



## European restructuring and policies

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Although European Construction can itself be seen as Global Restructuring, in that it has far reaching results on the society, power and the economic life of the continent as a whole, the question is, does Europe itself have a global view on restructuring and is it equipped with the necessary tools to implement it? Current European policy on this issue may be the object of some concern but, with the future in mind, a step back into the origins of the Union itself and what it has, so far, been able to achieve, is worthy of reflection.

### 1. Restructuring, an innate problem for Europe

#### **The ECSC: the birth of a community and initial restructuring**

Although it may seem banal to recall that the EU of today has its origins in the ECSC, which was created in 1951, its general guidelines remain unchanged. The context was a Europe devastated by the Second World War, whose strategic activities, coal and steel, had to be modernised and rationalised. It was also expected to help in the reconstruction of a devastated Germany, Italy, France and the Benelux countries. This initial community which lasted 50 years and has now drawn to a close was the scene of medium and long-term strategic decisions, which, in part, led to the gradual closure of most mines and several industries. However, it also saw the birth of new industries. Not only did the community, financed by its Member-states, bear the burden of almost all its technical and economic innovations, it also oversaw social reconstruction of its industries, with the exception of environmental issues.

In terms of social reconstruction, it sought to preserve jobs, to help those regions in difficulty and to prevent social dumping in Member States. Industries which had a long tradition of trade unions also had a long tradition of in-fighting and negotiations.

The ECSC created a number of instruments:

- special funds aimed at compensation for the consequences of social reconstruction
- a social dialogue between trade unions and Member States at both national and industrial level, thanks mainly to the Advisory Committee
- social measures for compensating those who had lost their jobs, measures relating to health and safety, special funds for migrant workers and a massive (re)deployment programme.

The ECSC also saw the birth of the European Court of Justice.

When one takes a closer look at the past 50 years of the ECSC, it would not be wrong to say that it has, indeed, achieved its principle objectives, even though some very hard hit areas are still finding it hard to bounce back (Wallonia, Lorraine, amongst others...).

### **Setting up financial tools to help reconstruction**

The financial tools set up by the ECSC soon had to cater for other sectors and problems. The EAGGF (*European Agricultural Guidance and Guarantee Fund*) was also born to deal with agricultural matters, long seen as equally important in the reconstruction process, especially when one considers the drastic drop in the number of people employed in the agricultural sector between the 50s and 80s. The CAP was set up specifically to help reconstruct a Common Agricultural Policy for Europe. It has had its fair share of problems and crucial debates but it has undeniably contributed to the transformation, for better or for worse, of agricultural policy in Member States.

The European Social Fund was created in the same spirit with the birth of the European Economic Community in 1957. Although this Fund has had access to fewer resources than those Funds relating to agricultural policy - hence its influence has also been less incisive - its existence has never been questioned.

Other structural funds, such as the ERDF, have also played an important role in creating and renewing infrastructure throughout Europe.

### **The 1970s and the creation of directives to regulate the most critical aspects of European reconstruction**

Three directives were introduced in the 1970s to help bring harmonisation to existing legislation within the Member States. In the area of reconstruction, three main instruments prevail:

- the first in 1975, updated in 1998, relating to mass layoffs was aimed at
  - o regulating such redundancies (size of the operation and companies concerned)
  - o introducing special obligations for employers (information, consultation and encouragement to set up social measures covering things from prevention to compensation)
  - o providing information to public authorities of the Member States
- the second in 1977, updated in 2001, relating to the relocation of companies and aimed at introducing
  - o regulation (turnover of employees following a merger, takeover etc..)
  - o an obligation to respect labour contracts and their related rights
  - o rights for workers affected by such operations
- the last was introduced in 1980, updated in 2002, and relates to issues surrounding social guarantee funds (salaries, benefits..) for workers whose company has filed for bankruptcy or liquidation.

To these three main directives can be added:

- The 1994 directive relating to European Work Councils whose main aim is to make sure that management informs and consults with members of these councils in exceptional situations affecting the interests of workers, especially in terms of relocation, closure or mass layoffs;
- The 2002 directive relating to the exchange of information and consultation between Member States, with the aim of encouraging social dialogue so as to prevent these problems.

This approach, which has required legislation at national level within the Member States has had varying results: ranging from almost unanimous adoption to opposition; from the introduction of European legislation to literal or opportunistic implementation. However, on close observation, there appears to be a recurring theme:

- Restructuring is usually considered to be a question to be solved at national level and usually only at company level
- Restructuring is often seen as a one-off crisis which implies the need for social partners
- The absence of the necessary tools to implement the change, as seen in later directives, such as the equal opportunities or non-discrimination directives.

