First meeting of the Expert Group on transnational company agreements of 14 May 2009

Draft minutes

1. Presence

In addition to Commission’s representatives, the first meeting of the Expert Group on transnational company agreements had 52 Participants: 38 permanent members, 5 permanent observers and 9 speakers and ad-hoc experts in a personal capacity:

- **21 EU and 3 EEA Governmental experts** from BE, CZ, CY, DE, EE, EL, ES, FR, HU, IE, IS, IT, LIE, MT, NL, NO, PL, PT, RO, SE, SK, UK

- **17 Social Partners’ experts**: 9 experts from the employers' organisations nominated by BusinessEurope (BDA, CBI, CEEMET, CEEP, CEOE, MEDEF, UEAPME, VNO-NCW), 8 experts of the trade-union organisations nominated by ETUC (CCOO, CSC-ACV, DGB, FGTB-ABVV, ISSTO, NSZZ Solidarnosc, UNI)

- **2 Institutional experts** from the European Foundation for the improvement of Living and Working Conditions (Dublin) and ILO

- **2 Academics**: Edoardo Ales (University of Cassino), Elodie Bethoux (ENS Cachan, CNRS)

- **2 ad-hoc representatives of the social partners**: Jørgen Rønnest (DA, BusinessEurope), Bart Samyn (EMF-FEM, ETUC)

- **5 Company actors**: Marianne Naud and Maureen Kearney (AREVA Social policy Director and European Works Council Secretary), Steve Evison and Georg Leutert (FORD of Europe Director HRO and European Works Council Secretary), Jacques Khelfif (.RHODIA Director sustainable development)

The **European Commission** was represented by
2. OPENING

Mr van der Pas, Director General Employment, Social Affairs and Equal Opportunities opened the first meeting of the Expert Group. He stressed the increasing role of transnational company agreements in the present economic and social context, particularly as to anticipation and management of restructuring in multinational companies in times of crisis and globalisation. With the establishment of the expert group, the Commission intends to be helpful and to support the development of initiatives, notably by giving access to information, as well as exchanging practice and views on actions aiming at answering difficulties faced in this process.

3. THE EXPERT GROUP, ITS ROLE, TASKS AND PROCEDURES

Mr Silva presented the proposals of the Commission as to the composition, work and draft rules of procedure of the expert group as described in the document "the expert group on transnational agreements". The expert group should have a monitoring role and provide a forum for discussions between the experts coming from Member states and social partners. The Commission will prepare conclusions at the end of the two years period of its functioning.

As to establishment of the expert group, the governmental expert of ES congratulated the Commission for this initiative allowing to progress to an improved capacity and framework for the dialogue between social partners. The employer expert of NL expressed satisfaction for the possibility to share diverse experiences. The trade union expert of PL welcomed this possibility to build a European dimension in industrial relations and hopes this will give a good base for future actions in this field.

As to the composition of the expert group, the governmental expert of ES stressed the importance of the participation of social partners. The employer expert of NL and the trade union expert of PL expressed similar satisfaction with the composition of the expert group. The employer expert of CEEP wished to get a list of participants. Mr Silva answered that, given the rules on data protection, prior authorisation is necessary. Mr Ales underlined the role of academic experts to give external support, notably on legal issues, where necessary.

As to the conclusions and opinions of the expert group, the employer expert of NL requested confirmation that the conclusions will be drawn by the Commission and stressed the problem in adopting opinions where there is no consensus. The governmental expert of UK noted the need for consensus and the exceptional nature of any voting given the unusual composition of the expert group. The employer expert of CEEP considered that minutes...
should be agreed by all. The governmental expert of IE considered that any disagreement should be reflected in the minutes. Mr van der Pas and Mr Silva confirmed that minutes of the meetings of the expert group will be established, that voting in the group is to be exceptional, that conclusions will be drawn at the end by the Commission in its own name and that the rules of procedure will be reviewed in accordance. *(See rules of procedure)*

4. **The Role of Transnational Company Agreements in Times of Economic and Social Change**

