INTRODUCTION

Dealing with company restructuring and anticipating and managing change are important issues in transnational company agreements, and increasingly so, it appears. This paper provides a contribution to the work of expert group on transnational company agreements as regards "transnational company agreements in times of economic and social change", in particular as to the role of such instruments in the context of the current crisis.

It builds on the analysis carried out in 2008 in different studies, documents and meetings, (see references in annex) and takes into account the new developments related to the current economic situation.

1. TRANSNATIONAL COMPANY AGREEMENTS DEALING WITH ANTICIPATING AND MANAGING CHANGE, TRAINING AND MOBILITY

Since the early 2000s, an emerging phenomenon can be observed at corporate level, consisting in a transnational negotiation’s activity on restructuring and/or anticipation of change. The joint texts resulting from this process cover situations located in the different countries where the European/multinational companies operate or in those ones affected by a restructuring plan.

While global transnational texts typically focus on fundamental rights or address the different aspects of corporate social responsibility, transnational texts for the European area tend to have as their core aim the establishment of partnerships to deal with restructuring, reorganisation and anticipative measures. In 2008, in a study prepared for the Commission, M. Schmitt analysed 37 examples of transnational joint texts, signed at 22 multinational companies, which relate to restructuring and/or anticipation of change in varying ways.
a) Addressing concrete restructuring events

Agreements have been negotiated after the announcement of a restructuring plan, in order to lay down a set of guarantees for the employees affected by this operation and sometimes addressing economic issues. Specific circumstances prompted negotiation and adoption of texts, for example at Danone, DaimlerChrysler, Ford (2 texts), General Motors (5 texts) and Unilever.

Avoiding redundancies

When plants closures and jobs reductions are planned, agreements often include commitments to avoid compulsory redundancies

Guarantees linked with transfer and redeployment

When plant closures and redundancies are unavoidable, agreements generally set up accompanying measures, as internal and/or external redeployment.

Employees who are transferred after a plant closure often benefit from the maintenance of employment terms and conditions and/or job security. The same applies when employees are ‘automatically’ transferred to another company in consequence of a spin-off or an alliance, or even a divesture.

Several of these texts also contain a commitment to ensure the return of the transferred employees in their former company.

Other accompanying measures (alternatives to transfer and redeployment)

Other accompanying measures are generally offered to employees affected by the restructuring plan:

- Part time work programmes,
- Outplacement assistance, support in starting up a business, compensation payment after the termination of contract, compensation for shortfall in earnings with a new job
- Training to attain the necessary skills to qualify for jobs with a new employer
- First right of application in new recruitments

Social guarantees can also indirectly result from provisions addressing economic issues, for example to provide sourcing or investments.

Procedural rules on collective agreements and employee representation

The consequences of transfer on collective agreements are treated in different agreements, for example by providing that the existing collective agreements will stay in force and be the subject of local/national negotiations. One agreement states that outsourced company is to become a member of the employers’ association in order for the collective agreements signed at sectoral level to be valid.

Three agreements also contain rules addressing the employee representation until the restructuring will be effective and/or after the transfer of employees, preserving the skills and rights of the EWC, as well as those of the national trade unions. Others adapt the representation to the new group or provide for the creation of a new EWC.

One agreement handles participation of employee representatives to the definition of concrete restructuring decisions by providing that “Both parties will examine potential business opportunities in order to lessen the impact on employees” and to favour joint ventures.
b) Organising a socially responsible management of potential restructuring

Agreements are designed to lay down a joint planning for restructuring in advance, by negotiating general rules and/or more concrete measures to apply to their employees in this event, for example at Axa, Danone (1997), Deutsche Bank, Dexia (2002 and 2007), Diageo, EADS (2007), General Motors (Outsourcing 2008), RWE, Total (2004) and Unilever (2001).

These agreements aim at “restructure in a socially responsible manner”, explaining the social policy of the Groups in the event of restructuring and staff changes, setting up ‘the master guidelines and social minimum standards’, with a particular focus on business disposals.

By setting principles and concrete measures to apply in the event of restructuring in advance, these texts generally intend to promote job security and employability and to mitigate the impact of restructuring for employees.