### **Extended social dialogue with a curative and national dimension**

The ECSC pioneered social dialogue, even though this seldom reflects the real state of industrial relations which are usually more combative and belligerent. It introduced Europe-wide tripartite procedures, hitherto only understood by the ILO. However, this approach was hardly ever used in other sectors, and in the 70s, restructuring became associated more with industry, with employers being required to be more forthcoming with information and consultation in cases of company relocation or mass layoffs. It was the employer's duty to provide technical, economic and social information to employee representatives. The employer was required to consult with representatives to try to find a solution to mass redundancies or to negotiate the number of workers who would be laid off and pay packages for those who would be affected. To some extent, this is also reflected in the directive relating to company relocations, which requires that a working relationship be maintained, something that some Member States had already begun to implement at national level. It also encouraged dialogue between the employer and employee representatives.

Although these directives tend to prefer a preventative approach, a lot depends on how well they are received by the employer. Indeed, social policies during the period between 1970 and 2000 tended to be more of a curative nature and were marked by two principal aspects: policies relating to dropping out of the labour market (early retirement, invalidity, etc...) and redundancy pay.

It was not until the introduction of the Work Councils directive in 1994 that there started to be a gradual change of approach. For the first time, this tackled restructuring at trans-national level – affecting sites in at least two Member States – and at the same time, this went beyond the simple notion of redundancies because EU agreements and legislation were already playing more of a role in terms of restructuring and reorganisation than any single operation relating to relocation or redundancies could do. Finally, the notion of timely social dialogue at least gives the idea that something, however little it may be, is being done. Social dialogue at company level was reviewed in the information-consultation directive of 2002 .

Finally, not only do the regulation and directive relating to the European society and worker participation, guarantee a dialogue in companies at trans-nation level but they go

as far as promoting worker participation in governing bodies and, therefore, participation in the decision-making process and no longer only in their social volet.

In this brief overview of European construction, it is evident that reconstruction has always been an integral part of the Union; so much so that it has always undergone profound economic changes, some of which have been due to the implementation of European ideals, objectives and measures.

### **Competition and foreign trade: corner stone of the reconstruction policy**

Limiting oneself to social policy would be turning a blind eye to other issues, some of which are equally as essential to European reconstruction policy, such as those relating to foreign trade and competition. This is without taking into consideration industrial policy, suspected by many to be a euphemism for preferential treatment, quotas or protectionism, planning. As a consequence, it has long been ignored; although what is at stake here, on a par with employment, is the transformation of the production process itself.

Be it a question of price fixing or preferential treatment, quotas or monitoring the merger of competitors, market liberalisation, anti-trust legislation or State aid, these policies generate a lot of interest and give rise to a lot of very controversial, European intervention. Therefore, although the roots of competition policy are often more "social" than one would imagine – this is a battle against "trusts", monopolies and oligopolies; to prevent States from giving direct or indirect aid – its use today is questioned. The same can be said for foreign trade – with preferential agreements for some southern countries. In these matters, the European Union has often been one step ahead of national authorities.

However, the social impact of their decisions is simply not adequately addressed or is relegated to national level. With regards to mergers, the decision-making process excludes all social aspects, with the hard-fought exception of employee representatives. Even then, they are treated with secondary importance, in relation to competition. With regards to trade, the opening of the borders – that Europe has often benefitted from – rarely happens with inevitable economic and social consequences.

Therefore, it is the coherence of European intervention that is in question; whilst it appears to be happy to benefit from the economic and competitive advantages, it is reluctant to implement its social aspects.

## **2. Contemporary reality and adaptation of European policies**

Several works, multiple studies and, amongst others, case studies and comparisons from the MIRE project, highlight the realities that have never really been at the heart of European concern over the years and which lead one to consider reconstruction from a wider and deeper angle.

### **The extended scope of restructuring**

Initially designed as a temporary event and throwing companies into difficulty, the scope of this concept has now been widened. Today, it is not considered a random addition of

companies but of entire sectors involved in international competition to give rise to a new division of work. The transition from an industrial economy to a service economy is, in this regard, striking and concerns every member of the European Union, without exception. This revolution is at least similar to that which saw Europe go from an economy based on agriculture to an industrial economy within a few decades. Furthermore, this is no longer just a temporary crisis but a sort of recurrent movement whereby hitherto acquired situations are constantly being re-opened to question. Finally, within the framework of heightened international competition, profitable companies may feel just as tempted to restructure in the name of consolidation or growth of their business as companies that are less successful.

This considerable change in European economies leads one to consider the extended impact of decisions relating to reconstruction on the entire production network and not only on a few, key companies – empirical studies show that one job lost in a key company is followed by the loss of at least an equal number of jobs in its network, and this number could even rise to as high as double or triple.

