

The development of transnational agreements

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- **Emergence of a transnational negotiation's activity**

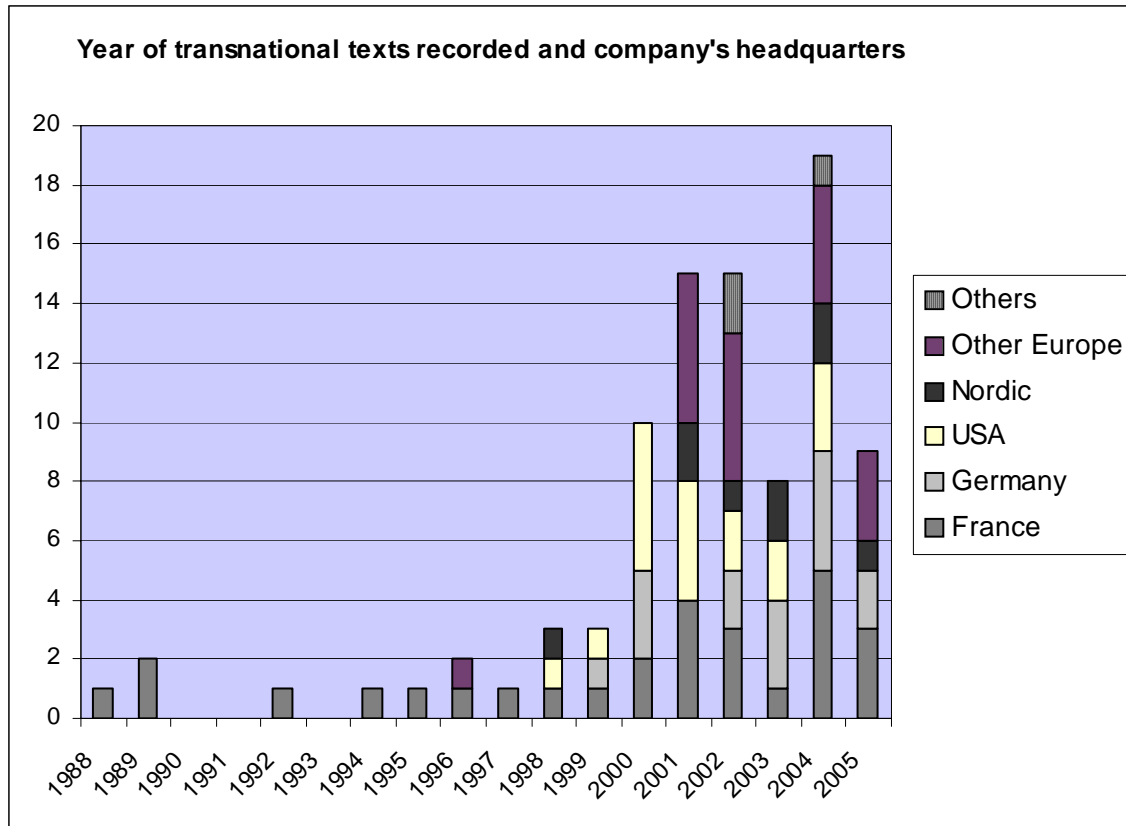
At corporate level, the emergence of a more or less formalised activity of transnational negotiation is clearly visible. The Commission recorded 91 texts resulting from forms of transnational negotiation at company level, most of them having been concluded in the last few years. Companies headquartered in France, Germany and the Nordic area are largely present in this emerging process, together with American companies operating in Europe.

Outside the periods when the constituent agreements are being established or renegotiated, the European Works Councils are increasingly going beyond their information and consultation role and, either with or without the national, European and International trade union organisations, are drawing up transnational texts that are intended to apply in several European countries, notably on:

- health, safety and the environment
- data protection
- equal treatment at work
- mobility management
- mergers, closures, relocations and restructuring

During the last few years, texts have also been negotiated between companies and parties representing the employees at European or International level on issues related to corporate social responsibility, notably on fundamental rights, and which in scope go far beyond Europe. These texts are usually known as "International Framework Agreements".

Companies involved in this process include General Motors and Ford, which have concluded a series of agreements on restructuring, Arcelor, ENI or Lafarge, which have developed a European health and safety policy, Total or Deutsche Bank, which have developed measures concerning employment trends, mobility or training, Unilever, GE Advanced Materials or Philip Morris, which have produced texts on data protection, Volkswagen, Rhodia, Suez, Club Méditerranée, Philips or Rheinmetall, which have concluded agreements on fundamental rights and social responsibility and Danone, the pioneer.



The increasingly transnational nature of restructuring, the emergence of the first European companies and the future transnational merger or transfer operations all point the way to an intensification of this transnational negotiation at company level, together with developments in the field of Corporate Social Responsibility.