Avoiding redundancies

Companies often take a pledge to avoid, as far as possible, jobs reductions and to seek alternatives measures to mass layoffs:

- internal reassignment before decision to lay off
- voluntary departures or early retirement
- financial compensation
- part-time jobs; redistribution and shortening of working hours, reductions in overtime
- geographical mobility.

Providing for accompanying measures, notably in case of disposals

For cases where job reductions are unavoidable, particularly in the case of business disposal, agreements contain accompanying measures:

- Practical and financial assistance to internal and/or external redeployment notably through vocational training and outplacement assistance
- Preservation of rights and pledge to comply with pay-bargaining systems or even continuation of terms and conditions and right to return for some years after outsourcing
- Site rehabilitation aimed at creating new jobs and stimulating economic development for example through consulting services, market or feasibility studies and financial assistance

Social criteria are also set in case of future business or majority shares disposals

Procedures – social dialogue

In addition, all these joint texts set up procedural rules on social dialogue. The groups commit themselves to inform and consult the employee representatives – EWC and/or local trade unions and representatives. The information-consultation process generally concerns the restructuring plan and its social impact.

c) Anticipating change

Agreements are specifically dedicated to anticipation of change and more precisely to forward-looking management of jobs and skills. Thus, the aim of these recent joint texts is not to lay down a set of principles or rules to apply in the event of a restructuring plan, but to establish a long-term social policy with a view to ensure the future of employees whatever the
organisational changes within the Groups. Such joint texts were signed at Danone (1992), Dexia (2002), Eni (2001 and 2003), Schneider Electric, Suez and Total (2004 and 2007).

Planning
These texts put in place planning ‘studies’ or ‘approach’ concerning jobs and training needs in a context of change, for example in setting in place ‘a system for monitoring the technological developments expected within the group and the labour market assumptions’.

Management of employment and skills
In relation to future developments in occupations and work, a management of employment and skills is set up. This anticipating/training policy is conceived as framework agreement that defines orientations for future national agreements or contains more concrete and complete provisions dealing with:
- general forward planning tools, i.e. assessment per country, company, workplace job;
- professional development of each employee: individual competence review, vocational training, mobility, validation of working experience...
- active training policy open to all employees defined through local annual discussions
- recruitment policy: priority to internal candidates; junior associates’ integration, transfer of skills between generations;
- mobility: anticipating internal and external forced mobility and encouraging and accompanying voluntary internal mobility, communication of job offers;
- specific measures for anticipation and retraining of employee from the age of 45 or with physically strenuous occupations.

Procedures - Social dialogue
These agreements highlight the importance of information and consultation at European level as well as local level so as to enable an ‘anticipatory social dialogue’. They enhance the scope of information given to the EWC, link the European dialogue with the information and consultation of representation bodies at local level and establish committees at different level

d) Addressing restructuring in the context of global agreements
Some Global and International framework agreements do not specifically focus on accompanying and anticipating change but include references to restructuring and/or anticipation of change, for example at Arcelor, EADS 2005, EDF, ENI 2002, Generali, Lukoil, Rhodia, PSA, Renault, Suez 1998.

These texts set commitments for the company to observe certain principles and standards – i.e. the ILO Labour minimum standards – in its operations.

A number of these texts illustrate a CSR approach in referring explicitly to the social management of restructuring by protecting employment through training and mobility, minimizing the impact of a restructuring on employment and working conditions, by ensuring the employability of the employee in a long-term view and by providing for information and consultation of employee representatives on restructuring.

Some global agreements contain a specific provision focusing on anticipating change by stating that the company undertakes to anticipate, as much as possible, economic and industrial changes and their consequences in terms of human resources. The favourite means
to implement this "principle of anticipation" is the management of skills and training and a prospective and permanent social dialogue.