Furthermore, the question of restructuring has widened to become, in many cases, a social and national question. Whether it is in relation to the environmental effects linked to the cessation of certain businesses and necessary regeneration of sites; or the imbalance that some mono- or oligo-business nations are subject to, the company can no longer be the only element that benefits socially or economically from restructuring.

Finally, many businesses now reach beyond their local, industrial or national borders. Restructuring is much more trans-national and, for many of them, global. Mergers, take-overs, relocations within or outside Europe are now part and parcel of the economic life of Member States.

### **Long-reaching restructuring**

The impact of restructuring is far from being limited to mass layoffs and job losses. Indeed, one could say these two are only the tip of the iceberg of an economic phenomenon that has more far-reaching effects on companies and work organisations. Whether it is change due to new technologies and processes; a change in the approach to work; a change in the qualifications and duties required; an increased demand for individual or collective performance or just simply a change in the corporate fibre without its capitalist fibre and the emergence of a different, more demanding sort of shareholder; a considerable rise in production groups and networks – restructuring is often an integral part of the phenomenon with multiple repercussions.

With regards to individuals, restructuring goes hand-in-hand with a rise in insecurity and precariousness. Older workers who are to be laid often see it as a renewed questioning of their know-how and social usefulness; of their health. This causes a lot of uncertainty in their family and personal relationships. For younger workers, although the flexibility of their work

and employment conditions may sometimes have some advantages, this often translates into uncertain career paths and a degree of precariousness in their source of revenue.

The selective effect of restructuring has been severe on companies and considerable for workers who have found themselves caught up in a need for change that many of them are unable to face up to. This often leads to demotion, obsolescence or long term, if not permanent, unemployment. The selection criteria is often based on the length of service, performance or age, if it is a question of trying to protect certain categories in favour of other, sometimes more vulnerable, ones. Work practices, often linked to new legislation or convention, lead to a number of exclusions or discrimination in law or in fact, in the accompanying social measures aimed at guaranteeing professional continuity. Many divisions may be brought to the fore, especially those concerning

- Unlimited/limited work contract holders
- Workers in large companies/SMEs
- Workers in profitable/unprofitable companies
- Legally dependent employees/Economically dependent employees.

The sum of the differences of these situations and protections doesn't go without questioning the real extent of the principles of equal opportunities but also, more simply, equality before the law; the founding principles on which the charter of the fundamental rights of the EU, and many constitutional documents of Member States are based.

Finally, practices relating to employability and the security of professional transition are not frequent. Therefore, it is perfectly normal that often policies relating to pecuniary pay – that only favour employees who are already well established on the labour market – and withdrawals from the market (invalidity, early retirement, etc...) are maintained at high levels. At the same time, the employability of several workers has made little progress. The period that a worker remains out of work is gradually becoming longer and often a return to the labour market will require a lot of retraining; something that social and public players are often still wary about or even unprepared for.

### **2.3. The impact on the social dialogue**

Finally, restructuring has had an impact on professional relationships. Apart from the usual questions of pay and work conditions relating to employment, the latter has become a crucial part of the social dialogue and has led to an inversion in the position of the main players: employers and their representatives have gone from a usually defensive position to a more offensive position whilst the opposite can be said about the trade unions, who have become much weaker in most Member States. In several countries, the social dialogue has changed its agenda and level, leading at the same time to a sort of dilution and fragmentation of the situations. Apart from the direct impact on the social dialogue, restructuring, due to the widening of its scope and impact, has led to an increase in the number of players: national players, agencies specialised in the domain of reclassification or economic (re)development, a myriad of associations, authorities in charge of completion and the environment; the social dialogue is no longer a single issue. Indeed, it is often a multi-faceted process. The dialogue has become richer, more complex and often more difficult. Consequently, possible solutions have also become more difficult to find.

Collective negotiation on restructuring is characterised by three main things:

- negotiations at national, industrial and inter-industrial levels, when they exist, are generally relatively dated (the most recent ones date back to the 80s)
- recent negotiations are made at company level
- negotiations at European level are either non-existent or not very convincing.

The widening of the scope and the deepening of the impact of the restructuring process are a challenge to the social constructions of the 20<sup>th</sup> century. Emphasising the accidental aspect of the phenomenon, the breaking of the contract, the limits of the company in its much more general, legal and often industrial sense, these regulations are increasingly lagging behind the problems and needs of our contemporaries.

### 3. Recent European policies: advancements and limits

One must thank European players for taking or relaying initiatives that national or local players have often had more difficulty to conceive or, at least, to see through.