**Introduction:** Mrs Pichot introduced issues related to “transnational company agreements in times of economic and social changes” through a presentation based on the issues paper produced for the meeting. Restructuring, anticipation, training and mobility are a main area in European texts. They provide measures to avoid compulsory redundancies, accompanying measures such as training or outplacement assistance, planning and forward-looking management of change including professional development, procedures and dialogue. Drivers for engaging in transnational negotiation include company context, Human Resources (HR) policy, active European Works Council (EWC) and trade union objectives. Main results are mutual understanding, accepting change and understanding challenges, corporate common identity and concrete social results. The question is how to develop positive results that may be attained through transnational company agreements in the present context. *(See presentation and issues paper)*

The employer expert of CEEP asked about figures on transnational agreements concluded. Mrs Pichot referred to the mapping issued. Mid 2007, there were already 150 texts known through public sources in companies employing 7.5 million employees, showing a significant development of these texts. *(See mapping of transnational texts 2008)*

**Example of Ford of Europe:** Mr Evison presented the series of agreements concluded at Ford of Europe with the EWC since 2000 in the context of key changes undergone in the company. In addition to procedures for dialogue, two agreements addressed transfer terms and conditions as well as sourcing and investment commitments in the context of a spin-off and of a joint venture. An agreement provided for support for employees, employment and investment commitments in the case of a concrete restructuring process. Rules on sourcing of competences were established in a further agreement and a more general agreement on social rights and social responsibility principles has also been signed. Through the crisis, management wants to keep a good dialogue at European level in addition to national level, which is important to help employees understand what is happening. He considered that the voluntary approach developed has helped with business needs. *(See presentation)*

Mr Leutert presented the views of the Ford EWC. He underlined the need for employees to overcome national egoism and develop a pan-European approach, to be cooperative, strategic and innovative and listed the related means. He stressed the importance of monitoring the agreements and the need for clauses to renegotiate or amend them. He considered that the experiences of agreements at Ford have been positive, allowing for access to senior management, involvement in strategic projects and decision-making processes, achieving better overall results for employees than negotiations at local or national level. The crisis and the national policies to deal with it reinforce competition between sites and countries but so far the basis for cooperation and existing agreements remained intact. He suggested the Commission simplifies the application procedure for budget line 04.03.03.03 and stressed the role of social dialogue at European level. *(See presentation)*
Mr Vasquez opened the discussion. As to actors involved, the employer expert of CEEP asked whether the agreement of all stakeholders, notably of all representative unions, was obtained to negotiate at EU level. The representative of the Dublin Foundation asked about the legitimate actors in the process. The trade union expert of EMF-FEM stressed the need for workers to organise themselves to negotiate transnational agreements. The Governmental expert of DE noted the need for the agreement to respect national laws as to the capacity to conclude agreements. Mr Evison stressed Ford's approach had been to regard European-level dialogue as complementary to existing national bodies and processes. Mr Leutert stressed the need to consider the representativeness in the way it is established at national level and explained how the agreement of all stakeholders is ensured in the different countries, ensuring the signature of all representative bodies.

As to implementation, the employer expert of NL asked about the term of “agreement” used and whether specific legal standing is involved. The Governmental expert of UK asked how the agreements are implemented and which process is foreseen for enforcement and dispute resolution. Mr Evison stressed the role of the EWC in monitoring and implementing the agreement, underlined that the company would not like breaking an agreement and stressed the need to solve potential disputes on implementation, including - where mutually agreed - the option of negotiating updates to agreements. Mr Leutert said we don’t know what the result of going to court would be. Mr Evison considers that a European instrument would not assist while Mr Leutert considers that strengthening the legal framework would be useful.

**Example of Rhodia:** Mr Kheliff presented the international framework agreement (IFA) signed in 2003 with ICEM and updated in 2008. Reasons for engaging in the process were the need for common standards at global level, the corporate social responsibility (CSR) as an asset to move out of the crisis the company was going through and the commitment power of an agreement compared to a unilateral charter. Rhodia chose to negotiate with ICEM given its capacity of commitment at global level. The agreement has two aspects: fundamental social rights in line with ILO conventions and global compact and provisions relating to social dialogue and health & safety. Worldwide implementation was a major concern. Indicators have been established, annual report is discussed at EWC which has been trained on this issue and annual tripartite visits are organised locally with senior management, which have proved very effective, for example in China and Brazil. The agreement is included in managerial procedures, evaluations and audits. Negotiation is underway to establish a specific body on safety issues.

The employer expert of CEEP asked whether a agreement on less consensual issues that CSR, for example on restructuring could be negotiated with ICEM too and highlighted the choice to negotiate with a global organisation. Mr Kheliff answered that such a global process on restructuring could be envisaged and that all five French trade unions had signed an agreement on that issue.

