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## Issues paper

### Form and transparency in Transnational company agreements

#### INTRODUCTION

Where reciprocal commitments are taken by the parties per agreement, the form in which these commitments are done and the way these commitments are known by the stakeholders becomes important. This is already the case in the national context, where there are usually clear rules to observe and procedural requirements as to the form of company agreements and their dissemination. This paper provides a contribution to the work of expert group on transnational company agreements as regards "form and transparency in transnational company agreements".

It builds on the collection of texts done by the Commission's services since 2005, on the analysis carried out in 2008 in different studies, documents and meetings (see references in annex), and on the database on transnational company agreements for which a call for tenders has been launched in 2009.

#### 1. FACTS ON FORM AND TRANSPARENCY IN TRANSNATIONAL TEXTS

##### **The various titles, forms and natures of the transnational texts recorded**

The Commission's services compiled and analysed in 2008 the information contained in existing transnational texts published in various specialised publications or websites<sup>1</sup>. In July 2007, the Commission's services had recorded 147 transnational texts, most of which were concluded after 2000. The following analysis is based on these texts.

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<sup>1</sup> Particularly ETUI-REHS/SDA EWC database <http://www.ewcdb.org/>; M. Carley & M. Hall in EWC bulletin IRS & IRRU Warwick London, Ebr-service <http://www.ebr-ewc.net/>, Eurobetriebsrat Training und Beratungsnetz <http://www.euro-betriebsrat.de/ebr/index.html>, Planet Labor <http://www.planetlabor.com/>

There is a wide diversity in the titles given to the transnational texts recorded. Out of the 88 European and mixed transnational texts:

- 36 texts include the word “agreement” in their title: “agreement”, “framework agreement”, “global agreement”, “European agreement”, and “group agreement”; they deal with all kinds of issues, particularly restructuring. Examples are the framework agreements on restructuring at *General Motors* or on training at *Danone* or on social policy at *Geopost*, the European agreement on anticipation of change at *Schneider*, the group agreements at *Suez* on equal opportunities and forward-looking management of employment and skills, the global agreement at *PSA* on social responsibility, the agreements at *Porr* on data protection or at *ENI* on health and safety.
- Nine texts are called “principles”, “guidelines” or “orientations”; they deal with health and safety, joint ventures, introduction of the euro, restructuring, CSR and information and consultation procedures.
- Seven texts are called “charters”: “charter”, “social charter”, “European charter”, “group social charter”; they deal with health and safety, subcontracting and CSR.
- Seven texts are called “declarations” or “joint declarations”; they deal with health and safety, subcontracting, data protection and restructuring.
- Five texts are called “joint opinion”, they deal with specific issues, particularly restructuring.
- Other titles include “code of conduct”, “procedure”, “protocol”, “framework”, “practices”, “project”, “action programme”, “convention” on procedures for social dialogue or on issues such as health and safety, training, restructuring.
- Four texts form an “annex” to the European Works Council or European Company involvement agreement or a part thereof, and two further texts are declared as forming part of or being an annex to a future EWC agreement; they deal with restructuring, data protection, CSR or procedures for social dialogue.
- In one company, *Nordea*, a Group Council and eight business area councils covering the Nordic countries have been established on a permanent basis. In addition, in case of major changes with cross border consequences expected to result in redundancies, the issue may be referred to a negotiating committee should parties have split opinions over the initiative.

As it appears from the record, there seems to be no correspondence between the title of the text and the main issue addressed in it. Further analysis of the content also indicates that the title is not always in accordance with the more indicative or imperative aim of the text’s provisions.

Most of the texts called agreements do not have the legal character of a collective agreement under any national rules. However, at least nine can indeed be considered to be collective agreements at company or group level, since they were negotiated under French or Italian rules and concluded by national unions. They cover financial participation, anticipation of change, equal opportunities, health and safety, CSR and social dialogue. In addition, three “European agreements” have voluntarily been sent to the European Commission for

“registration”, in a move similar to national collective agreements which are to be sent to national administrations to that end.

As to the form of the text concluded, some transnational texts indicate clearly the date of conclusion, the names and positions of the signatories, the scope, the addressees, the duration and a definition of the terms used where necessary. Some texts are fully drafted as company collective agreements according to the legislation applicable in the country where the headquarters is registered, for example as “group agreements” under the French Labour Code. Some are drafted as political declarations. Most texts recorded are mixed, with parts drafted as agreements and others drafted as declarations.

### **The type of provisions of the transnational texts dealing with restructuring**

In a preparatory study for the 2008 Restructuring Forum and conference of the French Presidency on "transnational company agreements- dialogue, rights, anticipating corporate restructuring, actors: a new perspective"<sup>2</sup>, Mélanie Schmitt analysed for the Commission existing transnational texts dealing with restructuring (see references in annex). Her analysis copied below is based on 37 joint texts signed until 2007 in a total of 22 companies and dealing with restructuring and/or anticipation on change, in a specific, general or brief manner.

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).