#### 3.1. The European employment strategy

One could say that the European employment strategy is an entirely new "restructuring" process in its own right. Indeed, in trying to make the intellectual economy of European the most competitive in the world, this inevitably puts a strain on its production and social processes that Member States have to face up to if they are to reach their goal. The wide reaching nature of the restructuring process provoked by the Lisbon Strategy is evident by the combination of the macro- and micro-economic guidelines combined with the specific employment guidelines (integrated guidelines for growth and employment).

Only the 20<sup>th</sup> integrated guideline, "*Promote flexibility combined with employment security and reduce labour market segmentation*", explicitly mentions restructuring: "better anticipation and positive management of change, including economic restructuring, notably changes linked to trade opening, so as to minimise their social costs and facilitate adaptation; support transitions in occupational status...". If other lines dedicated to employment are considered (**17**: "*Promote a lifecycle approach to work*", **22**: "*expand and improve investment in human capital*", **23**: "*adapt education and training systems in response to new competence requirements*"), one can but see an imbalance between the quest for restructuring on the one hand and management and multidimensional change on the other.

This imbalance is even more evident when one looks at the small number of indicators and national reform plans proposed and discussed today.

Whilst considering restructuring to be on the whole a positive thing, the EU seems to be underestimating not only the reaction and resistance that it causes but also the need to adopt proportionate governing and accompanying devices.

### 3.2. CSR

The launch of the CSR in Europe only had a very loose link with restructuring. One only has to read the Green Paper of the public Commission in 2000 or to observe the reaction of companies, notably through their report indicators.

Although restructuring, the result of a rich and long standing history, equipped with a legal and conventional framework, be it at European or national level, did not foresee a huge adoption of CSR, socially responsible concepts about restructuring have largely spread in just a few years.

This can be attributed to a number of simple factors:

- a phenomenon that was often seen as irresponsible and leading to strained relations between European societies and several companies, thus provoking the latter to commit themselves to schemes that go beyond the simple respect of current laws and conventions
- more and more emphasis on the necessary anticipation of future transformations (management of change) coupled with strategic decisions covering not only staff training but also other measures following a reduction in personnel (information sharing, diversification)
- operations that put the main players – management, workers’ representatives, public representatives, national representatives, associations, employment and reclassification organisations, experts, the media – and requiring the set up of a more or less sophisticated, multi-faceted, balanced and... satisfactory dialogue.

Despite all these evolutions, several operations are still far from being socially responsible: the inadequacy of social dialogue, the lack or absence of forethought, a weakness of the devices aimed at professional re-integration, social dialogue and measures limited to “insiders”, to the detriment of sub-contractors and the production chain... So, what is the position of restructuring in the new European Alliance in relation to the CSR? The Commission’s announcement on the CSR and company initiatives that promote socially responsible restructuring is awaited with interest.

### 3.3. Commission initiatives

#### 3.3.1. *Social partners’ seisin on restructuring in 2002*

Another consequence of the Vilvoorde effect, the Commission’s initiative in 2002 on restructuring, in compliance with the EU treaty, lead to a first phase of consultations with European social partners. In a document entitled, "Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring", the Commission explains that "corporate restructuring is an important element of change" and that managing the latter is of capital importance for implementing the Lisbon strategy which relies on a positive approach to socio-economic change. Restructuring – of companies, sectors, entire regions –

are creative and drive change even though their consequences are sometimes painful. The document goes on to review the arguments vying for EU action (media restructuring, development of the domestic market, future expansion, the increasing presence of transnational companies, globalisation and the necessary adaptation required). The Commission continues with a number of deliberations from the Council and Parliament to encourage the development and spread of good practices without necessarily aiming for harmonisation of the rules.

In a second section of the document, it lists European policies that could influence restructuring management before going on to a third section about the way forward.

Starting from the constant that in most Member States, restructuring management is trying to promote better anticipation, that redundancies should be used only as a last resort, that there are a number of alternative solutions to redundancies. The Commission is questioning the social partners on the whether it is worth setting out guidelines at European level, relating to how to elaborate such principles and on the place for social dialogue, on an entirely different and appropriate European initiative. It finally opens up a number of possible domains for discussion:

- employability and adaptability whilst safe-guarding career paths; support in terms of employability and consideration of the restructuring options with the least social cost
- effectiveness and simplification and streamlining of the legal and regulatory frameworks
- external responsibility of companies: territorial responsibility and downstream responsibility on subcontractors
- modalities of implementation: involvement of workers, fair compensation, prevention and resolution of disputes, the special situation of SMEs.

### ***3.3.2. Communication from the Commission of 31 March 2005***

Called "Restructuring and employment: anticipating and accompanying restructuring in order to develop employment – the role of the EU", made in response to the adoption of the social agenda of 9 February 2005 with the aim of developing an integrated approach to restructuring.

