

Restructuring and anticipation dimension of existing transnational agreements

Analysis and overview table

Table of contents

Introduction

I. Main fields and subjects covered

II. Signatories

III. Scope

IV. Type of provisions

V. Implementation, follow-up, monitoring and dispute settlement provisions

Conclusion

References

By Mélanie Schmitt, Phd in Law, Researcher at the Robert Schuman University of Strasbourg (France).

May 2008

Report done for the European Commission (EMPL/F/3 – Directorate-General for Employment, Social Affairs and equal Opportunities – Unit "Adaptation do Change and Working Conditions)

Introduction

Emergence of a transnational negotiation's activity on restructuring and/or anticipating change

Since the early 2000s, an emerging phenomenon can be observed at corporate level, consisting in a transnational negotiation's activity on restructuring and/or anticipation of change. The joint texts resulting from this process cover situations located in the different countries where the European/multinational companies operate or in those ones affected by a restructuring plan. Most of these transnational agreements have been concluded at companies headquartered in France (13) and at companies based or mainly operating in Germany (11) and Italy (4).

Context

In its document that launched the first phase of consultation of the Community cross-industry and sectoral social partners, entitled "Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring" (2002)¹, the European Commission focuses on the central role of social partners by stating that:

"Managing change requires solid partnerships and commitments. It is built on dialogue and a common understanding of the challenges and the opportunities change brings. This is particularly relevant in the context of restructuring".

The dialogue among cross-industry organisations began in October 2002 in the framework of "joint seminars" where ETUC, UNICE/UEAPME and CEEP discussed a number of case studies of restructuring. This finally led in October 2003 to a document entitled "Orientations for reference in managing change and its social consequences"², which underlines "the importance of continuous, quality communication with workers and/or their representatives" and the "existence of a climate of confidence between them and management" as "key factors" in managing restructuring and its social effects.

Pursuing the approach adopted in its communication adopted in March 2005 and entitled "Anticipating and accompanying restructuring in order to develop employment: the role of the European Union"³, the European Commission also develops a positive dimension of structural corporate changes:

"Despite its sometimes painful social consequences, corporate restructuring is not only inevitable but also a driving force for change. It contributes to increasing productivity and to the introduction of new technologies. In that sense, it is important that it is not simply ignored or opposed as such. Properly taking into account and addressing the social impact of restructuring greatly contributes to its acceptance and to enhance its positive potential. This implies combining in an effective and balanced manner the interests of businesses, faced with changes in the conditions governing their activity, and those of employees, threatened with the loss of their jobs".

The necessary conciliation between economic adaptation of European companies and security for workers implies a close co-operation between management and trade unions and/or employee representatives. This co-operation expresses itself in social dialogue at company level, which has been established by the 1994 EWC directive. Change in corporate structures in a rapidly evolving business environment was clearly one of the main drivers behind the proposal and adoption of the EU Directive on EWCs (Carley and Hall 2006, p. 1).

Many Community-scale undertakings and groups gone beyond the information and consultation rights afforded by the directive, by negotiating "substantial agreements" with their EWC and in some cases with European or international federations, or with local trade unions. Joint texts addressing restructuring and/or anticipating change constitute an important part of those.

¹ http://ec.europa.eu/employment_social/social_dialogue/docs/changement_I_en.pdf

² http://ec.europa.eu/employment_social/dsw/public/actRetrieveText.do?id=10407

³ http://ec.europa.eu/employment_social/news/2005/apr/com_restruct_en.pdf

Transnational agreements analysed in the present study

The information available indicates that 37 joint texts signed in a total of 22 companies are dealing with restructuring and/or anticipation on change, in a specific, general or brief manner. These agreements have been listed on the ground of the list established by the Commission in May 2006⁴ and renewed at the end of 2007. As the content of some of them is not (yet) available, the present study also refers to two previous ones made by Carley (2001) and by Carley and Hall (2006).

Whereas joint texts initially aimed at regulating the social consequences of a restructuring plan which had been announced by management (except two texts concluded at Danone), the most recent ones focus on adaptation an anticipation of economic and structural changes. This major trend is completed by a second and more general tendency which consists of the emergence of “international framework agreements” (IFAs)⁵ explaining the Company social policy and often dealing with Corporate social responsibility (CSR). The issues of restructuring and/or anticipation are sometimes part of the matters treated in these global agreements⁶.

Most of the joints texts analysed in this study are “framework agreements”⁷, even if there are important differences between them, regarding to their title, their signatories, their scope, as well as the type of their provisions and their modalities of implementation, follow-up and dispute settlement.

The first chapter of this study is dedicated to the subjects covered by the 37 joint texts. This first approach will allow us to classify these agreements into four groups.

The following chapters concentrate on the signatories (II), the type of the provisions and the status of the texts (III), their scope (IV) and their implementation, follow-up and disputes settlement provisions (V).

In conclusion, we will try to point the major tendencies and the lessons that can be drawn from this emerging transnational negotiation’s activity on restructuring and/or anticipation of change.

I. Main fields and subjects covered

Among the 37 known joint texts that have been listed, four groups can be identified.

In the first group we find agreements specifically dedicated to the social consequences of an announced restructuring plan. The second group comprises agreements laying down principles and general rules to be applied in the event of a (potential) restructuring plan. The third group consists of agreements specifically or mainly dealing with the anticipation of change. Texts of the fourth group are global agreements making a reference to restructuring and/or anticipation of change.

These four groups only provide a framework designed to present each of the texts and to point the main differences between them as to the manner they treat restructuring and/or anticipation of change. This typology is based on the object of the texts. It is therefore some of them can be classified into two different groups.

⁴ http://ec.europa.eu/employment_social/labour_law/docs/transnational_agreements_table_en.pdf

⁵ International framework agreements are global instruments negotiated in transnational companies with the purpose of ensuring the international labour standards. By 2002, the term International Framework Agreement had been adopted as a means of clearly distinguishing the negotiated agreements from the type of voluntary codes of conduct that corporations were increasingly adopting unilaterally to ostensibly demonstrate their commitment to corporate social responsibility (CSR).

⁶ The global agreements which do not clearly refer to restructuring or to anticipation of change exceed the scope of this study even if some of their provisions (especially those ones dealing with skills and training) are likely to be relevant in such a context.

⁷ The term ‘framework agreement’ is intended to highlight the particular nature of an agreement as providing an outline of general principles and rules that have to be implemented at lower levels: in the Member States when such joint texts are adopted at cross-industry or sectoral levels, or in each business unit of the transnational company in the case of transnational agreements.

I.1. First group: texts addressing concrete restructuring events

The transnational agreements belonging to the first group are specifically dedicated to the social consequences of a specific restructuring exercise. **Ten agreements** have been negotiated after the announcement of a restructuring plan, in order to lay down a set of guarantees for the employees affected by this operation (Carley and Hall, p. 26). These specific circumstances thus prompted negotiation and adoption of texts at Danone, DaimlerChrysler, Ford (2), General Motors (5) and Unilever.

They handle the consequences of the restructuring for the employees affected and sometimes economic issues (Ford Visteon 2000). Their provisions deal with four subjects addressing guarantees for employees aiming at mitigate the effects of the restructuring on their jobs: avoiding redundancies (a), guarantees linked with transfer and redeployment (b), other accompanying measures (c) and procedural rules on employee representation and social dialogue (c).

a) Avoiding redundancies

When plants closures and jobs reductions are planned, agreements often include commitments to **avoid compulsory redundancies** (Danone 2001, GM 2001 ‘Olympia’ and ‘Luton’, GM 2004) and even any redundancies (Ford 2004). In its ‘Astra’ agreement signed in 2008⁸ General Motors also undertakes to avoid dismissals, but only until the end of 2016. Jobs cuts to come in 2011 at the Antwerp plant when GM Europe stops Astra production would be through accompanying measures (see c).

