Expert Group

Transnational Company Agreements

Report

31 January 2012
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Introduction

examined on 11 October 2011

In its 2008 Staff working Document, the Commission analysed "the role of transnational company agreements in the context of increasing international integration"¹, highlighting the situation and potential of such agreements in times of economic and social change, particularly as to anticipation and management of restructuring in multinational companies. With a view to promoting social dialogue and supplementing the action of the Member States it planned to support initiatives to conclude transnational company agreements.

To that end, the Commission set up an expert group on transnational company agreements whose mission was to monitor developments and exchange information on how to support the process under way. It invited the social partners, governmental experts and experts of other institutions to take part. Depending on the issue under discussion, academics and company actors were invited to present their work and experience to the members. As a result, 43 to 55 members, observers and ad-hoc experts in a personal capacity attended the six meetings of the expert group held between May 2009 and October 2011, during which the main issues arising from transnational company agreements were extensively discussed.

The work of the expert group enabled the experts to develop and access information on transnational company agreements, as well as to exchange practice and views on actions aiming at answering difficulties faced in this process.

To that end, the Expert Group reviewed developments in transnational company agreements as well as research, training and exchanges of experiences in this field. It examined more in details the experience of 15 companies. It focused its analysis on five open issues relating to transnational company agreements: the actors involved, implementation and disputes, form and transparency, link between levels and legal effects.

The Expert group had informal status within the meaning of the framework for Commission expert groups. The role of the Commission has been mainly to providing it with logistical support provided and the results of its own work on the subject as well as helping to develop its ideas. The Commission did not sought to interfere with or seek official positions. The same applied to the experts in the Expert Group who, in their countries or organisations, are responsible for the issues under discussion.

The Commission is extremely pleased with the work and achievements of the Expert Group, which has had a fruitful exchange of views in a remarkable spirit of co-operation on the basis of working documents presented by the Commission. This positive judgement is shared by the members of the Expert Group. The shared objective of supporting the development of transnational company agreements allowed the Expert Group to agree with the report deriving from the minutes and working documents.

The report is, however, meant as a simple tool to all which are or will be involved in transnational company agreements. It is by no means binding on any of the institutions or organisations involved, as it does not exempt the Commission from its role under the Treaty.

I – The Expert Group and its work

examined on 14 May 2009 and 11 October 2011

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

While opening the first meeting of the Expert Group on transnational company agreements on 14 May 2009, the Director General Employment, Social Affairs and Equal Opportunities of the European Commission, 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. He explained that, with the establishment of the expert group, the Commission intended 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.

1.1 Commission's document on the Expert Group presented on 14 May 2009, as revised

1.1.1. Objectives and tasks

In the 2008 Commission Staff working Document "the role of transnational company agreements in the context of increasing international integration"², it was foreseen that "With a view to promoting social dialogue and supplementing the action of the Member States as regards the representation and collective defence of the interests of workers and employers, the Commission will support initiatives to conclude transnational company agreements without prejudice to compliance with the applicable national or Community provisions."

To that end the Commission is now setting up an expert group on transnational company agreements whose mission is to monitor developments and exchange information on how to support the process under way, and it invites the social partners, governmental experts and experts of other institutions to take part.

The Commission will provide the expert group with its initiatives and work on the subject, which will focus on developing a data base of transnational texts, organising exchanges of experience and analyses, reviewing the effects produced by company agreements and the way norms relate to each other in the Member States and clarifying the rules of international private law in connection with transnational texts.

The expert group on transnational company agreements has informal status within the meaning of the framework for Commission expert groups³.

1.1.2. Composition and appointment

The permanent members of the Expert group are:

- **EU Governmental experts**: one expert per Member State of the European Union nominated by the respective Permanent representations to the EU
- **Social Partners**: nine experts from the employers' organisations nominated by BusinessEurope, nine experts of the trade-union organisations nominated by ETUC

The permanent observers in the Expert group are:

- **EEA Governmental experts**: one expert per Member State of the European Economic Area nominated by the respective Missions to the EU
- **Institutions**: one expert of the European Parliament nominated by the Chairman of the Committee on employment and social affairs, one expert of the European Economic and Social committee nominated by the President of the SOC section, one expert of the European Foundation for the improvement of Living and Working Conditions, one expert of the ILO, one expert of the EFTA surveillance Authority.

In addition, the Commission may invite ad-hoc experts in a personal capacity to take part in the work of the expert group according to the subject of the agenda:

- **Academics** with specific competence in the subject under discussion, authors of studies commissioned by the Commission,
- **Company actors**: Management and employee representatives of companies involved in transnational company agreements presenting their experience.

1.1.3. Operation

**Chair**: The expert group is chaired by the Director for Social dialogue, social rights, working conditions, adaptation to change at DG EMPL, European Commission.

**Meetings**: the expert group shall meet twice a year and the meetings shall in principle be held in Brussels

**Dissemination of information**: Information obtained as a result of participation to the work of the expert group shall not be disseminated where the Commission lays down that this information is confidential; the Commission may publish on the internet any summary, conclusion, part of the conclusion or working document from the expert group.

**Secretariat**: The Commission shall provide secretarial services for the expert group.

**Meeting expenses**: travel and subsistence expenses incurred by members, experts and observers as part of the activities of the group shall normally be reimbursed by the Commission. Where reimbursement takes place, it shall be in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated.

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5 The regulations regarding the reimbursement of travel and subsistence expenses, and expenses incurred during travel by persons from outside the Commission invited as experts [SEC(94) 299 and SEC(94) 315/4 of 24 February 1994] limit the number of government and private-sector experts whose expenses may be
to the DGs under the annual procedure for the allocation of resources. The tasks carried out shall not be subject to remuneration. Payment of a special allowance to members, experts and observers shall only be possible in duly justified exceptional cases and provided that it has been expressly authorised by a decision of the Commission

**Duration:** the expert group in established for two years starting in May 2009. The Commission shall draw conclusions from its work and re-examine with the expert group, at the end of this period, the need for an extension.

- **Rules of procedure:** see Annex 1

### 1.2 Discussion in the Expert Group on 14 May 2009

The Chairman 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. The Chairman 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. The Director General and the Chairman 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.

reimbursed; See also Commission decision of 5 December 2007 on the rules for reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity C(2007)5858
2. MEETINGS OF THE EXPERT GROUP

2.1 Six meetings held between May 2009 and October 2011

- 2.1.1. First meeting on 14 May 2009

The first meeting of the Expert Group took place on 14 May 2009 and addressed the following issues:
- The Expert Group on transnational company agreements, its role, tasks and procedures
- Transnational company agreements in times of economic and social change
- Actors involved in transnational company agreements

The experience in the following companies was presented:
- Ford of Europe: series of agreements related to management of change and restructuring
- Rhodia: International Framework Agreement
- Areva European Equal Opportunities Framework Agreement

- 2.1.2. Second meeting on 27 November 2009

The second meeting of the Expert Group took place on 27 November 2009 and addressed the following issues:
- Developments and research in transnational company agreements
- Implementation and disputes relating to transnational company agreements

The following studies, research and training activities were presented:
- Study on international private law aspects of transnational company agreements carried out for the Commission by A. van Hoek and F. Hendrickx, Tilburg University
- Research activities of the ILO (International Labour Organisation)
- Research activities of the European Foundation for the improvement of Living and Working Conditions

The experience in the following companies was presented:
- Solvay: Charters on corporate social responsibility, health & safety and social policy in joint ventures, practices for subcontracting
- Volkswagen: Charter on labour relations
- ArcelorMittal: agreement on anticipation of change

- 2.1.3. Third meeting on 7 May 2010

The third meeting of the Expert Group took place on 7 May 2010 and addressed the following issues:
- Developments in transnational company agreements
- Form and transparency relating to transnational company agreements

The following studies and activities were presented:
• Study on international private law aspects of transnational company agreements
carried out for the Commission by A. van Hoek and F. Hendrickx, Tilburg
University
• Project of database on transnational company agreements carried out for the
Commission by Planet Labor

The experience in the following companies was presented:
• Unicredit: joint declarations on training and equal opportunities
• Statoil: Global agreement on the exchange of information and the development
of good working practice
• Club Mediterranée: agreement transnational mobility and fundamental rights

2.1.4. Fourth meeting on 26 October 2010

The fourth meeting of the Expert Group took place on 26 October 2010 and addressed the
following issues:
• Developments in transnational company agreements
• Links between transnational company agreements and other levels of social dialogue

The following studies and activities were presented:
• Study on the interaction between levels of transnational social dialogue by
A. Sobczak and E. Léonard, Audencia and Université Catholique de Louvain
• Research and training activities of the ILO (International Labour Organisation)

The experience in the following companies was presented:
• Thales: European agreements on annual activity discussion and on forward
looking management of employment and skills
• GDF-Suez: agreements on forward looking management of employment and
skills and Health & Safety
• AirFrance KLM: agreement on reorganisation of sales agencies
• PPR: agreement on the prevention of stress

2.1.5. Fifth meeting on 3 May 2011

The fifth meeting of the Expert Group took place on 3 May 2011 and addressed the following
issues:
• Developments in transnational company agreements
• Legal effects of transnational company agreements

The following studies and training activities were presented:
• Study on the characteristics and legal effects of agreements between companies
and workers' representatives carried out for the European Commission by
Labour Asociados
• Workshops of ITC ILO with and for management representatives