The type of provisions will determine the procedure and instruments of their implementation. Following Carley, 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’.

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<sup>2</sup> See <http://ec.europa.eu/social/main.jsp?catId=782&langId=en&eventsId=166&furtherEvents=yes> and <http://www.anticipationofchange.eu/index.php?id=346>

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). 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.

### **The scope of the transnational texts dealing with restructuring**

This analysis is also taken from Mélanie Schmitt who analysed existing transnational texts dealing with restructuring in 2008 (see above and references in annex).

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.

As to the **geographical scope**, a major part of the joint texts analysed in the 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. 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, 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).

As to the **material and personal scope**, the one 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 1<sup>st</sup> 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 this 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.

## **2. VIEWS OF THE ACTORS ON FORM AND TRANSPARENCY OF TRANSNATIONAL TEXTS**

In the Commission's 2006 survey, actors directly involved in the conclusion and/or implementation of transnational texts were asked questions regarding their views on their nature, form and dissemination of their text . The views of management, the European Works Council (EWC) representatives and the union representatives were very much in step with each other.

### **Nature of the texts concluded and concepts used**

The perception by management, European Works Council and unions of the nature of the particular transnational text they have concluded is broadly similar. There are no fundamental differences in the views expressed on the same text and the latter is usually seen as a result of the European Works Council’s activities. However, the perception of the nature of such texts tends to vary significantly among companies, ranging from political declarations to company collective agreements.

There was in many cases difficulty in defining the nature of the text concluded and often concepts were used that normally apply in other contexts<sup>3</sup>. This difficulty echoes the different views expressed by the social partners about the nature of the transnational texts on the occasion of the first stakeholder seminars and should call for a clarification of the concepts being used.

### **Dissemination of the text and collective ownership**

Some transnational texts include mechanisms for its dissemination to local management and employees. Dissemination of the text is often considered to be extremely important for its implementation, in order to make sure that everybody in local management is familiar with the text as well as all the employees who are concerned by it.

Attention is drawn to the time needed to ensure collective appropriation of the text concluded. For example, at the 2006 second study seminar, the *Nordea* union representative described the process as follows: *“As we see it, it is a necessity that the agreement is well known and accepted all over the organisation. This is not an easy task. The agreement is not one-way, but is reached by negotiations. It must be an understanding, a collective ownership. This is extremely important and takes time. I think a year is a short time. We also have to create a common platform to see that both the union and the management have the same goal. Our goal is to have a healthy company, this is not only for the management or the shareholders. It is absolutely in the interest of the employees because it creates more secure jobs. When it comes to the agreement, many persons, both among management and employees, are involved. What we have achieved is that the employees throughout the bank now see the advantages of the consultative committees. They see that it makes a difference. Both management and the unions agree upon the fact that dialogue like this produces better results.”*

Collective ownership of the text goes together with developing a European way of thinking, moving beyond the protection of own interests. Companies have done this in various ways, notably by training the EWC or enhancing union coordination.

The third element linked to the ownership of the agreement is that, if it is to be implemented everywhere, managerial action is needed. Some cases involve performance indicators for management linked to implementation of the transnational text on health and safety or equal opportunities.

One essential point is felt to be the follow-up by the union representatives and the EWC. The follow-up might either be carried out by those who actually negotiated the text or by different players. Here it all depends on the relationship between those who negotiated and those who are implementing the text later.

The key element of dissemination of the text is also referred to in the 2008 study for the European Foundation for the improvement of Living and Working Conditions<sup>4</sup>: "Most framework agreements provide the obligation to communicate the IFA to employees. Only the

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<sup>3</sup> For example: “It is a political declaration but not only that, there are other elements involved”; or “It is an agreement but it is not really a collective agreement in the way that one usually understands the term”.

<sup>4</sup> "European and international framework agreements: Practical experiences and strategic approaches" p35, see authors and references in annex



IFA between ICEM and Freudenberg and between UNI and Carrefour do not contain such provisions. In the case of Bosch and Rheinmetall, the local workers' representatives have to be consulted in advance. But as a study of BWI<sup>5</sup> shows, this responsibility is not always carried out: most employees (included in the study) do not have any information about the IFA. The employees of the Euradius Group, in contrast, have to be informed about the IFA by a note on their payroll slip; this information has to be repeated periodically."

### 3. ISSUES ON FORM AND TRANSPARENCY IN TRANSNATIONAL TEXTS

Although form and transparency are not the foremost concern of the actors involved in the first transnational texts, the potential development of transnational negotiation makes it necessary to examine how to help social actors in this field.

#### Form of transnational company agreements

Even where transnational texts are signed by a party representing an employer and a party representing the employees and recorded under the title of agreements, their form and content usually don't follow the rules or requirements for collective agreements, in particular company agreements in any of the covered countries.