Overall, the general mobility of production factors and the growing number of businesses operating on an international scale fundamentally affect the ability of the social partners to act in a purely national context and are among the reasons why transnational negotiation activities are emerging both within Europe and beyond.

- **The questions raised by transnational negotiation**

The question of the **actors entitled to negotiate**, their representativeness and their mandate is crucial to every negotiation system. As counterparts to the company's management, there are various scenarios at present, involving one or more of the following actors in the negotiations and the signature of the text, with different practices in terms of representativeness and mandate:

- the European Works Councils, parties to two thirds of the recorded texts
- European and/or international workers' federations, also parties to two thirds of the recorded texts

- national workers' organisations, which are, together with the other actors, signatories of around twenty texts resulting from transnational negotiations

The question of the **legal effect** of the texts resulting from transnational negotiations is very complex in the present situation, depending on very different national mechanisms¹, on the presence or absence of national unions among the signatories, on the rules of private international law and whether the text contains a unilateral commitment by the employer.

These questions of the legal effect and of the **interrelation with the other levels of norms** must be at the centre of any discussion on the development of transnational agreements. This interrelation is little addressed in the existing texts and may raise concrete problems when implementing substantial provisions included in these texts, notably on equal opportunities. In particular, is to be determined whether and, if necessary, under what conditions transnational agreements would:

- be subject to Community legislation and national legislation,
- have an impact on individual labour relations,
- be binding on third parties,
- take precedence over or would be subject to National collective agreements,
- be subject to transnational agreements of a higher level and take precedence over transnational agreements of a lower level.

The place of transnational agreements concluded at company level in the systems and levels of collective bargaining and in the European social dialogue should be analysed.

In terms of **form, procedure and content**, the current texts resulting from transnational negotiations are very disparate. Formalisation would be necessary for the conclusion of transnational collective agreements to which the signatory parties would wish to have legal effect.

Maximising the capacity of the transnational negotiation to respond to the challenges which the European social players must face has therefore to be analysed in light of the legal context in which the practice is developing. In particular, the possibilities and limits of the instruments the social partners have today at their disposal in order to formalise the nature and results of transnational negotiation, to give effect to their agreements and to allow them to resolve the problems they face should be clarified.

¹ At present, only the texts signed by National unions can, if concluded according to the National rules of the competent Member state, constitute collective agreements being able to produce the legal effects particular to that kind of texts resulting from an agreement between different parties. The constituting elements of a collective agreement vary from one Member state to another, including in particular the respect of procedures for the negotiation, requirements on the content, criteria regarding the representativeness and the mandate of the signatories as well as registering requirements. National Laws vary also as regards the obligatory and erga omnes effects of text having the nature of collective agreements

- **Working method of the Commission**

The interest of developing transnational agreements, in particular at company level, and the questions raised in the present situation are at the origin of the Commission's initiative, as provided for in the **Social Agenda**², intending to create a **European framework** at the disposal of the social partners willing to formalise the nature and results of their transnational collective negotiation³.

To provide a basis for the analysis and initiatives on this question, a **legal study** has been launched, in execution of a call for tenders from the Commission, coordinated by Prof. Eduardo Ales of the University of Cassino (Italy). The Commission's services also **collected and analysed transnational texts** concluded at company level.

These and other studies initiated on this issue will provide a basis for an **open debate** with the stakeholders on the questions raised by the development of transnational negotiation processes and the issue of an optional framework for transnational agreements. A seminar is organised by the Commission in Spring 2006 to this aim. A formal consultation will occur later depending on the progress of reflections and preliminary studies

² COM(2005) 33 final of 9 February 2005

³ With regard to transnational situations only, this European framework would add to the instrument of social dialogue at national level and would not aim to replace or harmonise it in any way. It would be purely optional, the parties remaining free to retain informality in their bargaining and the outcome of it.