DaimlerChrysler takes the specific pledge to exclude lay-offs for operating reasons for employees who move to a National Sales Company (NSC) in the context of transfer op operations. The Framework Regulation establishes a distinction between this first case and the case of transfer of ownership, for which DaimlerChrysler doe not commits to avoid any redundancies: ‘If human resources measures are necessary within two years after the transfer of ownership, these shall be implemented as far as possible on the basis of socially compatible measures’.

Avoiding plants closures is one of the aims of GM agreements (2001 ‘Olympia’ and ‘Luton’, 2004), which assert the priority of maintaining employment at the locations affected by a restructuring. The 2008 GM framework agreement contains similar provisions as to the production of the Astra compact car, but the safeguarding of the five plants concerned is only ensured until the end of 2016.

b) Guarantees linked with transfer and redeployment

When plant closures and redundancies are unavoidable, agreements generally set up accompanying measures, as **internal and/or external redeployment** (Danone 2001, GM-Olympia 2001, GM Luton 2001, GM 2004, Unilever 2005).

For example, Unilever will help people who will not have an ‘ongoing role in the business’ to find alternative employment before their current position ends, notably by working with the external service provider to identify opportunities for redeployment of its employees into new service organisation or elsewhere in the service provider’s business in which these employees are transferred⁹.

Employees who are transferred after a plant closure often benefit from the **maintenance of employment terms and conditions** and/or job security (Danone 2001, GM 2001 and 2004, Unilever).

Unilever thus takes the pledge to maintain a similar total remuneration – including pensions – to employees who transfer in the same country. Whenever he/she is laid off within the three years of the transfer, he/she will continue to benefit from this ‘package’. Further, employees transferring in an eastern country where the provider is based will be eligible for a similar level of remuneration to an equivalent Unilever employee in that country for three years.

The same applies when employees are ‘automatically’ transferred to another company in consequence of a spin-off (Ford-Visteon 2000) or an alliance (GM-Fiat 2000). As stated in the Ford agreement (2000),

⁸ This text is not yet available. See:

http://www.gmworkersblog.com/languages/english/gm_europe_guarantees_5_plants_through_2016_union

⁹ We refer to Carley and Hall study (2006, p. 57).

“for the duration of their employment, terms and existing conditions Ford employees, who transfer to Newco, will mirror Ford conditions (including discretionary pensions in payment increases) in their respective countries (lifetime protection)”.

The Danone joint text (2001) deserves particular attention as it sets up specific guarantees for employees transferred outside the Danone Group:

- a trial period for employees in their new jobs. During this period which length should be negotiated locally but not be less than four weeks, they will remain on the Danone payroll;
- Danone will ensure that employers hiring former Danone employees offer permanent employment contracts, unless temporary contract is a common practice at the company concerned and provided this is reasonable to anticipate that the job will become permanent within a given period;
- Danone will allow these employees who are the laid off once more to use all of Danone’s placement services.

The same agreement also provides similar detailed guarantees to employees who are transferred to another Danone facility after the closure of its biscuits division plants.

Several of these First group texts also contain a commitment to ensure **the return of the transferred employees** in their former company. This is the case for the Ford-Visteon agreement: employees working in Visteon activities can decide to be reassigned to Ford and will receive job offers from Ford. These flow-backs to Ford, which will be implemented in a five-year period from the date of full spin-off, will though cease if an employee refuses two offers of suitable vacancies in Ford.

In addition, the Ford employees who transfer to Newco at the time of the legal separation “will have the opportunity to apply for vacancies within Ford which are to be filled externally” and they “will be given preference over external candidates”. On the contrary, the GM-Fiat Alliance agreement contains such a provision to apply in the event of a failure of the alliance: “employees will be afforded the right to return to existing former employment location”.

The DaimlerChrysler Framework Regulation is less favourable for employees transferred to NSCs since they are not given the guarantee to be reassigned to the former employer:

‘If operations are abandoned in an NSC within a period of 3 years, the MPC will examine taking on the respective employees who moved to the NSC in the context of the transfer of operations, consulting in this case with the national employee representations and, if necessary, with the EWC’.

Furthermore, the benefit from the aforementioned measures sometimes depends on the **behaviour of the employees**.

The right not to be laid off and to be assisted in outplacement set up by the GM-Luton agreement (2001) “only applies to employee willing to accept reasonable job offers or, in the event of insufficient job opportunities, one of the alternatives described above”. A similar requirement exist in the GM framework (2004): “Efforts to place workers in reasonable positions will require an increased willingness of employees with regard to mobility and flexibility for the work location as well as for working time and practice”.

The 2001 Danone joint text also lays down a commitment towards the workers: they have to participate actively in their redeployment through the adoption of individual action plans. If employee have ‘persistently demonstrated passive behaviour’ regarding any future employment opportunities or have refused all proposals for future employment, the text allows forced redundancies.

c) Other accompanying measures (alternatives to transfer and redeployment)

Other accompanying measures are generally offered to employees affected by the restructuring plan and who do not benefit from a transfer to another company:

- early retirement: GM (Olympia 2001, Luton 2001, 2004, Astra 2008), Unilever 2005
- voluntary separation: GM (Olympia 2001, Luton 2001, 2004)
- part time work programmes: GM Luton 2001
- outplacement assistance: GM (Olympia 2001, Luton 2001), Unilever 2005
- starting up a business: Danone (2001) will make available to its employees company resources (training, counselling and assistance services, financial and practical aid)

- compensation payment after the termination of contract, according to the local social compensation plan: Unilever 2005
- natural attrition: GM Astra 2008.

In the 2001 Joint understanding Danone makes several exceptional commitments if a new operation is started up at or near the facility that has been closed, in order to favour hiring of its former employees:

- to pay for training in order to allow its former employees to attain the necessary skills to qualify for jobs with the new employer (see also Unilever);
- to seek to find jobs for its employees at 'generally comparable rates' and, if not possible, to make up all or part of any shortfall in earnings ,for the same working hours, for a period of at least one year.

The 2005 Unilever agreement provides similar guarantees: the group has agreed with the new owner that it will offer appropriate vacancies to Unilever employees when recruiting externally; Unilever employees will have the first right of application (Carley and Hall, p.58).

Social guarantees can also indirectly result from provisions addressing **economic issues** (Ford-Visteon 2001). In order to ensure the future of its former employees, Ford commits "to provide sourcing to Newco in Europe" and, along with Newco management, to "comply in full with the existing investment agreements which affect the Newco facilities" and "to take the necessary steps to provide the opportunity to enhance or develop a viable business situation for these plants". Newco also takes the pledge to maintain and to develop its activities in these facilities.

d) Procedural rules on employee representation and social dialogue

Two types of provisions can be identified. The major part of the texts focuses on the collective consequences of a restructuring, whereas one agreement handles participation of employee representatives to the definition of concrete restructuring operations.

The consequences of transfer on collective agreements are treated in the Ford-Visteon and in the GM-Fiat and GM-Luton agreements, but the protection afforded to employees seems lower in the latter than in the former. Whereas 'all existing Ford collective agreements (...) will be fully adopted by Newco', the GM-Fiat agreement states that the existing collective agreements will be the subject of local/national negotiations. They will nevertheless 'stay in force as collective agreements'. This latter provision does not appear in the GM-Luton agreement, so that collective agreements are likely to be reviewed at lower levels.

These three agreements also contain **rules addressing the employee representation** until the restructuring will be effective and/or after the transfer of employees. Thus the GM agreements focus particularly on this subject and aim at preserving the skills and rights of the GM EWC, the European Employee Forum (EEF), as well as those of the national trade unions by stating that 'union recognition will remain the same'. The GM-Fiat agreement takes into account the specificity of the alliance and tends to avoid any form of double representation at GM and at Fiat. Furthermore, the agreement states that 'unless prohibited by law, national negotiations will ensure that existing employee representation (...) will be retained'. The DaimlerChrysler Framework Regulation, signed on 31 July 2007, contains similar provisions, adding that "The respective national protection rights apply to the individual members of the employee representation bodies".

The 2001 Ford agreement states that Visteon is to become a member of the employers' association for the metalworking industry and that accordingly, collective agreements signed with IG Metall will be valid in each facility. Similar rules will be adopted for the United Kingdom. In addition, it is mentioned that 'Newco will establish a new, independent EWC'.

