



## EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change

Brussels, 28 October 2010

EMPL F2 EP

# Third meeting of the Expert Group on transnational company agreements of 7 May 2010

## Minutes

### 1. PRESENCE

In addition to Commission's representatives, the third meeting of the Expert Group on transnational company agreements had 55 Participants: 39 permanent members, 6 permanent observers and 10 speakers and ad-hoc experts in a personal capacity:

- **24 EU and 4 EEA Governmental experts** from AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LIE, LT, MT, NO, PL, PT, RO, SE, SI, SK, UK
- **15 Social Partners' experts:** 8 experts from the employers' organisations nominated by BusinessEurope (BDA, BusinessEurope, CEEMET, CEEP, MEDEF, UEAPME, VNO-NCW), 7 experts of the trade-union organisations nominated by ETUC (DGB DE, ETUC, EMF, Nordic In NORD, NSZZ Solidarnosc PL, UGT ES, UNI Europa)
- **2 Institutional experts** from the European Parliament and ILO
- **4 Academics and consultants:** Aukje Van Hoek (University of Amsterdam); Marie-Noëlle Lopez, Eckhard Voss and Alan Wild (Planet Labor consortium)
- **6 Company actors:** CLUB MEDITERRANNEE : Christian Juyaux European Works Council Secretary and EFFAT representative; STATOIL: Aksel Stenerud Senior Advisor Reward and Industrial Relations, Lars Myhre Chair of ICEM's Energy Industries Section and founder of Industri Energi; UNICREDIT: Angelo Carletta Head of Labour Policies and Industrial Relations, Elena Foggiato Head of Industrial Relations International, Angelo Di Cristo Chairman of the European Works Council

The **European Commission** was represented by

- Armindo Silva, Acting Director "Social Dialogue, Social Rights, Working Conditions, Adaptation to Change" and Chairman of the expert group

- Fernando Vasquez, Deputy Head of unit "Working conditions, Adaptation to change", Chairman of the afternoon session
- Elisabeth Aufheimer (Social dialogue), Sabine Boehmert (International affairs), Torsten Christen (European employment strategy, CSR), Carina Bjurklint, Francisco Perez-Flores and Evelyne Pichot (Labour law), all DG EMPL

## 2. OPENING

Mr Silva opened the third meeting of the Expert Group. He welcomed the participants and recalled the main objectives of the expert group and the issues under discussion by reference to the meetings of 14 May and 27 November 2009; particularly he stressed the increasing role of Transnational Company Agreements (TCAs) in the present economic and social context. Mr Silva presented the draft agenda as well as the amended draft minutes of the second meeting which were approved without comments.

## 3. FOLLOW-UP ON THE STUDY ON INTERNATIONAL PRIVATE LAW ASPECTS OF TCAs

As the experts had requested at previous meeting, the outcomes of the study "International private law aspects of dispute settlement related to TCAs" were examined anew.

Prof Van Hoek recalled the objective of the study to provide an overview of the rules to be applied as to the applicable law and the competent jurisdiction when a dispute arises on the interpretation or application of a TCA.

As to **characterisation of obligations** under a TCA, Prof Van Hoek stressed that private international law and national laws do not necessarily coincide in characterising the commitments that are undertaken in TCAs. Under private international law, claims based on a TCA would in most cases be treated as "civil and commercial" and "contractual" in nature. Prof van Hoek recommended to express a provision on binding or non-binding character of the TCA.

In the subsequent discussion, the employer expert of NL stressed that parties to a transnational text often not consider it as an agreement and do not intend it to be binding. The employer expert of CEEP noted that TCAs often express corporate values and are not concluded in the context of contractual relations.

As to the **applicable law**, the currently relevant legal instruments are: Regulation on law applicable to contractual obligations (Rome I) and Regulation on law applicable to non-contractual obligations (Rome II). Article 3 of Rome I Regulation provides that parties to a TCA can designate the law to be applied ("choice of law") to the obligatory part of the whole TCA or to parts of it ("depeçage"). Article 4 of Rome I Regulation deals with the applicable law in the absence of choice: the applicable law has to be determined first according to the "characteristic obligation" performed and, in its absence, to the "closest connection". Article 8 of Rome I Regulation only deals with individual employment contracts and is not applicable to TCAs. Regarding the applicable law, Prof Van Hoek concluded that the use of closest connection leads to uncertainty and that party autonomy has to be considered as the preferred solution. She recommended expressing choice of law for the obligatory part of TCAs.

