Fifth meeting of the Expert Group on transnational company agreements of 3 May 2011

Minutes

1. PRESENCE

In addition to Commission’s representatives, the fifth meeting of the Expert Group on transnational company agreements had 51 participants: 34 permanent members, 4 permanent observers and 13 speakers and ad-hoc experts in a personal capacity:

- **21 EU and 2 EEA Governmental experts** from AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, IT, LT, MT, NO, PL, RO, SE, SI, SK, UK

- **13 Social Partners' experts**: 6 experts from the employers' organisations nominated by BusinessEurope (BDA DE, BusinessEurope, CBI UK, CEEMET, CEEP, VNONCW NL), 7 experts of the trade-union organisations nominated by ETUC (DGB DE, EFFAT, ETUC, Nordic In NORD, NSZZ Solidarnose PL, UGT ES, UNI Europa)

- **2 Institutional experts** from the European Parliament and ILO

- **4 Academics and consultants**: Patrick Humblet and Ricardo Rodriguez (Labour Asociados), Maria Vasquez and Arnout De Koster (ITC ILO)

- **9 Company actors**: ETEX: Myriam Macharis HR Director; ALSTOM: Noël Huret Group employee relations; European HRD circle for social responsibility: Yves Barou Co-Chairman, Philippe Vivien HR Director Areva, Hervé Borensztejn HR Director Converteam and Eleonore Mazeau; PFLEIDERER AG: Michael Fischer HR Director Corporate Functions/Policies and Programs, Frank BergmannChairman of European Works Council and Gisbert Brennecke Arbeit und Leben Bielefeld DGB

The **European Commission** was represented by

- Armando Silva, Director "Employment and Social legislation, Social dialogue" and Chairman of the Expert Group
- Fernando Vasquez, Deputy Head of unit "New Skills for New Jobs, Adaptation to change, CSR, EGF", Chairman of the afternoon session
- Evelyne Pichot, Marie-Aude Tannou "Labour law" unit, DG EMPL
2. **OPENING**

Mr Silva opened the fifth meeting of the Expert Group. He welcomed the participants and recalled the main objectives of the meeting. Mr Silva presented the draft agenda and the draft minutes of the fourth meeting which were approved without comments.

3. **LATEST DEVELOPMENTS IN THE FIELD OF TRANSNATIONAL COMPANY AGREEMENTS**

**Fresh agreements and initiatives:** Mrs Pichot presented the latest developments in the field of TCAs (*See presentation*). Since last October, new agreements have been concluded both with European and global scopes. These include the Alstom and Areva European agreements on anticipation of change as well as the European agreement establishing a procedure for social negotiation signed at EADS. At global level, new agreements were adopted by Norsk Hydro, GDF-Suez, Electrolux, Pfleiderer, and Kimberly Clark.

Mrs Pichot informed about other initiatives taken in companies such as on-going negotiation on financial participation in EADS and on gender equality in GDF-Suez or discussions on the establishment of a World Works Council in General Motors. She also presented recent initiatives of employers' organisations, companies or trade unions in the field of TCAs. With regard to studies and academic work on these issues, she referred to various papers issued and on-going projects at ILO, European Parliament, French Ministries, ETUC and universities.

Mrs Pichot also drew the audience's attention to the new projects supported under Budget Heading 04.03.03.03 in 2010 which have a significant part or contain elements relating to TCAs (respectively seven and five projects for total grants of €1,13 and 0,61 million). On the Commission's side, she outlined that the database on TCAs was in its final testing phase. She finally reminded that a study on the characteristics and legal effects of company agreements was on-going and that chapters on TCAs are included in the 2010 reports on Industrial Relations in Europe and on Restructuring in Europe.

**Project of ITC ILO:** Mr Silva then invited Mr de Koster to present the results of project carried out on TCAs by the employers' Activities Programme of the International Training Center of the International Labour Organisation with the support of BusinessEurope. Mr de Koster introduced this EU funded project which consisted of five European workshops, which were attended by employers' organisations and representatives of 43 companies together employing 6 million employees (one third with TCAs, two thirds without). Participants were informed of recent developments regarding TCAs and could discuss openly among peers on management approaches to this developing issue (*See presentation*).