The agreement signed at GM in 2004 is an exception as **it involves the employee representatives in the ongoing economic restructuring process**: "Both parties will examine potential business opportunities in order to lessen the impact on employees" and, further, "both parties agree that Joint Ventures are the general rule".

I.2. Second group: texts addressing management of potentially arising restructuring

The second group consists of agreements which are dedicated to **the social aspects of a potential restructuring**. Contrary to the first group agreements, negotiations did not occur in a reactive way, as a response to changes in a company, but was designed to lay down a joint planning for restructuring in advance, by negotiating general rules and/or more concrete measures to apply to their employees in this event. **Eleven joint texts** fit this qualification; they were signed at: Axa, Danone (1997), Deutsche Bank, Dexia (2002¹⁰ and 2007), Diageo, EADS (2007), GM (Outsourcing 2008), RWE, Total (2004) and Unilever (2001)¹¹.

These agreements aim at explaining the social policy of the Groups in the event of restructuring and staff changes, by setting up ‘the master guidelines and social minimum standards’ (Deutsche Bank). Some agreements strive to justify the need for economic and thus social changes in a context of globalisation (Unilever, RWE, Total 2004).

Moreover, some joint texts indicate in which situations they apply. It is the case of the RWE agreement (see art. 1), the Dexia Principles agreed in 2003, and the Joint understanding signed at Danone on 9 May 1997. The purpose of the latter one is:

“to introduce additional provisions beyond those already in existence within the Companies of Danone Group, applicable in the event that new techniques, organisational processes are implemented, or in the case of substantial changes in production volume, transferral of substantial part of production, partial or full closings of facilities and, in general, in all situations whereby working conditions or the nature of employment contracts are significantly affected”.

Several other texts contain specific provisions applying in the case of business disposals (Unilever brochure, Total 2004, Dexia 2007).

By setting principles and concrete measures to apply in the event of restructuring in advance, the second group joint texts generally intend to promote job security and employability and to mitigate the impact of restructuring for employees (Dexia 2002, Deutsche Bank, RWE, Unilever). In summary, as stated in the Unilever brochure, companies seek to “restructure in a socially responsible manner”. The joint texts provide both individual guarantees (a) and collective ones (b).

a) Individual guarantees

Companies often take a **pledge to avoid, as far as possible, jobs reductions** (Axa, Diageo, RWE) and to seek **alternatives measures to mass layoffs**:

- internal reassignment before decision to lay off (Dexia 2002)
- voluntary departures (Axa, RWE) or early retirement (Unilever)
- financial compensation (RWE, Unilever)
- part-time jobs (RWE); redistribution and shortening of working hours, reductions in overtime (Danone 1997)
- geographical mobility (Axa, Dexia 2002, RWE, Unilever)

For cases where forced redundancies are unavoidable, agreements contain **accompanying measures**.

A guideline, sometimes a commitment is laid down in order to favour **internal and/or external redeployment** by providing tools and/or practical and financial assistance. The main measures are:

- **vocational training** (Danone 1997, Axa, Deutsche Bank, Dexia 2002, Diageo, RWE)

¹⁰ The Principles of social management at the Dexia Group were agreed on 26 June 2002 but, according to the amendment concluded in 2007, they were formally adopted at the EWC meeting of 25 June 2003.

¹¹ The texts concluded at Diageo, EADS and GM (2008) are not (yet) available. For Diageo, see Carley and Hall (p. 29); for EADS, e-europenews 21 November 2007, n° 070956 – www.eeuropenews.com; for GM, http://www.gmworkersblog.com/languages/english/european_framework_guaranteeing_for_the_first_time_information_and_consultation_rights_and_social_minimum_standards_covering_outsourcing_applicable_to_all_general_motors_europe_sites

- **outplacement assistance** (Danone, Diageo, Unilever, Total 2004) and particularly in the case of business disposal (Total 2004, Dexia 2007)

Three of these texts (Danone 1997, Dexia 2002, Total 2004) treat training issues as a part of a global forward-looking administration of the employees (see section I.3).

In some agreements, there is a further pledge to comply with the national legal framework (Unilever, RWE) and, more precisely with ‘respective national legislation, pay-bargaining system’ (Deutsche Bank).

A few agreements contain more general commitments according to which the employees’ rights shall be preserved (RWE) or an adapted solution has to be provided to each worker (Total 2004).

On the contrary, the GM framework agreement on outsourcing (2008) gives to employees transferred to a supplier concrete social guarantees that are considerably above the legal standards in the affected countries. Indeed, these workers shall be treated as if they continued to be employed by GM for a minimum of five years and they benefit from a right to return at GM for a same period in the event that the company contract with the supplier expires.

Additionally, some joint texts plan ‘**site rehabilitation**’ partly with concrete actions foreseen (Danone 1997, Total 2004), partly in a less specific manner (Deutsche Bank, Unilever). For example, the 1997 Danone Joint understanding states that:

“Management, aware of the economic repercussions for communities where jobs are being eliminated, shall propose to support efforts aimed at creating new jobs and stimulating economic development through measures designed to promote the development and growth of local business firms. Such support may, if appropriate, be given jointly with local government authorities. It may consist of various measures, such as consulting services, market or feasibility studies and possibly financial assistance”.

As to the specific provisions dealing with business or majority shares disposals, two joint texts (Total 2004, Dexia 2007) oblige the group to take into account the social consequences resulting for employee from these operations. The Dexia amendment signed on 19 December 2007 is much more precise as it defines social criteria that have to be included in the selection of the successor.

b) Collective guarantees

In addition, all these joint texts set up **procedural rules on social dialogue**, except the Diageo ‘statement of best practice guidelines on redeployment, redundancy and outplacement’ which seems only handle individual issues (see Carley and Hall, p. 29).

The groups commit themselves to inform and consult the employee representatives – EWC (see particularly EADS 2007, GM Outsourcing 2008, RWE) and/or local trade unions and representatives (Axa, Danone 1997, EADS 2007). The information-consultation process generally concerns the restructuring plan and its social impact (see the 2003 Dexia Principles, which set up a commitment to see to it that the companies concerned by staff reductions open negotiation specifically regarding the accompanying measures).

Some agreements contain detailed provisions on **the modalities** of these procedures and **the means offered to employee representatives**: timely and meaningful information on restructuring plans (Unilever, Dexia 2002 and 2007, Total 2004); the right to submit alternative proposals (EADS 2007, GM framework 2008); the organisation of extraordinary meetings (Danone 1997, Total 2004).

For example, the Danone agreement specifies the modalities and means that are offered only to national trade unions or, in their absence, to employee representatives:

- the moment: ‘consultations should take place as early as possible, and not later than 3 months prior to the expected changes, whenever said changes concern a significant number of jobs (partial or total closing)’;
- the material that should be provided to employee representatives;
- the right to submit proposals as alternatives to plans by management;
- the right to be assisted by an expert.

The EADS procedure appended to EWC agreement in 2007 more specifically focuses on the articulation between employee representatives involved at European and local levels. When a 'global industrial project' is planned, the EWC is informed and consulted prior to the national representation. If the project only affects one country, the procedure does only concern the national bodies.

Most provisions addressing collective issues reflect national legislation and do not go further. However, some texts go beyond the legal obligations. This is the case for the Dexia Principles which stipulate that 'In those countries where no specific legislation or legally organised representation of workers exist, the Group undertakes to see to it that the management of each business unit concerned does what it takes to establish a venue for exchange of views and concerted consultation'.

In the same way, some texts underline the entitlements of the EWC in the area of restructuring, by including the implementation of accompanying measures (Dexia), by providing more favourable rights in terms of the timing of information and meetings (Total 2004), or by organising respective interventions of the EWC and national employee representatives (Total 2004, EADS 2007).