In the subsequent discussion, the trade union experts of EMF and NORD wondered whether choosing law would not prevent parties from finding a solution between themselves or through the national implementation mechanisms of the agreement. The employer expert of CEEP noted that Rome I Regulation sets clear rules for the law applicable to individual contracts. The governmental expert of DE noted that the situation of collective agreements was not considered when revising Rome I Regulation. Prof Van Hoek stressed that Art.8 of Rome I Regulation considers the worker as a weaker party and thus provides for specific safeguards as to individual employment contracts which cannot be applied to a bargaining party in the context of TCAs. She also recalled that applicable law may be different for the obligatory and the mandatory part of the agreement, the choice of law aiming to specify one single law for the obligatory part of it, particularly for the interpretation of the agreement, without affecting the law applicable to the mandatory (normative) part of it.

Regarding the private international law aspects of the **normative effect**, Prof Van Hoek highlighted the different possibilities of effect on individual labour contracts (such as statutory, mandate/membership or others) and explained that the normative effects of collective agreements are determined by national law ("reception") as well as that the mandate of national representatives is determined by national law of country of origin. Because restrictions under law A, overriding mandatory provisions under Rome I and public policy objections under law B must be contemplated, this led Prof Van Hoek to the result that a TCA under law A can have only normative effect on labour relations governed by law B to a limited extent and/or be subject to conditions Prof van Hoek recommended to explicit mandate to negotiators at European level and implement the TCA at national level according to national rules.

In the subsequent discussion, the employer expert of CEEP noted that, when EWC sign TCAs, there is no correspondence with the determination of representativeness for collective bargaining purposes at national level. The trade union expert of NORD considered that the point on the mandated is important, as parties need to be recognized the capacity to sign an agreement. Prof. Van Hoek considered the system of a double mandate, the first for the negotiation, the second for the signature, put in place by some trade union federations as particularly relevant in that context.

Regarding **jurisdiction** Prof Van Hoek referred to the Regulation on jurisdiction in civil and commercial matters (Brussels I). She raised the issues of Non-EU employers versus EU employers and commented on exclusive jurisdiction, jurisdiction over individual contracts of employment, "forum rei", special jurisdiction under Article 5, joinder of claim under Article 6 as well as interim and provisional measures under Article 31. Finally, as to jurisdiction, she recommended to insert a place of performance for specific obligations in the TCA and to insert a non-exclusive choice of forum in the TCA.

The employer expert of NL wondered which rules apply first: applicable law or jurisdiction. Prof van Hoek answered that court has to be considered before law.

Regarding **enforcement issues and "ius standi"**, Prof Van Hoek that enforcement routes may depend on the availability of and access to alternative dispute resolution mechanisms, the access to court and possibility and/or choice of industrial action. She recalled that there exists a large variety in national situations as to the legal capacity of unions and works councils and stressed that national law cannot be overcome by a party autonomy in this point. Prof Van Hoek suggested four ways to address the ius standi issue: firstly the creation of a European rule on the standing of workers' representative bodies, secondly the establishment of a system

of mutual recognition, thirdly avoidance through jurisdiction rules or fourthly unilateral acceptance of *ius standi* by the Member states.

In the subsequent discussion, the employer expert of BusinessEurope noted that the purpose of TCAs is to solve problems and that a dispute on their content is a failure of social dialogue. He stressed that disputes and court cases are and should remain the exception. The trade union expert of EMF agreed with that stance but considered however the legal debate as necessary. The trade union expert of NORD considered that there will be more agreements containing material elements in the future and that the discussion on enforcement is relevant in that context. The employer expert of CEEP considered that too important constraints on TCAs would diminish their number and that parties to a TCA agree to implement it at national level.

The trade union expert of EMF stressed that social partners need to try finding consensus between themselves and use internal mediation first and that mechanisms related to national implementation should also be used. The employer expert of CEEP also considered that particular attention should be given to national implementation of the agreement. The trade union expert of PL noted that, in the absence of a European framework, differences between Member states may lead to dilute a TCA through an implementation process at national level. The DE governmental expert noted that the link between European and national levels may be complex, for example in a TCA dealing with restructuring. The trade union expert of NORD stressed that the national implementation process ensures that a European agreement goes effectively into the Member States but that some sort of social partners mediation should be found when issues go beyond national implementation.

Prof Van Hoek added that a multilevel system such as the one at stake for TCAs needs safeguards, as tensions between the European level of the agreement and the implementation at national level seem inevitable. She stressed that, although an implementation process helps avoiding some of the problems, national laws will have to deal with the international system, through reception or recognition mechanisms.

Mr Silva thanked the experts and Prof Van Hoek for the fruitful discussion and the work on this complex issue.