Lessons learned were presented in a publication "Key issues for management to consider with regard to Transnational Company Agreements". With regard to the pros and cons of TCAs, it was considered on the one hand that they can constitute good vehicles for social dialogue as well as useful early warning systems. They may prove helpful for corporate social responsibility policies, notably as to public procurement and social rating. On the other hand, it was also considered that TCAs are not necessarily the appropriate option as they may entail centralisation, negative impacts on national collective bargaining as well as potential legal consequences. Trade union strategies regarding TCAs, notably related to recruitment of members and wages, were also taken into account. As regards the key issues to consider when engaging in TCAs, a number of important points were highlighted as to: internal coordination, drafting and language issues,

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risks of the model agreements, legitimacy, capacity and representativeness of the parties, legal considerations (as the status of TCAs has not been tested in courts). In respect to the implementation and monitoring, it was concluded that good internal communication and endorsement were factors of success but the real difficulties encountered need to be further analysed. Finally, attention should be given to dispute settlement mechanisms which are still rare in TCAs.

Overall, Mr de Koster concluded that TCAs are still an emerging process with which companies remain unaware and uneasy. As far as management is concerned, he still sees many uncertainties and stressed that any public initiative to support TCAs would need to be considered carefully.

Mr Silva thanked for the presentation and gave the floor to the audience for comments and questions. The trade union expert of NORD appreciated the concerns of companies but regretted the lack of distinction between different kinds of transnational agreements, particularly between IFAs and European agreements, as he considered it was prejudicial to the later developments. He stressed that he did not thought trade unions were pushing towards flatlined wages through TCAs. He also noted that strikes are the way gentleman agreements are enforced whereas legally binding agreements enable more peaceful dispute resolution mechanisms.

The employer expert of NL observed that these workshops were highly appreciated by participants as there is still a lot of unawareness regarding this issue in companies and that the brochure issued was a very useful document for them. She underlined that making an agreement at transnational level was not felt as a legal issue by the companies, that it would be counterproductive to treat them as such but that consideration should be given to legal aspects before making an agreement because of the related risks. The employer expert of CEEP insisted that a unique legal framework for TCAs is not appropriate to the reality of companies because of the diversity of the agreements, of their themes and objectives. The employer expert of DE pointed out the importance of these meetings allowing employers to exchange experience. She noted that the European level is not the issue but rather the global one. She also outlined that there is a need to raise awareness on the content and consequences of the references made to international legal texts such as the ILO standards.

The governmental expert of DE enquired whether national players were involved in the negotiations for the companies who had concluded TCAs. Mr de Koster answered that in starting the process, the main drivers are generally the international trade unions but that in many cases national trade unions are working as intermediaries to create a better platform. However, in the stage of negotiation, practices vary widely from purely international negotiation to a process involving both levels of actors.

Finally, the trade union expert of ETUC reflected on the ways to help TCAs, building on the different company experiences. He considered that an optional framework for TCAs at European level would not affect the national systems but would support the good functioning of existing TCAs. He noted that two routes may lead to a framework, heteronomy and autonomous contribution of the social partners, and that trade unions have already started establishing procedures to that aim. These mandating mechanisms were also highlighted by Mr de Koster.

4. LATEST EXAMPLES OF TCAs

Mr Silva thanked Mrs Pichot and Mr de Koster and gave the floor to the representatives of ETEX, Alstom, and the European HRD Circle for social responsibility for them to present their experience regarding TCAs.
Example of ETEX/ Environment, Health and Safety: Ms Macharis, HR Director, briefly presented the ETEX Group headquarterd in Brussels, which is active in building material and passive fire protection systems. It is present in 40 countries (25 in Europe) and has 13,500 employees worldwide. Ms Macharis then introduced the Environment Health and Safety Charter which was signed in 2010 and applies to all majority owned companies of the ETEX Group in Europe. Because of the difficult past of the company with asbestos, the ETEX group has made health and safety a priority issue. Social dialogue is also seen as a principle and was enshrined in the social charter agreed in 2002. Management gave therefore a positive answer to the 2009 EWC request for an EHS Charter. The negotiating group included representatives of EHS and HR management, EWC and European federation of building and woodworkers; it asked more management and employee representatives for their feedback after meetings. A first text was drafted by the workers representatives in form of an agreement; however this did not match the wishes of the ETEX Group who intended more a gentlemen agreement considering the final responsibility of local management in EHS matters. A compromise was found in the form of a Charter laying down EHS principles, tested with local EHS operational managers and workers representatives. The Charter establishes a joint working committee to serve as a platform for better information on EHS results; exchange and discussion on best practices, issues and ways to improve awareness. It meets once per year on a fixed agenda and reports to the EWC. However, Ms Macharis underlined that this is neither a decision-making-instrument replacing the local management, nor a mediation platform designed to solve local problems.

