Union budget in the five-year period following a judicial decision recognising the breach. 3. Member States shall exclude from the benefit of public aids from the national budgets during the same period the companies referred to in paragraph 2.”.

To sum up, the scope described in the above seems to correspond to that one usually left to national legislators within Social Directives (definitions of workers’ representatives; individuation of public authorities, confidentiality, sanctions and enforcement). Such a scope does not endanger the capacity of the Proposal to reach its aim of establishing minimum requirements in the relevant field and leaves also enough room for the application of the proportionality and subsidiarity principles.

7. Is there any knock-on effect on compliance by the target groups in different countries?

In order to answer this question a lacuna in the Proposal has to be emphasised, i.e. the lack of reference to European Works Councils (EWC) within the definition of ‘employees representatives’ as those one indicated by national law or practice (Recommendation 3 – Definitions). It is rather clear that a knock-on effect on compliance of companies in different countries (Member States) can be achieved only in case of transnational workers involvement in restructuring processes as envisaged by EWC Directive. On the contrary, the Proposal assumes the transnational perspective only dealing with the conclusion of the “agreement” that may exempt companies from the application of the legally binding regulatory framework. This by reference to “the procedures laid down by the competent trade union organisations at European level”.

8. If the initiative creates a financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens, is this cost minimised and commensurate with the objectives to be achieved?

Additional legal burdens are imposed on companies employing more than 500 workers in order to achieve the crucial aim of the Proposal, i.e. the improvement of “the way in which companies, employees’ representatives, public authorities and other relevant stakeholders throughout the Union anticipate, prepare and manage in a socially responsible way corporate restructuring.” (Recommendation 2).

In particular, companies shall:

- a) integrate any restructuring operation into a long-term strategy that aims to ensure and strengthen the long-term sustainability and competitiveness of the company (Recommendation 4);
- b) include into long-term strategic planning human resources, employment and skills objectives that focus on developing, on a permanent basis, the skills and competences of the workforce in order to increase the competitiveness of the company and its adaptability, as well as to increase the employability of workers and to manage their internal and external mobility (Recommendation 4);
- c) recognise the right of every employee to benefit from appropriate training (Recommendation 4);
- d) develop, in cooperation with employees’ representatives and, where applicable, with public authorities and other relevant stake-holders, mechanisms that anticipate and plan for future employment and skills needs and in particular
 - mechanisms for the long-term planning of quantitative and qualitative employment and skills needs that are linked to innovation and

development strategies and that take into account the foreseeable evolution of employment and skills, both positive and negative;

- multiannual plans of employment and skills development covering the following areas:
 - support for the creation of learning advisors to help employees select adequate training;
 - regular individual skills assessment leading to individual training maps;
 - individual training plans with quantitative targets;
 - an annual training budget;
 - individual learning accounts;
 - training packages, if needed, in co-operation with external stakeholders;
 - leave of absence for educational purposes;
 - specific training measures to tackle possible negative or problematic developments (Recommendation 5);
- e) inform dependent companies of the above mentioned mechanisms and plans (Recommendation 5);
- f) inform, from the beginning, the public authorities at the relevant level, in particular at local level, and involve them in the preparation of the restructuring process (Recommendation 7);
- g) inform from the beginning and actively involve in the process the local economic actors, in particular companies and their employees in a situation of dependence in relation to the restructuring company (Recommendation 7);
- h) consider, when the need to restructure occurs as a result of the need to preserve their competitiveness and long-term prosperity, redundancies only as last resort and only after considering all possible alternative options and identifying and, where available, implementing supporting measures such as, in particular,
 - phasing planned measures over time;
 - reduction in work intensification;
 - working-time reduction or re-organisation;
 - re-negotiation of working conditions;
 - internal or external redeployment;
 - in-sourcing of external activities;
 - negotiated departures; and
 - natural departures (Recommendation 8);
- i) when redundancies cannot be avoided or as part of the package to be implemented in the context of alternative options, make available to the employees concerned measures that aim to enhance their employability and help them to re-enter the labour market as quickly as possible (Recommendation 8);

- j) when a restructuring operation has major local effects, seek to develop complementarities and synergies between their preparatory action and the actions of all the other actors, with a view to maximising the re-employment opportunities of employees at risk of being or to be made redundant, in order to encouraging economic and social reconversion and to developing new economic activities generating jobs (Recommendation 10);
- k) monitor, on a permanent basis, in co-operation with external bodies and authorities, the psycho-social health of employees affected by restructuring processes, both redundant employees and those staying in the company (Recommendation 14);
- l) create tools for the regular evaluation and reporting on their restructuring practices, in co-operation with employees' representatives and the external organisations involved in that process (Recommendation 14).

In my view the above described additional burdens imposed on companies employing more than 500 employees are commensurate with the objective the Proposal intends to achieve, i.e. to "improve the way in which companies, employees' representatives, public authorities and other relevant stakeholders throughout the Union anticipate, prepare and manage in a socially responsible way corporate restructuring." (Recommendation 2).

Furthermore, not a few of the above mentioned additional burden are already provided by the national legislations of some Member States and the related legal measures are regarded as effective and commensurate to the aim of managing restructuring and anticipating change¹⁰.

