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Issues paper

Actors involved in transnational company agreements

INTRODUCTION

The issue of the actors is one of the most important open questions to address in transnational company agreements. This paper provides a contribution to the work of the expert group on transnational company agreements as to the issue of "actors involved in transnational company agreements in times of economic and social change", in particular as to the respective role of the different employee representatives .

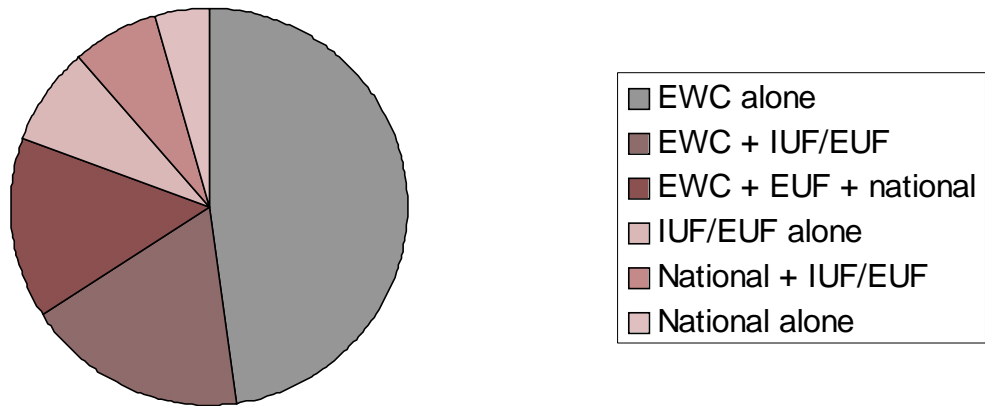
It builds on the analysis carried out in 2008 in different studies, documents and meetings (see references in annex).

1. FACTS ABOUT EMPLOYEE REPRESENTATIVES INVOLVED IN TRANSNATIONAL COMPANY AGREEMENTS

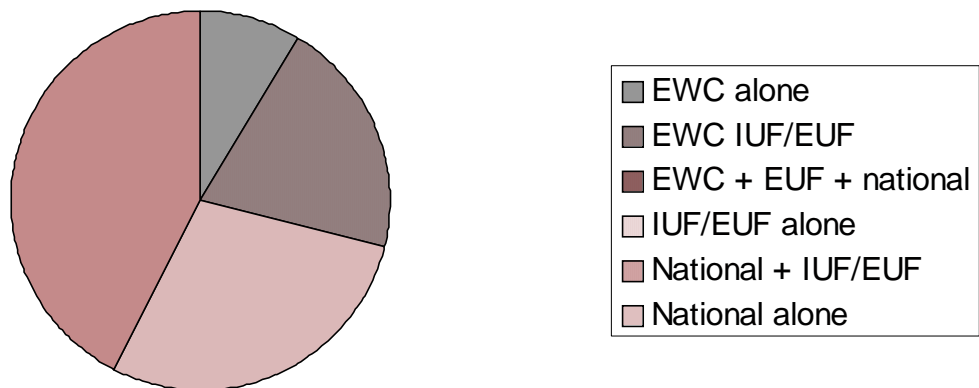
On employee side, transnational texts involve different sorts of parties and signatories: European Works Councils (EWCs), international and European Union organisations as well as national unions and national works councils. Over one third of the European and mixed transnational texts recorded and about two thirds of the global ones involve a combination of parties.

While international and national union federations are the main signatories of global texts, European Works Councils are the main parties in European and mixed texts . However, where several transnational texts are concluded in a single company, the parties usually remain the same, except in some companies where the parties change according to the issue dealt with or the scope of the text (*Arcelor, Lafarge, EADS, Suez*).

Signatories of the European and mixed transnational texts



Signatories of the global transnational texts



EWC = European Works Council; national = national unions

IUF = International Union Federation; EUF = European Union Federation (or organisation)

The leading role of European Works Councils

European Works Councils are signatories to 71 out of the 88 European and mixed transnational texts recorded:

- on their own in 42 cases, especially in companies headquartered in the United States, Germany, the Netherlands, Belgium as well as in some cases in France, mainly on health and safety or data protection issues;
- together with international or European union organisations in 16 cases, notably in the metal sector;
- together with both national unions and international or European union organisations in 13 cases, notably in companies headquartered in France or in the Nordic countries.

In addition, regarding seven out of the 17 remaining texts, European Works Councils were strongly involved in their negotiation, even if they do not appear among the signatories. The reason invoked in such instances by all parties to the negotiations regarding the absence of signature by the European Works Council is that “it is not a negotiating body”. Generally speaking, the actors surveyed in the 2006 complementary study also see the conclusion of transnational texts as resulting from the activity of the European Works Councils, from information-consultation to negotiation, even if they voluntarily refrain from signing the texts concluded in the end. It appears, therefore, that European Works Councils play the leading role in the conclusion of the transnational texts dealing with European issues¹.

The overall picture is quite different for global texts where the leading role is taken by international and European Union federations, even if usually together with national unions or European Works Councils. However, European Works Councils are involved in about one third of the global transnational texts recorded: they are the sole signatories of five global texts, the co-signatories of 12 additional global texts together with international or European Union federations, and were further involved in two additional global texts signed by the latter.