I.3. Third group: texts addressing anticipation of change

The third group that can be identified is composed of agreements specifically dedicated to anticipation of change and more precisely to forward-looking management of jobs and skills. Thus, the aim of these joint texts is not to lay down a set of principles or rules to apply in the event of a restructuring plan, but to establish a long-term social policy with a view to ensure the future of employees whatever the organisational changes within the Groups. This approach which is the most recent one expresses itself into two agreements signed in July 2007, although some previous agreements already contained provisions developing such a long-term view. Seven companies signed such joint texts: Danone (1992), Dexia (2002), Eni (2001 and 2003), Schneider Electric, Suez and Total (2004 and 2007).

The Danone agreement reached in 1992 appears as a pioneering joint text because it concentrates on 'skills training' and connects this issue with the anticipation of restructuring. The Dexia "Principles of social management" and the 2004 Total platform also prefigure 'new generation' agreements as they contain provisions specifically handling 'forward management of skills' and 'long-term management of employment and workforce skills and the provision of training'.

First, these texts put in place planning 'studies' or 'approach' concerning jobs and training needs in a context of change (Danone 1992, Dexia 2002).

These agreements contain also specific provisions. As stated in the Danone agreement: 'Faced with foreseeable changes, skills training should give particular priority to the least qualified personnel so that they will be employable. Training could also be preceded by training in language skills'.

As to Dexia Group, it undertakes to set in place 'a system for monitoring the technological developments expected within the group and the labour market assumptions'.

The 2001 Eni Protocol on Industrial Relations (and the 2003 Pilot project that implements a part of this Protocol – the Annex 1 on Training) also contains several provisions explaining the changing context and the frame of reference which prompted the adoption of this Protocol. The Annex 1 'Training' is particularly relevant as it lays down a strengthened commitment to training that has to be implemented into 'continuous training programmes'. The introduction clearly defines an anticipating approach:

'The parties agree that the constant and rapid technological and organisational evolution of processes, products and services, as well as the globalisation of markets requiring a continuous enrichment and change of competencies, poses the need to update roles and positions as an unrenounceable necessity'.

In its 2004 agreement, Total focuses on the local level and takes the pledge to encourage actions aiming at anticipating technological, industrial and environmental changes and to provide a technical support to joint initiatives on vocational training. These actions shall be developed in co-operation with employee representatives in the framework of an anticipating dialogue that also have to be put in place. Additionally, the parties undertake to provide a European framework to professional mobility within Europe.

The object of the Total framework agreement signed in 2007 is much more specific as it concentrates on ‘support for creating or expanding small and medium-sized enterprises development’. This text notably aims at providing such a support to employee entrepreneurs who would like to create or acquire a business (‘essaimage’): they will be given time off work and will have access to advice, resources, technical support and financial aid.

The agreements signed at **Suez** (3 July 2007) and at **Schneider Electric** (12 July 2007) present an **innovative dimension** first as they are specifically addressing ‘Forward planning of job and skill requirements’ and to ‘Anticipation of change’, and second as the social dialogue aspect of anticipating change is particularly improved.

- **Management of employment and skills.**

In this first area, both companies undertake to ensure a more or less improved management of employment and skills, as well as the anticipation of future developments in occupations and work.

The Schneider Electric agreement highlights three priorities:

- identifying and anticipating skills requirements at both job and workplace level, relying to the Schneider global classification of vocational skills;
- undertaking individual competence reviews with each employee at least once every three years in order to identify adapted development actions (skill or competence audits);
- developing an active training policy open to all employees; this policy is dependent on local annual discussions that need to define training needs, the validation of new qualifications and the existence of information, support and advice services.

This anticipating/training policy has to be implemented by social partners at local level. Indeed, the Schneider agreement is conceived as framework agreement that defines orientations for future national agreements (a French group agreement has been signed afterward).

The Suez agreement, which is a company agreement in itself (an ‘accord de groupe’ under French law), contains more concrete and complete provisions dealing with:

- general forward planning tools, i.e. assessment for each country and each company;
- tools that have to be enhanced in order to ensure that individual developments of each employee are taken into account (communication of job offers, vocational training, validation of working experience, etc.);
- recruitment policy : a preference will be given to internal candidates; actions will be taken to ensure the junior associates’ integration and the transfer of skills between generations;
- mobility: anticipating internal and external forced mobility and encouraging and accompanying voluntary internal mobility;
- specific tools for workers from the age of 45;
- specific measures for anticipation and retraining of employee with physically strenuous occupations.

- **Social dialogue aspects in relation with anticipating change.**

Both agreements highlight the considerable importance of information and consultation at European level as well as local level so as to enable an ‘anticipatory social dialogue’.

The **Schneider Electric** agreement recognises the key role of the EWC in defining ‘the group’s priorities and major plans’ and its role for potential revision of the corporate strategy. The text enhances the scope of information given to the EWC:

‘The European Committee shall be informed each year of the group’s strategy, its possible impact on the development of competence requirements and trends in employment at Schneider Electric. This information shall be based on foreseeable economic developments, and in particular:

- market developments that may affect the group’s operations,
- the main development and adaptation plans,
- technological change,

- organisational change,
- changes of scope (including, when possible, subcontracting)
- employment trends, and job and competency trends within the group’.

This text additionally articulates the European dialogue with the information and consultation of representation bodies at local level.

The **Suez** agreement puts in place a system of “GPEC¹² committees” operating at European, national (if at least two subsidiaries are established in the country), regional and local levels. It also indicates their entitlements, their composition and the modalities of dialogue.

Remark:

It seems that the specific topic of these joint texts is due to the French legal context. Indeed, the French Labour code (art. L. 432-1-1) establishes an obligation to inform and to consult the Works council on the evolution of employment and skills in the company during the foregone year, as well as on the forecasts and actions that the management plans to implement in consideration of these forecasts.

Furthermore, the law n° 2005-32 of 18 January 2005 establishes an obligation to negotiate every three year on forward-looking management of jobs and skills. This obligation notably applies to Community-scale undertakings and Community-scale groups with at least 150 employees in France. The legislator defines the subjects that have to be negotiated between the Management and the trade unions representatives: the modalities of Works Council information and consultation on the Company’s strategy and its expectable effects on employment and pay; the creation of a “GPEC” plan as well as the potential associated supporting measures.

As a consequence, the Suez and Schneider Electric agreements are very close to local collective agreements, in spite of substantial differences between them.

I.4 Fourth group: agreements containing explicit references to restructuring and/or anticipation of change

The last group of joint texts comprises “global agreements”, “international framework agreements” which include references to restructuring and/or anticipation of change. The aim of these new generation joint texts is to set commitments for the company to observe certain principles and standards – i.e. the ILO Labour minimum standards – in its operations worldwide or in the Europe Union. Thus, they do not specifically focus on accompanying and anticipating changes, but a number of them make a clear reference to these issues (Carley and Hall, p. 34). A number of global agreements also illustrate a CSR approach including social aspects of restructuring and/or anticipation of change. **Ten agreements** have to be briefly mentioned.

Some of these agreements (EADS 2005, EDF, Generali, Lukoil, Rhodia, PSA, Renault, Suez 1998) **refer explicitly to the social management of restructuring**.

The EADS IFA states that ‘in the case of company reorientation or restructuring, (EADS) will do all it can to protect employment by means of all possible measures, including training and mobility, whenever appropriate’. A similar provision exists in social charters (Generali and Suez) as well as in the Renault Declaration (see also the EDF agreement on CSR).

Some other texts are less precise. Rhodia only pledges to give priority to efforts likely to minimize the impact of a restructuring on employment and working conditions, in compliance with local laws and practices’. In the same perspective, PSA commits itself to accompany employees in all changes of activities and employment. But these both provisions are integrated in a section dealing with general commitments aiming at ensuring the employability of the employee in a long-term view.

¹² ‘GPEC’ is the acronym for ‘gestion prévisionnelle des emplois et des compétences’ (forward-looking management of jobs and skills).

Information and consultation of employee representatives on restructuring is also often mentioned (Rhodia, PSA, Lukoil, Suez).

Some other global agreements (Arcelor, EADS 2005, EDF, Eni 2002, PSA) contain **a clear reference or even specific provision focusing on anticipating change**.