In this document, restructuring – be it to anticipate or to properly manage it – is combined with the concepts of deep socio-economic transformation and change but also with corporate concentrations or reconversions.

This communication reviews the available European options:

- open method of coordination with reinforcement of the coordination between Member States and reform of the European strategy on employment
- different policies concerned: a revamped industrial policy, competition policy and relations with non EU countries
- structural funds, starting with the ESF which will now consist of a package of 1 Billion Euros aimed at managing crises and the EAGGF
- measuring and monitoring restructuring developed by the European Monitoring Centre on Change (EMCC)
- consultation and appeal, sometimes repeated, to social partners to implement their 2003 text (see below) but also an appeal to intersectorial social partners and the announcement of the setting up in 2005 of a multi-faceted forum on “Restructuring”

- regulation with the announcement, within the framework of a green paper on labour law; propositions aimed at effective transitions on the labour and also a revision of the directives relating to redundancies, company relocations and a directive proposal on improving the portability of supplementary pension rights so as to facilitate the mobility of workers within the Union.

### **3.3.3. *The Social Agenda 2005-2010***

The Social Agenda is one of the instruments of the open method of coordination. For a set period, it is concentrating on a number of themes the EU proposes cover, remembering that this list will be reviewed.

The 2005-2010 Agenda proposes, amongst other things, and under cover of the priority objective of full employment, to adopt a strategic approach to anticipation and positive management of change. Against this backdrop, the following aspects will be addressed: “restructuring, offshoring, outsourcing and deindustrialisation”. The same agenda is being proposed within the framework of improving regulation, to “give birth to” the directives relating to company relocation and mass layoffs.

### **3.4. European social dialogue**

Restructuring is not an easy subject for social dialogue and European social partners are only just beginning to come round to it, whereas the private European lobby (UNICE) was mainly reticent, while trade union movements were divided (with a number of national federations showing reservation when faced with themes that they judged would be better addressed at national level as opposed to European level. They were also a bit wary of the perspective of an imminent agreement on potential social regressions).

However, the Commission, through a 2002 seisin (cf. see earlier) in a treaty started an initial consultation with social partners. This had to be renewed on several occasions, such was the reticence expressed by the participants. It finally ended with a document called “Orientations for Reference”, “signed” on 16 October 2003.

This document covers restructuring, starting with the concept of managing change and its social consequences. It also states that economic and social transformation can affect regions and territories, that a number of SMEs are affected because they are dependent on large customers and that managing social restructuring consists, amongst other things, in looking at all the possible alternatives to redundancies.

It is remarkable that this very prudent document – each paragraph looks at the lessons learnt from the 10 cases studied jointly – does not have any precise implementation procedure – each organisation simply agrees to pass it on to its members – and was expecting ratification by the executive bodies of each of the signatories. However, although UNICE adopted these so-called orientations in summer 2003, the ECS, whose representative team had meanwhile almost been completely renewed, only adopted the document in (October 2003).

Therefore, this document could not be considered as an agreement and neither could it offer any hope of implementation. The only commitment by its signatories was their promise to pass it on to their respective members. Hence the Commission's launch, through its 31 March 2005 communication, of a second phase of consultations with its social partners with the aim of getting them to negotiate a way to implement the recommendations in this 2003 document and to ask intersectorial social partners to commit themselves to such discussions. In their 2006-2008 working programme, European social partners added the Orientations for Reference to their agenda, taking into consideration joint studies carried out following the arrival of the new Member States. Is this likely to lead to more robust, intervention of a conventional nature? It is still too early to tell.

### **3.5. Other Actions**

The following should be noted

- the ESF should be more careful in adapting to economic transformation. It should also have access to more robust means
- the creation of the adjustment fund for globalisation
- the creation in 2001, within the Dublin Foundation, of a European Monitoring Centre on Change (EMCC). The result of several working groups following the "Vilvoorde affair", the Monitoring Centre is an instrument for monitoring relevant data relating to European restructuring, to provide social players with the necessary tools for analysing change and anticipating the consequences. Managed by representatives of European social partners, the Foundation and the European Commission, it conducts a number of studies, seminars and provides businesses, social partners, national and territorial authorities and European institutions with an extensive and highly regarded database.

## **4. Possible areas for progress**

### **4.1. Economic, social, regional and democratic issues of restructuring in Europe today.**

Social and economic restructuring have become a fact of European life. In just over 30 years, we have progressed from an “accidental” vision of restructuring to a more “structural” vision: restructuring activities can be on-going, no longer just occurring during a “crisis” and can impact all business activities, even those fairing well, all types of companies and all categories of employees.