The experience in the following companies was presented:
• Companies whose senior HR Directors are members of the European HRD
circle for social responsibility (including Thales, Areva, Converteam)
• Alstom: European agreement on the anticipation of change
• ETEX Health Safety and Environment on the workplace Charter agreement
• Pfleiderer AG: Social Charta
2.1.6. Sixth meeting on 11 October 2011

The sixth meeting of the Expert Group took place on 11 October 2011 and addressed the following issues:

- Developments in transnational company agreements

The following studies, publications and activities were presented:

- Study on the characteristics and legal effects of agreements between companies and workers' representatives carried out for the European Commission by Labour Asociados
- ILO publication edited by K. Papadakis on "Shaping global industrial relations: the impact of International Framework Agreements"
- Database on transnational company agreements carried out for the Commission by Planet Labor

2.2 Participation in the meetings

In addition to Commission’s representatives, the meetings of the Expert Group on transnational company agreements had between 43 and 55 Participants: from 26 to 39 permanent members, from 4 to 6 permanent observers and from 6 to 13 speakers and ad-hoc experts in a personal capacity:

- **Governmental experts from 28 EU/EEA Member States**: AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LIE, LT, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK

- **Social Partners' experts**: up to 9 experts from the employers' organisations nominated by BusinessEurope (BDA DE, BusinessEurope, CBI UK, CEEMET, CEEP, CEOE ES, MEDEF FR, UEAPME, VNO-NCW NL), up to 9 experts of the trade-union organisations nominated by ETUC (CCOO ES, CSC-ACV BE, DGB DE, EFFAT, EMF, ETUC, FGTB-ABVV BE, ISSTO FR, NordicIn NORD, NSZZ Solidarnosc PL, UGT ES, UNI Europa)

- **4 Institutional experts** from the European Parliament (EP), the European Economic and Social committee (EESC), the European Foundation for the improvement of Living and Working Conditions (Eurofound) and the International Labour Organisation (ILO)

- **16 Academics and consultants**: Edoardo Ales (University of Cassino), Elodie Bethoux (ENS Cachan, CNRS), Arsnout De Koster and Maria Vasquez (ITC ILO), Frank Hendrickx (University of Tilburg), Kerstin Ahlberg, Patrick Humblet, Teun Jaspers and Ricardo Rodriguez (Dir. Labour Asociados), Marie-Noëlle Lopez, Gin Ngan, Eckhard Voss and Alan Wild (Dir. Planet Labor); André Sobczak (Director Institute for Global Responsibility, Audiencia Nantes), Fernando Valdes (Universidad Complutense de Madrid); Aukje Van Hoek (University of Tilburg and Amsterdam).

- **5 ad-hoc representatives of the social partners**: Geneviève Laforet (Belgium, CSC-ACV); Ignacio Plaza Sevillano (Vice Chair of the Civil Aviation sectoral
social dialogue committee, ECA); Jørgen Rønnest (BusinessEurope, DA), Jorma Rusanen (Chemical industry sectoral social dialogue committee, EMCEF), Bart Samyn (ETUC, EMF-FEM)

- **33 Company actors:**
  - European HRD circle for social responsibility: Yves Barou (Co-Chairman), Philippe Vivien (HR Director Areva), Hervé Borensztejn (HR Director Converteam) and Eleonore Mazeau;
  - AirFrance KLM: Henri Coursol (Vice President Human Resources AFKLM and Chair of the EWC), Sylca Bakker (Human Resources KLM), Paul Gilliam (Human Resources AF), Sandrine Basselier-Mulot (AFKLM Human Resources);
  - Alstom: Noël Huret (Group employee relations);
  - ArcelorMittal: Jean-Yves Tollet (Head of international coordination for Labour law, Legal affairs).
  - Areva: Marianne Naud (Social policy Director), Maureen Kearney (European Works Council Secretary),
  - Club Méditerranée: Christian Juyaux (European Works Council Secretary and EFFAT representative)
  - Etex: Myriam Macharis (HR Director)
  - Ford of Europe: Steve Evison (Director HRO), Georg Leutert (European Works Council Secretary)
  - GDF Suez: Bernard Parmantier (Director of Group Industrial Relations);
  - Pfleiderer AG: Michael Fischer (HR Director Corporate Functions/Policies and Programs), Frank Bergmann (Chairman of European Works Council), Gisbert Brennecke (Arbeit und Leben Bielefeld DGB)
  - PPR: Philippe Decressac (Group Human Resources Director), Christine Le Louarn (Group Directorate for social Development)
  - Rhodia Jacques Kheliff (Director sustainable development);
  - Solvay: Jean-Claude Gaudriot (Head of European industrial relations), Noël Tritz (Secretary to the European Works Council),
  - Statoil: Aksel Stenerud (Senior Advisor Reward and Industrial Relations), Lars Myhre (Chair of ICEM’s Energy Industries Section and founder of Industri Energi)
  - Thales: Ursula Biernert (Vice President Human Resources Germany)
  - Unicredit: Angelo Carletta (Head of Labour Policies and Industrial Relations), Elena Foggia (Head of Industrial Relations International), Angelo Di Cristo (Chairman of the European Works Council);
  - Volkswagen: Günther Koch (Director Volkswagen Group Human Ressource international), Michael Riffel (General Secretary of the Group Works Council),

The **European Commission, Directorate General Employment, Social Affairs and Inclusion** was represented by

- Nikolaus van der Pas, Director General
- Armando Silva, Director "Employment and social Legislation, Social Dialogue" and Chairman of the Expert Group
- Jean Paul Tricart, Head of unit "Social dialogue, Industrial relations" and acting Chairman in meetings of the expert group
• Fernando Vasquez, Deputy Head of unit "New Skills for New Jobs, Adaptation to change, CSR, EGF" and acting Chairman in meetings of the expert group

• Evelyne Pichot, legal officer in unit "Labour law" and Secretary of the Expert Group

• Elisabeth Aufheimer and Ellen Durst (Social dialogue), Sabine Boehmert (International affairs), Torsten Christen (European employment strategy, CSR), Carina Bjurklint, Nicolas Breczewski, Dimitrios Dimitriou, Julia Enzelsberger, The-Huong Luong, Francisco Perez-Flores and Marie-Aude Tannou (labour law)
II – Review of developments in transnational company agreements

Transnational company agreements in times of economic and social change
Updates on latest developments

3. TRANSNATIONAL COMPANY AGREEMENTS IN TIMES OF ECONOMIC AND SOCIAL CHANGE (EXAMINED AT FIRST MEETING)

3.1 Issues paper provided by the Commission/DG EMPL on 14 May 2009

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.

- 3.1.1. 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.

3.1.2. 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 from 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 their 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

3.1.3. 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.
3.2 Discussion in the Expert Group on 14 May 2009

- 3.2.1. Introduction

The Secretary of the expert group 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.

The employer expert of CEEP asked about figures on transnational agreements concluded. The Secretary 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)

- 3.2.2. Example of Ford of Europe:

The Director HRO of Ford of Europe 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.

The EWC Secretary of Ford of Europe 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.

The acting Chairman 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 expert of Eurofound 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. The Director HRO stressed Ford's approach had been to regard European-level dialogue as complementary to existing national bodies and processes. The EWC Secretary 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. The Director HRO 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. Ford's EWC Secretary said we don’t know what the result of going to court would be. The Director HRO considers that a European instrument would not assist while the EWC Secretary considers that strengthening the legal framework would be useful.

- 3.2.3. Example of Rhodia:

The Director for sustainable development at Rhodia 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 an 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. The Director for sustainable development 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. The Director for sustainable development 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. The Director for sustainable development answered that there is no global works council at present. This could possibly be done through an enlargement of the EWC.
4. **UPDATES ON LATEST DEVELOPMENTS (EXAMINED AT SECOND AND FOLLOWING MEETINGS)**

4.1 Update on 27 November 2009

The Secretary of the expert group presented the latest developments in the field of TCAs (See in annex latest examples of transnational texts). Within the last 2 years, as known through public sources, 49 new texts have been concluded. 40 of them have been completely new texts and 9 have been updates to previous ones. As regards the scope, the texts can be divided into 21 European, 15 mixed and 13 global ones. 24 texts cover CSR/fundamental rights, 13 deal with restructuring (including example of ArcelorMittal), 12 with others issues (including examples of Solvay and Volkswagen).

Since the mapping done in 2008, more companies and more workers have been involved in TCAs. 23 new companies (out of 43) were involved in concluding the new texts whereof both, big companies but also smaller ones, took part. Looking at the current figures also a diversification in sectors and origin is noticeable. About 9.8 million employees worldwide are currently working in companies involved in TCAs, whereof 6.5 million in companies having texts with a European or mixed scope.

She also underlined the increasing number of initiatives in view of TCAs by social partners. Within budget line 04.03.03.03 "Information, consultation and participation of representatives of undertakings," 12 projects dealing with TCAs have been granted € 1.6 million in 2009. The majority of these projects primarily focus on TCAs; others partly cover or at least include some elements on TCAs. Secondly, she mentioned that European trade union federations have established new negotiating procedures and that new initiatives to conclude International Framework Agreements were also taken from Global Union Federations. Furthermore, she referred to the recent trend of developing initiatives for specific sectors or categories.

In her final remarks, she drew the audience's attention to various ongoing research projects in the field of TCAs, namely she referred to the research of the European Foundation for the Improvement of living and Working conditions and of the ILO as well as to the studies on international private law 2009 and on company agreements 2010 (commissioned by the European Commission) and other research projects and academic articles. Last but not least she mentioned that the database on TCA-texts will be opened in 2010.