The Charter has been translated in 5 languages and all the European managing directors have been informed of its signature and requested to take action to implement it through the local structures. The legal effects of the Charter have not been tested and the text does not include any specific clauses on this issue, however it is a strong moral commitment to keep EHS matters has a major priority. Ms Macharis also referred to the Social Charter applying in the European Union, with a recommendation to take its principles into account outside the EU. In early 2011, the Executive committee approved a Code of Conduct sent to all managing directors for implementation worldwide and consideration is given to the making an International Framework Agreement (See presentation).

Mr Silva thanked Ms Macharis for her presentation and opened the floor for questions. The employer expert of CEEP enquired whether the texts have been signed by the representatives of the workers, Mrs Macharis indicated that the members of the EWC signed it (both managers and personnel representatives) whereas the Code of conduct was unilaterally designed and signed by the CEO.

Example of Alstom/ Anticipation of change: Mr Noël Huret, Group employee relations, presented the Alstom group, active in transport infrastructure, power generation and transmission and employing 95,000 persons of which 20% in France and stressed the accelerating pace of change the company and its employees need to face. He then introduced the agreement on anticipation of change and developments in Alstom, concluded with EMF in February 2011 for three years renewable and applying to 25 European countries. The agreement aims to anticipate the impacts of the market and product evolutions on employment and competencies and to safeguard employment in a period of crisis.

The agreement organises a strategic social dialogue at all levels in the company with information and consultation processes held at least once per year covering key economic developments in the company and HR responses to them. An important point of negotiation was the way to organize the different levels of social dialogue. It has been decided that the European Works
Forum must be informed before or at the same time as the national instances and that the national consultation processes should not be closed before the end of the European process. The agreement further provides measures aiming at the anticipation of the impacts of market and product evolutions on employment and skills. An annual meeting with the manager is notably to be organised for every employee in order to support mobility and prepare a training programme built on both management and employee objectives. Key provisions of the agreement aim at safeguarding employment in a period of crisis; mitigating the impact of workload or strategic developments on employment and have been negotiated during the last month before the signature of the agreement. In order to avoid redundancies as much as possible, all options are to be explored: balance the workload between sites, create new activities, maintain the workforce through internal mobility, requalification, short term or part time work. Once all possibilities to maintain the employees in their positions have been exhausted, Alstom and the employee representatives negotiate in order to avoid as much as possible redundancies by encouraging voluntary mobility, departures, support to individual projects, etc.

Mr Huret stressed that the main difficulty lies in the way to drive, cascade and implement the agreement which contains provisions that are not common in all European countries. Therefore, special attention has been given to dissemination and follow-up, with brochures and joint union-management meetings. He noted that the most important for an agreement is not to find the good words but to reach a common understanding in all countries, even if cultures and practices of social dialogue are different. As a conclusion, Mr Huret pointed out that the agreement does not aim to create new policies or new levels of negotiation but to organise existing ones and to develop good practices throughout European countries.