The analysis undertaken in the course of the MIRE project highlights some common points amongst the various European approaches under consideration:

- restructuring activities only becomes an issue at a late stage for most players, generally when significant job losses are envisaged.
- productive reorganisation strategies produce an iceberg effect. Although they radically modify the structure and the economic base of the companies as well as working relations, that have progressed from bilateral to triangular or multipolar, they only focus on the immediate or perceptible impact on employment, which hardly encourages anticipatory practices.
- restructuring activities involve many players: those from inside the company of course (from their various levels if applicable) but also those from outside the company such as experts, national or regional public authorities, local authorities, regional economic development offices, various agencies, the media, retraining organisations and redeployment firms...For the time being they all share the same characteristics, without exception, compartmentalisation, the often limited approach to their interventions and poor cooperation throughout the restructuring process.
- this results in very unequal salaries that are based upon the type and size of company (large business/SMEs/subcontractors) and employment status (new/old, permanent contracts/other contracts) or levels of professional qualifications.
- compensation or redundancy payments prevail over actual and effective support regarding the professional future of employees and if applicable, relocation issues – geographic and/or professional – that restructuring may entail.
- restructuring activities, whatsoever their concept, are dealt with on a company level, even on a level of the organisation as a whole. A sectoral or regional perspective or an approach by subsidiary, are rarely adopted even during social dialogue. As for an interprofessional approach it may well have existed at times during the 70s and 80s but it now needs to be renewed and relaunched.
- Discussion regarding the merits of restructuring is minimal. The European approaches rest upon the freedom of management of the employers and the implicit adequacy of their decisions. As for the consequences to the employees, almost exclusively only

those relating to the loss of employment are taken into consideration, disregarding those that for example relate to health (redundant employees as “survivors”).

- As the “private” nature of the decisions and management surrounding restructuring is a dominant feature, state interventions – when they do exist – are therefore limited essentially to social support. The return, albeit tentative, of industrial policy-making in the EU documentation may be a sign of a new “policy mix”.
- Traditional approaches regarding collective redundancies and employment protection are the subject of a fairly comprehensive enquiry.

In other words, the players involved in the restructuring activities are focusing particularly on the inadequate or outdated means and methods of action. In Europe, the common issues are:

- anticipation and governance
- enlarged scope of impacts and action
- fairness and protection in professional transitions and career paths
- regional economic (re)development and improvements

## **4.2. Reasons for acting on a European level**

One could be satisfied by the current state of Community policies for a number of reasons: low overall policy convergence, significant lack of general information on restructuring activities and their impact, failure of the social system which is viewed as an obstacle and an encumbrance, renationalisation of jobs, weak influence and limited legitimacy of the European social players etc... However, European accountability on this issue is substantial and often underestimated.

Let us repeat once again: Europe cannot ignore the consequences of its restructuring activities. It may in fact benefit from integrating them and anticipating them. Furthermore, as it remains responsible for rights regarding collective redundancy, transfers, social dialogue or equality of pay, the EU cannot act as if the environment had not altered in the last 30 years: today breaches of contract and inequalities are considerably different from those of the past and the transnational aspects are far more pronounced.

Whatever one might say, even for the worst, Europe is the gear stick for the national players: without “Brussels”, the courage – and sometimes the funds – are lacking to tackle the changes and to adopt the necessary improvements.

## **4.3. Better use of existing European tools**

### ***4.3.1. State policies***

The hypotheses put forward in this section are based upon information regarding existing tools such as the written intent in the 2005-2010 social agenda to adopt a strategic approach to anticipation and positive management of change.

**Improve merger of guidelines regarding restructuring activities and include specific indicators**

Integrated employment guidelines do indeed make reference to restructuring activities. However, on the one hand, these guidelines do not offer a coordinated approach and on the other the proposed indicators are weak and do not allow for specific evaluation of the progress of the production and employment restructuring activities. Evaluating the restructuring activities within the Europe is a very complex activity which the Member States have not been concerned to undertake, unlike for example the United States.

Could we not then identify the specific indicators for carrying out responsible restructuring activities and successful professional transitions? Improve communication of the relevant guidelines and even draw up a guideline regarding “anticipation and socially responsible behaviour for restructuring”, bringing together all objectives set out in the various guidelines?

### **Link the policy framework to the European Social Fund (ESF) and the Globalisation Adjustment Fund.**

Whether regarding communication on restructuring activities, submissions of cases to court between the social partners and even standard policies, there should be a European code of conduct governing the use of funds whose main items should be the following:

- social dialogue and justification of the changes
- restructuring activities, regional aspect and multi-player process
- restructuring activities, sub-contracting and SMEs
- equality of pay and employability development
- management of restructuring activities and protection for professional development
- prevention and resolution of conflicts, notably for restructuring activities of a transnational nature.