Last but not least, deprived of the above mentioned addition burdens the Proposal will produce no added value having regard to the already established EU legislation on restructuring.

B. Consistency of the proposed legislative initiative with other EU measures/policies

1. Is the proposed action consistent with the other EU's measures/policies on social dialogue, corporate restructuring and industrial policy?

As the Proposal stands, the answer to this question cannot be positive. As stressed in the above, if we except the Preamble, in the Proposal there is no reference to other EU measures or policies. Let us give some examples:

¹⁰ See European Labour Law Network, Thematic report 2010, *Protection, involvement and adaptation: Labour Law in time of crisis, restructuring and transition*, available at http://www.labourlawnetwork.eu/publications/prm/73/size_1/index.html

- a) Recommendation 3 - Definitions “c) “employees’ representatives” mean the ones provided for by national law and/or practice;”

Remark

The lack of reference to EU Law may determine, in a restrictive interpretation, the exclusion of EWC from the concept of “employees representatives”. This is problematic with reference to European scale undertakings and groups (covered by the proposal) to which directive 2009/38/EC shall apply.

- b) Recommendation 3 - Definitions “g) “restructuring operation” means any re-organisation of the structure, of work processes and organisation, of the location with a quantitative or qualitative impact on employment;”

Remark:

Such a broad definition of restructuring comprehends also the transfer of undertaking which is detailed defined and regulated by directive 2001/23/EC as interpreted by the ECJ. Therefore, the link between the latter and the Proposal shall be clarified.

- c) Recommendation 5 - Anticipation of employment and skills needs “1. Companies shall develop, in cooperation with employees’ representatives and, where applicable, with public authorities and other relevant stake-holders, mechanisms that anticipate and plan for future employment and skills needs.”

Remark:

The formula “in cooperation with employees’ representatives” is definitely new for EU Law. Its meaning has to be explained (for instance in Recommendation 3 - Definitions), maybe by recurring to the definition of workers involvement provided by article 2(h) of directive 2001/86/EC¹¹.

- d) Recommendation 7 - Information and consultation concerning business decisions “1. Any restructuring operation shall be subject to an early explanation and justification to all the relevant stakeholders on the basis of either long-term strategic goals and requirements or short-term constraints.”

Remark:

It is not clear how the “early explanation and justification” is provided to employees representatives and to the other stakeholders: Also in this case the proviso has to be coordinated with the legal framework on workers’ involvement already provided by EU Law¹².

“2. The dialogue provided for in paragraph 1 shall include the justification of the choice of the measures envisaged in order to achieve the objectives and of other possible options, in the light of all the interests concerned.”.

Remark:

¹¹ ‘Involvement of employees’ means any mechanism, including information, consultation and participation, through which employees’ representatives may exercise an influence on decisions to be taken within the company;

¹² As for the way in which such a coordination could be done, see Technical note under Recommendation 6 at p. 11.

The expression “dialogue” is definitely new for EU Law (if we exclude the European Social Dialogue, regulated by article 154 - 155 TFEU). Its meaning has to be explained (for instance in Recommendation 3 - Definitions). In any case this has to be coordinated with the legal framework on workers’ involvement already provided by EU Law.

“3 Companies shall from the beginning inform the public authorities at the relevant level, in particular at local level, and involve them in the preparation of the restructuring process.”

Remark:

It is not clear how public authorities are involved “in the preparation of the restructuring process”. Also in this case, the proviso has to be coordinated with already existing EU Law, in particular with the Collective Redundancies Directive.

“4. The local economic actors, in particular companies and their employees in a situation of dependence in relation to the restructuring company shall also be informed from the beginning and actively involved in the process.”

Remark:

It is not clear how dependent companies and their employees are informed and involved within the process. In any case it has to be coordinated with the legal framework on workers’ involvement already provided by EU Law.

e) Recommendation 8 “Minimising internal social costs through a social plan”

“2. In particular, companies shall consider the following options as alternatives for redundancies:

- phasing planned measures over time;
- reduction in work intensification;
- working-time reduction or re-organisation;
- re-negotiation of working conditions;
- internal or external redeployment;
- in-sourcing of external activities;
- negotiated departures; and
- natural departures”

Remark:

It is not clear whether this is a specification of the alternative measures referred to into art. 2 of the Collective Redundancies Directive. The link between Recommendation 8 and the Collective Redundancies Directive is however unclear. In the Recommendation it seems that the alternative measures have to be considered before the employer has even contemplated the redundancies whilst within the Collective Redundancies Directive is clearly stated that alternative measures have to be considered within the consultation procedure which takes place after the communication of the envisaged redundancies.

f) Recommendation 14 - Follow-up, evaluation and reporting

“1. Companies shall monitor, on a permanent basis, in co-operation with external bodies and authorities, the psycho-social health of employees affected by restructuring processes, both redundant employees and those staying in the company.”

Remark:

A link should be established between the monitoring of the psycho-social health of employees affected by restructuring processes, and the risk assessment provided by the Framework Directive 89/391/EEC on Health and Safety.