Mr Silva thanked Mr Huret for his presentation and opened the floor for questions and comments. The employer expert of the NL enquired about the signatures on employee side and the motives of management in this agreement. Mr Huret stressed that the EWC has no negotiating role but information and consultation becomes a difficult debate when it comes to adaptation to change and restructuring. The objectives of the agreement, concluded with EMF, are precisely to organise this debate between the different levels, so as to better prepare for change. The employer expert of CEEP considered that part-time work or voluntary mobility solutions taken at group level could be refused or even legally backfired at local level, which has the power to negotiate. He therefore enquired on the kind of firewall available against people contesting the measures taken. Mr Huret answered that attention had been given to the wording of the agreement, which provides that alternative solutions to redundancies should be considered if so requested by the employees' representatives. The trade union expert of NORD noted that the agreement and the approach agreed with the European Metalworkers' Federation regarding the national implementation were interesting. The governmental expert of DE asked how national competencies, actors and rules were respected in the process. Mr Huret noted that the negotiating group included people representing the major unions in Europe and not solely the EMF. He stressed that the agreement tries to link the different levels and promote certain solutions but remains prudent enough to ensure that the local and national rules and regulations would not be affected. Finally, upon question from the employer expert of DE about the role of management, Mr Huret explained that the implementation of such an agreement was difficult on both sides and that there needs to be a good understanding and ownership for management to be in a position to apply the agreement.

Experience of the members of the European HRD circle for social responsibility: Upon invitation of Mr Silva, Mr Barou presented the European HRD Circle, composed of senior HR Directors across Europe and which aim is to improve corporate social dialogue and responsibility through sharing, and to draw some lessons from their experience. Members of the Circle have
signed 20 TCAs covering 1 million employees. Mr Barou stressed that TCAs are not to be considered as marginal but rather as the main event of this decade in Europe in the field of social Europe after EWCs had been the one of the former decade. He pointed out that the European model is based on social dialogue, which has no equivalent in the USA or in Asia. He insisted that this collective heritage has a great value and that the challenge is to overcome the differences in order to offer to the world this European system based on social dialogue. However, social dialogue has to be positioned at the appropriate level in the company, at the level where decisions are taken, which is not happening at local or national level for key decisions in multinational companies. Mr Barou stressed the belief of the members that the European Commission has a responsibility to support these actions, notably by providing a flexible optional framework. This framework would lessen the uncertainty which weighs on companies, enable them to know the rules of the game and give them the possibility to use regulation rather than end up with litigation. In this view, the framework should be optional, thus leaving the decision up to each company, respect the national systems for collective agreements and should be very flexible to allow innovation and new ways forward.

Mr Barou drew a few lessons from the agreements concluded. The first lesson is that TCAs are an opportunity to explore new fields not addressed so far in social dialogue. Secondly, he stressed that by basing these agreements on the sharing of good practices, solid foundations are given to TCAs. Thirdly, he noted a pragmatic move from agreements on principles to more precise, realistic and clear commitments which can be checked and followed-up. The fourth lesson drawn lies on the way to negotiate: it is not for the EWC to negotiate but the EWC is a key actor before and after the negotiation. The national representatives in a negotiating body should be appointed according to national practice in order for this body to be the most effective and combine the strengths of trade unions and works councils. Lastly, Mr Barou stressed the importance of the follow-up which is often done by a "convention" meeting every six to nine months and needs to be treated as seriously as other managerial responsibilities, at all levels (See text).

Mr Vivien added three points on the basis of the European agreements concluded at Areva: the 2006 agreement on equal opportunities and the 2011 agreement on professions and competences forecast and management. He first referred to "innovation through negotiation": the negotiation at EU level is a unique way to build some trust when considered on both sides as a relevant and useful level of discussion and not the repetition of local procedures. The home-based-syndrome should be avoided: an international negotiating team allows grasping the complexity of the future implementation from the beginning. Secondly, there should be a consistency between the local practices and the European scheme and he noted that in this view, working with best practices creates pride of what exists so that people would share these within the negotiations. He stressed that the process is both bottom up and top down and that high input at the time where the agreement is negotiated results afterwards in smooth monitoring locally. Thirdly, he noted that working at European level enhances the professionalism on both sides as it requires innovation and changes in the usual way to work. Finally, it provides the actors with a common vision for the future: it sets a vision with indicators and criterions through the follow-up. In these circumstances, the risk of legal uncertainty can be taken as confidence is built. To conclude, Mr Vivien shared his belief that the new way to go forward is to develop social and environmental responsibility, not only in Europe but also all over the world.