Use of the above-mentioned funds shall therefore be linked to a commitment to the European code of conduct followed by a reporting on its application. Such commitments may also bring about the use of other structural funds, if necessary. Until now, the Member States excluded this possibility in order to use the funds as freely as possible. Is this attitude tenable?

### **Reinforce the coordination of the policies, in particular employment/industry/competition**

The creation of a task force and a forum signify notable progress in the coordination of the policies. But considerable progress remains to be made with regards to:

- genuine sectoral approaches on the one hand and regional ones on the other
- an effective coordination between competition policies on the one hand and employment and industry policies on the other
- reinforcement of synergies between the different community authorities concerned: relevant DG, task force, forum, advisory committee on industrial change, EMCC, etc....

The possible areas for progress could include:

- The creation of genuine monitoring organisations allowing sectoral or regional visibility, capable of dealing at the same time with restructuring activities, activity creation, improvements, change management, social policies while combining this wherever possible with similar instruments available within the Member States.

- Genuine consideration of the “competition” policy in the study and anticipation of the social and regional impact of decisions, particularly with regards to concentrations
- A work programme organised between the different Community authorities dealing with “restructuring activities”.

### **Adapt the collective redundancy and transfer directives**

According to the 2005-2010 social agenda, the revision of these directives is necessary. This revision could include:

- a commitment, as far as it is possible, to anticipate and justify
- giving priority to employability, redeployment and to the principle of fair pay in order to correct the more flagrant inequalities in the social support measures
- expansion of the notions of redundancy and of end-of-contract particularly with regards to establishing equal pay between workers with short-term contracts.
- a reference to breaches of contract and transfers of a transnational nature and the necessity of providing an appropriate response
- a link with the framework directive on health and safety at work in order to limit the impact on the health of individuals and allow them to “bounce back” under the best conditions
- an acknowledgement of the concept of a group or network of businesses so as not to deal with breaches of contract and transfers using an outdated legal framework.

Finally, let us add that “the threat of legal action” – extremely weak since 2004 – can be as effective as the legislation itself and lead players to taking measures and evolving better and more quickly than if they had been left to their own devices.

#### **4.3.2. Social dialogue**

The central question examined here is the use and enrichment of standard policies. As such the European social partners have committed to promoting them as part of their work programme. However, in their current state, these policies are admittedly not workable. They could become workable however:

- by way of sectoral and/or national negotiations which could provide inspiration and lead to binding instruments or at least standards (codes of conduct standards)
- by way of use by other players (see the above code of conduct for the use of European funds concerned or sources of inspiration for the revision of collective redundancy or transfer directives).

Furthermore, the work started in the new Member States constitutes an incredible and double opportunity to enrich an as yet fairly weak framework regarding restructuring policies in these countries and to enter into collective sectoral or intersectoral negotiations that are as yet very tentative.

Finally, with regards to their future “promotion”, these policies could be further enriched in the future by integrating elements such as:

- business and sub-contracting
- social measures and equal pay
- restructuring activities and health at work

#### **4.4. Developing new tools and new approaches?**

Since 2004, the efforts and even objectives of convergence have weakened and even been brought into question by a number of Member States, and thus the reality of the restructuring activities and practises set up by the players highlights the need for new tools. In this respect, three issues appear critical to us that are not taken into consideration in the current system:

- governance and exceeding the scope of the business
- the specific scope of the restructuring activities both transnational and intra European
- the question of health.

##### **4.4.1. Adapting to restructuring that exceeds the scope of the business**

The reality of the situation observed primarily by the MIRE project, leads to the conclusion the exceeding the scope of the business is almost systematic due to the fact that the businesses operate as a network and multiple outsourcing is abundantly described. For as long as these national practises and legal and conventional frameworks continue to lock de facto if not de jure the restructuring activities in a tête-à-tête between the company and the representatives of the employees, this will lead to:

- a “hyper accountability” of the companies leading to a sound emulation of social improvements and also to addressing requirements that the company does not always satisfy.
- weakened industrial relations due to the conflict of interest between the insiders and outsiders and to an excessive focus on intra-enterprise solutions (job or position protection) that are sometimes impractical and even barely desirable.
- a drastic limitation on the number of players able to contribute positively to situations deemed to be particularly negative.

Whether dealing with the anticipation or management of restructuring activities, the establishment of a multi-player process, adapted to the particular realities of each situation, is required. Furthermore, the social dialogue, which is traditionally built around the idea of a certain fixedness of the businesses and jobs, is shaken by more brief temporalities and more significant and recurrent relocations.

Could not Europe promote, at least with regards to restructuring activities of a certain size, the establishment of multi-player social forums equipped with powers of information, consultation and intervention? Is it not necessary to develop dialogue frameworks that contend with the movements of both companies and people and that combine professional, sectoral and regional aspects?