4.2 Update on 7 May 2010

The Secretary of the expert group presented the latest developments in the field of TCAs. Within the last months, 14 new texts have been concluded and made available to the public. These include a series of new agreements on restructuring, on specific issues such as Health

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6 Sectors: finance, telecom, security.
7 Countries: UK, Nordic countries, IT, ES, BR.
8 which is intended to strengthen transnational cooperation between workers’ and employers’ representatives in information, consultation and participation matters.
9 Such as the Nordic financial sector or pilots.
& Safety or annual activity discussion or on Fundamental rights, with developments in non-
European companies. Some existing agreements were also amended or complemented. The
employer expert of CEEP commented on the agreement concluded at AirFrance KLM on the
reorganisation of sales agencies in airports and stressed the challenge of its implementation at
national level. The trade union expert of EMF informed about an agreement concluded at PSA
on Health & Safety addressing environment issues and negotiating processes at Areva on
seniors and Schneider-Alstom on the integration of Areva T&D. Referring to GDF-Suez
agreement, he commented on the work between the different European trade union
federations where the activities of a company covers several domains which enter into their
respective area of competence.

She informed about different initiatives in view of TCAs by employer organisations and trade
unions\textsuperscript{10}. She also referred to the ILO report in the context of the G20 labour and Employment
Ministers Meeting.

In her final remarks, she drew the audience's attention to various Commission's activities in
the field of TCAs, namely she referred to the publication of the study on international private
law, to the preparatory work to launch a study on the effects of company agreements and to
the award of contract for a database on TCA-texts.

**4.3 Update on 26 October 2010**

The Secretary of the expert group presented the latest developments in the field of TCAs.
Within the last months, new texts have been concluded and made available to the public.
These include agreements on restructuring at Schneider-Alstom on the integration of Areva
T&D or at Opel, texts on specific issues such as Health & Safety and stress at work at ETEX
and PPR or on Fundamental rights at Telekom Indonesia. At EADS, an agreement was
concluded with national trade unions from the four countries concerned on a procedure for
social negotiation at European level. Some existing agreements were also updated, notably at
PSA.

She informed about different initiatives in view of TCAs by employer organisations and trade
unions\textsuperscript{11}. She also drew the audience's attention to the Commission's activities in the field of
TCAs, namely she referred to the launch of a study on the effects of company agreements, to
the on-going work for a database on TCA-texts, to the active support to projects regarding
TCAs and to information efforts in this regard.

**4.4 Update on 3 May 2011**

The Secretary of the expert group presented the latest developments in the field of TCAs.
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

\textsuperscript{10} Most funded under the budget line 04.03.03.03 "Information, consultation and participation of representatives
of undertakings"

\textsuperscript{11} Notably funded under the budget line 04.03.03.03 "Information, consultation and participation of representatives
of undertakings"
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. She 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.

She 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.

4.5 Update on 11 October 2011

The Secretary of the expert group presented the latest developments in the field of TCAs. Since last May, new agreements have been concluded both with European and global scopes. These include the European agreements on stress at Allianz, on anticipation of change at Axa and on financial participation at EADS as well as the global agreements at Umicore on social responsibility and at Danone on Health, safety, working conditions and stress. With regard to studies and academic work on these issues, she referred to on-going research at universities of Stockholm and Amsterdam and to papers issued by ILO and by IZA for the European Parliament.

She also drew the audience's attention to the Commission’s fresh activities, notably the launch of the database, the update of the webpage, the support to social partners’ projects under Budget Heading 04.03.03.03 the final report of the study on the characteristics and legal effects of company agreements and the launch of a study on out of court dispute settlement in transnational labour disputes.
5. ACTORS INVOLVED IN TRANSNATIONAL COMPANY AGREEMENTS (EXAMINED AT FIRST MEETING)

5.1 Issues paper provided by the Commission on 14 May 2009

The issue of the actors is one of the most important open questions to address in transnational company agreements. This paper provides a contribution to the work of the expert group on transnational company agreements as to the issue of "actors involved in transnational company agreements in times of economic and social change", in particular as to the respective role of the different employee representatives.

It builds on the analysis carried out in 2008 in different studies, documents and meetings (see references in annex).

- 5.1.1. Facts about employee representatives involved in transnational company agreements

On employee side, transnational texts involve different sorts of parties and signatories: European Works Councils (EWCs), international and European Union organisations as well as national unions and national works councils. Over one third of the European and mixed transnational texts recorded and about two thirds of the global ones involve a combination of parties.

While international and national union federations are the main signatories of global texts, European Works Councils are the main parties in European and mixed texts. However, where several transnational texts are concluded in a single company, the parties usually remain the same, except in some companies where the parties change according to the issue dealt with or the scope of the text (Arcelor, Lafarge, EADS, Suez).
Signatories of the European and mixed transnational texts

- EWC alone
- EWC + IUF/EUF
- EWC + EUF + national
- IUF/EUF alone
- National + IUF/EUF
- National alone

Signatories of the global transnational texts

- EWC alone
- EWC IUF/EUF
- EWC + EUF + national
- IUF/EUF alone
- National + IUF/EUF
- National alone

EWC = European Works Council; national = national unions
IUF = International Union Federation; EUF = European Union Federation (or organisation)

The leading role of European Works Councils

European Works Councils are signatories to 71 out of the 88 European and mixed transnational texts recorded:
- on their own in 42 cases, especially in companies headquartered in the United States, Germany, the Netherlands, Belgium as well as in some cases in France, mainly on health and safety or data protection issues;
- together with international or European union organisations in 16 cases, notably in the metal sector;
- together with both national unions and international or European union organisations in 13 cases, notably in companies headquartered in France or in the Nordic countries.
In addition, regarding seven out of the 17 remaining texts, European Works Councils were strongly involved in their negotiation, even if they do not appear among the signatories. The reason invoked in such instances by all parties to the negotiations regarding the absence of signature by the European Works Council is that “it is not a negotiating body”. Generally speaking, the actors surveyed in the 2006 complementary study also see the conclusion of transnational texts as resulting from the activity of the European Works Councils, from information-consultation to negotiation, even if they voluntarily refrain from signing the texts concluded in the end. It appears, therefore, that European Works Councils play the leading role in the conclusion of the transnational texts dealing with European issues.

The overall picture is quite different for global texts where the leading role is taken by international and European Union federations, even if usually together with national unions or European Works Councils. However, European Works Councils are involved in about one third of the global transnational texts recorded: they are the sole signatories of five global texts, the co-signatories of 12 additional global texts together with international or European Union federations, and were further involved in two additional global texts signed by the latter.

The involvement of international, European and national union organisations

International and European Union organisations are signatories of 39 out of the 88 European and mixed transnational texts recorded. They are especially active in the metal sector. In most cases, unions tend to be co-signatories together with European Works Councils (see above) and national unions.

The actors surveyed give the following reasons for signing by international or European union federations: legitimating the union organisation or coordinating national representative bodies. The reasons invoked for the absence of their signature are the fact that the unions may act through the European Works Councils, the preference of some company managements for elected bodies, the German culture of works councils negotiating company agreements on issues such as restructuring, and the presence of various sectors within the same company.

The national unions of the country where the headquarters are located signed 23 out of the 88 European and mixed transnational texts recorded, particularly the ones on social responsibility, financial participation and working conditions of companies headquartered in France, Italy or in the Nordic countries, usually with European or international actors but alone in four cases where the texts concluded are company collective agreements under national law. In a few cases, individual national unions from countries other than where the headquarters are located are also direct signatories to the transnational texts recorded (EDF, Geopost, IF, Nordea).

The main reasons invoked by the actors surveyed for involving national bodies in the signature of transnational texts are linked to the will to associate local bodies that will be major actors in implementing the text already at its conclusion stage, and the will to give the text the character of a company collective agreement under a national law.

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5.1.2. Issues on actors involved in transnational company agreements

The issue of who the actors are is crucial in a transnational negotiation, as in any negotiations. At present one or more categories of actors play a part in representing workers:

- European works councils;
- European and/or international workers’ federations;
- National workers’ organisations.

Today none of these three categories of actors has the full legitimacy or the legal capacity needed to conclude transnational texts to which the parties would like to give the effect of company agreements in several Member States.

The competences of European works councils under Directive 94/45/EC are information and consultation, not negotiation. Their membership is tailored to that end and determining their representativeness is problematic given the frequent lack of proportionality when set against the worker head count. Furthermore, their involvement in negotiations is at odds with national systems that make a clear distinction between the consultative role of elected bodies (works councils) and the negotiating mandates entrusted to trade unions or which utilise a single trade-union channel for worker representation.

The representativeness of European and international workers’ organisations and their mandates to negotiate and sign are not always clear. Organisations such as the European Metalworkers’ Federation have begun to adopt internal rules of procedure in this respect. The involvement of trade-union organisations in negotiations on issues such as restructuring also comes up against national systems under which the works council is responsible for such topics.

When it comes to concluding transnational texts, the crucial limitation affecting national workers’ organisations lies in their national field of competence.

When negotiating and signing transnational agreements the actors’ capacity to represent and enter into commitments on behalf of others is not a theoretical matter. The existing texts may stem from a centralised process involving the management and the coordinator of the European works council and from the active involvement of local actors at various stages. Certain opt-outs have occurred following disagreements on the approach, the substance or compatibility with national law. In other cases, the European text provides a framework for ‘transposition’ via national agreements.