Last but not least a source of general concern has to be highlighted: the relationship between the Proposal and the European Employment Strategy (EES) which is implemented via the Open Method of Coordination (OMC - soft law) whereas the Proposal advocates for a directive (hard law). In many points of the Proposal, measures are provided that clearly echo the contents of the Employment Guidelines as elaborated in the past 15 years by the Commission and the Council. According to article 145 - 150 TFEU, Employment (policies) falls outside the scope of the legislative competence of the Union¹³.

In such a perspective, the proviso of Recommendation 11 (3) (which should become 10 (3) according to the Technical note) seems to be highly problematic, since it obliges Member States to adopt specific measures in the field of employment policy, measures which are already suggested in general terms by the EES.

This is the case, above all, for the duty of public authorities to:

- a) create permanent bodies, networks or observatories to monitor change processes;
- b) (..) create mechanisms facilitating employment transitions;
- c) implement training actions benefiting small and medium-sized companies and their employees and support dialogue and co-operation between these and large companies;”.

What can be suggested in alternative is an amendment to Recommendation 11 (3). For it, see the Technical note p. 15.

2. To what extent the proposed measure affect workers’ existing rights and obligations? in particular as regards information and consultation within their undertaking and protection against dismissal?

If adequately coordinated with the already existing EU Law, the proposed measures will improve workers’ rights since it provides:

¹³ See, Recommendation 11(3) providing that: “in regions affected by structural change, public authorities shall: a) create permanent bodies, networks or observatories to monitor change processes; b) promote territorial employment pacts aimed at favouring employment creation and adaptation; c) promote or create mechanisms facilitating employment transitions; d) implement training actions benefiting small and medium-sized companies and their employees and support dialogue and co-operation between these and large companies; e) favour regional employment and economic and social re-conversion.

- a) that long-term strategic planning shall include human resources, employment and skills objectives that focus on developing, on a permanent basis, the skills and competences of the workforce in order to increase the competitiveness of the company and its capacity of adaptation, as well as to increase the employability of employees and to manage their internal and external mobility (Recommendation 4 (2));
- b) mechanisms for the long-term planning of quantitative and qualitative employment and skills needs that are linked to innovation and development strategies and that take into account the foreseeable evolution of employment and skills, both positive and negative (Recommendation 5);
- c) multiannual plans of employment and skills development covering the following areas:
 - support for the creation of learning advisors to help employees select adequate training;
 - regular individual skills assessment leading to individual training maps;
 - individual training plans with quantitative targets;
 - an annual training budget;
 - individual learning accounts;
 - training packages, if needed, in co-operation with external stakeholders;
 - leave of absence for educational purposes;
 - specific training measures to tackle possible negative or problematic developments (Recommendation 5);
- d) that to every employee shall be offered a given number of hours of training per year to be determined by law or collective agreement (Recommendation 5);
- e) that employees of the dependent companies shall be covered by the above described mechanisms and plans upon the request of the dependent company, justified on the grounds that those mechanisms and plans are required or useful for their own adaptation and development (Recommendation 5);
- f) that any restructuring operation shall be preceded by an appropriate preparation with all the stakeholders concerned with a view to preventing or alleviating its economic, social and local impact (Recommendation 6);
- g) that any restructuring operation shall be subject to an early explanation and justification to all the relevant stakeholders on the basis of either long-term strategic goals and requirements or short-term constraints (Recommendation 7);
- h) that local economic actors, in particular companies and their employees in a situation of dependence in relation to the restructuring company shall also be informed from the beginning and actively involved in the process (Recommendation 7);

- i) that companies shall consider the following options as alternatives for redundancies:
- phasing planned measures over time;
 - reduction in work intensification;
 - working-time reduction or re-organisation;
 - re-negotiation of working conditions;
 - internal or external redeployment;
 - in-sourcing of external activities;
 - negotiated departures; and
 - natural departures (Recommendation 8);
- j) that when redundancies cannot be avoided or as part of the package to be implemented in the context of alternative options, companies shall make available to the employees concerned measures that aim to enhance their employability and help them to re-enter the labour market as quickly as possible (Recommendation 8);
- k) that when a restructuring operation has major local effects, companies shall seek to develop complementarities and synergies between their preparatory action and the actions of all the other actors, with a view to maximising the re-employment opportunities of employees at risk of being or to be made redundant, in order to encouraging economic and social reconversion and to developing new economic activities generating jobs (Recommendation 10);
- l) that measures referred to in Recommendation 7 shall cover, as far as possible, the employees of companies that are dependent, in particular as a result of subcontracting or a supply contract. Dependent companies and their workers shall, in any event, be informed of those measures insofar as such information is required or useful for their own adaptation and for the management of the restructuring process within those companies (Recommendation 10);
- m) that Public authorities at different levels shall intervene in an anticipation and management capacity by:
- Promoting the co-ordination of the work of external stakeholders with the work developed within companies;
 - Supporting the anticipation of processes and particular restructuring operations, with a view to alleviating their economic and social impact (Recommendation 11);
- n) that Public authorities shall monitor the mechanisms for long-term planning and multi-annual plans of employment and skills needs developed within companies (Recommendation 11);
- o) that in regions affected by structural change, public authorities shall:
- create permanent bodies, networks or observatories to monitor change processes;

