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:
  1. The Expert Group and its work
  2. Review of developments
  3. Analysis of issues
  4. Review of research, training and projects
  5. 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 companies 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