Since 2005, the European trade-union organisations, who believe the role of the trade unions cannot be circumvented, highlighted their special concern regarding the issue of the actors in the negotiation and the representativeness of the signatories of transnational company agreements on both management and employee sides. They consider that employee-side representatives should be able to sign on behalf of all employees of the multinational, its subsidiaries and, where relevant, its suppliers/contractors. They also consider that management representatives should be able to deliver the commitment of the multinational company itself, its subsidiaries and, in some cases, its suppliers or contractors.

The type of actors involved and the process followed in concluding transnational texts also pose a problem for the company negotiators, who need to innovate to ensure the text agreed is
accepted as widely as possible and has the biggest impact. The issue of the actors is thus crucial for the development of transnational company agreements.

- 5.1.3. The actors in transnational company agreements: lessons for today

Management and employee representatives from Areva have kindly accepted to present their insider experience of transnational company agreement on equal opportunities and the actors involved in the process. Representatives of BusinessEurope and the European Metalworkers Federation will present respectively the views of a European employer organisation and of a European trade union federation on the respective roles of the actors in transnational company agreements.

How to develop the positive results that may be attained through transnational company agreements, by ensuring the actors have the legitimacy and capacity to negotiate, conclude and implement transnational company agreements is the purpose of the discussion of the expert group with them.

5.2 Discussion in the Expert Group on 14 May 2009

- 5.2.1. Introduction

The Secretary of the expert group 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.

- 5.2.2. Insider views of Areva

The Social Policy Director and the EWC Secretary at Areva 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. The Areva EWC Secretary referred to the EWC objective that employees could see a difference and the Social Policy Director 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.

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. The Areva EWC Secretary 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, she noted it helped formalize the implementation and monitoring process, the Social Policy Director also welcomed the financial support. The Secretary of the expert group explained that support to transnational agreements was a priority on Budget line 04.03.03.03. As to negotiations on restructuring, the Areva EWC Secretary noted that it would be difficult when competition decisions from the Commission are involved and the Social Policy Director considered that a negotiation on anticipation could be envisaged instead with EMF. As to legislation, the EWC Secretary 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.

- **5.2.3. Views of the social partners**

The representative of BusinessEurope 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.

The representative of EMF 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 form 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. He 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 the representative of BusinessEurope, he referred to the development of similar procedures in other sectors.

- 5.2.4. Lessons learned

The acting Chairman 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 Eurofound raised the issue of peripheral actors and referred to studies concluding that only 9% of IFAs were applicable to whole supply chain.
The representative of BusinessEurope 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.

The representative of EMF 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.
6. IMPLEMENTATION AND DISPUTES RELATING TO TRANSNATIONAL COMPANY AGREEMENTS (EXAMINED AT SECOND AND THIRD MEETINGS)

6.1 Issues paper provided by the Commission on 27 November 2009

Where reciprocal commitments are taken by the parties in a transnational text, these parties usually wish them to become reality. Implementing and resolving disputes in company agreements proves however far more complex in a transnational context than in a national one. This paper provides a contribution to the work of expert group on transnational company agreements as regards "implementation and dispute settlement in transnational company agreements", in particular as to the way to resolve difficulties to interpret or enforce texts.

It builds on the analysis carried out in 2008 in different studies, documents and meetings (see references in annex). It is completed by the results of the study addressing international private law aspects of transnational company agreement carried out by Aukje van Hoek and Frank Hendrickx from the Tilburg University for the Commission.

- 6.1.1. Facts on implementation, monitoring and dispute resolution provisions in transnational texts

a) Status and implementation provisions

Some of the transnational texts recorded have the status of a collective agreement at company level under national legislation and/or practice, notably the ENI (2001) agreement on industrial relations, the two Air France (2005) agreements on financial participation and profit-sharing as well as the three Suez (2007) Group agreements on equal opportunities, financial participation and forward-looking management of employment and skills.

Some texts declare themselves to be “legally binding” on management and/or on employees and provide for direct application. For example, the Porr (2004) agreement on data protection: “the agreement is to apply to all employees of the Group’s companies in the European Economic Area and to employees posted to such a company”. Also the Diageo (2002) Annex, to the European Works Council Agreement, on restructuring: “the agreement is intended by the parties to be legally binding” and “is governed by Irish law”.

Direct application is usually provided for in all subsidiaries. For example, the Total (2005) European agreement on social dialogue and forward looking management of jobs provides that “this agreement applies to all legally autonomous entities of the Total Group”. It may also be intended to apply to subcontractors. For example, The GE Plastics (2004) agreement on pre-employment screening provides that “The agreement lays down the principles on how to conduct pre-employment screening, which shall apply to its supplier Kroll Background Europe, which will carry out these background checks for GEPE”.

Some transnational texts are intended to become legally binding through national implementation, notably the series of Ford and General Motors texts on restructuring. For example, the General Motors framework agreements include a sentence stating that “Implementation of this framework shall occur at national level. In line with European legislation and national laws, Management and Employee Representatives will ensure that the agreed provisions will become legally binding for individual employees as well as
negotiating partners”. Implementation through national initiatives is also provided for in the \textit{EDF} (2004) agreement on CSR.

As regards the relation between the transnational texts concluded and other transnational norms, most of the texts dealing with fundamental or trade union rights refer to international norms. Transnational texts usually refer to the relevant ILO conventions, despite the fact that these conventions are addressed to States and not to private bodies. Some European transnational texts refer to Community legislation. For example, in the \textit{Axa} (2005) joint declaration annexed to the EWC agreement “\textit{Parties (…) solemnly declare that this agreement is ruled by Community law, in particular the Treaty of the Union, the Social Charter and Directive 94/45 of 22 September 1994. As a result, any difficulty linked to its interpretation or application should come under Community jurisdictions}”.

Transnational texts may also recall the intention to respect national legislation. For example, the \textit{Danone} (1988) joint opinion on management of change specifies that the provisions should under no circumstances substitute more favourable clauses existing at the company. The \textit{Porr} (2004) agreement provides that rights are established “\textit{without prejudice to national applicable legislation}”.

\textbf{b) Follow-up and monitoring mechanisms}

Some transnational texts include mechanisms for its dissemination to local management and employees.

Follow-up provisions appear in most of the transnational texts recorded. These provisions include some form of monitoring commitments, usually in the form of an annual review of the implementation of the text concluded and/or the setting-up of a monitoring committee. These committees usually include internal staff and involve the EWC. The European or international trade union organisations are also included where they are signatories and in some cases provide for external monitoring.

The \textit{GM} agreements do not contain any follow-up provisions, but this is not as surprising as it appears to be at first sight. Indeed, these joint texts are designed to be implemented within a brief period and the implementation procedure should be sufficient to ensure that their provisions effectively apply to workers affected by the restructuring plans.

Several texts set up a special body to carry out the follow-up of implementation. For example, in the case of the \textit{EDF} (2004) agreement on Corporate Social Responsibility (CSR), the follow-up is done by a specific monitoring body involving international union federations and the unions for each of the companies. An analysis of every article of the agreement is carried out once a year. (see also \textit{Arcelor, Ford 2000, Schneider Electric})

In the other texts this charge is assigned to:

- signatories: \textit{Lukoil, Rhodia, Suez} 2007,
- joint local union-management bodies (existing or ad hoc): \textit{Arcelor} (“the local representative authorities are first responsible”), \textit{Danone} 2001 (at all of the Group’s entities affected), \textit{PSA} (in each of the major countries)
- EWC’s Liaison Bureau (though not signatory): \textit{Total}

The company generally undertakes to pay the organization expenses (\textit{EDF}) or more generally to ‘make available the necessary resources to monitor this agreement’ (\textit{Arcelor, Lukoil}).
A few joint texts provide precisions about the organization and modalities of follow-up and monitoring. The 2007 Schneider Electric agreement thus stipulates that: ‘It is agreed that, when making this evaluation [within the monitoring commission], a list will be drawn up of the actions that could have been undertaken in respect of each of the areas of the present agreement and that this will lead to discussion and the setting up of a “good practices” database which will be made available to all the Group’s entities. On the basis of this examination, recommendations could be made for improving the application of the agreement’.

The 2001 Danone text also contains a specific provision though it belongs to the first group of joint texts. It specifies that the joint union-management bodies set up at local level will ‘monitor developments while the restructuring plan is being carried out and for up to 24 months after the departure of an employee (or longer if necessary, by local agreement)’. On the contrary, there was no follow-up procedure set up in the 1992 and 1997 Danone Joint understandings. This weakness can be explained by the fact that these texts were signed at a time when corporate negotiation was not yet formalised.

An annual review meeting (EDF, Lukoil, Rhodia) or an annual report (PSA) is frequently laid down. Much more exceptionally the update takes place twice a year, during the meetings of the EWC’s Liaison Bureau (Total 2004). This latter text also lays down the possibility of a meeting devoted to its application, but only in the case of difficulties observed by the social partners in one of the Group’s entities, and if the signatories request is approved by the Management of Total.

Some texts go beyond this usual follow-up mechanism and establish specific tools. For example, the Total (2005) European agreement on equal opportunities establishes a “European social dashboard”, including data on recruitment of women or actions undertaken to keep employees with disabilities at work. The EWC is to analyse these data at least annually, as well as the local representative bodies.