- promote territorial employment pacts aimed at favouring employment creation and adaptation;
 - promote or create mechanisms facilitating employment transitions;
 - implement training actions benefiting small and medium-sized companies and their employees and support dialogue and co-operation between these and large companies;
 - favour regional employment and economic and social re-conversion (Recommendation 11);
- p) that without prejudice to the obligations of companies resulting from national laws or practices, public authorities shall co-finance employability measures that favour employees of companies undergoing restructuring, insofar as this type of support is necessary or appropriate for allowing them to quickly re-enter the labour market (Recommendation 12);
- q) that in accordance with the rules governing them, European Union Funds, and in particular ERDF, ESF and EGF funds, may be used in supporting integrated action to anticipate and to prepare for restructuring, as well as to help employers to adapt to change for the purposes of the Proposal (Recommendation 12);
- r) that companies shall monitor, on a permanent basis, in co-operation with external bodies and authorities, the psycho-social health of employees affected by restructuring processes, both redundant employees and those staying in the company (Recommendation 14);
- s) that companies shall create tools for the regular evaluation and reporting on their restructuring practices, in co-operation with employees' representatives and the external organisations involved in that process (Recommendation 14).

The Proposal also imposes to employees an obligation to accept training when offered. Refusal shall only be permitted on justified grounds (Recommendation 5).

Furthermore, "Member States shall provide that employees' representatives and any other persons who accede to information which has been provided to them expressly as a result of this Directive are not authorised to reveal it if it has been delivered on a confidential basis." (Recommendation 14).

3. To what extent the initiative will contribute to the effectiveness of the right of workers to information and consultation at the appropriate levels and in good time as required by Article 27 of the Charter of Fundamental Rights of the European Union?

If adequately coordinated with EU Law already existing in the field, the Proposal will contribute to the effectiveness of the right of workers to information and consultation at the appropriate levels and in good time as required by Article 27 of the Charter of Fundamental Rights of the European Union. As a matter of fact, it provides:

- a) that any restructuring operation shall be preceded by an appropriate preparation with all the stakeholders concerned with a view to preventing or alleviating its economic, social and local impact (Recommendation 6);
- b) that any restructuring operation shall be subject to an early explanation and justification to all the relevant stakeholders on the basis of either long-term strategic goals and requirements or short-term constraints (Recommendation 7);
- c) that local economic actors, in particular companies and their employees in a situation of dependence in relation to the restructuring company shall also be informed from the beginning and actively involved in the process (Recommendation 7);
- d) that dependent companies and their workers shall, in any event, be informed of those measures insofar as such information is required or useful for their own adaptation and for the management of the restructuring process within those companies (Recommendation 10);
- e) that companies shall create tools for the regular evaluation and reporting on their restructuring practices, in co-operation with employees' representatives and the external organisations involved in that process (Recommendation 14);

4. To what extent the proposed measure supports the development of a flexicurity approach in that it aims to enhance the capacity of companies and workers to adapt to changing patterns while ensuring security through better anticipation and management of change?

Support to the development of a flexicurity approach in that it aims to enhance the capacity of companies and workers to adapt to changing patterns while ensuring security through better anticipation and management of change is widely guaranteed by the Proposal by providing that:

- a) companies and employees' representatives, when dealing with restructuring, in a spirit of cooperation, shall recognise that these processes aim to protect both the interests of companies as regards competitiveness and sustainability, and those of their employees (Recommendation 2);
- b) any restructuring operation shall be integrated into a long-term strategy that aims to ensure and strengthen the long-term sustainability and competitiveness of the company (Recommendation 4);
- c) long-term strategic planning shall include human resources, employment and skills objectives that focus on developing, on a permanent basis, the skills and competences of the workforce in order to increase the competitiveness of the company and its adaptability, as well as to increase the employability of

employees (workers) and to manage their internal and external mobility (Recommendation 4);

- d) companies shall recognise the right of every employee to benefit from appropriate training (Recommendation 4);
- e) employees shall recognise that education and lifelong learning are necessary to enhance their employability and shall accept relevant training offers (Recommendation 4);
- f) companies shall develop, in cooperation with employees' representatives and, where applicable, with public authorities and other relevant stake-holders, mechanisms that anticipate and plan for future employment and skills needs, and, in particular
 - mechanisms for the long-term planning of quantitative and qualitative employment and skills needs that are linked to innovation and development strategies and that take into account the foreseeable evolution of employment and skills, both positive and negative;
 - multiannual plans of employment and skills development covering the following areas:
 - support for the creation of learning advisors to help employees select adequate training;
 - regular individual skills assessment leading to individual training maps;
 - individual training plans with quantitative targets;
 - an annual training budget;
 - individual learning accounts;
 - training packages, if needed, in co-operation with external stakeholders;
 - leave of absence for educational purposes;
 - specific training measures to tackle possible negative or problematic developments (Recommendation 5);
- g) every employee shall be offered a given number of hours of training per year to be determined by law or collective agreement. Any refusal to accept that offer by employees shall only be permitted on justified grounds (Recommendation 5);
- h) when redundancies cannot be avoided or as part of the package to be implemented in the context of alternative options, companies shall make available to the employees concerned measures that aim to enhance their employability and help them to re-enter the labour market as quickly as possible (Recommendation 8);
- i) when a restructuring operation has major local effects, companies shall seek to develop complementarities and synergies between their preparatory action and the actions of all the other actors, with a view to maximising the re-employment opportunities of employees at risk of being or to be made redundant, in order to

encouraging economic and social reconversion and to developing new economic activities generating jobs (Recommendation 10);

