

ETUC RESPONSE TO THE COMMISSION'S ACTION PLAN ON EUROPEAN COMPANY LAW AND CORPORATE GOVERNANCE

Brussels, 26 April 2013

The ETUC expresses its disappointment with the new Action Plan of the European Commission on European Company Law and Corporate Governance (COM (2012) final). Acknowledging the importance of modern European company law, the ETUC has participated in two consultation exercises in a constructive spirit. We highlighted the need for a fundamental change of objectives, away from regime competition and the deregulatory agenda and towards coherent and sustainable governance¹.

The “new” Action Plan does not distance itself from the old approach. Already, the previous 2003 Action was inspired by a unilateral shareholder-value oriented approach which encouraged competition between national company law systems. The result of this Action Plan was a damaging shift towards a deregulated model of corporate governance in many Member States.

The failure of corporate governance which culminated in the current financial, economic and social crisis strengthened the assumption that the European Commission would draw some lessons from it and say goodbye to the shareholder-value approach, steering towards a stakeholder approach and a future-oriented sustainable company with stronger stakeholder rights, in particular strengthened workers’ involvement. A massive increase of inequality was the consequence, and one of the main contributors to this trend (which was especially strong in the US and UK where the share of income for the top 1% doubled) was the huge increase in the remuneration received by the top management of the largest companies. One relevant factor which would restrain the upward spiral of remuneration would be the inclusion of workers’ representatives on company boards. The ETUC welcomes that the European Commission agrees with the European Parliament’s proposal to cap bonuses.

The Action Plan does not live up to our expectations that a sustainable path of a more balanced and fairer European company law will be followed. A strengthening of workers’ involvement is not on the agenda. The communication of the Commission which is presented as “fruit of the 2012 public consultation” shows that the shareholder oriented experts remain rather influential in policymaking networks. A major objective of the future initiatives will be to avoid “unnecessary burdens for companies”. The main lines of action are “enhancing transparency”, “engaging shareholders” and “simplifying cross-border operations of European businesses”. With regard to workers’ rights, the Commission merely intends to take action to encourage employee share ownership – something which nobody has asked for in the middle of the deepest crisis since the Great Depression²! The ETUC renews its calls on the Commission to start a reflection about strengthening basic European standards for workers involvement (information, consultation and board level representation).

¹ See ETUC concrete proposals on the future of European company law:

http://www.etuc.org/IMG/pdf/Resolution_European_Company_Law_March_2012_EN.pdf (March 2012)

² See ETUC conditions for employee financial participation:

http://www.etuc.org/IMG/pdf/Resolution_European_Company_Law_March_2012_EN.pdf (March 2013)

The Commission's apparent unwillingness to draw lessons from past mistakes is particularly evident in relation to the European Private Company (SPE) Statute. The Action Plan ignores the obvious reasons behind the blockage of the proposal. Whilst no one has ever contested the need to facilitate business for European SMEs, it is the deregulatory approach contained in the proposal which has been poisoning the debate.

Similarly, the ETUC is extremely concerned about the Commission's analysis on transfer of seats. The Action Plan focuses almost exclusively on business needs, ignoring wider society's interest in company mobility. Europe does not need an instrument promoting delocalisations and letter box companies! Essential preconditions for an acceptable Directive on transfer of seats include:

1. a link between the main place of business and the registered office, and
2. meaningful workers' involvement

Finally, given the general tone of the Action Plan, the ETUC is worried that the announced codification or simplification risks further weakening of worker involvement and other regulatory standards.

In sum, the ETUC asks the European Commission to finally draw lessons from the crisis and bridge the gap between the worker involvement and sustainability approaches. There was a time where the European Commission pursued a project of company law harmonisation based on high standards which guaranteed a level playing field and discouraged regime competition between the Member States. But the past two decades have seen a clear shift towards regulatory competition eroding national standards of company law. It is high time to put fairness back into unbalanced proposals which risk strengthening the shareholder model and finally jeopardizing the European social model. The ETUC calls for a new Action Plan.