Last generation of European texts are particularly attentive to Implementation, even developing projects to that aim. This is the case of Areva (2006) agreement on Equal opportunities or Thales (2009) agreement on anticipation and professional development.

c) Dispute settlement mechanisms

Transnational agreements containing provisions addressing dispute settlement are less numerous, and those provisions are generally vague, without any precisions on procedures. Additionally, it has to be noted that the belonging to one or another group of joint texts is not a crucial criteria: dispute settlement provisions are not more frequent in texts addressing restructuring and/or anticipation of change than in global agreements.

Some contain very general provisions for a monitoring committee to “examine the matter and propose appropriate measures” (Schwann Stabilo 2005), or simply state that “the parties shall notify each other” if any “anomalies” should arise, which the management will then seek to “eliminate” and inform the union organisations accordingly (ENI).

This charge is sometimes assigned to the signatory EWC (or an EWC representative) alongside with the management (EADS, Generali, Suez 2007, Total 2004) whereas some other texts set up ad hoc bodies that are generally joint union-management structures (Ford 2000, Danone 2001). The ‘joint extended steering group’ established at European level by the Danone joint text signed in 2001 will be charged with the examination and conciliation of any conflicts arising at local level, at the request of IUF on behalf of the IUF-affiliated local union concerned.
In the cases where international trade unions or European federations are signatories, they are also in charge of dispute settlement jointly with management. The Schneider Electric agreement stipulates that: ‘The EMF and the General Management shall seek an amicable solution for these disagreements within a reasonable period of time and in a spirit of cooperation’ (see also the Rhodia agreement that links this issue with monitoring).

One text states that the sole EWC is recipient of issues or concerns regarding the framework (GM 2000). In one other text, the employees are given ‘the opportunity to inform the company of any conduct that does not comply with this declaration’ (Renault).

Some detailed provisions may be established. For example, the Ford (2000) text on the sale of Visteon included some precise follow-up and dispute-resolution provisions: “1. The parties to this agreement commit to implementing this agreement at national level. A joint working group shall be set up with Ford management and the FEWC select committee. This working group shall monitor implementation of this agreement and shall take a decision in the event of any dispute regarding its interpretation. 2. After legal separation, Newco management shall be responsible for adherence to this agreement vis-à-vis the corresponding Newco employee representatives. In the event of disagreements between Newco management and the corresponding employee representatives that arise from different interpretations of this agreement, the procedure described under 1. above may be applied. 3. Where Newco management and employee representatives agree it is beneficial to make changes to the agreement, then changes will be made by mutual consent and after prior approval by the working group.”

Some transnational texts do specify the applicable legislation and competent jurisdiction as well as the linguistic version to be referred to. It is worth noting that a few texts stipulate that they are governed by a national law (Arcelor: Luxembourg law explicitly, Suez 2007 and Total: French law implicitly). As a result, any disputes linked with these agreements will fall within competence of the respective national courts (explicitly in the three cases). The Axa case is a particular one as the Joint declaration is appended to the EWC agreement. As a consequence, this joint text will follow the rules governing the administration of the EWC agreement.

- 6.1.2. Views of the actors on implementation and difficulties faced

Actors directly involved in the conclusion and/or implementation of transnational texts were asked in 2006 questions regarding their assessment of implementation, the problems encountered and how these had been solved. The views of management, the European Works Council (EWC) representatives and the union representatives were very much in step with each other. The fact that most of the texts which were discussed were very recent has to be taken into account in analysing the results.

a) Ensuring collective ownership and implementing

The main challenge is considered by the actors to be ensuring collective appropriation of the text signed.

Dissemination of the text is often considered to be extremely important for its implementation, in order to make sure that everybody in local management is familiar with the text as well as all the employees who are concerned by it.
Attention is drawn to the time needed to ensure collective appropriation of the text concluded. For example, at the 2006 second study seminar, the Nordea union representative described the process as follows: “As we see it, it is a necessity that the agreement is well known and accepted all over the organisation. This is not an easy task. The agreement is not one-way, but is reached by negotiations. It must be an understanding, a collective ownership. This is extremely important and takes time. I think a year is a short time. We also have to create a common platform to see that both the union and the management have the same goal. Our goal is to have a healthy company, this is not only for the management or the shareholders. It is absolutely in the interest of the employees because it creates more secure jobs. When it comes to the agreement, many persons, both among management and employees, are involved. What we have achieved is that the employees throughout the bank now see the advantages of the consultative committees. They see that it makes a difference. Both management and the unions agree upon the fact that dialogue like this produces better results.”

Collective ownership of the text goes together with developing a European way of thinking, moving beyond the protection of own interests. Companies have done this in various ways, notably by training the EWC or enhancing union coordination.

The third element linked to the ownership of the agreement is that, if it is to be implemented everywhere, managerial action is needed. Some cases involve performance indicators for management linked to implementation of the transnational text on health and safety or equal opportunities.

b) Monitoring

One essential point is felt to be the follow-up by the union representatives and the EWC. The follow-up might either be carried out by those who actually negotiated the text or by different players. Here it all depends on the relationship between those who negotiated and those who are implementing the text later.

Monitoring mechanisms may correspond to a will to enhance the control of risks, notably health and safety or environmental ones. Monitoring mechanisms, as well as indicators, are seen as necessary in order to be able to assess results.

c) Applying and adapting

Apart from the main difficulty of ensuring collective ownership of the text, some specific provisions of the text might be difficult to apply over time. For example, one of the texts on restructuring provides that the company will continue to give a certain number of contracts to the sold entity. But all persons responsible for purchasing or for relations with subcontractors have not necessarily fully integrated the terms of this agreement. The provision in this case is to grant compensation: if the provisions of the agreement are not respected for certain purchases, then compensation is paid. This is seen as a solution to the difficulty of having an agreement respected by all the different management levels across the company.

Some actors expressed a need for mechanisms allowing for the adaptation of the texts according to developments.

Rights and obligations arising from texts agreed may also include penalties in the event of a failure to observe the provisions of a transnational agreement.
The risks of someone ‘going it alone’, of action being taken by associations external to the company or of non-compliance with previous commitments following a merger or restructuring have been raised in several cases.

**d) Interpreting**

Another point raised is linked to interpretation of the texts. In the 2006 survey, it was felt that there is a need to find ways of resolving differences of interpretation of the text because — obviously — once a text has been finalised, it is possible to interpret it in different ways. It was felt that there is a need to have mechanisms for solving such different interpretations of the texts.

For example, at the second 2006 study seminar, a union representative described the Nordea situation as follows: “Text-making is difficult, very, very difficult. Our text has so far been good, but it is important that the text does not consist of too many factors that make it possible to interpret in many ways. Therefore, the official language in Nordea is English, which none of us has as our mother tongue. This makes it easier for us to avoid misunderstandings. We cannot insure ourselves against that, of course. So far we have solved misunderstandings by dialogue. In the event of disputes, we have a negotiation committee, which has been used once in six years. I think that is very good. We came to a conclusion there.”

**e) Facing change in ownership or management**

The consequences of changes in ownership or management for the validity and respect of the transnational text concluded were questioned by the actors during the 2006 study seminars and complementary study.

For example, there were questions about the future of Arcelor’s transnational texts after the merger with Mittal. The fact that the EDF agreement continues to be in use by the new owners of two transferred undertakings was underlined.

The experience of the Nordic Nordea bank was also described by a union representative at the second 2006 study seminar: “In the consultative committees it is possible to make decisions, legally binding decisions as far as they are not in conflict with the national laws. We have not had any problems with that so far. There are issues we do not discuss in the consultative committees, such as salaries, working hours and social benefits. But all other issues, like strategy, downsizing, changes in the organisation, outsourcing, etc., very important matters are being discussed in these committees. This is not an EWC agreement, but a transnational agreement. (...) What we are struggling with is that there are many countries within Nordea now and it is extremely important that we learn to think European. It is the hard way, but we believe it is absolutely necessary. The thing that we are afraid of concerning our agreement, which we are all very proud of, is that we do not know what will happen in the event of a take-over or merger. It is not protected. (...) We would like to have this transnational agreement legally binding in order to be able to keep our system (...). Therefore, we would absolutely like the EU to discuss and reach conclusions on transnational agreements. This would help us.”

However, the strength of parties’ commitments is also at stake where such a change occurs, and challenges go obviously beyond legal aspects, as underlined during the second 2006 study seminar.
6.1.3. Issues on dispute settlement in transnational company agreements

Although dispute settlement is far from being the foremost concern of the actors involved in the first transnational texts, the potential development of transnational negotiation makes it necessary to consider mechanisms allowing social actors to protect agreements concluded, to follow their development and to resolve any differences of interpretation and disputes that may arise in their application. Such mechanisms, which exist in national industrial relations systems, do not apply in the case of agreements extending beyond the province of national actors.

In cases where a signatory party, employee, local employer or third party seeks to have rights under transnational texts recognised by the courts, the situation as determined by the rules of international private law is particularly complex and unclear today. Furthermore, the legal uncertainty created by the difficulty national courts may have in understanding the logic behind a transnational agreement where their only references are national was pointed out by one company during the 2006 seminars.

The application of international private law rules to transnational texts in order to determine the applicable legislation and the competent jurisdiction raises particular difficulties. Main instruments are the Rome Convention, which will be replaced by the ‘Rome I’ Regulation as from 17 December 2009\(^\text{13}\) and the ‘Brussels I’ Regulation\(^\text{14}\), which are very difficult to apply in connection with collective labour relations. The results of the study on international private law aspects of dispute settlement related to transnational company agreements are to be referred to on this issue.