We need to inject, by way of expansion of rights and players, a little more democracy into processes presented as inevitable and non-debatable. This would also improve the overall feelings of powerlessness or “victimisation” and reduce the occurrence of social and political withdrawal that is very prevalent in public and professional life.

#### **4.4.2. A more adapted response to restructuring activities of a transnational and intra European nature**

This issue is largely ignored, due to its extreme sensitivity, by EU politicians and those responsible for restructuring, transfers and externalisations involving several countries of the EU. The new intra European divisions of labour are combined in effect with a new global division. We are not concerned with stigmatising such movements but only with questioning the transparency, fairness and social responsibility of such processes. Furthermore, in the current situation, only businesses comprising a European enterprise committee have the opportunity to potentially discuss these issues. We have also highlighted the fact that once the scope of the business has been exceeded, the response from the EEC can only be partial. Finally, EU public authorities cannot on the one hand manage restructuring activities and on the other refuse to acknowledge the consequences involved for the individual.

Added to this there is now an increased mobility of the work force, due in particular to the expansion of the EU. Rather than devising new regulations, is it not time to consider a new approach that is at once more Community-focused and more institutional? That is why we would suggest studying, after the conclusion of work being undertaken by the European experts on restructuring activities and on prevention mechanisms and solutions to transnational social conflicts, the feasibility of a European mediation mechanism for transnational restructuring operations involving a significant impact on employment and regional balance.

Let us try to outline the scope of this mechanism. It should be set up as an independent authority, extra-judicial, specifically aimed at dealing with the issue of restructuring and mergers, and should intervene on any operation of a certain size involving at least one large European company. It would set out a certain number of criteria for sound social governance (social dialogue, fairness regarding the future and retraining of individuals and groups concerned, transparency in the use of public funds, in particular European funds) which it employs in its dealings with the company as in its dealings with its environment. The structure is as yet to be defined – tripartite core? It would be made up of ad hoc representatives and experts depending on the operations, individuals and regions, possibly members of the ECSE, the European Court of Justice and the European Parliament? It would intervene as much as possible prior to the implementation of the operation, when the social issues have not yet been finalised. The court case proceedings are to be defined – in the instance of a breakdown in dialogue and the usual mediation methods, it offers authorisation to partners likely to submit a case. Endowed with powers of recommendation and even decision-making powers, this authority could make its acts public and monitor the undertakings of the parties.

#### **4.4.3. Health - the forgotten issue and a lever for the future**

Employment, an incredible professional, individual and social opportunity has largely lost its “certitude” and has become a risk for many. In other words, the economic changes have brought about a risk of work, as well as risks at work. Studies carried out on the mental health of employees during the restructuring process show that the long-term effects are very significant but that they continue to be largely and partly voluntary. As such the MIRE studies demonstrate:

- a significant deterioration in health conditions, whether physical or psychological, of the employees during these restructuring operations, whether they are affected or not themselves by the redundancies
- a new approach taken by health insurance companies during personal and professional periods of transition
- establishment of a support system not only with regards to professional issues but also psycho-social issues
- the importance of health not as the absence of illnesses but as an overall wellbeing that facilitates the individual’s ability to cope.

From this point of view, the meeting of the social and economic policies on the one hand and health policies on the other is undoubtedly necessary. The concept of quality of work suggests this idea even though it has not actually been the subject of a thorough review nor brought about new practices in this area. The framework directive on health and safety 89/391 could play a role in this area but it focuses on other objectives, practices and players.

When the safety of people becomes more significant than employment and job safety, would it not be time to promote a far more ambitious and as a result more promising health plan with regards to the anticipation and management of restructuring activities, and to integrate it into the employment conditions?

*The issues surrounding the renewal of the European intervention framework on the subject of restructuring activities are numerous. Whether it concerns the concept of restructuring itself, checks to anticipated measures, clarification of multi-player processes, better protection with regards to professional relocation or consolidation of regional revitalisation procedures, it is the processes as a whole that require both renewal and setting out. Their economic, social and societal implications are evidently considerable. With regards to influencing the restructuring activities, Europe plays a more significant role than ever; it is a region that deserves to be developed, lived in and given responsibility. If employment is no longer a core foundation of stability, Europe must encourage identification of the elements around which the future stability will be formed: jobs, regions, statutes of the assets, more “protected” activities, or other.*

*The European Community was originally formed from the ECSE. Ever since, the EU has adopted a kind of “slack” approach. Is this still reasonable? Or legitimate? Or even in compliance with its fundamental objectives? Does it bring progress? It seems to us that this approach is both questionable and amendable. This is the exactly the aim of the paper which seeks to provoke animated and fruitful discussion.*