- j) in regions affected by structural change, public authorities shall:
- create permanent bodies, networks or observatories to monitor change processes;
 - promote territorial employment pacts aimed at favouring employment creation and adaptation;
 - promote or create mechanisms facilitating employment transitions;
 - implement training actions benefiting small and medium-sized companies and their employees and support dialogue and co-operation between these and large companies;
 - favour regional employment and economic and social re-conversion (Recommendation 11).

Last but not least, according to the Proposal, Member States shall provide that companies that do not comply with its provisions shall not benefit from any funding in provenance of the EU budget in the five-year period following a judicial decision recognising the breach. Those companies shall also be excluded from the benefit of public aids from the national budgets during the same period (Recommendation 16).

To sum up, the Proposal creates obligations on employers and public authorities aimed to increase employees' 'security' and to balance the 'flexibility' which is already guaranteed by EU legislation on collective dismissal.

ANNEX

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on Information and consultation of workers, anticipation and management of restructuring

(2012/2061(INI))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union, and in particular Articles 9 and 151 and Article 153(1) (e) of the Treaty on the Functioning of the European Union,

- having regard to Articles 14, 27 and 30 of the Charter of Fundamental Rights of the European Union,

- having regard to 'Managing change - Final report of the High Level Group on economic and social implications of industrial change, set up by the Luxembourg Employment Summit of November 1997,

- having regard to Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of participation by employed persons in profits and enterprise results (including equity participation),

- having regard to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE),

- having regard to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies,

- having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses,

- having regard to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees,

- having regard to European Parliament and Council Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community,

- having regard to Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees,

- having regard to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids,

- having regard to Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies,

- having regard to Directive 2009/38/EC of the European Parliament and of the Council of 6 May on the establishment of a European Works Council or a procedure in Community scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees,
- having regard to the Commission communication of 31 March 2005 on 'Restructuring and employment: Anticipating and accompanying restructuring in order to develop employment: the role of the European Union' (COM(2005)0120) and the opinion of the European Economic and Social Committee of 14 December 2005 (CESE 1495/2005),
- having regard to the Commission communication on the Social Agenda (COM(2005)0033),
- having regard to the Commission communication on a Council decision on guidelines for the employment policies of the Member States (COM (2010)0193) and the Council decision of 21 October 2010 establishing guidelines for the employment policies of the Member States,
- having regard to the Commission communication on 'An Integrated Industrial Policy for the Globalised Era Putting Competitiveness and Sustainability at Centre Stage' (COM(2010)0614),
- having regard to the Commission communication on "Towards a Single Market Act" (COM(2010)0608 final/2)
- having regard to the Commission communication on "An Agenda for New Skills and Jobs" (COM (2010)0682),
- having regard to the Commission communication on "Green Paper on Restructuring and anticipation of change: what lessons from recent experience?" (COM(2012)0007),
- having regard to the Commission communication on "Towards a job rich recovery" (COM (2012)0173),
- having regard to its resolution of 26 May 2005 on the Social Agenda for the period 2006-2010,
- having regard to its resolution of 10 May 2007 on strengthening European legislation in the field of information and consultation of workers,
- having regard to its resolution of 9 March 2011 on an Industrial Policy for the Globalised Era,
- having regard to Rules 42 and 48 of its Rules of Procedure,
- having regard to the report of the Committee on Employment and Social Affairs (A7-0000/2012),

A. whereas restructuring is not a new phenomenon but one which in recent years has taken on new forms, becoming more prevalent with a broader geographical and sectorial coverage in Europe;

B. whereas the crisis which began in 2008 has served to speed up the rate of change sharply; whereas it has added to the structural pressures to adapt to change resulting from globalisation's more immediate constraints which subject undertakings, workers, territories and governments to critical tensions;

C. whereas, as consistently highlighted in recent policy papers from the Commission, especially the Europe 2020 Strategy and the Industrial Policy Communication of 27 October 2010, "Better anticipating and managing restructuring would help employees and companies to adapt to transitions imposed by excess capacities and by modernisation and structural adjustment". (...) "Management and employees' representatives are the key players to agree on restructuring strategies at company level. Policy interventions should accompany such restructuring to avoid social hardship and promote new skills and jobs, thus avoiding mass redundancies and the decline of entire regions or the relocation of entire industries, by facilitating economic conversion and professional transition.";

D. whereas the number of jobs losses were almost double the number of jobs created in the third quarter 2011, this trend is likely to increase in view of the announcement of major restructurings in strategic fields;