The Arcelor agreement lays down the “Principle of anticipation” which means that ‘Arcelor undertakes to anticipate, as much as possible, economic and industrial changes and their consequences in terms of human resources’. The same principle is asserted in the EDF agreement which further stipulates that the consequences on employees have to be taken into account during strategic decisions (choice of investment, mergers-acquisitions, restructurings, disposals)’.

The favourite means to implement this general principle is again the management of skills and training (Arcelor, EADS, EDF; see also Eni 2002 and PSA which agreements are less explicit). Anticipation of change will also be ensured by ‘a prospective and permanent social dialogue’ (Arcelor; see also EDF, Eni 2002, PSA).

II. Signatories

The 36 joint texts analysed were signed by management – generally represented by the chief executive officer – and a variety of employee-side parties. The choice of the signatories on the employee side depends on the very object and the scope of the text, but it also lies on the national traditions of the company (or mother company) in some cases and on the strategy developed by the European federations or International trade unions in sectors that have to face important changes.

II.1 First, second and third groups: texts specifically or mainly addressing restructuring and/or anticipation of change

Company	Date	EWC	International TU	European federations	National TU	Other employee representatives
Axa	2004		X		X	
DaimlerChrysler	2007	X				
Danone	1992		X			
	1997		X			
	2001		X			
Deutsche Bank	1999	X				
Dexia	2002	X				
	2007	X				
Diageo	2002	X				
Ford	2000	X				X
	2004	X				
EADS	2007	X				
Eni	2001				X	
	2003	X				
General Motors	2000	X	X			
	2001	X				
	2001	X				
	2004	X	X		X	
	2008 Astra	X				
	2008 Outs.	X				
RWE	2007	X				
Schneider Electric	2007			X		
Suez	2007	X		X	X	
Total	2004			X		
	2007			X		
Unilever	2001	X				
	2005	X				

All the agreements belonging to these three groups were negotiated and concluded by the EWC, except eight texts concluded in a total of five companies.

The Danone agreements (1992, 1997 and 2001) were signed by an international union, IUF. However, these texts were clearly negotiated within the context of the EWC or an earlier informal structure (Carley, p. 18) and EWC members are usually also in the union delegation (Pichot, November 2006). It was also the case for the Total “platform for employee relations” which was finally signed by three European-level federations: EMCEF, FECCIA and FECER.

The AXA joint declaration was signed by UNI, mandated by 18 national unions (eight countries), along with five French trade unions.

The Schneider Electric European agreement on the anticipation of change was signed by a well-experienced European federation, the EMF, which has developed a “Policy Approach towards Socially Responsible Company Restructuring” (2005).

The GM agreements concluded in 2000 and 2004 were signed by the EWC along with the EMF, which played a considerable role in mobilisation as well as in negotiation. The 2000 agreement has been negotiated in co-operation with IG Metall (on behalf of the EMF) and after co-ordination with the Fiat EWC (Rehfeldt, 2004). The 2004 GM framework agreement is also signed by representatives of the national trade unions involved. As stated in the text, this participation appears essential to its translation into binding national agreements.

The agreement reached at Ford in 2000 was signed by the Ford EWC and by the Visteon European Workers representatives, but was negotiated by the EWC together with representatives from the German union IG Metall. These cases show us that the parties involved in negotiations are not necessarily the signatories of the text, but their participation is essential as a guarantee that provisions are adapted to the local context and then implemented in an effective and appropriate way.

The 2001 Eni Protocol is the only text which was only signed by national trade unions. However, this text has to be taken into account as a transnational agreement considering its global scope (see Chapter III).

The predominance of the EWC on the employee-side derives from the object of the joint texts which deal with issues – restructuring and anticipation – on which the EWC is compulsorily and regularly informed and consulted. Thus, it seems natural that this structure also negotiates and signs these texts concerning the very future of the employees in the company (see Moreau, p. 5).

Furthermore, the signature by the EWC of groups based or operating in Germany (Deutsche Bank, Ford, GM) corresponds to the tradition of “co-determination”, noting that the EWC, as the German *‘Betriebsrat’*, is only composed by employee representatives.

On the contrary, seven of the eight agreements which were not signed by the EWC have been reached in French-headquartered groups (Axa, Danone, Total, Schneider Electric). This practice reflects the French law and traditions since the works council does not benefit from a right to collective bargaining in companies where trade unions are present. The Suez agreement adopted in 2007 is even more particular as it is conceived as an ‘accord de groupe’ under French law. That is the reason why it has been signed by the national trade unions – along with the EWC, the EPSU (European Federation of Public Service Unions) and the CEC (Confédération européenne des cadres).

II.2 Fourth Group: global agreements containing a reference to restructuring and/or anticipation of change

Company	Date	EWC	International TU	European federations	National TU
Arcelor	2005		X	X	
EADS	2005	X	X	X	
EDF	2005		X		X
Eni	2002		X		X
Generali	2006	X			

Lukoil	2004		X		X
PSA (Peugeot Citroën)	2006		X	X	X
Renault	2004	X	X		
Rhodia	2005		X		
Suez	1998	X			

The major part of these agreements was signed by international trade unions:

- IMF (International Metalworkers' Federation) : Arcelor, EADS, PSA, Renault
- ICEM (International Federation of Chemical, Energy, Mine and General Workers' Unions): EDF, Eni, Lukoil, Rhodia
- International Federation of Municipal Engineers: EDF
- PSI (Public Services International): EDF

Some of these texts are furthermore concluded by other signatory parties:

- the EWC in four cases: EADS, Renault
- a European federation, the EMF, in three cases: Arcelor, EADS, PSA
- national trade unions in four cases :
 - o EDF: France (FNME-CGT, FCE-CFDT, FNEM-FO, CFE-CGC and CFTC; U-K: GMB, Unison, Prospect and Amicus; Hungary (VDSZSZ); Poland (Solidarnosc); Slovakia (SOZE)
 - o Eni: FILCEA-Cgil, FEMCA-Cisl, UILCEM-Uil
 - o Lukoil: RGOWU (Russian Oil, Gas and Construction Workers' Union)
 - o PSA: trade unions of the main countries where the group is established.

The Suez and Generali Social charters can be considered as exceptions since these global texts have been agreed by the sole EWC.

As to the Generali European social charter, it looks rather like a unilateral instrument than a bipartite one: by adopting it, the "Parent Company aims at reasserting some guiding principles on the safeguard of its employees and, in general terms, the Group image". It is worth noting that the text is not formally signed. However it takes into account the Generali EWC's requirements by making reference to international texts. One can thus consider that this charter was concluded in the context of the EWC.

The predominance of International trade unions is due to the scope (see Chapter III) and the very object – fundamental human and social rights – of global agreements and to the human rights and CSR policies developed by these organisations.

The added signature of the EMF can be explained by the mobilisation of this European federation both in collective bargaining at the company level and on issues linked with restructuring.

III. Scope

The scope of an agreement means both the geographical area in which it applies, the material situations and the individuals (employees and others actors) covered by its provisions.

III.1 Geographical scope

A major part of the joint texts analysed in this study stipulates – explicitly or not – their geographical scope that depends on their object. The global or European scope is often specified in their title.

It can indeed be observed that some agreements, e.g. those devoted to the social consequences of a specific restructuring exercise, apply in European countries, whereas framework agreements that contain general principles and fundamental rights, and those which expose the corporate social policy have an international or global scope. Thus, the Ford and GM agreements are explicitly European in scope

(Carley, p. 30). For example, the 2004 GM Framework is designed to explain the main elements of a large restructuring program that ‘will affect all brands, sites, plants and functions within GM Europe’. The title of the agreement signed at Danone in 2001 contains a reference to the ‘draft restructuring plan of its biscuits division in Europe’.

The Danone texts signed in 1992 and in 1997 do not state any particular scope, but, according to Carley (p. 30), they can be assumed to be worldwide, in that they often refer to the whole group, and IUF is a global trade union organisation. However the 1997 joint understanding suggests that IUF is signing it only on behalf of its European affiliates.