2. **Drivers and Impact of Transnational Company Agreements Dealing with Anticipating and Managing Change**

   a) **Reasons for engaging in transnational company agreements**

   At the workshop for management and workers’ representatives from companies that have concluded transnational company agreements on anticipating change and restructuring, organised in May 2008 by the European Commission, the participants suggested a number of answers as to why the companies and workers’ representatives concerned negotiated and signed such text:

   - **The company context**: growth into new countries, increasing internationalisation, mergers and acquisitions, will to strengthen group identity and coherence
   - **A well-functioning, active and well-resourced EWC**, with dialogue on restructuring progressing form information and consultation to more substantive negotiations.
   - **A Restructuring exercise or a Human resources policy** with implications across a number of countries or group-wide, leading to seek a transnational solution or approach, save the time and effort of conducting parallel negotiations on the same topic in each country.
   - **Trade union objectives**: EWCs and European and international trade union federations to validate and strengthen their role, development of partnerships with companies
   - Extension of national legal context and approach to anticipation of change.

   b) **A range of benefits**

   The 2008 workshop participants’ views of the transnational company agreements on restructuring were overwhelmingly positive, with a variety of benefits identified but very few negative aspects.

   Beyond the advantages (actual or potential) for employees and employers implied by the agreements’ substantive content, the experience of negotiating and implementing TCAs on restructuring had brought a number of other, less direct benefits. These included:

   - contributing to a stronger sense of group-wide corporate common identity across borders;
   - improving mutual understanding and confidence between management and workers’ representatives at both transnational and lower levels;
   - promoting new ways of thinking on both management and employee sides, and notably a forward-looking approach to company restructuring;
   - encouraging an acceptance among all parties that change inevitably happens, and a belief that the best way to deal with it is through negotiation, dialogue and a joint approach;
   - helping to focus the minds of management and workers’ representatives on evaluating existing practices, taking stock of how restructuring is currently handled, identifying both inadequate practices that need to be improved and good practices that may be disseminated;
providing a framework that allows for a more structured debate on company strategies; and
giving substance and real meaning to the role of EWCs and the dialogue they conduct, and linking them more strongly to developments at the national and/or local levels.

Few problems and drawbacks were reported by participants. A few, on the employee side, expressed some concern about the concrete application of TCAs at national and local levels, and a possible lack of consistency in implementation between countries and subsidiaries. Linked to this, in a few cases it was suggested that there might be a degree of resentment among managers and workers’ representatives at lower levels about the top-down imposition of measures agreed at European level. Some participants identified a number of problems in achieving mutual understanding over the issues covered by agreements in a transnational context, owing to a lack of common terminology.

The actors surveyed in 2006 by the Commission indicated similar positive results from the transnational company agreements dealing with restructuring. In overall terms, they felt that transnational company agreements

- have a positive impact on social dialogue
- have a positive impact on understanding and facing challenges, for example, as regards the need for and design of restructuring
- are a way of bringing in a European dimension and also constitute a driving force for further action in various countries.

They also indicated very concrete results in the field of anticipation and management of change. Management recognised

- that they helped to bring the negotiation with employees to an end in a difficult and time-limited context,
- the effectiveness of certain precise provisions such as the ones provided in the framework agreement on the consequences of the alliance between General Motors and Fiat (employment guarantees, maintaining of collective agreements, possibility to return)
- more generally, their positive impact on the employees’ acceptance of the need for restructuring.

Employee representatives also

- perceived concrete results, such as having avoided plant closures, allowed the positive development of a sold activity or maintained statutes for employees,
- acknowledged the common rules for dealing with the restructuring and the common raft of measures provided for the workers affected.

Positive results were also identified from more general texts on CSR. For example, one transnational text was considered as having introduced managerial principles throughout the group and given dynamism to concrete actions, leading – for example – to a label for call centres, to negotiations on socially responsible subcontracting in one country and to a charter on purchasing
3. **The Role of Transnational Company Agreements in the Crisis and Lessons for Today**

Against the difficult situation created by the crisis, new transnational company agreements are concluded in companies such as *General Motors Europe* with the aim of avoiding mass layoffs and plant closures. In other companies such as *Dexia or ArcelorMittal*, the instruments set in place through transnational company agreements concluded in times of "peace" are confronting with "fire" and being used in times of crisis.

Management and employee representatives from *Ford Europe* and *Rhodia* have kindly accepted to present their experience of transnational company agreements and the role they play in times of economic and social change. How to develop the positive results that may be attained through transnational company agreements, in particular avoiding negative social impacts of corporate restructuring and creating ground for future developments, in the present context is the purpose of the discussion of the expert group with them.

**ANNEX: REFERENCES**

- 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