



# **Transnational company agreements Introduction to the documents submitted to the discussion**

**Evelyne Pichot, European Commission**

**Expert group on transnational company  
agreements**

**Brussels, 11 October 2011**

# Draft report of the Expert Group

- ❖ **Factual, Submitted to adoption**
- ❖ **Presents the work done between 2009 and 2011**
- ❖ **Made of working documents and minutes of meetings**
- ❖ **Organised in 5 parts:**
  - I- The Expert Group and its work**
  - II- Review of developments**
  - III- Analysis of issues**
  - IV- Review of research, training and projects**
  - V- Examination of company examples**

# Draft elements for conclusions

- ❖ Analytical, Submitted to discussion
- ❖ Presents elements for conclusions
- ❖ Made of analysis of situation, problems and options to be considered
- ❖ Organised in 6 parts (issues):
  - I- Role and development of TCAs
  - II- Actors involved
  - III- Form and transparency
  - IV- Implementation and links between levels
  - V- Legal effects
  - VI- Disputes

# I- Role and developments of TCAs

## ❖ Work in the Expert Group:

- .Meeting dedicated to TCAs in times of economic and social changes (May 2009 – II 3.)
- .Updates on developments (all meetings – II 4.)
- .Review of research, training and exchanges of experiences (all meetings - IV)
- .Examination of company examples (all meetings - V)

## ❖ Draft elements for conclusions:

Recognizing the role of TCAs and contributing to their development (I)

# I- Role and developments of TCAs con't

- ❖ **The emergence of TCAs and its drivers:**
  - .215 agreements in 138 compnaies with over 10 million employees identified mid 2011**
  - .Drivers: European integration, HR policy, EWC, TU**
- ❖ **Opportunities for companies and society, notably to face change**
- ❖ **Challenges, notably complexity, legal risks and disagreements over the actors' legitimacy**
- ❖ **Recognizing the role of TCAs and providing for an adapted EU support to their development**
- ❖ **Addressing open questions**

## **II- Actors involved in TCAs**

- ❖ **Work in the Expert Group:**

- .Meeting dedicated to the actors involved in TCAs  
(May 2009 – III 5.)**

- .Examination of company examples (all meetings - V)**

- ❖ **Draft elements for conclusions:**

- Supporting the actors in TCAs and clarifying their  
role (II)**

## **II- Actors involved in TCAs con't**

- ❖ **Different categories of actors involved**

- ❖ **Problems:**

  - Negotiation needed on parties to negotiation

  - Legitimacy and capacity

  - Uncertainties over implementation

  - Interference with national IR systems

- ❖ **Options to be considered**

  - Reference

  - Actions to ensure legitimacy

  - Actions to ensure capacity

  - Financial support



# III- Form and transparency in TCAs

## ❖ Work in the Expert Group:

- .Meeting dedicated to form and transparency relating to TCAs (May 2010 – III 7.)
- .Examination of company examples (all meetings - V)
- .Presentation and discussion of database (May 2010 – III 7., October 2011)

## ❖ Draft elements for conclusions:

Promoting transparency in TCAs (III)



# III- Form and transparency in TCAs con't

- ❖ **Variety in form and dissemination**

- ❖ **Problems:**

  - Lack of clarity in drafting

  - Limitation in effects produced

  - Respect of the rights of affected persons

  - Interference with national IR systems

- ❖ **Options to be considered**

  - Clarity in title, principles in drafting

  - Information of covered management and employees,

  - Controlled public disclosure, maintenance of database

  - Invitation to social partners to issue guidance

  - Coordination with ILO on TCA-related information

# **IV- Implementation and links between levels**

## **❖ Work in the Expert Group:**

- .Meetings dedicated to implementation and disputes (November 2009 – III 6.) and to links between levels (October 2010 – III 8.)**
- .Examination of company examples (all meetings - V)**
- .Discussion of study results (October 2010 – III 8.)**

## **❖ Draft elements for conclusions:**

**Enhancing the implementation of TCAs and the links with other levels of social dialogue (IV)**

# IV- Implementation and links between levels con't

- ❖ **Diversity in implementing practices and links with other levels of social dialogue**
- ❖ **Problems:**
  - Limitation in effects produced
  - Complex « implementation » mechanisms
  - Incoherence and conflicts between outcomes of social dialogue
- ❖ **Options to be considered**
  - Procedures for implementation
  - Reference for implementation
  - Reinforce links and coherence through practice and support to social partners
- Invitation to social partners to work on link between levels

# V- Legal effects

## ❖ Work in the Expert Group:

- .Meeting dedicated to the legal effects of company agreements (May 2011 – III 9.)
- .Examination of company examples (all meetings - V)
- .Discussion of study results (May and October 2011 – III 9.)

## ❖ Draft elements for conclusions:

Improving legal certainty in the effects of transnational company agreements (V)



# V- Legal effects con't

- ❖ **Variable and unclear legal status**

- ❖ **Problems:**

  - Legal risks

  - No correspondance between parties' intentions and actual legal effects

  - No coherence of effects across Member States

- ❖ **Options to be considered**

  - Clarity of intentions in agreements

  - Rules to be observed for TCAs intending to produce legal effects

  - Work on mechanism to give controlled legal effects where wished

# VI- Disputes

## ❖ Work in the Expert Group:

- .Meeting dedicated to implementation and disputes relating to TCAs (November 2009 – III 6.)
- .Examination of company examples (all meetings - V)
- .Discussion of study results (November 2009 and May 2010 – III 6.)

## ❖ Draft elements for conclusions:

Enale preventing and settling disputes (VI)

# VI- Disputes con't

- ❖ **Few mechanisms in place to handle disputes**

- ❖ **Problems:**

  - Parties badly equipped and risks not addressed

  - Difficulties in using court and out-of-court settlement

  - Data protection requirements not addressed

- ❖ **Options to be considered**

  - Monitoring, adaptation and first-level dispute resolution mechanisms in agreements

  - Follow-up of recommendations of study on applicable law / competent jurisdiction

  - Dissemination of study results and information

  - Invitation to social partners to work on first level and out of court mechanisms

# Links

## Website European Commission Employment and Social Affairs Labour law

[http://ec.europa.eu/labour\\_law](http://ec.europa.eu/labour_law)