**Examples of texts of transnational character
negotiated at corporate level**

Enterprise	Date	Title	Field
Danone	1988	Joint opinion	Principles and common work programme
	1989	Project	Economic and social information
	1989	Action programme	Equality between men and women
	1992	Framework agreement	Training
	1994	Joint declaration	Trade union rights
	1997	Joint opinion	Management of changes of activity (training, redeployment, consultation, trade union rights)
	2001	Agreement	Social measures in cases of restructuring
Accor	1995	Agreement	Fundamental social rights
ENI	1996	Agreement	Health & safety
	2002	Agreement	CSR, social dialogue
Vivendi	1996	Joint declaration	Fundamental social rights
	1999	Charter	Safety at work
Ikea	1998	Code of conduct	Fundamental social rights
Suez	1998	International social charter	Fundamental rights, principles of human resources management
	2002	Charter	Health & safety
Kraft Jacobs Philip Morris	1998	Code of conduct	Smoker/non-smokers
	1999	Code of conduct	
		Principles	Introduction of the euro
	2001	Agreement	Data protection
Deutsche Bank	1999	Joint position	New structures, job security and employability
Ford	2000	Agreement	Sale of Visteon: employees' statute, representation and Visteon contracts
	2000	Agreement	Joint venture CFT: maintenance of Ford contracts, investments
	2003	Framework agreement	Social rights and CSR
	2004	Agreement	IOS restructuring: maintenance of jobs, investments, employability
General Motors	2000	Framework agreement	Consequence of the GM/Fiat merger on the statute of employees and representation
	2001	Framework agreement	Current restructuring
	2001	Framework agreement	Restructuring of Opel
	2002	Agreement	CSR
	2004	Framework	European restructuring
Faber Castell	2000	Framework agreement	Fundamental social rights
Air France		Joint opinion	Mobility
		Joint opinion	Position of sales and marketing staff
	2001	Social charter	Fundamental rights, human resources policy
Freudenberg	2000	Global Agreement	Fundamental rights, Health & Safety
Hochtief	2000	Code of conduct	CSR
Carrefour	2001	Agreement	Fundamental rights
Accor	1995	Agreement	Fundamental social rights
Club Méditerranée	2001	Joint declaration	Sub-contracting
	2004	Agreement	Fundamental rights and mobility Europe and Africa

Enterprise	Date	Title	Domain
Chiquita	2001	Agreement	Fundamental rights
Marazzi	2001	Declaration	Health & Safety
OTE	2001	Global agreement	Fundamental rights
Unilever	2001	Brochure	Responsible restructuring
	2004	Joint declaration	Data protection
Skanska	2001	Agreement	Fundamental rights
Statoil	2001	Agreement	Social dialogue
Telefonica	2001	Agreement	Fundamental rights
Triumph	2001	Code of conduct	Fundamental rights
Sara Lee			Health & Safety
Merloni	2002	Declaration of agreement	Fundamental rights
Anglogold	2002	Agreement	Fundamental social rights, social dialogue
Diageo	2002	Annex to EWC agreement	Good restructuring practices
DaimlerChrysler	2002	Principles	CSR
Fonterra	2002	Global agreement	Trade Union rights, minimum labour standards
Endesa	2002	Protocol	Social dialogue
Ballast Nedam	2002	Framework agreement	Fundamental rights, subcontracting
Norske Skog	2002	Agreement	Fundamental rights
GE advanced materials (GEPE)	2002	Agreement	Electronic communications
	2003	Annex to EWC agreement	Negotiating mechanism between EWC and management
	2004	Agreement	Recruitment data
Volkswagen	2002	Joint declaration	Social rights and social relations
Dexia	2002	Principles	Social management
Usinor-Arcelor	2002	European convention	Health & safety
	2004	European convention with preparatory groups	Health & safety
	2005	Preparatory group	Developing skills
	2005	Global agreement	CSR
Leoni	2003	Declaration	Social rights and social relations
Lafarge	2003	European meetings and joint declaration	Health & safety
Schlumberger	2003	Ad-hoc committee	Conditions for the transfer of activities
GEA	2003	Declaration	CSR
Rheinmetall	2003	Code of conduct	CSR
ISS	2003	Letter of agreement	Fundamental social rights
SKF	2003	Code of conduct	Ethics, Trade union rights
H&M	2004	Agreement	Fundamental social rights
Philips	2004	Text written by management in consultation with the EWC	Management of restructuring
EDF	2004	Agreement	CSR
Bosch	2004	Joint declaration	CSR
Lukoil	2004	Global agreement	Fundamental rights
Impregilo	2004	Framework agreement	CSR
Rhodia	2004	Agreement	CSR
Porr	2004	Agreement	Data protection
Total	2004	Agreement	Social dialogue, forward-looking management of jobs, restructuring
	2005	European Agreement	Equal opportunities
Prym	2004	Declaration	Social rights and industrial relations
Renault	2004	Declaration	Fundamental social rights

Enterprise	Date	Title	Domain
SCA	2004	Agreement	Cooperation and CSR
Röchling	2004	Code of conduct	Fundamental social rights
BMW	2005	Joint declaration	CSR
EADS	2004	Framework agreement	CSR
AXA	2005	Joint declaration (to be included in future reviewed EWC agreement)	Restructuring
Veidekke	2005	Framework agreement	CSR, Health & Safety, wages, working time
Schwan Stabilo	2005	Global framework agreement	Fundamental social rights