The involvement of international, European and national union organisations

International and European Union organisations are signatories of 39 out of the 88 European and mixed transnational texts recorded. They are especially active in the metal sector. In most cases, unions tend to be co-signatories together with European Works Councils (see above) and national unions.

The actors surveyed give the following reasons for signing by international or European union federations: legitimating the union organisation or coordinating national representative bodies. The reasons invoked for the absence of their signature are the fact that the unions may act through the European Works Councils, the preference of some company managements for elected bodies, the German culture of works councils negotiating company agreements on issues such as restructuring, and the presence of various sectors within the same company.

The national unions of the country where the headquarters are located signed 23 out of the 88 European and mixed transnational texts recorded, particularly the ones on social responsibility, financial participation and working conditions of companies headquartered in France, Italy or in the Nordic countries, usually with European or international actors but alone in four cases where the texts concluded are company collective agreements under national law. In a few cases, individual national unions from countries other than where the headquarters are located are also direct signatories to the transnational texts recorded (*EDF, Geopost, IF, Nordea*).

The main reasons invoked by the actors surveyed for involving national bodies in the signature of transnational texts are linked to the will to associate local bodies that will be major actors in implementing the text already at its conclusion stage, and the will to give the text the character of a company collective agreement under a national law.

¹ Also referred in a 2004 study of the European Industrial Relations Observatory (EIRO): Developments in European Works Councils, Mark Hall and Paul Marginson, [European Foundation for the Improvement of Living and Working Conditions](http://www.eiro.eurofound.ie/2004/11/study/tn0411101s.html), Dublin, November 2004, on line at <http://www.eiro.eurofound.ie/2004/11/study/tn0411101s.html>

2. ISSUES ON ACTORS INVOLVED IN TRANSNATIONAL COMPANY AGREEMENTS

The issue of who the actors are is crucial in a transnational negotiation, as in any negotiations. At present one or more categories of actors play a part in representing workers:

- European works councils;
- European and/or international workers' federations;
- National workers' organisations.

Today none of these three categories of actors has the full legitimacy or the legal capacity needed to conclude transnational texts to which the parties would like to give the effect of company agreements in several Member States.

The competences of European works councils under Directive 94/45/EC are information and consultation, not negotiation. Their membership is tailored to that end and determining their representativeness is problematic given the frequent lack of proportionality when set against the worker head count. Furthermore, their involvement in negotiations is at odds with national systems that make a clear distinction between the consultative role of elected bodies (works councils) and the negotiating mandates entrusted to trade unions or which utilise a single trade-union channel for worker representation.

The representativeness of European and international workers' organisations and their mandates to negotiate and sign are not always clear. Organisations such as the European Metalworkers' Federation have begun to adopt internal rules of procedure in this respect. The involvement of trade-union organisations in negotiations on issues such as restructuring also comes up against national systems under which the works council is responsible for such topics.

When it comes to concluding transnational texts, the crucial limitation affecting national workers' organisations lies in their *national* field of competence.

When negotiating and signing transnational agreements the actors' capacity to represent and enter into commitments on behalf of others is not a theoretical matter. The existing texts may stem from a centralised process involving the management and the coordinator of the European works council and from the active involvement of local actors at various stages. Certain opt-outs have occurred following disagreements on the approach, the substance or compatibility with national law. In other cases, the European text provides a framework for 'transposition' via national agreements.

Since 2005, the European trade-union organisations, who believe the role of the trade unions cannot be circumvented, highlighted their special concern regarding the issue of the actors in the negotiation and the representativeness of the signatories of transnational company agreements on both management and employee sides. They consider that employee-side representatives should be able to sign on behalf of all employees of the multinational, its subsidiaries and, where relevant, its suppliers/contractors. They also consider that management representatives should be able to deliver the commitment of the multinational company itself, its subsidiaries and, in some cases, its suppliers or contractors.

The type of actors involved and the process followed in concluding transnational texts also pose a problem for the company negotiators, who need to innovate to ensure the text agreed is accepted as widely as possible and has the biggest impact. The issue of the actors is thus crucial for the development of transnational company agreements.

3. THE ACTORS IN TRANSNATIONAL COMPANY AGREEMENTS: LESSONS FOR TODAY

Management and employee representatives from *Areva* have kindly accepted to present their insider experience of transnational company agreement on equal opportunities and the actors involved in the process. Jørgen Rønneest of *BusinesEurope* and Bart Samyn of the European Metalworkers Federation will present respectively the views of a European employer organisation and of a European trade union federation on the respective roles of the actors in transnational company agreements.

How to develop the positive results that may be attained through transnational company agreements, by ensuring the actors have the legitimacy and capacity to negotiate, conclude and implement transnational company agreements is the purpose of the discussion of the expert group with them.

ANNEX: REFERENCES

European Commission, *The role of transnational company agreements in the context of increasing international integration*, SEC(2008)2155 of 2 July 2008

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Konstantinos Papadakis ed., *Cross-border social dialogue and agreements: an emerging global industrial relations framework?*, ILO, 2008

Peter Wilke and Kim Schütze, *Background paper on International Framework Agreements for a meeting of the Restructuring Forum devoted to transnational agreements at company level*, June 2008