E. whereas, as stated in the Annual Growth Survey: advancing the Union's comprehensive response to the crisis, "the positive export performance of some Member States shows that success in global markets relies on wider factors such as sector specialisation, innovation, and skills levels that enhance real competitiveness";

F. whereas in its Communication on An Agenda for New Skills and Jobs of 23 November 2010, the Commission also recognises that "adaptability and pro-activity when moving jobs or occupations may however be hampered by insecurity because transitions bear a potential hazard of unemployment, lower wages and social insecurity; whereas positive transitions along people's career paths are therefore essential in order to adapt constantly, maintaining and increasing employability while providing security for individuals and fluidity in labour markets.";

G. whereas, as stated in the Single Market Act, "The Lisbon Treaty, and the affirmation of the concept of a 'highly competitive social market economy' as one of its key objectives, require the Union to adopt a more all-embracing view of the single market (...) A European framework for restructuring exercises would make for an environment based on mutual trust.";

H. whereas, the "Orientations for reference in managing change and its social consequences" drawn up by the social partners in October 2003 have however not been followed by any significant measure leading to the practical implementation and concrete application of those guidelines;

I. whereas the Commission has looked for concrete contributions on how to further develop policy in this area through its "Green Paper on Restructuring and anticipation of change: what lessons from recent experience?" of 17 January 2012;

J. whereas, in spite of the strong statements referred to above, the Commission has delivered disappointing responses to parliamentary resolutions on information, consultation and restructuring, highlighting the need for urgent and concrete steps in this area, and to requests coming from other economic and social players;

K. whereas this resolution is without prejudice to information and consultation obligations resulting from other Union and national law; insofar as Union and national law so provide, information and consultation procedures should be fully used to apply the rules laid down in the present Resolution";

L. whereas, despite consulting the European social partners twice in the previous decade, the Commission has failed to take practical steps to ensure the wide application throughout the Union of the anticipative and proactive approaches and socially responsible restructuring practices that it recalls in so many policy documents (see above);

M. whereas good information and consultation in relation to restructuring means a more intelligent, proactive, responsible and strategic manner, which will contribute to making undertakings and the Union more competitive, as well as sending out a message of certainty and transparency to European citizens at a time of crisis;

1. Requests the Commission to submit to the Parliament within three months of the date of adoption of this resolution on the basis of Article 225 of the Treaty, a legislative proposal for a directive as recommended in the Annex;

2. Confirms that the recommendations respect the principle of subsidiarity and proportionality and the fundamental rights of citizens;

3. Considers that the requested proposal will have no financial implications;

4. Instructs its President to forward this legislative proposal and the accompanying detailed recommendations to the Commission and the Council.

ANNEX TO THE MOTION FOR A RESOLUTION DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

Recommendation 1

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

- having regard to the Treaty on the Functioning of the European Union and in particular to Article 153(1) (e) thereof,

Whereas:

(1) [When dealing with anticipation, preparation and management of restructuring, companies, workers' representatives and the other stakeholders act in a spirit of cooperation, based on timely and comprehensive information and consultation.]

(2) Anticipation, preparation and management of change must take place in the context of strengthening social dialogue and with a view to promoting change in a manner compatible with the preservation of the priority objective of employment.

(3) There is a need to envisage, promote and enhance anticipatory measures concerning the company situation and likely development of employment, in particular where employment may be under threat.

(4) Restructuring is facilitated and its impact softened when companies develop on a permanent basis the skills and competences of their workers.

(5) Good restructuring practices require preparation as early as possible and starting as soon as the need to restructure is envisaged, making it possible to avoid or to reduce to a minimum its economic, social and territorial impact.

(6) It is a widely recognised that any restructuring operation should be subject to an explanation and of justification to the stakeholders,

(7) Serious action aimed at limiting the impact of restructuring requires companies to envisage redundancies as a last resort and only after having considered all possible alternative options and/or having implemented possible supporting measures.

(8) The active involvement of public authorities at the relevant level in the preparation and management of restructuring operations contributes greatly to limiting their negative impact.

(9) It is important that companies, in conjunction with employees' representatives, create tools for regular evaluation and reporting on their restructuring practices.

(10) Such an Union framework should apply to major companies and groups of companies, those which employ on the territory of the Union at least 500 workers, and to restructuring operations of a certain dimension, covering at least 100 workers in a single

company or 500 employees in a company and its dependent companies or one or more Member States over a period of three months.

(11) Any Union framework on anticipation, preparation and management of change and restructuring should encourage and give precedent to agreement between the most concerned parties, only in the absence of such agreement should standard rules apply.

SECTION I GENERAL

Recommendation 2 Objective

1. The purpose of the Directive is to promote and facilitate information and consultation in economic change and improve the way in which companies, employees' representatives, public authorities and other relevant stakeholders throughout the Union anticipate, prepare and manage in a socially responsible way corporate restructuring.

2. To that end, when dealing with anticipation, preparation and management of restructuring, companies, workers' representatives and the other stakeholders shall act in a spirit of cooperation, based on timely and comprehensive information and consultation, by recognising that these processes aim at protect both the interests of companies as regards competitiveness and sustainability, and those of their employees.