#### **4. LATEST DEVELOPMENTS IN THE FIELD OF TRANSNATIONAL COMPANY AGREEMENTS**

Mrs Pichot presented the latest developments in the field of TCAs (*See presentation*). Within the last months, 14 new texts have been concluded and made available to the public. These include a series of new agreements on restructuring, on specific issues such as Health & Safety or annual activity discussion or on Fundamental rights, with developments in non-European companies. Some existing agreements were also amended or complemented. The employer expert of CEEP commented on the agreement concluded at AirFrance KLM on the reorganisation of sales agencies in airports and stressed the challenge of its implementation at national level. The trade union expert of EMF informed about an agreement concluded at PSA on Health & Safety addressing environment issues and negotiating processes at Areva on seniors and Schneider-Alstom on the integration of Areva T&D. Referring to GDF-Suez agreement, he commented on the work between the different European trade union federations where the activities of a company covers several domains which enter into their respective area of competence.

Mrs Pichot informed about different initiatives in view of TCAs by employer organisations and trade unions<sup>1</sup>. She also referred to the ILO report in the context of the G20 labour and Employment Ministers Meeting.

In her final remarks, Mrs Pichot drew the audience's attention to various Commission's activities in the field of TCAs, namely she referred to the publication of the study on international private law, to the preparatory work to launch a study on the effects of company agreements and to the award of contract for a database on TCA-texts.

## 5. LATEST EXAMPLES OF TCAS

Mr Silva thanked Mrs Pichot for her introductory remarks and gave the floor to the representatives of Unicredit and Statoil to talk about their experience

**Example of Unicredit:** Mr Carletta and Ms Foggiato presented the 2009 joint declarations concluded with the EWC on equal opportunities and non-discrimination as well as on training, learning and professional development in the context of a company growing international since 2005. (*See presentation*). Mr Carletta considered social dialogue as a facilitator and a need in the internationalisation of the company, the cooperation between the parties building sustainability and sound bases. He noted that the EWC does not have negotiating rights but that the process developed in concluding the joint declarations forms a virtuous circle and that the texts concluded are de facto agreements although they are not named as such. Ms Foggiato recalled the origin of the texts in joint committees established in 2008 on professional development and equal opportunities. She presented the means used for the internal dissemination of the joint declarations: translation into 22 languages, distribution to all new employees in their welcome kit, inclusion in trainings, website, meetings in Member States and local initiatives, discussion at EWC meeting with presentation done by representatives of the Member States. The joint declarations also form part of the identity card of the company in external communication. Mr Carletta noted that TCAs have a value, independently from their legal status, and that guaranteeing their implementation and respect is key for the image of the company. He concluded by stressing the positive role played by the process established with these texts for developing a culture of social dialogue in the Member States. (*See presentation*)

Mr Di Cristo presented the views of the Unicredit EWC. He expressed his satisfaction with the social dialogue established in the company at European level. He noted the difficulty of disseminating the TCA in countries where trade unions are not present. He stressed the need to link TCAs with European sectoral social dialogue and referred in particular to the link between Unicredit text and the 2002 declaration on lifelong learning in the banking sector.

Upon a remark from the trade union expert of PL that the implementation of Unicredit TCAs is working well in PL, Mr Di Cristo noted the correspondence with the national system of industrial relations in that country where collective agreements are concluded at company level. Mr Carletta added that the implementation of the agreement by local parties is encouraged, thus favouring local and national social dialogue. He took the example of RO where this process led to conclude the first collective agreement in the bank and develop training in the country. The employer expert of NL stressed that, whereas European social

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<sup>1</sup> Most funded under the budget line 04.03.03.03 "Information, consultation and participation of representatives of undertakings"

dialogue outcomes represent an opportunity for parties at other levels to address particular issues, there is no automatic implementation process from European to national and company social dialogue. Mr Carletta agreed that there was no direct link but noted that the fact that the 2002 European declaration on lifelong learning had been integrated in the national collective agreement in Italy has helped its use in the company. He considered that European, national and company social dialogue should not be viewed as different stages in the process but as different sources.

Mr Silva thanked for the interesting discussion and noted that lifelong learning is to become a key element of European policies in the coming period, notably in the context of the EU 2020 policy.

**Example of Statoil:** Mr Stenerud welcomed a discussion on issues he considers becoming more and more important. He showed how Statoil has grown international, with 30000 employees in 40 countries and the challenge for industrial relations in this process. He stressed the importance of the set of values, laid down in the “Statoil book”, which guide Statoil’s activity and include the involvement of employees. He referred accordingly to a need for an industrial relations strategy to support the international strategy. He explained the challenges and risks of working in countries not having implemented the ILO conventions and the interest of working together with an international trade union federation in that context. Together with Mr Myhre, he presented the global agreement concluded between Statoil and ICEM updated in 2008, and its importance in the concrete management of Statoil’s international development.