The existing transnational texts have varied titles, such as 'joint opinion', 'joint declaration', 'draft', 'programme', 'convention', 'principles', 'framework', 'code of conduct', 'charter', 'framework agreement', 'agreement' or 'European agreement'. They may also be published in the form of brochures or as annexes to agreements setting up European works councils. There is no necessary link between the title of the text, its content, the procedure for negotiating it and the type of commitments it involves.

In addition, the fact that a transnational text does not have the legal status of a company collective agreement does not always prevent its signatories from considering it as such in practice, as emerges from the 2006 survey.

As to the title of the texts, useful reference can be made to the typology of European social dialogue texts drawn up by the Commission in 2004 and comprising four major categories<sup>6</sup>:

- agreements laying down minimum standards and implemented autonomously or by a Council decision in accordance with Article 139 of the Treaty;
- process-oriented texts: frameworks for action, guidelines, codes of conduct, policy orientations;
- opinions, declarations and tools for exchanging information;
- procedural texts laying down rules on dialogue between the parties.

As to the form, the drafting of transnational texts should observe certain principles where the parties wish them to produce effects other than declaratory. For example, texts will be clearer and easier to implement if they are dated and signed and the name and capacity of the person signing are shown clearly, if the persons to whom the text is addressed are indicated, if the

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<sup>5</sup> BWI (2006) Social partnership at the global level – BWI experiences with Global Company Agreements, p. 5.

<sup>6</sup> COM(2004) 557 of 12.8.2004.

date by which its provisions are to be implemented and the way this is to be done are indicated and the rules for monitoring and settling disputes are shown, etc.

The Commission considered in 2008<sup>7</sup> that suggestions could be usefully done on how transnational texts could be made more transparent, as it was for the European social dialogue texts, without prejudice to the freedom of the parties.

### **Information of management and employees falling in the scope of a transnational text**

Even where transnational texts are signed by a party representing an employer and a party representing the employees and recorded under the title of agreements, their dissemination and/or registration usually don't follow the rules for collective agreements and in particular company agreements in any of the covered countries.

As it appears from the facts and views referred to above, the employees and management coming in the scope of a transnational text are not always informed about its existence and do not always have access to its content. This is also the case for subcontractors.

This is not a problem for declarative texts but indeed has to be considered as an important one for agreements comprising reciprocal commitments, especially where they are stated in the form of concrete and detailed provisions or where their inobservance may have consequences.

### **Information of stakeholders about transnational texts concluded and database**

Since 2005 the Commission has collated and analysed the transnational texts available to the public and has conducted a survey of cases covering the actors involved in concluding them.

Knowledge of transnational texts is still in its infancy, and during the study seminars in 2006, the social partners stressed the need to continue gathering and exchanging information on the subject. Considering this request and the interest of concerned stakeholders, the Commission's services went on in collating and analysing the texts it could know about

In its 2008 staff working document and mapping, the Commission has listed 147 joint transnational texts in 89 companies; most of these have been concluded since 2000. In its working documents for the November 2009 meeting of the expert group on transnational company agreements, it issued an additional list of 49 texts (40 new texts, 9 updates) concluded in 43 companies (23 new companies, 20 already involved in transnational texts).

Against the aforementioned background, the Commission launched in 2009 a call for tender<sup>8</sup> to collect, analyse and make available information concerning transnational company agreements via the website of the European Commission's DG for Employment, Social Affairs and Equal Opportunities<sup>9</sup>. The information on transnational company agreements should be made available to the European institutions, to the European social partners and to company actors, to use both as a monitoring tool and as a case management tool. The contract for this database has been awarded to Planet Labor<sup>10</sup>.

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<sup>7</sup> SEC(2008)2155 of 2 July 2008

<sup>8</sup> See <http://ec.europa.eu/social/main.jsp?catId=626&langId=en&callId=238&furtherCalls=yes>

<sup>9</sup> <http://ec.europa.eu/social>

<sup>10</sup> <http://www.planetlabor.com/>

The main tasks to be carried out by the contractor are the following:

- Data collection on transnational company agreements: the contractor has to collect the full texts of existing transnational company agreements from various sources and to establish a mechanism to collect them systematically in the future.
- Analysis of data on transnational company agreements: the contractor has to analyse the agreements, characterise the companies in which they are concluded and input the information gathered into searchable fields.
- Input of data and dissemination of information concerning transnational company agreements: the contractor has to input the data collected and analysed on transnational company agreements using the Content Management System developed for the DG's website. The contractor has also to contribute to the promotion of the database on transnational agreements when it becomes available on-line.

#### **4. FORM AND TRANSPARENCY IN TRANSNATIONAL COMPANY AGREEMENTS: LESSONS FOR TODAY**

The secretary of the *ClubMéditerranée* European Works council has kindly accepted to present its approach to form and transparency in *ClubMéditerranée* transnational company agreements, notably the latest on transnational mobility. The team of Planet Labor to whom the contract has been awarded and the Commission's team involved will be present to discuss with the members about the database on transnational company agreements.

How to give transnational company agreements the appropriate form and transparency is the purpose of the discussion of the expert group with them.

#### **ANNEX: REFERENCES**

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