The “new generation” framework agreements often stipulate that they apply worldwide, should they not be entitled “global framework” (PSA, Rhodia) or “international framework” (EADS). Furthermore, the EADS agreement states that ‘EADS and the Group’s European Works Council have expressed their attachment to the aforementioned principles which they intend to promote worldwide’ and, further ‘The provisions of this framework agreement define EADS standards to be applied wherever the Group operates’.

Even without such a precision, several expressions may suggest an international scope for agreements belonging to the first three groups, e.g. information on the group’s geographical perimeter (Danone 1997, Dexia 2003: ‘Taken as a whole, these principles form the basis of rules which will apply to all workers in the Group who have a contract, regardless of the business unit by which they may be employed’ and, further ‘given the fact that the Group has subsidiaries and branches throughout Europe and the world, special attention will be given to language training’).

The employee-side signatory partie(s) can be seen as a meaningful clue. Agreements only signed by the EWC or by European federations are generally European in scope, whereas those signed by International trade unions – exclusively or alongside with the EWC or national trade unions – apply worldwide (Renault, Danone).

III.2 Personal and material scope

The material and personal scope of agreements dealing with the social consequences of a specific restructuring plan is necessary limited to this operation and, as a consequence, to companies and employees affected by this restructuring.

The 2000 GM framework covers the employees transferred from GM to Fiat; the 2000 Ford agreement applies to Visteon workers who will be transferred to Newco. The 2008 agreement on the Astra production covers all employees in the five plants affected by the restructuring plan. As to the material scope, the 2004 GM framework applies in a general way (the ‘restructuring program will affect all brands, sites, plants and functions within GM Europe’). This is also the case for the GM framework agreement on outsourcing that lays down provisions to be applied in any event of restructuring, while the first ones covered a single operation as the alliance GM/Fiat or the Visteon spin-off (Ford 2000).

Global agreements often contain a further provision specifying that they cover *any operations* they may conduct in the world (EADS, Lukoil).

Several of the most recent agreements contain **detailed provisions dealing with the companies covered** by them. The EDF agreement constitutes a particularly meaningful example since it distinguishes ‘companies over which EDF Group holds direct control’ and those in which it does not exercise any direct control’ (see also Lukoil). This text shall apply to the former, while the signatories will encourage the latter to adopt and apply its provisions. It is maybe even more the case of the Arcelor worldwide agreement which moreover states that ‘companies in which the ARCELOR Group has a significant presence, albeit without exercising a dominant influence there, along with contractors and suppliers also fall within the scope of this agreement’.

Both Total joint texts deserve also to be cited because they stipulate that they apply to all the TOTAL Group’s legally autonomous entities mentioned in the 1st article of the agreement concerning the European Works Council (EWC) of TOTAL dated 20 March 2001 and renewed on 29 June 2005.

As far as **suppliers and subcontractors** are concerned, several texts specify severe consequences of non compliance with their provisions. The Rhodia agreement is one of them as it stated that ‘Any serious violation of employee health and safety legislation, environmental protection or basic human rights that is not remedied shall lead to termination of relations with the company concerned in compliance with contractual obligations’ (see also Arcelor, EDF, PSA). It has to be noted that his sanction does not apply in the case of a violation of the provisions devoted to restructuring.

The EADS agreement, as the Renault Declaration settle for encouraging suppliers to apply the principles and rights they promote and to introduce and implement equivalent principles in their own companies.

Some other agreements contain provisions applying to **successors** in the event of business disposals (Total, Dexia 2007) but the commitments linked with social criteria explicitly oblige the sole Groups concerned.

Finally, a few texts involve **local authorities**, especially in the case where companies undertake to develop the local business (‘site rehabilitation’, see Danone 1997). The 2004 Total Platform considers as a priority to mobilise public authorities in the ‘Pro forma management of jobs and skills’. The PSA global agreement stipulates that: ‘In the event of changes in the business, PSA agrees to inform the relevant national authorities beforehand and to cooperate with them in order to better consider local interests’. This text, as well as the Axa Joint declaration, the 2007 Suez agreement and the 2004 and 2007 Total agreements are also filed with national or local government authorities.

IV. Type of provisions

Whatever their titles, the major part of the texts are essentially frameworks containing guidelines, policies, principles or general rules that have to be implemented at lower levels within the multinational concerned. Some texts set up concrete measures and detailed provisions which should not need further concretisation to be applied (‘self-sufficient’). For example, the 2007 Suez text is a company agreement (‘accord de groupe’ under French law) that is immediately applicable at least in the company’s French business units.

The major parts of these texts do not apply directly, except agreements signed by national trade unions which has to be considered as collective agreements under their national law (EDF, PSA, Lukoil). This is due to the absence of a status for transnational agreements that have to be implemented into national or local agreements to be effective and legally enforceable.

The type of provisions will determine the procedure and instruments of their implementation.

Following Carley (p. 19), a **distinction** can be made between three categories of agreements on the ground of the type of their provisions.

First of all, it has to be noted that different types of provisions can co-exist in one sole text and that the distinction between two types of provisions is often not clear-cut.

The texts belonging to the first category set up general, broad principles and/or fundamental rights or minimum standards. Global agreements – IFAs, Worldwide agreements – handling CSR (Arcelor, EADS, Rhodia, Lukoil) and social charters (Suez 1998, Renault, Generali for its first section entitled ‘Commitments’) generally belong to this group.

Several agreements, frameworks and other texts also fit this description (RWE, GM 2004). It is also the case of the EDF agreement but only for its part entitled ‘Universal standards’. The following part entitled ‘Commitments and joint guidelines to EDF group regarding relations of responsibility between EDF group and its employees’ contains more precise provisions which fall into the second group.

Another example is given by the Deutsche Bank Joint position which quotes ‘guiding principles’ and lays down a set of ‘corporate standards’.

A second category can be identified that comprises **joint texts exposing the company social policy** on issues linked with restructuring and/or anticipating change (Danone 1992, Unilever brochure, Axa, Schneider Electric). The provisions contain in these cases **general rules** but sometimes alongside

principles or fundamental rights (that are less precise than rules). This is the case of the EDF agreement; the Dexia Principles, the Generali European social charter, the Rhodia agreement, and the Deutsche Bank Joint position which also lays down a number of general rules governing the management of a potential restructuring.

These texts sometimes lay down a ‘plan of action’ accompanying a statement of policies (Schneider Electric, Total 2007 and, to a lesser extent the 2001 Eni Protocol; see Carley p. 20)

Some agreements on CSR also belong to this second group. It is the case of the PSA Worldwide agreement which goes beyond broad principles without laying down concrete rules or measures. The Total platform contains general rules as to the forward management of jobs and skills and the social consequences of changes, alongside precise rules on the social dialogue aspect.

The third category of provisions corresponds to **concrete, detailed rules** that the company intends to follow in a context of change. It is the case of the provisions of the Dexia amendment; the Suez accord 2007; or the Danone agreement signed in 1997, which contains precise and concrete rules such as ‘consultations should take place as early as possible, and not later than 3 months prior to the expected changes’ or ‘in the event of the partial or full closing of a facility, delegates of unions representing its employees may be granted time off with pay in order to perform their duties’.

The Ford agreements and the Danone agreement reached in 2001 are certainly the texts that provide the most achieved examples of this group as they contain precise, detailed rules as well as concrete measures. This is not surprising since these texts are designed to give concrete answers to the employees’ concerns in specific circumstances of a restructuring plan.

These latter examples illustrate the fact that the title (‘framework’ for the GM texts) does not necessarily correspond to general provisions. The term ‘framework’ is indeed also used to mean that the texts have to be implemented into national or local agreements to be legally binding.

V. Implementation, follow-up and dispute settlement provisions

The more or less attention that is given to these provisions by the signatory parties shows the extent of their involvement in ensuring that the texts are effectively applied at local level.