In cases where parties would wish to use extrajudicial dispute settlement mechanisms, such as conciliation, mediation or arbitration, they would also face major difficulties. Although national industrial systems provide for developed mechanisms to that aim, those are not competent nor adapted to transnational company agreements.

In addition, transnational texts raise questions regarding data protection many actors are not aware of. Reference should be made to the opinions and documents of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data\(^\text{15}\), which lay down guidelines on how personal data are to be processed in accordance with the principles set out in Directive 95/46/EC. In particular, in order for "binding company rules" to constitute a valid instrument for making transfers of personal data processed in the Member States to other companies in a transnational group which are established in non-member countries, the Working Party states that the persons concerned and the national data-protection authorities must be legally in a position to demand compliance with such rules. In this context, international transfers of personal data from the Member States may be subject to special contracts entered into the EU/EEA controllers and the third country entities receiving the data which provide for specific rights granted to data subjects whose data are transferred in order to ensure the protection of their rights. The binding corporate rules shall be legally


\(^{15}\) This independent European advisory body was set up under Article 29 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31). Documents WP 48, WP 117, WP 74, WP 107, WP 108 and WP 133 relate to the processing of personal data in a professional context, the application of European data protection rules to internal whistleblowing schemes and the use of binding company rules for international transfers of personal data within transnational groups (WP 74).
enforceable by data subjects whose personal data are processed by the group and by data protection authorities, so that they may have a right to enforce compliance with the rules by lodging a complaint before competent data protection authorities and competent courts.

The Commission considered in 2008 that the situation should be more widely known and that thought should be given to the way disputes arising in connection with transnational company agreements can be settled both in and out of court.

- **6.1.4. Implementation and dispute settlement in transnational company agreements: lessons for today**

Management of *ArcelorMittal* has kindly accepted to present its approach to implementation and disputes in *ArcelorMittal* transnational company agreements, notably the latest on anticipating change. Aukje van Hoek and Frank Hendrickx from the Tilburg University will present the results of the study addressing international private law aspects of transnational company agreements just carried out by for the Commission. Fernando Valdés Dal-Ré from the Complutense University will share with us his knowledge of labour conciliation, mediation and arbitration mechanisms in Europe.

How to allow social actors to implement and protect transnational company agreements concluded, to follow their development and to resolve any differences of interpretation and disputes that may arise in their application is the purpose of the discussion of the expert group with them.

**6.2 Introduction to the discussion in the Expert Group on 27 November 2009**

The Secretary of the expert group presented issues on the implementation and on dispute settlement in TCAs. As to status and implementation questions in TCAs she noted that many texts declare their provisions being "legally binding in all subsidiaries". Some texts are intended to become legally binding through national implementation; others are an annex to EWC agreements or are even company agreements under national law. Looking at the latest examples there are more recently also specific projects to carry out implementation as part of an agreement. Regarding follow-up and monitoring she informed that most of the texts include follow-up provisions.\(^\text{16}\) In comparison to that, only few texts include provisions on disputes.\(^\text{17}\) Once in a while there are some specifications as to applicable law, competent jurisdiction or the decisive linguistic version in TCAs.

From the actors' point of view the main challenge on implementation and disputes seems to be the issue of collective "ownership" of the text and the case of changes in ownership or management of the company but also a need for respect by all management levels, monitoring, adapting texts and solving interpretation issues were listed by the actors. She drew the conclusion that it is important to clearly determine firstly how social actors should be allowed to implement, protect and adapt concluded TCAs and secondly how to provide feasible solutions for interpretation and application disputes. Referring to the current status of

\(^{16}\) Usually an annual review by signatories/the EWC takes place, or special bodies are established to carry out the follow up but sometimes also specific tools such as reports, indicators or dashboard are used.

\(^{17}\) Usually an examination by signatories shall take place when anomalies arise, but more precise procedures are often missing.
law there are three main difficulties for her that should be addressed: a) Difficulties in the application of rules to determine applicable law and jurisdiction; b) National mechanisms to extrajudicial settlement for TCAs and c) Legal basis for transfers of personal data to non EU-countries.

6.3 Results of the study on international private law aspects of dispute settlement related to transnational company agreements

- 6.3.1. Discussion in the Expert Group on 27 November 2009

In her presentation Prof Van Hoek talked about specific issues of TCAs in an international private law context and presented the outcomes of the study "International private law aspects of dispute settlement related to TCAs" which was undertaken for the European Commission. The objective of the study was firstly to provide a comprehensive overview of the rules to be applied as to the applicable law and the competent jurisdiction when a dispute arises on the interpretation or application of a TCA; secondly to identify the practical and legal obstacles to the way disputes relating to TCAs can be settled in court; and thirdly to identify and suggest any actions that might be taken to overcome these obstacles. Prof Van Hoek underlined that some issues of private international law would not arise if TCAs were covered by a uniform European regulation. The currently relevant legal instruments are: Rome I Regulation on law applicable to contractual obligations (Rome I), Rome II Regulation on law applicable to non-contractual obligations (Rome II) and Brussels I Regulation on jurisdiction in civil and commercial matters (Brussels I).

Legal classification of TCAs is needed to identify relevant instruments to be used. As to characterisation of obligations under a TCA it is important to taking into consideration that there is no "single notion" of a TCA but a wide variety of documents and texts. The diversity of the signatory parties to a TCA is also problematic. Additionally the characterisation in international private law does not necessarily coincide with the characterisation in national law! Therefore the answer to the first question depends on whether claims based on a TCA are "civil and commercial" in nature. Prof Van Hoek argued, based on the case law of the ECJ on the Brussels Convention and Brussels I Regulation, that there is no reason to exclude TCAs from the scope of application of these Regulations. Secondly, the question arises to what extent claims based on a TCA can be deemed to be "contractual" in nature. Prof Van Hoek argued that an analysis of the rules on applicable law and jurisdiction should be based on the assumption that commitments which management has undertaken in a TCA towards the workers and their representatives can in most cases be classified as contractual under the relevant instruments. According to her the relevant criterion is whether the TCA contains obligations voluntarily taken on by (at least one of) the parties. Hence, the concept of "contract" is wide enough to cover commitments which are largely unilateral in character. Besides, Prof Van Hoek mentioned that both the Brussels I Regulation and the Rome I Regulation contain special provisions for individual labour contracts. For Prof Van Hoek those provisions don't apply because even though a TCA can contain individualised rights, this doesn't change the classification of the TCA as such. Claims of outsiders (e.g. competitors or consumers) instead have to be classified separately as there is no contractual relationship between the signatory company and the claimant. In this regard any liability claim, even when based on statements contained in a TCA, will sound in tort.

As to the applicable law the Rome I Regulation has to be considered. Generally the parties to a TCA (such as the central European management, local subsidiaries,
International/European/National trade unions or EWCs) can designate the law to be applied to their agreements themselves. Such a choice of law will (have to) be respected on the basis of Article 3 of the Regulation. Prof Van Hoek restricted, however, that agency/mandate third party relations are not covered by Rome I. She also mentioned that by their choice of law the parties can select the law applicable to the whole or to part only of the contract (keyword: depecage) and addressed the issue of choice of non-national systems of law. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the applicable law has to be determined first by enquiring whether there is a party which performs the obligation "characteristic" of the contract type. If such a party may be impossible to discern the Rome I Regulation refers to the law having the closest connection to the contract at hand. Regarding the applicable law Prof Van Hoek concluded that party autonomy has to be considered as the preferred solution. Regarding the normative effect Prof Van Hoek highlighted the different possibilities of effect on individual labour contracts (such as statutory, mandate/membership or others) and explained that the normative effects of collective agreements are determined by national law ("reception") as well as that the mandate of national representatives is determined by national law of country of origin. This led Prof Van Hoek to the result that a TCA under law A can have only normative effect on labour relations governed by law B to a limited extent and/or to subject of conditions. In total, Prof van Hoek recommended to express a provision on binding character of the agreement, to express choice of law in TCA with specifications, to explicit mandate to negotiators at European level and to do the implementation at national level according to national rules.

Regarding jurisdiction Prof Van Hoek referred to the Brussels I Regulation. She raised the issues of Non-EU employers versus EU employers and commented on exclusive jurisdiction, jurisdiction over individual contracts of employment and other possibilities. To solve this issue she recommended to insert a place of performance for specific obligations in the TCA and to insert a non-exclusive choice of forum in the TCA.

Last but not least Prof Van Hoek addressed the issue of ius standi. With regard to the legal capacity of unions and works councils there exists a large variety in national solutions. As national law cannot be overcome by a party autonomy in this point Prof Van Hoek suggested four ways to address the ius standi issue: firstly the creation of a European rule on the standing of workers' representative bodies, secondly the establishment of a system of mutual recognition, thirdly avoidance through jurisdiction rules or fourthly unilateral acceptance of ius standi by the Member states.

The Chairman asked Prof Valdes to present findings of his research on extra-judicial dispute settlement. Prof Valdes focused on autonomous mechanism to address the central question of effectiveness of TCAs. In his remarks he cited two main concerns. Firstly he referred to the issue of competence. He reminded the audience to distinguish between individual and collective conflicts and to not deprive TCAs from their complementary role so that any rivalry with national systems is avoided. Secondly he raised the issue of which body is competent to resolve TCA disputes. According to him there should be distinguished between internal and external bodies. With regard to external bodies he called autonomous procedures such as

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18 The principle of "closest connection" causes uncertainty. Take into consideration that the choice of law is an obligatory aspect of the TCA.