Mr Silva thanked Mr Barou and Mr Vivien for sharing their strong experience and analysis and opened the floor for questions and discussion. The employer expert of CEEP stressed that the local level had a very important role to play also in the decision-making and that not all decisions and policies of the companies were adopted centrally. He considered that in terms of efficiency, social dialogue at the local level was preferable, that the development of TCAs in the metal
sector is quite specific and that TCAs were rather a choice than the future. The employer expert of DE also noted the specificities of the metal sector and of French companies as to TCAs. She stressed the need to take into account national industrial relations systems and pointed to potential adverse effects of EU regulation which might add to the uncertainty and to the risk of litigation instead of reducing it. She noted that the European level may not be the pertinent one, particularly for IFAs, and that the framework needed appears to be less legal and more institutional, which points to the role of the social partners. The trade union expert of ETUC expressed his agreement with the presentations, especially considering the need to have clear rules of the game in order to give a future to this experience. He stressed that although TCAs cannot solve all problems, they design innovative policies in companies and the option of engaging in such process should be made viable for more companies than today. He considered the elements received as useful for the social partners to take up the subject in common at the end of the expert group.

Mr Silva noted that the optional aspect of any framework should be kept in mind as it leaves a large room for differentiation according to circumstances. Mr Vivien observed that it would be meaningful to negotiate a framework establishing a set of rules and metrics, to be shared across Europe despite national differences. This would be useful for both employees and management and is not about calling for an unrealistic single European scheme. He suggested companies may try contributing through negotiation to make this happening. Mr Barou observed that a European regulation would exist one day and that he believes in negotiation rather than in laws: he does not ask the law to decide for them but to give them keys to negotiate. He stressed that everywhere in Europe, rules exist to negotiate in companies at local and national levels, but that the European level remains a blank page. The power in companies has shifted away from national level to the European one or beyond but social dialogue has not shifted in the same way. He considered the European level, where negotiation is a common language and is not limited to principles, to be an interesting and necessary step, considering the cultural gaps to face at global level. So that Europe needs to be reinforced and could be a pragmatic step to offer solutions through negotiation for other regions, which he has experienced concretely with Australia.

Mr Borensztejn outlined that his company Converteam, of medium size, is building strategies at transnational level and not at local one. He also agreed that a global negotiation framework would be useful but that only a step by step approach, starting with Europe seems feasible as it is a real challenge to negotiate with some third countries, particularly in Asia, because of the differences for example in union legacy. Finally he observed that TCAs tackle new topics which are not covered at national level and believed this is an opportunity to improve social dialogue.

Finally, the employer expert of DE considered that spreading the metrics decided through negotiations is not fitting every country and every sector so that no generalisation should be done. Recalling the situation prevailing in Germany, she also considered that no law is needed to negotiate. The employer expert of CEEP came back on the subject of social Europe stressing that, although it may differ from one country to the other, it should be reinforced during the crisis and that the interest of employees now was on their jobs and their job security.

Mr Silva thanked the speakers and experts for the interesting discussion.

5. **LEGAL EFFECTS OF TRANSNATIONAL COMPANY AGREEMENTS**

**Introduction:** Upon invitation by Mr Vasquez, chairman of the afternoon session, Mrs Pichot introduced issues related to the legal effects of TCAs. She stressed that a first question was the one of the parties' intentions as these may vary widely from declaratory texts to binding
agreements producing direct legal effects. A second issue is the fact that the actual legal status of the text is unclear and may differ from the parties' intentions. The lack of norms and of case-law leads to the fact that an agreement might be considered as an employer's unilateral commitment and that its legal status may vary from one country to another. In fact, the legal effects of the agreement are conditioned by the national framework applicable for which various elements could enter into consideration such as its content, the signatories and their representativeness or the procedure followed. She recalled that national rules as to what makes a collective agreement at company level differ, in particular regarding the link between company agreements and other norms and levels of social dialogue, the application to all employees or to affiliated members only as well as the effects on individual working contracts, questions which are examined in the study commissioned to Labour Asociados. She therefore presented the issue to analyse in following terms: to facilitate the development of TCAs, parties should be able to determine and control the legal effects produced by the text they conclude, in coherence with national norms in place. What are the legal and practical obstacles to face and what could be done in this regard? (See presentation)

Mr Vasquez thanked Ms Pichot and gave the floor to Mr Rodriguez for him to present the preliminary results of the on-going study carried out by Labour Asociados for the Commission on the characteristics and legal effects of agreements between companies and workers' representatives.