Provisions dealing with implementation, follow-up and dispute settlement are part of the final provisions handling administration of most of the texts but they are much diversified. Even if these processes are very often treated in a same provision, they are not necessarily conducted by the same actor. Some of the texts create *ad hoc* structures and set up specific procedures, whereas others contain less improved provisions. Follow-up and dispute settlement procedures play an integral part of implementation itself. General or brief provisions may indicate that companies do not intend to put in place improved follow-up and dispute resolution procedures.

IV.1. Implementation

Quite all of the texts need to be implemented into national or local collective agreements so as to produce obligatory effects. The 2004 Total Platform is an exception as far as its application in France is concerned, since it stipulates that it ‘is signed by French TU so that it is immediately applicable in companies located in France and legally enforceable’.

Implementation is also a necessary stage in order to concretise principles and general rules into measures adapted to local situations. This stage is characterised by its practical approach (a) for agreements specifically addressing restructuring and/or anticipation (b) and to a much lesser extent for global agreements (c).

a) The meaning of implementation: a practical approach

Many texts belonging to all the four groups stipulate that they have to be ‘put into practice’ (Generali, Suez 1998, Danone 1992, Lukoil).

Such a ‘practical’ approach is particularly present in some texts as the Danone agreement on skills training (1992) that stipulates that it ‘will be put into practice in the subsidiaries through a program of action and a

schedule of implementation' (see also Danone 1997). The provisions of the Lukoil agreement are more improved: 'LUKOIL and ICEM will meet annually to review practice and experience of the agreed principles as part of the follow-up to this Agreement. The purpose shall be to discuss the issues covered by the Agreement with a view to agreeing joint actions that will further develop good working practices'.

This overall picture should not hide the fact that detailed provisions are not necessarily the most binding ones. Indeed, concrete measures are in some cases nothing more than examples aiming at guiding the local actors who have to comply only with the general principles or rules laid down additionally (Deutsche Bank, Dexia 2002).

Additionally, it is worth noting that the aforementioned provisions suggest that implementation would not be achieved by concluding a unique local agreement. On the contrary, it looks like a step-by-step process that supposes a continuous and regular dialogue. As a consequence, implementation and follow-up procedures are often strongly linked, if joint texts do not only set up follow-up and monitoring processes (see further).

b) Agreements specifically addressing restructuring and/or anticipating change issues (1st, 2^d and 3^d groups)

Implementation is generally compulsory as far as (see particularly Ford, GM, Danone, Suez 2007). But as to the actors involved and the procedures, the provisions are much diversified.

Actors responsible for implementation

Some texts stipulate that this operation lies on the responsibility of:

- the local business units: Danone 2001,
- the local business units alongside with the senior management: DaimlerChrysler, Schneider Electric ('in co-operation with the group'),
- the local management and the local employee representatives: all known GM agreements except the GM-Fiat 2000, Danone 1997, Unilever 2005
- the signatories: Ford 2000.

Surprisingly, some texts do not contain any provisions on implementation: Ford 2004, Deutsche Bank, Dexia (but this text contains detailed provisions on social dialogue), Unilever 2001. This is also the case for the 2001 Eni Protocol that does not contain a general provision on implementation but it specifies concrete measures that have to be taken on the ground of its provisions addressing training issue.

Procedures

Most texts do not lay down procedural rules. However, some contain a general principle (the GM agreements refer to 'European legislation and national laws') or more detailed provisions. The 2007 Suez and Schneider Electric agreements thus specify that they have to be implemented in a period of one year. Implementation is sometimes also foreseen in order to complement and adapt European provisions to local context (Suez 2007) or to improve minimum standards they lay down (GM Outsourcing 2008). The 2007 Total agreement goes beyond these both agreements by laying down a precise framework for local negotiations by defining a number of subjects that have to be set up in collective agreements.

c) Global agreements

Global agreements contain often more vague provisions. In some cases, it is even doubtful whether implementation is and obligatory or voluntary stage. For example, the Rhodia Agreement as well as the Suez Social charter do not contain any provision addressing the implementation procedures (see also Lukoil). Several other global texts only specify that the local management alone (Arcelor, EADS 2005, Generali) or jointly with employee representatives (Renault) is responsible of implementation without any precision on the procedures and means that have to be used to this end.

Nevertheless some global agreements signed at French-headquartered companies (PSA and EDF) stipulate that they have to be implemented at local level through collective bargaining.

The EDF agreement contains the more precise rules, stating that:

'In each Group company concerned, dialogue shall be initiated between the management and the employee representatives on the initiatives to be taken and the conditions for the implementation of the present Agreement, within a period of six months following its signature. These initiatives shall take into account the local economic, cultural, professional or regulatory characteristics and set out conditions for enforcement within a policy of ongoing improvement.'

IV.2. Follow-up provisions

Individuals responsible for follow-up

Several agreements set up a special body to carry out the follow-up of implementation. It is the case of the EDF agreement that creates the Consultation Committee on EDF Group Corporate Social Responsibility (CCSR) that includes the signatories (see also Arcelor, Ford 2000, Schneider Electric).

In the other texts this charge is assigned to:

- signatories: Lukoil, Rhodia, Suez 2007,
- joint local union-management bodies (existing or ad hoc): Arcelor ('the local representative authorities are first responsible'), Danone 2001 (at all of the Group's entities affected), PSA (in each of the major countries)
- EWC's Liaison Bureau (though not signatory): Total

The company generally undertakes to pay the organization expenses (EDF) or more generally to 'make available the necessary resources to monitor this agreement' (Arcelor, Lukoil).

The GM agreements do not contain any follow-up provisions, but this is not as surprising as it appears to be at first sight. Indeed, these joint texts are designed to be implemented within a brief period and the implementation procedure should be sufficient to ensure that their provisions effectively apply to workers affected by the restructuring plans.

Follow-up procedures and modalities

A few joint texts provide precisions about the organization and modalities of follow-up and monitoring.

The 2007 Schneider Electric agreement thus stipulates that:

'It is agreed that, when making this evaluation [within the monitoring commission], a list will be drawn up of the actions that could have been undertaken in respect of each of the areas of the present agreement and that this will lead to discussion and the setting up of a "good practices" database which will be made available to all the Group's entities. On the basis of this examination, recommendations could be made for improving the application of the agreement'.

The 2001 Danone text also contains a specific provision though it belongs to the first group of joint texts. It specifies that the joint union-management bodies set up at local level will 'monitor developments while the restructuring plan is being carried out and for up to 24 months after the departure of an employee (or longer if necessary, by local agreement)'.

On the contrary, there is no follow-up procedure set up in the 1992 and 1997 Danone Joint understandings. This weakness can be explained by the fact that these texts were signed at a time when corporate negotiation was not yet formalised.

Global agreements are often much less precise and do not lay down improved follow-up procedures.

They frequently lay down an annual review meeting (EDF, Lukoil, Rhodia) or an annual report (PSA).

The Suez Social charter contains one single provision stipulating that its application 'will be included on the agenda of each meeting of the European Instance of Dialogue'. The Renault declaration is also meaningful as it settles for 'an initial evaluation of the implementation in late 2006' without any further precision.

Much more exceptionally the update takes place twice a year, during the meetings of the EWC's Liaison Bureau (Total 2004). This latter text also lays down the possibility of a meeting devoted to its application, but only in the case of difficulties observed by the social partners in one of the Group's entities, and if the signatories request is approved by the Management of the TOTAL Group. It is also specified that the EDF special Committee may invite NGO representatives to attend its assemblies at certain conditions.

IV.3 Dispute settlement provisions

Transnational agreements containing provisions addressing dispute settlement are less numerous, and those provisions are generally vague, without any precisions on procedures. Additionally, it has to be noted that the belonging to one or another group of joint texts is not a crucial criteria: dispute settlement provisions are not more frequent in texts addressing restructuring and/or anticipation of change than in global agreements.

This charge is sometimes assigned to the signatory EWC (or an EWC representative) alongside with the management (EADS, Generali, Suez 2007, Total 2004) whereas some other texts set up *ad hoc* bodies that are generally joint union-management structures (Ford 2000, Danone 2001). The ‘joint extended steering group’ established at European level by the Danone joint text signed in 2001 will be charged with the examination and conciliation of any conflicts arising at local level, at the request of IUF on behalf of the IUF-affiliated local union concerned.