19 Because for this question restrictions under law A, overriding mandatory provisions under Rome I and public policy objections under law B must be contemplated.

20 The Brussels I Regulation covers jurisdiction in international matters and in principle gives jurisdiction to the country of domicile of the defendant.
arbitration, mediation and arbitration. In his view, conflict resolution should not be seen as a disconnected part of the contract and he recalled the risks of judicial solutions.\textsuperscript{21}

In the subsequent discussion, the trade union expert of ETUC concentrated on considerations about dispute resolution, and wondered if there is a possibility that partners can impose sanctions themselves, and if so, how they could be enforced. The trade union expert of EMF stressed the fact that a European legal framework could make things easier but the discussion has to go deeper. According to him, trade unions don't want to go to court, that collective disputes should be settled internally between the social partners and just in case that this is not possible the issue shall be transferred to external institutions.\textsuperscript{22} He called for a much stronger takeover of responsibility by the social partners in TCAs. As a second point he mentioned that a hierarchy of collective agreements should not also exist at national level but also on European level and thirdly, he spoke about the role and legal status of European actors.

The DE governmental expert\textsuperscript{23} asked the speaker to repeat the arguments for applying the Rome I Regulation in this context, mainly focusing on the reasons why ECJ rulings, which were issued in relation to consumer rights, should also be applicable to TCAs. Finally she asked about the normative effect of domestic law, when the Rome I Regulation is applicable. In Germany there are already binding rules for negotiations of collective agreements. Can mandates also be used in this context?

Referring to the first question of DE expert, Prof Van Hoek answered that the fact that the rules for individual labour contracts don't mention collective agreements doesn't mean an total exclusion for them. ECJ rulings that were issued to consumer contracts gave a general view on the classification of contracts in an international private law context and therefore can be used for TCAs. As to the second question, Prof Van Hoek informed that the recognition of a collective agreement is a unilateral decision by the national law and there is no mandate space left. Going back to EMF's comment she totally agreed that it is up to the social partners to find an autonomous dispute resolution but restrained that the current study dealt with resolution by court.

Prof Hendrickx (co-author of the presented study) added that alternative dispute resolution is an important tool, but it wasn't subject of the current study. Regarding the ius standi issue of European actors Prof Hendricks admitted that there are still open questions which always refer to the general international private law rules, particularly the issue of legal capacity.

The BE governmental expert asked what happened if TCAs contain provisions that are against national law. Does it mean that only these particular provisions are void or the TCA in total? The employer expert of MEDEF wondered if the discussed court problems are really important to the actors or if they are more academic and theoretical in nature, stressing the mainly declarative nature of the texts concluded.

Prof Valdes added from an academic point of you that the schemes presented can only be applied if the assumption is true that a collective agreement is a contract. But this is not the case all over Europe. In Spain, for example, a collective agreement is considered a legal "source of law". Thus, characterising TCAs as contract would be problematic in Spain. He wondered how a European unified process could look like and stressed that the existing tools

\textsuperscript{21} Judicial solutions always contain the risk that different national courts come to different conclusions. For him there also remain lots of questions in this context, such as more permanent or acute use of an institution, procedural aspects and the question of liability of an extrajudicial decision.

\textsuperscript{22} In line with Prof Valdes the EMF expert wanted disputes to be solved outside the court because if the social partners can't find a solution also the denouncement of the agreement is a considerable possibility.

\textsuperscript{23} The German representative thanked for the study but proposed another detailed discussion about it after all experts have studied the whole report.
are still inadequate. Secondly Prof Valdes argued that the risen problems with court proceedings have not found (any) practical significance, because TCAs mainly contain only general guidelines and not concrete workers' rights.

Referring to the question of BE Prof Van Hoek noted that the question of invalidity of provisions depends whether appropriate arrangements were made in the TCA by the parties and if not, should be solved with the law that is dealing with the TCA. She agreed with the other participants that there are not many court cases in TCAs issues but reminded the actors once again to further discuss issues of "legal bindingness" to avoid conflicts.

### 6.3.2. Follow-up of the discussion in the Expert Group on 7 May 2010

As the experts had requested at previous meeting, the outcomes of the study "International private law aspects of dispute settlement related to TCAs" were examined anew.

Prof Van Hoek recalled the objective of the study to provide an overview of the rules to be applied as to the applicable law and the competent jurisdiction when a dispute arises on the interpretation or application of a TCA.

As to **characterisation of obligations** under a TCA, Prof Van Hoek stressed that private international law and national laws do not necessarily coincide in characterising the commitments that are undertaken in TCAs. Under private international law, claims based on a TCA would in most cases be treated as "civil and commercial" and "contractual" in nature. Prof van Hoek recommended to express a provision on binding or non-binding character of the TCA.

In the subsequent discussion, the employer expert of NL stressed that parties to a transnational text often not consider it as an agreement and do not intend it to be binding. The employer expert of CEEP noted that TCAs often express corporate values and are not concluded in the context of contractual relations.

As to the **applicable law**, the currently relevant legal instruments are: Regulation on law applicable to contractual obligations (Rome I) and Regulation on law applicable to non-contractual obligations (Rome II). Article 3 of Rome I Regulation provides that parties to a TCA can designate the law to be applied ("choice of law") to the obligatory part of the whole TCA or to parts of it ("dépèçage"). Article 4 of Rome I Regulation deals with the applicable law in the absence of choice: the applicable law has to be determined first according to the "characteristic obligation" performed and, in its absence, to the "closest connection". Article 8 of Rome I Regulation only deals with individual employment contracts and is not applicable to TCAs. Regarding the applicable law, Prof Van Hoek concluded that the use of closest connection leads to uncertainty and that party autonomy has to be considered as the preferred solution. She recommended expressing choice of law for the obligatory part of TCAs.

In the subsequent discussion, the trade union experts of EMF and NORD wondered whether choosing law would not prevent parties from finding a solution between themselves or through the national implementation mechanisms of the agreement. The employer expert of CEEP noted that Rome I Regulation sets clear rules for the law applicable to individual contracts. The governmental expert of DE noted that the situation of collective agreements was not considered when revising Rome I Regulation. Prof Van Hoek stressed that Art.8 of Rome I Regulation considers the worker as a weaker party and thus provides for specific safeguards as to individual employment contracts which cannot be applied to a bargaining party in the context of TCAs. She also recalled that applicable law may be different for the obligatory and the mandatory part of the agreement, the choice of law aiming to specify one
single law for the obligatory part of it, particularly for the interpretation of the agreement, without affecting the law applicable to the mandatory (normative) part of it.

Regarding the private international law aspects of the normative effect, Prof Van Hoek highlighted the different possibilities of effect on individual labour contracts (such as statutory, mandate/membership or others) and explained that the normative effects of collective agreements are determined by national law ("reception") as well as that the mandate of national representatives is determined by national law of country of origin. Because restrictions under law A, overriding mandatory provisions under Rome I and public policy objections under law B must be contemplated, this led Prof Van Hoek to the result that a TCA under law A can have only normative effect on labour relations governed by law B to a limited extent and/or be subject to conditions Prof van Hoek recommended to explicit mandate to negotiators at European level and implement the TCA at national level according to national rules.

In the subsequent discussion, the employer expert of CEEP noted that, when EWC sign TCAs, there is no correspondence with the determination of representativeness for collective bargaining purposes at national level. The trade union expert of NORD considered that the point on the mandated is important, as parties need to be recognized the capacity to sign an agreement. Prof. Van Hoek considered the system of a double mandate, the first for the negotiation, the second for the signature, put in place by some trade union federations as particularly relevant in that context.

Regarding jurisdiction Prof Van Hoek referred to the Regulation on jurisdiction in civil and commercial matters (Brussels I). She raised the issues of Non-EU employers versus EU employers and commented on exclusive jurisdiction, jurisdiction over individual contracts of employment, "forum rei", special jurisdiction under Article 5, joinder of claim under Article 6 as well as interim and provisional measures under Article 31. Finally, as to jurisdiction, she recommended to insert a place of performance for specific obligations in the TCA and to insert a non-exclusive choice of forum in the TCA.

The employer expert of NL wondered which rules apply first: applicable law or jurisdiction. Prof van Hoek answered that court has to be considered before law.

Regarding enforcement issues and "ius standi", Prof Van Hoek that enforcement routes may depend on the availability of and access to alternative dispute resolution mechanisms, the access to court and possibility and/or choice of industrial action. She recalled that there exists a large variety in national situations as to the legal capacity of unions and works councils and stressed that national law cannot be overcome by a party autonomy in this point. Prof Van Hoek suggested four ways to address the ius standi issue: firstly the creation of a European rule on the standing of workers' representative bodies, secondly the establishment of a system of mutual recognition, thirdly avoidance through jurisdiction rules or fourthly unilateral acceptance of ius standi by the Member states.