The trade union expert of ES asked how management builds its European or global solidarity as the trade unions do. Mr Kheliff stressed that the implementation network is the managerial network, that managers would not like to be caught in the internal audit process or during visits of the CEO. He noted that ICEM also provides a network.

The ILO expert noted that the agreement is global but the annual report is examined by the EWC. Mr Kheliff answered that there is no global works council at present. This could possibly be done through an enlargement of the EWC.
5. THE ACTORS INVOLVED IN TRANSNATIONAL COMPANY AGREEMENTS

Introduction: Mrs Pichot introduced issues related to “actors involved in transnational company agreements” through a presentation based on the issues paper produced for the meeting. At present, on employee side, three categories of representatives intervene, often together. EWCs sign almost all European and mixed text and a third of global texts, while their competence are information and consultation, not negotiation. European and/or international workers’ federations sign half of European and mixed texts and almost all global ones, while their mandates to negotiate and sign are not always clear. The crucial limitation affecting national workers’ organisations, who sign one third of transnational texts, lies in their national field of competence. The national industrial relations backgrounds as to respective role of trade unions and works councils in company negotiation on the issues dealt with in transnational agreements, such as restructuring, also vary. On management side, involvement of national and local management, together with corporate one, is crucial to further implementation. The question is therefore how to ensure actors have legitimacy and capacity in negotiating, signing and implementing transnational company agreements to develop their positive results. (See presentation and issues paper)

Insider views of Areva: Mrs Naud and Mrs Kearney presented the actors involved in initiating, negotiating, signing and implementing the 2006 European agreement on equal opportunities. Initiative came from the EWC, both management and employee sides. Negotiation occurred between EMF mandated by national trade unions, EWC select committee and corporate management and included implementation mechanism. Agreement was signed between EMF and CEO. A specific project was carried out, with the EU financial support under budget line 04.03.03.03, to implement the agreement. It included joint appraisal of situation as to gender equality and insertion of differently abled people in all sites in Europe, a transnational seminar bringing together employee representatives, HR and managers to share best practice, the creation of a European network on gender issues and differently abled people in the workplace, 10 regional workshops to design regional action plans and communication of results, both internally and externally. Mrs Kearney referred to the EWC objective that employees could see a difference and Mrs Naud to the management objective of long term credibility. They both insisted on the determination of all partners global commitments will make real difference locally, showed satisfaction as to the results obtained and underlined that essential elements are building trust and confidence between all the actors. The joint monitoring of the agreement will continue with subgroups to follow action plans and monitoring committee meetings. (See presentation)

The employer expert of NL asked about the reasons to involve EMF and the Commission. The employer expert of CEEP noted that it seems rather a joint project than an agreement and that no need for legislation appears as everything works well. He asked about representativeness issues: proportional representation at EWC and way to deal with trade unions that are not members of ETUC. He also asked whether a negotiation on restructuring could be possible with EMF. Mrs Kearney insisted on the involvement of all concerned from the beginning, answered that EWC initiated the process but mandating process of all trade unions was ensured within EMF. As to the Commission's involvement, Mrs Kearney noted it helped formalize the implementation and monitoring process, Mrs Naud also welcomed the financial support. Mrs Pichot explained that support to transnational agreements was a priority on Budget line 04.03.03.03. As to negotiations on restructuring, Mrs Kearney noted that it
would be difficult when competition decisions from the Commission are involved and Mrs Naud considered that a negotiation on anticipation could be envisaged instead with EMF. As to legislation, Mrs Kearney noted that the strong and shared will present at Areva does not exist in all companies and that a framework may help in this context.

**Views of the social partners:** Mr Ronnest stated that BusinessEurope is taking part in the expert group with interest even though no need for EU action is felt. Gathering texts and transnational agreements is seen as particularly meaningful and a typology might be useful, without leading to guidelines. He underlined that social dialogue in transnational companies is a complex phenomenon. Depending on issues, context and ability to follow-up on commitments made, type of involvement may differ and related decision is to be taken at company level. He considered that EU level is the right one to deal with transnational issues, together with the ILO one. He noted that EWCs play an important role in the process and that recast EWC directive is a good basis for the development of social dialogue at company level. He stressed however that EWCs are information-consultation and not negotiation bodies, that actors cannot escape the countries in which the company operated, as no European room exists, explaining why national trade unions are involved in so many transnational agreements. Reflecting on these issues was considered as extremely useful.