Recommendation 3 Definitions and scope

1. For the purposes of the Directive:

- a) "companies" mean companies and groups of companies employing at least 500 employees in the Union, as well as any company part of the group referred to above;
- b) "dependent companies" mean companies in a situation of dependence on the ones above by reasons of subcontracting, supply contract and others;
- c) "employees' representatives" mean the ones provided for by national law and/or practice;
- d) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;
- e) "agreements" mean agreements concluded at the relevant level (European, national, sectoral, regional or company-level) by, on one hand, representatives of the companies or their organisations, and, on the other hand, representatives of the employees with the capacity to conclude collective agreements under national law or practice or under the procedures laid down by the competent trade union organisations at European level;
- f) "employees" mean the employees of the companies covered by the Directive, irrespective of the type of employment contract;
- g) "public authorities" mean bodies of the public administration at the relevant level, as designated by Member States;

- h) “restructuring operation” means any re-organisation of the structure, of work processes and organisation, of the location with a quantitative or qualitative impact on employment;

2. The present Directive covers restructuring operations affecting 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.

SECTION II

ANTICIPATION OF CHANGE

Recommendation 4

Long-term strategic planning, adaptability and employability

1. Any restructuring operation shall be integrated into a long-term strategy that aims to ensure and strengthen the long-term sustainability and competitiveness of the company.

2. Long-term strategic planning shall include human resources, employment and skills objectives that focus on developing, on a permanent basis, the skills and competences of the workforce in order to increase the competitiveness of the company and its adaptability, as well as to increase the employability of workers and to manage their internal and external mobility.

3. To that end, companies shall recognise the right of every employee to benefit from appropriate training. Employees shall recognise that education and lifelong learning are necessary to enhance their employability and shall accept relevant training offers.

Recommendation 5

Anticipation of employment and skills needs

1. Companies shall develop, in cooperation with (by involving) employees' representatives and, where applicable, in cooperation with public authorities and other relevant stake-holders, mechanisms that anticipate and plan for future employment and skills needs.

2. To that end, companies shall establish, in co-operation with (by involving) employees' representatives and in cooperation with other relevant stakeholders:

- a) mechanisms for the long-term planning of quantitative and qualitative employment and skills needs that are linked to innovation and development strategies and that take into account the foreseeable evolution of employment and skills, both positive and negative;
- b) multiannual plans of employment and skills development covering the following areas:
 - support for the creation of learning advisors to help employees select adequate training;
 - regular individual skills assessment leading to individual training maps;
 - individual training plans with quantitative targets;
 - an annual training budget;
 - individual learning accounts;
 - training packages, if needed, in co-operation with external stakeholders;

- leave of absence for educational purposes;
- specific training measures to tackle possible negative or problematic developments.

3. Every employee shall be offered a given number of hours of training per year to be determined by law or collective agreement. Any refusal to accept that offer by employees shall only be permitted on justified grounds.

4. The provisions of paragraphs 1 to 3 do not apply to companies and employees covered by an agreement, concluded at the relevant level and with the relevant parties, on the procedures for anticipating and forward-looking planning of employment and skills needs.

5. Dependent companies shall be informed of the mechanisms and plans provided for in paragraph 2. Their employees shall be covered by those mechanisms and plans upon the request of the dependent company, justified on the grounds that those mechanisms and plans are required or useful for their own adaptation and development.

SECTION III PREPARATION AND MANAGEMENT OF RESTRUCTURING PROCESSES

Recommendation 6

Appropriate preparation of restructuring operations

1. Except in circumstances where restructuring is triggered by unforeseen or sudden events, any restructuring operation shall be preceded by an appropriate preparation with all the stakeholders concerned with a view to preventing or alleviating its economic, social and local impact.

2. Appropriate preparation shall be carried out as early as possible and shall start as soon as the need to restructure is contemplated. Except in the circumstances referred to in paragraph 1, it shall be carried out within a timeframe that allows for the adoption of measures making it possible to avoid or to mitigate to the minimum its economic, social and local impact.

3. Appropriate preparation shall include an early explanation and justification of any restructuring operation to all the relevant stakeholders on the basis of either long-term strategic goals and requirements or short-term constraints. It shall also include the justification of the choice of the measures envisaged in order to achieve the objectives and of other possible options, in the light of all the interests concerned.

4. Involvement of employees in appropriate preparation will take place within the framework of the already existing EU instruments.

5. Companies shall from the beginning inform the public authorities at the relevant level, in particular at local level, and involve them in the preparation of the restructuring process.

6. The local economic actors, in particular dependent companies and their employees shall also be informed from the beginning and actively involved in the restructuring process.

Recommendation 7

Minimising internal social costs of restructuring processes

1. When the need to restructure occurs as a result of the need to preserve their competitiveness and long-term prosperity, companies shall consider redundancies only as last resort and only after considering all possible alternative options and identifying and, where available, implementing supporting measures.