First results of the study on the effects of company agreements: Mr Rodriguez presented the objectives of the study and underlined that, according to the terms of reference, it focused on providing a comprehensive review of the characteristics and legal effects of company agreements under national rules; identifying practical and legal obstacles faced in the context of TCAs; and exploring options to overcome them. He introduced the work carried out so far which consists in the analysis of the company agreements' legal systems and practices in all Member States, the development of a simulation test of implementation of 15 TCAs to see their legal effects at national level and the discussion and drawing of preliminary results, stressing that these are not final results but work in progress (See presentation).

Mr Rodriguez went through an overview of the national systems of company agreements while underlining their diversity with regard to their legal definition, the content and variety of company agreements, their juridical nature, their relation to national legislation or the formal requirements after their conclusion. He indicated that two main types of personal enforceability exist: the provisions are applied to all employees in the scope of the agreement without regard to their membership to the signatory party or it can be limited to the workers affiliated to the trade union signing the agreement. In addition, the application of the agreement may be limited to a specific profession. As to the capacity to negotiate on workers’ side, depending on the countries, it may be given to trade unions, to the works council, to either or both of them or some waterfall system may be applied. With regard to the articulation of company agreements, some MS have a clear hierarchical structure between national/industry level agreements and company/workplace ones whereas in others there is no such hierarchy. He noted that where a hierarchical structure exists, the principle of most favourable conditions often applies to the agreements concluded at lower level.

Finally, Mr Rodriguez presented the simulation exercise on the implementation of selected TCAs whose preliminary findings show major difficulties to acknowledge TCAs in national systems, particularly as to the capacity on workers’ side. He also outlined preliminary hypothesis as to options to overcome legal and practical difficulties encountered: the possibility of giving uniform legal effects to TCAs appears difficult due to the variety of systems but the possibility of making
the legal effects vary according to the will of the parties and that of giving TCAs the same or comparable legal effects in Member States as company agreements concluded at national level are being further explored.

Mr Vasquez thanked Mr Rodriguez for this overview highlighting differences and common features of the national systems of collective bargaining and gave the floor to the audience for questions. Upon question of the employer expert of NL, Mr Rodriguez outlined that this was a study which did not imply consulting national employers but was based on the input of labour law experts at national level. The trade union expert of NORD observed that the distinction which was made between collective agreements and company level agreements is not applicable in all MS and that both are often interlinked. Upon questions of Mr De Koster and comment of the employer expert of CEEP, Mr Rodriguez explained that it had been a choice to present the personal enforceability and not the binding effect within this short presentation of preliminary results because of the former's clarity, but that both are addressed in this legal study.

Mr Vasquez thanked Mr Rodriguez for his presentation and indicated that the slides as well as the interim report would be sent after the meeting. He then invited the representatives of Pfleiderer AG to share their experience and views on the subject.

**Insider views – The approach to effects of transnational company agreements in Pfleiderer AG Social Charters:** First, Mr Fischer introduced Pfleiderer AG which has its headquarters in Germany, is one of the leading producers of wood products and employs 5,400 people worldwide (EU, Russia, Canada, US) (See presentation)

The 2010 Social Charter (PASOC) applies in all the countries where Pfleiderer AG has manufacturing sites. The Charter is the result of a project started in 2009 by the employee representatives, with international workshops attended by the EWC, trade-unions and the management. Building on the good experience in EWC, the company answered positively to the employees’ initiative which was in coherence with its policy for social responsibility and allowed giving a positive signal to employees in this difficult economic period.

Different views and expectations between the parties needed however to be reconciled during the five-month negotiations, especially concerning the legal aspects. The uncertainty as to the legal effects of a reference to ILO standards, as well as the lack of ratification of some of these standards by the USA and Canada, were notably considered as a major problem and legal issues almost prevented an agreement to be reached. The good mutual understanding and responsibility of both parties, the experience brought by the trade union federation BWI and the wish to give substance to the idea of a social Charter enabled however to go beyond legal aspects and reach a positive conclusion.

