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Information and consultation of workers - BUSINESSEUROPE response to first stage social partners' consultation

KEY MESSAGES

- 1 The REFIT programme aims to *unlock the benefits of EU law for citizens, businesses and society as a whole in the most efficient and effective way, while removing red tape and lowering costs without compromising policy objectives*. The content of the Commission consultation document is not in line with these objectives. It runs counter the objective to reduce red tape and ignores the need to foster the competitiveness of business in Europe.
- 2 BUSINESSEUROPE is against the proposed revision or the recast of the EU information and consultation directives:
 - Various studies confirm that the EU legislative framework and related national transposition rules in this field work well for workers and companies. There is no need to change the long established EU rules;
 - Far from unlocking benefits or cutting red tape, this would just lead to more uncertainty, additional burdens for business, and prolonged decision making in companies in contrast to REFIT's purpose;
- 3 Harmonisation of definitions of "information" and "consultation" in the three directives is not appropriate. The directives concern different situations, therefore differences in their scope, definitions, thresholds and requirements are justified and should be maintained.



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BUSINESSEUROPE RESPONSE TO FIRST STAGE SOCIAL PARTNERS' CONSULTATION ON INFORMATION AND CONSULTATION OF WORKERS

1. On 10 April 2015 the European Commission launched the first stage social partners' consultation regarding the possible consolidation of the three EU Directives on information and consultation of workers¹. The consultation follows the European Commission's Regulatory Fitness and Performance programme (REFIT). With this paper BUSINESSEUROPE would like to respond to the questions raised in the consultation.

Do you consider the description of the issues in this (consultation) paper correct and sufficient?

EU information and consultation of workers directives work well

2. In 2011 the Commission established an Expert Group to discuss the functioning of the three EU Directives on information and consultation of workers. The aim was to identify excessive burdens, overlaps, gaps or inconsistencies in this legislation, in line with the REFIT agenda. BUSINESSEUROPE has contributed actively to this work.

3. The overarching conclusion of the Expert Group was that the Directives have been in place for many years, creating well established frameworks which work well for both employers and workers. Therefore, legislative action at the EU level aiming to change the existing rules is not only unnecessary but also inappropriate. The evaluation report prepared for the Commission confirms that: *"Given that the directives are considered coherent by all stakeholders in virtually all countries, most high level representative stakeholders in the majority of countries do not see the need or benefits of a consolidation of existing EU legislation"*².

4. The consultation document also rightly concludes that *"Overall the Commission fitness check pointed out that the three I&C Directives as amended appear coherent and mutually reinforcing. There is no evidence of any duplications or contradictions resulting in problems in their practical implementation"*. BUSINESSEUROPE fully agrees with this.

5. Moreover, available statistics – including the most recent European Company Survey from Eurofound show that information and consultation processes are widespread and overall satisfactory within Europe's companies.

¹ Directives 98/59/EC on collective redundancies, 2001/23/EC on transfer of undertakings, and 2002/14/EC on national frameworks for informing and consulting employees;

² Final Synthesis Report, Deloitte, May 2012, "Operation and effects of information and consultation directives in the EU/EEA countries"



6. Despite all this evidence the Commission consultation document suggests to pursue a targeted revision of the three directives or a recast. BUSINESSEUROPE believes that the Commission should acknowledge that the overall assessment of the functioning of the three EU information and consultation directives is positive and should draw the appropriate conclusion from this by refraining from changing the EU rules.

7. The consultation document states that according to a survey carried out during the Commission fitness check *“stakeholders at company level hold a more critical opinion about uncertainties or inconsistencies, gaps and practical problems relating to I&C legislation and express the view that some efforts of simplification and consolidation might be justified”* and therefore *“...such concerns deserve serious consideration and further discussion”*. This statement is misleading because it ignores the fact that the criticism referred to national, and not to EU rules.

8. In September 2012 BUSINESSEUROPE commented to the Commission and the Expert Group that company-level actors were asked in the survey about *“rationalisation of information and consultation legislation”* not *“consolidation of EU directives”*. BUSINESSEUROPE members, representing companies across the EU, gave clear answer that unnecessary burdens and need for rationalisation do not concern the EU directives.

Harmonisation of definitions is not appropriate

9. The Commission’s consultation document suggests to harmonise the definitions of “information” and “consultation” in the three directives. The document indicates this may “enhance legal clarity and awareness”, “improve consistency and coherence”, “render the application of the Directives easier and simpler“. BUSINESSEUROPE does not agree with this conclusion.

10. BUSINESSEUROPE believes that the reopening of the discussion on the definitions of “information” and “consultation” in the three directives would bring a long period of uncertainty for both employers and workers, and create risks of new legal interpretations of these terms, with no corresponding benefits. This would run counter to the objectives of REFIT.

11. The three directives concern different situations, therefore differences in their scope, definitions, thresholds and requirements are justified and are in line with the aim of REFIT not to impose burdens on companies without compromising policy objectives. The Commission³ rightly recognises that *“differences between the three Directives may be explained by the particular scope of each Directive”*. In particular, Collective Redundancies Directive concerns very serious situations where there is a risk that a significant number of employees may lose their jobs. Therefore, it is understandable that the requirements for workers’ information and consultation in this directive are more stringent than in other types of information and consultation processes. The current definitions and thresholds allow for diverse mechanisms of employee consultation in large and small companies in the Member States, which should be sustained.

³ Commission Staff Working Document (SWD(2013) 293)



The Commission consultation document contradicts the aims of the REFIT programme.

12. As indicated in the Better Regulation Package of 19 May 2015, “*the REFIT programme aims to unlock the benefits of EU law for citizens, businesses and society as a whole in the most efficient and effective way, while removing red tape and lowering costs without compromising policy objectives*”. BUSINESSEUROPE agrees with this aim. The REFIT programme should aim to achieve the same policy goals in a “smarter” way. As such, it should not lead either to new rights or fewer rights for workers.

13. We are concerned that the Commission document, rather than consulting on the need to simplify legislation and removing red tape, seems to focus on questions around expanding employee rights for information and consultation.

14. BUSINESSEUROPE does not support introducing new requirements on companies in the area of information and consultation, as EU legislation in this field is already comprehensive. Especially, the idea to introduce in all directives the requirement to run consultations “with a view to reaching an agreement” or the timing of information and consultation as required in the Collective Redundancies Directive, would make information and consultation processes more complicated, costly and would make timely adaptation to change more difficult.

Do you think that the Commission should launch an initiative to revise or recast the three Directives on I&C of workers at national level? If so, what should be its scope?

15. For the reasons outlined above BUSINESSEUROPE is convinced that the Commission should not revise or recast the three directives on I&C of workers. It would bring legal uncertainty, and would make it more difficult for companies to run information and consultation processes. Such action would go against the purpose of the REFIT programme, which aims “*to make EU law simpler and to reduce regulatory costs, thus contributing to a clear, stable and predictable regulatory framework supporting growth and jobs*”.

Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation?

16. It is the first time EU social partners are consulted under article 154 on a better regulation initiative. In principle, BUSINESSEUROPE may be open in the future to negotiate with the trade unions in the context of the better regulation agenda. However, in the context of this particular consultation, BUSINESSEUROPE opposes any change in the three EU Directives as unnecessary and inappropriate, and it is not in favour of initiating negotiations under Article 155 TFEU.