2. In particular, companies shall consider the following options as alternatives for redundancies:

- a) phasing planned measures over time;
- b) reduction in work intensification;
- c) working-time reduction or re-organisation;
- d) re-negotiation of working conditions;
- e) internal or external redeployment;
- f) in-sourcing of external activities;
- g) negotiated departures; and
- h) natural departures.

3. When redundancies cannot be avoided or as part of the package to be implemented in the context of alternative options, companies shall make available to the employees concerned measures that aim to enhance their employability and help them to re-enter the labour market as quickly as possible.

Recommendation 8

Agreements on managing restructuring processes

The provisions of Recommendation 6 do not apply to companies and employees covered by an agreement concluded at the relevant level and with the relevant parties on the procedures and mechanism for preparing, managing in a socially responsible way and minimising internal social costs of restructuring operations.

Recommendation 9

Minimising external economic and social impacts

1. When a restructuring operation has major local effects, companies shall seek to develop complementarities and synergies between their preparatory action and the actions of all the other actors, with a view to maximising the re-employment opportunities of employees at risk of being or to be made redundant, in order to encouraging economic and social reconversion and to developing new economic activities generating jobs.

2. The measures referred to in Recommendation 6 shall cover, as far as possible, the employees of companies that are dependent, in particular as a result of subcontracting or a supply contract. Dependent companies and their workers shall, in any event, be informed of those measures insofar as such information is required or useful for their own adaptation and for the management of the restructuring process within those companies.

SECTION IV PUBLIC SUPPORT MEASURES

Recommendation 10 Public support

1. Public authorities at different levels shall intervene in an anticipation and management capacity by:

- a) Promoting the co-ordination of the work of external stakeholders with the work developed within companies;
- b) Supporting the anticipation of processes and particular restructuring operations, with a view to alleviating their economic and social impact

2. Public authorities shall monitor the mechanisms for long-term planning and multi-annual plans of employment and skills needs developed within companies.

3. In regions affected by structural change, public authorities, while implementing the European Employment Strategies Guidelines may opt for the adoption of one or more of the following measures:

- a) create permanent bodies, networks or observatories to monitor change processes;
- b) promote territorial employment pacts aimed at favouring employment creation and adaptation;
- c) promote or create mechanisms facilitating employment transitions;
- d) implement training actions benefiting small and medium-sized companies and their employees and support dialogue and co-operation between these and large companies;
- e) favour regional employment and economic and social re-conversion.

Recommendation 11 Financial support

1. Without prejudice to the obligations of companies resulting from national laws or practices, public authorities shall co-finance employability measures that favour employees of companies undergoing restructuring, insofar as this type of support is necessary or appropriate for allowing them to quickly re-enter the labour market.

2. In accordance with the rules governing them, European Union Funds, and in particular ERDF, ESF and EGF funds, may be used in supporting integrated action to anticipate and to prepare for restructuring, as well as to help employers to adapt to change for the purposes of paragraphs 1 and 2.

Recommendation 12 Designation of the relevant public authorities

Member States shall designate the public authorities, at national, regional or local level that are responsible for the purposes of the Directive.

SECTION V FOLLOW-UP, EVALUATION AND REPORTING OF RESTRUCTURING PROCESSES

Recommendation 13 Follow-up, evaluation and reporting

1. Companies shall monitor, on a permanent basis, in co-operation with external bodies and authorities, the psycho-social health of employees affected by restructuring processes, both redundant employees and those staying in the company.
2. Companies shall create tools for the regular evaluation and reporting on their restructuring practices, in co-operation with employees' representatives and the external organisations involved in that process.

SECTION VI MISCELLANEOUS PROVISIONS

Recommendation 14 Confidential information

1. Member States shall provide that employees' representatives and any other persons who accede to information which has been provided to them expressly as a result of this Directive are not authorised to reveal it if it has been delivered on a confidential basis.
2. Each Member State shall provide, in specific cases and subject to the conditions and limitations laid down by national legislation, that companies are not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm their functioning or would be prejudicial to them.

A Member State may provide that such dispensation is to be subject to prior administrative or judicial authorisation.

Recommendation 15 Compliance with the Directive

1. Member States shall provide for appropriate measures in the event of failure to comply with the Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from the Directive to be enforced.
2. Member States shall provide that companies that do not comply with the provisions resulting from the Directive shall not benefit from any funding in provenance of European Union budget in the five-year period following a judicial decision recognising the breach.
3. Member States shall exclude from the benefit of public aids from the national budgets during the same period the companies referred to in paragraph 2.

4. Notwithstanding paragraphs 2 and 3, nothing shall preclude the use of funds from the general budget of the European Union and from national budgets for the direct benefit of the employees of the companies referred to in those paragraphs.

Recommendation 16

Link between this Directive and other Community and National provisions

1. This Directive shall be without prejudice to the specific procedures set out in Directive 89/391/EEC, 98/59/EC, 2001/23/EC, 2002/14/EC, 2004/25/EC, 2005/56/EC.

2. This Directive shall be without prejudice to provisions adopted in accordance with Directives 2001/86/EC, 2003/72/EC, 2009/38/EC.

3. This Directive shall be without prejudice to other rights to information, consultation, participation and codetermination under national law.

4. Implementation of this Directive shall not be sufficient ground for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.