Mr Samyn explained how the European Metalworkers’ Federation (EMF) approach to transnational company agreements has developed since the first examples in 2000 such as Ford to the procedure followed to conclude and implement the Areva agreement. He considered that the debate on the actors, their representativeness and mandates, is a key one. He stressed the need to invent a culture and process at European level that does not copy one of the national models and to bring European trade union federations and employee representatives who know the company around the table. It is not about opposing EWC and trade unions. He underlined that the initiative stems from the EWC in most cases but that EMF needs to take up the lead as soon as negotiation starts. He described the EMF procedure for negotiations experimented at GM, Arcelor and PSA, particularly on restructuring, agreed in 2006 and used in latest agreements at Schneider, Thales, Areva as well as in negotiations At ArcelorMittal and Alstom. Objective is to achieve clear mandates and commitment. In a first step, the EMF informs all trade unions. Then national unions give a negotiating mandate to EMF, preferably unanimously and in accordance with national rules (French CGC, although not member of ETUC, is associated). A continuous information is ensured during negotiations carried put by negotiating team. Draft agreement is to be approved by all trade unions involved by 2/3 majority in each country (in ABB case, one country blocked the signature). EMF signature binds all trade unions present in company to implement it. Last, information on agreement is carried out. Mr Samyn stressed the will of EMF to develop close cooperation with EWC in negotiating the agreements, their monitoring and follow-up being done by them. Following a remark by Mr Ronnest, he referred to the development of similar procedures in other sectors. (See presentation)

**Lessons learned:** Mr Tricart opened the discussion. The trade union expert of UNI indicated that global as well as European agreements have been concluded in 32 companies in the sectors covered. He considered that global agreements should be better addressed as global companies need global unions, most “European” companies also operate outside Europe and global and European levels need to complement each other. He considered that legitimacy of the agreements stems from national trade unions, stressed the strength related to their voluntary nature and noted that mechanism to support interpretation of the texts and mediation may be needed. The employer expert of CEEMET fully agreed with UNI to that
extent that he didn’t see any problem in implementation, observing that companies adapt procedures to their needs and build confidence.

Reacting to EMF procedure, the governmental expert of DE noted that company employee representatives from EWC are competent on issues such as restructuring in Europe. The employer expert of CEEP considered the EMF procedure as interesting and asked about ways to avoid the agreement being challenged in court and relations between EMF and the EWC. The employer expert of NL stressed that industrial relations systems are diverse and that one should also consider non-French companies.

The governmental expert of ES noted that agreements bring added value. He considered that these initiatives should be supported and that a framework could bring legal certainty. As to the representativeness, he considered that social partners should be decision makers and that a work on this topic at sectoral level would make sense. Mr Ales referred to the importance of mutual recognition in transnational agreements as well as to the notions of legitimacy, capacity and mandate. He considered managerial decisions to implement agreement preferable to a ratification process. He asked about mechanisms to resolve disputes.

The governmental expert of IE referred to actors involved in upstream and downstream process. Drivers leading to signature should be considered as well as implementation where European management may encounter resistance from global or local management. The expert of Dublin Foundation raised the issue of peripheral actors and referred to studies concluding that only 9% of IFAs were applicable to whole supply chain.

Mr Ronnest reflected about the reasons leading companies to engage in the conclusion of agreements in specific sectors and Member states and noted that the coherence in companies is affected positively by this process, in addition to making trade unions happy. As to the role of the European social partners, only real problems, not speculative ones, should lead to act.

Mr Samyn noted that also American companies with European headquarters (GM, Ford) are very much involved in the process, not only French ones. Discussing with one organisation instead of many could be a reason to engage in transnational negotiations for companies. As to the legal framework, he stated that EMF favours it to help and make life easier. As to the involvement of national actors, he does not favour co-signatures of agreements at national level given the fact that the procedure guarantees involvement of all actors, including consultation of national WC where needed (DE and NL for example). As to the relation between EWC and trade unions, he stressed the need to have both the EWC part of the process and the EMF signing to bind all members. He considered it possible to develop a nice cooperation between elected and trade union representatives respecting the different industrial relations systems.

Mr Tricart 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 in November should notably discuss results of study on international private law aspects.