In the cases where international trade unions or European federations are signatories, they are also in charge of dispute settlement jointly with management. The Schneider Electric agreement stipulates that: ‘The EMF and the General Management shall seek an amicable solution for these disagreements within a reasonable period of time and in a spirit of cooperation’ (see also the Rhodia agreement that links this issue with monitoring).

One text states that the sole EWC is recipient of issues or concerns regarding the framework (GM 2000). In one other text, the employees are given ‘the opportunity to inform the company of any conduct that does not comply with this declaration’ (Renault).

It is worth noting that a few texts stipulate that they are governed by a national law (Arcelor: Luxembourg law explicitly, Suez 2007 and Total: French law implicitly). As a result, any disputes linked with these agreements will fall within competence of the respective national courts (explicitly in the three cases). The Axa case is a particular one as the Joint declaration is appended to the EWC agreement. As a consequence, this joint text will follow the rules governing the administration of the EWC agreement.

Conclusion

In conclusion, the present analysis shows the considerable diversity of the joint texts dealing with restructuring and/or anticipation of change. That holds for the signatories, the scope, as well as the type of provisions, the implementation process and the provisions dedicated to follow up and dispute settlement.

However, one can observe a point of convergence between most of the texts in the fact that they are essentially frameworks, even if their titles do not reflect this major trend. The explanation results in the absence of a legal status for transnational agreements that thus have to be implemented at lower levels.

A more recent tendency resides in the adoption of agreements focusing on anticipation of restructuring and change. It is worth noting that these texts are concluded in French-headquartered companies in accordance with the national legislation and that several of them are signed by national trade unions and therefore apply directly to employees. As these latter do not need to be translated into local agreements to be enforceable, they can be considered as exceptions to the first trend observed.

References

Official texts

European Commission, First phase of consultation of the Community cross-industry and sectoral social partners “Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring”, January 2002,

http://ec.europa.eu/employment_social/social_dialogue/docs/changement_I_en.pdf

European Commission, Communication on “Restructuring and employment Anticipating and accompanying restructuring in order to develop employment: the role of the European Union”, 31 March 2005, COM(2005) 120 final,

http://ec.europa.eu/employment_social/news/2005/apr/com_restruct_en.pdf

European Parliament, Resolution on the social consequences of industrial restructuring, B5-0089/2001, 15 February 2001,

http://www.europarl.europa.eu/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=010215&LANGUE=EN&TPV=PROV&LASTCHAP=22&SDOCTA=8&TXTLST=1&Type_Doc=FIRST&POS=1

ILO, “The role of labour standards in industrial restructuring: Participation, protection and promotion”,

<http://www.ilo.org/public/english/bureau/inst/papers/1990/dp19/>

European Commission, Seminars on Transnational agreements

First study seminar “Transnational Agreements”, 17 May 2006

E. Pichot, “The development of transnational agreements. First approach – March 2006”,

http://ec.europa.eu/employment_social/labour_law/docs/transnational_agreements_general_en.pdf

E. Pichot, “Transnational texts negotiated at corporate level: facts and figures”,

http://ec.europa.eu/employment_social/labour_law/docs/transnational_agreements_facts_en.pdf

Annex: Table,

http://ec.europa.eu/employment_social/labour_law/docs/transnational_agreements_table_en.pdf

Second study seminar “Transnational Agreements”, 27 November 2006

E. Pichot, “Complementary Study. First findings”

http://ec.europa.eu/employment_social/labour_law/docs/transnational_agreements_case_study_first_findings_en.pdf

Studies

M. Carley, “Bargaining at European level? Joint texts negotiated by European Works Councils”, European foundation for the Improvement of Living and Working Conditions, 2001,

<http://www.eurofound.europa.eu/pubdocs/2001/52/en/1/ef0152en.pdf>

M. Carley and M. Hall, “European Works councils and transnational restructuring”, European foundation for the Improvement of Living and Working Conditions, 2006,

<http://www.eurofound.europa.eu/pubdocs/2006/83/en/1/ef0683en.pdf>

Europe et société, “European social dialogue and restructuring” (« Le dialogue social européen et les restructurations. À quelles conditions les partenaires sociaux peuvent-ils devenir les acteurs du changement ? »), Les Cahiers de la Fondation n° 67-68, October 2006-September 2007.

I. Greer and M. Hauptmeier, “Political Entrepreneurs and Co-Managers: Labour Transnationalism at Four Multinational Auto Companies”, *British Journal of Industrial Relations*, March 2008, p. 76.

M.-A. Moreau, « Restructuration et comité d'entreprise européen », EUI Working Papers, Law n° 2006/2, <http://www.iue.it/PUB/LawWPs/law2006-02.pdf>

M.-A. Moreau et J.-J. Paris, « Le rôle du comité d'entreprise européen au cours des restructurations : les leçons du projet AgirE », EUI Working Papers, Law n° 2008/02, <http://cadmus.iue.it/dspace/bitstream/1814/7841/1/LAW-2008-02.pdf>

ORSE (Observatoire sur la Responsabilité sociétale des entreprises), “Directory for International Framework Agreements negotiations”, June 2007, http://www.orse.org/site2/maj/phototheque/photos/docs_an/IFA_june_2007.pdf

U. Rehfeldt, “European Works Councils and International Restructuring: A Perspective for European Collective Bargaining?”, Lettre du GERPISA n° 136, 1999, <http://www.univ-evry.fr/labos/gerpisa/lettre/numeros/136/136.pdf>, published in E. Charron, P. Stewart (eds.), *Work and Employment Relations in the Automobile Industry*, Basingstoke / New York (Palgrave Macmillan), 2004.

U. Rehfeldt and I. da Costa, “European Works Council and transnational bargaining about restructuring in the auto industry”, *Transfer*, n° 2-2007.

V. Telljohann (ed.), *European Works Councils Case studies*, (for the Eni Protocol on industrial relations, see V. Telljohann, D. Dazzi, p. 241), http://www.fipl.it/docs/wpapers/18_cae_en.pdf

C. Vigneau, “Les restructurations en France” in CRDS Lyon, *Impact et perspectives des normes sociales européennes. Égalité de traitement et restructurations dans neuf pays de l'Union européenne*, 2006, http://sites.univ-lyon2.fr/droit-ietl/crds/Rapport_IPNSE.pdf

E. Voss, K. Stegemann (European Foundation for the Improvement of Living and Working Conditions), *EWCS in new Member States. Case study: Unilever*, 2006, <http://www.eurofound.europa.eu/pubdocs/2006/655/en/1/ef06655en.pdf>

Comments

A. Broughton, “International agreement on restructuring at Danone biscuits”, 2001, <http://www.eurofound.europa.eu/eiro/2001/11/feature/eu0111206f.htm>

A. Broughton, “Framework agreement on social rights at Total”, December 2004, <http://www.eurofound.europa.eu/eiro/2004/12/feature/eu0412207f.htm>

A. Broughton, “Global framework agreement signed at Rhodia”, February 2005, <http://www.eurofound.europa.eu/eiro/2005/02/feature/eu0502206f.htm>

A. Broughton, “International framework agreement concluded at EADS”, July 2005, <http://www.eurofound.europa.eu/eiro/2005/07/feature/eu0507205f.htm>

V. Telljohann and M. Tapia, “Suez group signs three international framework agreements”, October 2007, <http://www.eurofound.europa.eu/eiro/2007/09/articles/eu0709049i.htm>

P. Ughetto, “Danone reignites controversy over redundancies in profitable firms”, February 2008, <http://www.eurofound.europa.eu/eiro/2001/02/feature/fr0102133f.htm#contentpage>

M. Whittall, “Schneider Electric and European Metalworkers’ Federation sign agreement on anticipating change”, September 2007, <http://www.eurofound.europa.eu/eiro/2007/09/articles/eu0709019i.htm>