Mr Fischer outlined the reasons for Pfleiderer to finally agree to the project despite the concerns and legal risks the company is concerned by the issues of sustainability and CSR and this project was a contribution to the development of decent working conditions. He pointed that the Charter was also a way to implement in all countries the guidelines on cooperation which were developed in Pfleiderer AG in 2004 as well as to improve the image of the company and to reinforce its cooperation with the EWC. The core aim is to guarantee fair and sustainable working conditions for all the employees but it was also very important to develop the principle of dialogue and cooperation between employer and employees.

In addition to legal issues, Mr Fischer observed that the implementation and its costs was an important issue, on which a meaningful compromise was found to limit the costs of the implementation while taking means to ensure it. The Charter has been translated and measures have been taken to include its implementation in all the instructions, guidelines or
communications given to management. Moreover, a monitoring-team was established. In the event of disputes the first step is local, then the works council or trade unions can play a role and finally, the PASOC Monitoring Committee can be called upon. If no solution is found, terminating the agreement would be envisaged.

Mr Bergmann came back on the difficulties faced with the legal aspects of this Charter. He noted that the agreement was not concluded as a typical German one, being it a company agreement (Betriebsvereinbarung) or a collective agreement on terms and conditions (Tarifvertrag) so that ways and means for a broader application had to be found. He stressed the need to have all players around the table for negotiation to allow taking into account the views of all countries. He stressed the positive role played by the EWC, an active and democratic body, which works well with trade unions and should not be excluded from negotiations. He finally stressed the need to look beyond Europe and work for international rights in the context of globalisation, and give employees’ representatives possibilities for action at this level.

**Debate on the lessons on legal effects of transitional company agreements:** Mr Vasquez thanked the representatives of Pfleiderer AG for their presentation and opened the floor for further questions and debate.

The trade union expert of NORD welcomed the preliminary results of the study but regretted the interim report was not sent ahead of the meeting. Considering the specificities of the German system, he pointed out that rules on TCAs should be made to be applicable to all countries even those where a distinction between company agreements and collective agreements does not exist. He observed that giving the EWC the capacity to negotiate does not respect the prerogatives of the trade unions in most EU countries but that the agreements should be prepared in a joint effort between trade unions and the EWC. Finally, he noted that the diversity in national systems should be taken into consideration when making TCAs applicable at national level and that in this regard a national implementation would be a way to ensure that the agreements fit in the existing system. Mr Bergmann added that EWCs differ from national works councils as they are based on an EU directive providing for a competence of information and consultation. He considered that they are legitimate and competent bodies to represent European employees and should be able to contribute to decision making.

Upon question from the governmental expert of AT about solutions found for countries where ILO core standards are not ratified, Mr Fischer indicated that the ILO conventions were not directly taken up into the text of the Charter but that references were made to them, thus avoiding conflicts with national law.

The employer expert of NL emphasised on the diversity in the legal situations as well as in the industrial relations culture in the field of company agreements. She also expressed her concern regarding the fact that the study is carried out without enquiring about the intentions of the stakeholders and stressed the interest of the ITC-ILO project. She observed that breaches can presently be solved through dialogue with management and considered that the legal dimension brought by a legal framework, even optional, could put at risk the development of TCAs. Building on the positive experience of European framework the employer expert of CEEP considered that lessons could be drawn from the way to implement European framework agreements through national agreements, which enables a satisfactory legal consolidation. In light of the positive approach taken at EMF, he also stressed the need for further work between social partners on the issue of TCAs. The employer expert of BusinessEurope insisted that the German system should not be copied, as other countries are satisfied with different systems and wondered about future developments in industrial relations.
Mr Humblet, from the steering team of the study, outlined that he does not share the pessimism regarding the existence of a solution respecting the diversity in national systems and the characteristics of TCAs, although it might not be a unique one. Finally Mr Rodriguez outlined that the issue of legal effect was neither easy to solve, nor impossible. He made clear that the preliminary results of the study are a progress report including many details on the national systems regarding company agreements and starting exploring the alternatives available without providing with a unique solution. He thanked for the comments received which will be taken into account.

Mr Vasquez thanked for the comments and the lively debates. Mrs Pichot indicated that the slides as well as the interim report of the study regarding the legal effects of company agreements would be sent to the experts. Experts were further informed that the last meeting of the Expert Group would take place on the 11th October 2011 to discuss the report and draft conclusions from the Commission, which will be sent in advance.