Mr Myhre explained the way the first agreement was developed in 1998 and its link with the Norwegian system of industrial relations, as perceived by the workers. At that time, the present 70 IFAs didn’t exist and the way to proceed with a transnational agreement had to be invented. The agreement was signed by Statoil, ICEM and the Norwegian trade unions. Since then, the agreement is discussed every year and revised every second year. Mr Myhre stressed the importance of these regular meetings on the agreement, not only to share information but also to develop a work in common. He then gave a series of examples where the agreement was of concrete relevance in Algeria, Poland, US, Turkey. He notably described the joint six year-training programme established for union members and HR managers in Azerbaijan.

Mr Silva enquired about the participants in the annual meetings, Mr Stenerud and Mr Myhre answered that only the parties to the agreement (ICEM and Norwegian unions) attend these meetings but that parties of each country work on the agreement’s implementation at national level. The employer expert of NL enquired about potential conflicts with national negotiations. Mr Stenerud answered that there is no risk as the content of the agreement is generic and Mr Myhre added that national trade unions and ICEM work closely together. The trade union expert of NORD expressed enthusiasm about the results achieved by this agreement and the prospect of developing such IFAs. He noted however the difference between global agreements, such as this one, reflecting fundamental principles of management and European agreements having a material content. The employer expert of CEEP considered that framework agreements prove positive through their national implementation and noted there are no legal problems in that context. The AT governmental expert asked about the practical way conflicts in the implementation of IFAs are addressed where Human Rights are not respected. The employer expert of CEEMET asked about relations with other companies in that context. Mr Myhre provided an example on how it was finally possible to work in a country despite of the initial impossibility even to have a contact with the employers’ organisation. Mr Stenerud first recalled that national law prevails. He

then referred to the importance of the principles enshrined in the agreement for the company, stressing that their implementation has to be seen in a time perspective, the question being therefore “when’ this implementation takes place. He referred also to the expectations of Statoil shareholders, in particular the Norwegian State, as to the high standards in which the company develops internationally and its contribution to the ILO decent work policy.

## 6. FORM AND TRANSPARENCY IN TRANSNATIONAL COMPANY AGREEMENTS

**Introduction:** Mrs Pichot introduced issues related to “form and transparency in transnational company agreements” through a presentation based on the issues paper produced for the meeting. At present, there is a large diversity in titles given to the texts, without clear correspondence with the main issue addressed in the texts and their imperative or declarative nature. Date, signatories, scope, addressees, duration are not always clear and the texts mix often drafting as political declarations and as agreements. Some of the texts however are group or company agreements under national law and/or are sent to the Commission for “registration” in the same way as national collective agreements. When looking more specifically to the texts dealing with restructuring, texts can be divided in three categories, with differences in the geographical, material and personal scope: frameworks, joint texts exposing the company social policy and “self-sufficient” texts. Views of the actors on form and transparency were recalled as well as areas for potential action: title in correspondence with typology, clear drafting and dissemination. The question is therefore how to give transnational company agreements the appropriate title, form and dissemination to ensure necessary or useful transparency. (*See presentation and issues paper*)

Mr Vasquez thanked Mrs Pichot for her introductory remarks and noted that transparency also relates to the process. The trade union expert of NORD noted that important points have been raised as to form and transparency in TCAs and stressed that any agreement should be clear and properly disseminated. He considered however, as well as the trade union expert of EMF, that important developments occurred since 2006-2007, which were not reflected in the issues paper, and stressed the key role of industry trade union federations in that regard, notably through the procedures established for organising negotiations..

**Insider views of Club Méditerranée:** Mr Vasquez gave the floor to the representative of Club Méditerranée’s employees to talk about his views as to form and transparency issues. Mr Juyaux explained the elements which led to negotiate the first agreement on the mobility of employees between EU and Turkey signed in 2004, in particular the need for retaining qualified support personnel over seasons (summer in Turkey, winter in the Alps) within the context of immigration legislation, and its enlargement to Switzerland and Africa in 2009. Trade unions were not opposed to transnational mobility as long as it is framed and accompanied by support measures, leading EFFAT and UITA to conclude this “agreement on the respect of fundamental rights at work and transnational mobility of Club Méditerranée GE employees in the Europe-Africa zone” together with the General management of club Méditerranée. The agreement is built on the respect of fundamental rights enshrined in ILO Conventions and the provision of accompanying measures to transnational mobility of support personnel (some 400 employees). Concrete guarantees have been developed in that context, notably a notice of 15 days and a priority to local personnel. Important efforts have been dedicated to disseminate and implement the agreement, notably through a series of visits of EFFAT representative to Turkish employees in ski resorts and the organisation, together with

the European Works Council, of a welcome training in Turkey. Mr Juyaux stressed the positive results obtained in retaining employees for high quality services, reducing precarious work, providing concrete support to trade unions in the countries concerned and developing cooperation both between trade unions and with management (*See presentation*)

