



European Trade Union Confederation (ETUC)  
Confédération Européenne des Syndicats (CES)

BUSINESSEUROPE



GO FOR GROWTH

AN AGENDA FOR  
THE EU IN 2010-2014



**Mr Robert Verrue**  
Director General  
DG Employment  
European Commission  
B-1049 Brussels

14 June 2010

Dear Mr Verrue,

We are writing to you as a follow-up to the 12 January meeting of the Commission's Expert Group that was set up to monitor transposition of the European works councils recast directive 2009/38/EC in the EU member states.

With this letter, BUSINESSEUROPE and ETUC would like to clarify the way in which they understand the meaning of the following provisions of the recast directive:

1. Information of European social partners on launch of new negotiations (article 5.2.c)
2. Agreements in force (article 14) and adaptation (article 13)

#### **Information of European social partners on launch of new negotiations (article 5.2.c)**

Article 5.2.c has been amended in the Commission's proposal of 2 July 2008. European social partners did not comment on it in their joint advice of 29 August 2008. They have accepted the requirement to inform competent European workers' and employers' organisations of the composition of the SNB and of the start of the negotiations.

The ETUC and BUSINESSEUROPE understand "competent European workers' and employers' organisations" as the European social partners' organisations that are consulted by the European Commission under Article 154 TFEU. The Commission publishes and regularly updates a list of European Social partners' organisations which fulfil the required criteria of representativeness.

In order to secure an effective implementation of this new obligation, BUSINESSEUROPE and ETUC stress the importance of a simple, non bureaucratic procedure.

Accordingly, the ETUC and BUSINESSEUROPE have provided single contact email addresses in order to assure an effective transmission of information from companies to European social partner organisations. Once they have received information from companies, both organisations are responsible for disseminating the information to the addressees identified in the recast directive in a timely manner. This will be done according to their respective structures and procedures. On the trade union side, the relevant European Trade Union Federation(s) will notify companies when the information has been received so that companies get a clear feedback on which European trade union organisation(s) is/are involved.

## **Agreements in force (article 14) and adaptation (article 13)**

A two-year special period was established in the recast directive at the request of social partners in their joint advice of 29 August 2008. Its scope has been discussed in the Council Working Group in autumn 2008. Following this, article 14.1.b in the recast directive allows social partners at company level to negotiate new agreements or renegotiate existing article 6 agreements between 2009 and 2011 based on existing national transposition laws under 94/45/EC directive and without being subject to the new provisions of the recast directive.

Article 14.1.a clarifies that the obligations of the recast directive do not apply to EWCs established under 'old' article 13 (of directive 94/45/EC) as long as they remain valid and are supported by social partners at company level. These agreements can also be adjusted in case of "changes in the structure of the undertakings or groups of undertakings" without full negotiations in accordance with articles 5-7 of the recast Directive in so far as these changes do not trigger the applicability of Article 13 of the recast Directive (see below).

Moreover, article 14.2 stipulates that, upon the time of their expiry, and if both sides agree with this, article 14 agreements - as defined in articles 14.1.a and 14.1b - can be renewed or revised when the parties to the agreement jointly decide so. Where this is not the case, the provisions of the recast directive apply. This is in line with recital 41 in the recast directive according to which "unless the adaptation clause (article 13 of the recast) is applied, the agreements in force should be allowed to continue in order to avoid their obligatory renegotiation when this would be unnecessary".

We understand that, according to article 13 of the recast Directive, three cumulative conditions are necessary to trigger new negotiations in cases in which an article 14 agreement (one of the two categories of agreements foreseen in article 14) is involved:

- i. There is a significant change of structure in the company in accordance with article 13 in the recast Directive;
- ii. There is no specific provision in the existing EWC agreement on the procedure to follow for an adaptation, or there is a conflict between two or more applicable agreements;
- iii. Central management initiates negotiations on its own initiative or at the written request of at least 100 employees or their representatives in at least two different Member States.

It is our joint understanding that once these three conditions are fulfilled, articles 5, 6 and 7 of the recast Directive apply to the negotiations. This may lead to the conclusion of a new agreement within the three-year negotiating deadline foreseen in article 7.1 which would then be subject to the recast Directive.

We hope that these elements will be helpful for the work of the Expert Group on EWCs and remain at your disposal for further clarifications you may want to ask us in the future.

Sincerely yours,

Catelene Passchier  
Confederal secretary  
ETUC

Jørgen Rønne  
Chairman of BUSINESSEUROPE's  
Social Affairs Committee

CC: Mr Sjoerd Feenstra  
Ms Evelyne Pichot