Mr Vasquez thanked Mr Juyaux for this interesting insight and opened the floor for discussion. Mr Carletta noted that the geographical scopes of the TCA and of the EWC do not necessarily correspond. Mr Juyaux acknowledged that this was one of the reasons for negotiating the Club Méditerranée agreement within trade union federations where organisations of concerned countries (Turkey, Senegal,..) are member, the agreement being however presented to the EWC before its signature. The employer expert of CEEP enquired about the relation to national trade unions and the reasons for the priority given to local employment. Mr Juyaux answered that French trade unions were deeply involved in the agreement and stressed the need to shift from importing employees for seasonal activities to managing internationally the stable employment needed for high value services. He noted that, as a result of this policy, the turn over at Club Med could be limited to 13%, compared to an average of 20% in this activity. Asked by the ILO expert about the impact of the crisis and future developments, Mr Juyaux answered that the lack of financial resources created some difficulties in countries such as Greece and that parties to the TCA are looking to the challenges resulting from the development of the company in Asia and South America. The representative of ILO enquired about the reasons for registering the Club Méditerranée agreement at ILO. Mr Juyaux answered that French collective agreements need to be sent to national public authorities for registration and that it seemed therefore normal to send this international agreement at ILO for the same reason.

**Database on transnational company agreements:** Mr Vasquez referred to the specifications of the call for tenders issued by the Commission for the database on transnational company agreements (*See specifications*) and gave the floor to the representatives of the consortium led by Planet Labor to which the contract has been awarded.

The team set up by Planet Labor was presented. Ms Lopez, director of Planet Labor, presented the agency activities in European social issues. She will act as coordinator for the database and focus particularly on decentralised sources of information through Planet Labor's network of national correspondents as well as on ways to present and disseminate the information gathered. Mr Wild from Aritake & Wild will focus on the management side in multinational companies, ILO and CSR issues. Mr Voss and other members of Wilke, Maak & Partner will build on the study done on IFAs for the European Foundation and focus on the employee side in EWCs. As to data collection, the team will focus on the search for texts not yet known, through complementary channels -journalistic, employers and trade unions- and areas -restructuring, equality, H&S, CSR, etc...-. Members of the expert group may be contacted shortly to this aim. The team will then analyse the data, to organize the information into searchable fields, and input it on the Commission's website.

The employer expert of BusinessEurope and the trade union expert of EMF welcomed the creation of the database. The employer expert of CEEP however considered that the database however largely duplicates work already done by the European Foundation. The employer expert of NL noted that dissemination is key to make TCAs useful but employees may always choose not to use an information that is brought to them.

As to the texts to include in the database, the employer experts of CEEP and CEEMET stressed the difficulty to define TCAs and therefore to determine which texts are to be



included in the database. The trade union expert of EMF considered that the database should be as complete as possible, notably by including texts signed by EWCs, but also well define the different categories of texts. He stressed the need to update the list of texts, noting that the situation as regards TCAs is moving fast, notably as a result of the procedure for negotiation established by European industry federations. Noting that the broader the database, the less important the definition will be, the employer expert of BusinessEurope also spoke in favour of a wide database with search possibilities and regular update.

As to confidentiality and ownership issues, the employer expert of NL noted that these texts are usually private owned. Mr Wild and Ms Pichot explained that a system will put in place to check confidentiality issues and allow parties to a TCA to oppose the publication of the text.

As to the analysis of the texts, the employer expert of NL, stressed the difficulty to have a TCA analysed by an outsider. The employer expert of CEEMET added that there should be no external interpretation of TCAs. Ms Pichot explained that the aim is not to interpret the texts but to allow putting the information into searchable fields. Mr Wild added that he will explain companies it is a factual analysis that does not involve any judgment. Here also, parties will be able to oppose or correct any information they consider as inappropriate or non-communicable.

Finally, the employer expert of NL indicated she would be happy to help establishing the database, provided the necessary guarantees as to confidentiality and checking the analysis are ensured. The employer expert of BusinessEurope noted that the obligation lies on the Commission in this regard.

Mr Vasquez closed the meeting by thanking all participants for a very fruitful discussion. He recalled that closing date for the EU budget line financing projects on transnational agreements is September and announced that next meeting should take place in October.