In the subsequent discussion, the employer expert of BusinessEurope noted that the purpose of TCAs is to solve problems and that a dispute on their content is a failure of social dialogue. He stressed that disputes and court cases are and should remain the exception. The trade union expert of EMF agreed with that stance but considered however the legal debate as necessary. The trade union expert of NORD considered that there will be more agreements containing material elements in the future and that the discussion on enforcement is relevant in that context. The employer expert of CEEP considered that too important constraints on TCAs would diminish their number and that parties to a TCA agree to implement it at national level.
The trade union expert of EMF stressed that social partners need to try finding consensus between themselves and use internal mediation first and that mechanisms related to national implementation should also be used. The employer expert of CEEP also considered that particular attention should be given to national implementation of the agreement. The trade union expert of PL noted that, in the absence of a European framework, differences between Member states may lead to dilute a TCA through an implementation process at national level. The DE governmental expert noted that the link between European and national levels may be complex, for example in a TCA dealing with restructuring. The trade union expert of NORD stressed that the national implementation process ensures that a European agreement goes effectively into the Member States but that some sort of social partners mediation should be found when issues go beyond national implementation.

Prof Van Hoek added that a multilevel system such as the one at stake for TCAs needs safeguards, as tensions between the European level of the agreement and the implementation at national level seem inevitable. She stressed that, although an implementation process helps avoiding some of the problems, national laws will have to deal with the international system, through reception or recognition mechanisms.

6.4 Insider views: the approach to implementation and disputes in ArcelorMittal TCAs and discussion in the Expert Group on 27 November 2009

The Head of International coordination of labour law at ArcelorMittal was invited by the Chairman to speak about his experiences with TCAs, and placed particular emphasis on the recent agreement on anticipating change of ArcelorMittal. He stressed that social dialogue is the best way to be effective in restructuring situations and that TCAS have been concluded in ArcelorMittal to overcome difficulties. Indeed, the latest agreement provides very concrete commitments to reopen blast furnace when market conditions allow it and to provide for support to workers in transitory periods.

Regarding the geographical scope of the agreement all countries covered by EMF members are included, so not only EU-Member States such as Romania, but also for example Bosnia and Turkey. He reported that this agreement guarantees minimum standards in countries that do not have high legal standards.

An agreement on CSR, concluded in 2005, has not been renewed in 2008, because ArcelorMittal decided that in difficult situations common agreements should be concluded on specific issues: e.g. on safety & security and crisis management, which bring an important input to corporate identity. Representation from both sides and networking on social dialogue are important keywords in this context.

On health and safety the deployment of H&S joint committees in all facilities is agreed upon and minimum standards will be reviewed on a yearly basis by the follow up committees. Firstly a national follow up committee is set up in each participating country and secondly there is a Social Dialogue Group acting as a follow up committee at European level. Their mission is to identify existing problems and to propose possible solutions. Furthermore a conciliation body was established in order to conciliate in any disputes resulting from the interpretation or implementation of this agreement. Only this conciliation body can settle such a dispute and its decision is final, so that no courts are involved.

He continued that this agreement entered into force for an indeterminate duration. However, in the event that any change occurs which would disrupt the balance of commitments
prevailing between the signatory partners, either ArcelorMittal or the EMF could ask to modify it. If one of the negotiating parties is not complying with the agreed obligations, the agreement may be terminated.

The employer expert of FR welcomed the approach that social partners should always settle their own affairs themselves. In different industries certain issues have different importance (e.g. safety - Steel, banks), and therefore social partners must find their own way to conclude and implement such agreements on a case by case basis.
7. **FORM AND TRANSPARENCY RELATING TO TRANSNATIONAL COMPANY AGREEMENTS (EXAMINED AT THIRD MEETING)**

7.1 **Issues paper provided by the Commission on 7 May 2010**

Where reciprocal commitments are taken by the parties per agreement, the form in which these commitments are done and the way these commitments are known by the stakeholders becomes important. This is already the case in the national context, where there are usually clear rules to observe and procedural requirements as to the form of company agreements and their dissemination. This paper provides a contribution to the work of expert group on transnational company agreements as regards "form and transparency in transnational company agreements".

It builds on the collection of texts done by the Commission's services since 2005, on the analysis carried out in 2008 in different studies, documents and meetings (see references in annex), and on the database on transnational company agreements for which a call for tenders has been launched in 2009.

- **7.1.1. Facts on form and transparency in transnational texts**

  a) **The various titles, forms and natures of the transnational texts recorded**

  The Commission’s services compiled and analysed in 2008 the information contained in existing transnational texts published in various specialised publications or websites. In July 2007, the Commission’s services had recorded 147 transnational texts, most of which were concluded after 2000. The following analysis is based on these texts.

  There is a wide diversity in the titles given to the transnational texts recorded. Out of the 88 European and mixed transnational texts:

  - 36 texts include the word “agreement” in their title: “agreement”, “framework agreement”, “global agreement”, “European agreement”, and “group agreement”; they deal with all kinds of issues, particularly restructuring. Examples are the framework agreements on restructuring at General Motors or on training at Danone or on social policy at Geopost, the European agreement on anticipation of change at Schneider, the group agreements at Suez on equal opportunities and forward-looking management of employment and skills, the global agreement at PSA on social responsibility, the agreements at Porr on data protection or at ENI on health and safety.

Nine texts are called “principles”, “guidelines” or “orientations”; they deal with health and safety, joint ventures, introduction of the euro, restructuring, CSR and information and consultation procedures.

Seven texts are called “charters”: “charter”, “social charter”, “European charter”, “group social charter”; they deal with health and safety, subcontracting and CSR.

Seven texts are called “declarations” or “joint declarations”; they deal with health and safety, subcontracting, data protection and restructuring.

Five texts are called “joint opinion”, they deal with specific issues, particularly restructuring.

Other titles include “code of conduct”, “procedure”, “protocol”, “framework”, “practices”, “project”, “action programme”, “convention” on procedures for social dialogue or on issues such as health and safety, training, restructuring.

Four texts form an “annex” to the European Works Council or European Company involvement agreement or a part thereof, and two further texts are declared as forming part of or being an annex to a future EWC agreement; they deal with restructuring, data protection, CSR or procedures for social dialogue.

In one company, Nordea, a Group Council and eight business area councils covering the Nordic countries have been established on a permanent basis. In addition, in case of major changes with cross border consequences expected to result in redundancies, the issue may be referred to a negotiating committee should parties have split opinions over the initiative.

As it appears from the record, there seems to be no correspondence between the title of the text and the main issue addressed in it. Further analysis of the content also indicates that the title is not always in accordance with the more indicative or imperative aim of the text’s provisions.

Most of the texts called agreements do not have the legal character of a collective agreement under any national rules. However, at least nine can indeed be considered to be collective agreements at company or group level, since they were negotiated under French or Italian rules and concluded by national unions. They cover financial participation, anticipation of change, equal opportunities, health and safety, CSR and social dialogue. In addition, three “European agreements” have voluntarily been sent to the European Commission for “registration”, in a move similar to national collective agreements which are to be sent to national administrations to that end.

As to the form of the text concluded, some transnational texts indicate clearly the date of conclusion, the names and positions of the signatories, the scope, the addressees, the duration and a definition of the terms used where necessary. Some texts are fully drafted as company collective agreements according to the legislation applicable in the country where the headquarters is registered, for example as “group agreements” under the French Labour Code. Some are drafted as political declarations. Most texts recorded are mixed, with parts drafted as agreements and others drafted as declarations.

b) The type of provisions of the transnational texts dealing with restructuring
In a preparatory study for the 2008 Restructuring Forum and conference of the French Presidency on "transnational company agreements- dialogue, rights, anticipating corporate restructuring, actors: a new perspective"\(^{25}\), Mélanie Schmitt analysed for the Commission existing transnational texts dealing with restructuring (see references in annex). Her analysis copied below is based on 37 joint texts signed until 2007 in a total of 22 companies and dealing with restructuring and/or anticipation on change, in a specific, general or brief manner.

Whatever their titles, the major part of the texts are essentially frameworks containing guidelines, policies, principles or general rules that have to be implemented at lower levels within the multinational concerned. Some texts set up concrete measures and detailed provisions which should not need further concretisation to be applied (‘self-sufficient’). For example, the 2007 Suez text is a company agreement (‘accord de groupe’ under French law) that is immediately applicable at least in the company’s French business units.

The major parts of these texts do not apply directly, except agreements signed by national trade unions which has to be considered as collective agreements under their national law (EDF, PSA, Lukoil).

The type of provisions will determine the procedure and instruments of their implementation. Following Carley, a distinction can be made between three categories of agreements on the ground of the type of their provisions. First of all, it has to be noted that different types of provisions can co-exist in one sole text and that the distinction between two types of provisions is often not clear-cut.

The texts belonging to the first category set up general, broad principles and/or fundamental rights or minimum standards. Global agreements – IFAs, Worldwide agreements – handling CSR (Arcelor, EADS, Rhodia, Lukoil) and social charters (Suez 1998, Renault, Generali for its first section entitled ‘Commitments’) generally belong to this group. Several agreements, frameworks and other texts also fit this description (RWE, GM 2004). It is also the case of the EDF agreement but only for its part entitled ‘Universal standards’. The following part entitled ‘Commitments and joint guidelines to EDF group regarding relations of responsibility between EDF group and its employees’ contains more precise provisions which fall into the second group. Another example is given by the Deutsche Bank Joint position which quotes ‘guiding principles’ and lays down a set of ‘corporate standards’.

A second category can be identified that comprises joint texts exposing the company social policy on issues linked with restructuring and/or anticipating change (Danone 1992, Unilever brochure, Axa, Schneider Electric). The provisions contain in these cases general rules but sometimes alongside principles or fundamental rights (that are less precise than rules). This is the case of the EDF agreement; the Dexia Principles, the Generali European social charter, the Rhodia agreement, and the Deutsche Bank Joint position which also lays down a number of general rules governing the management of a potential restructuring. These texts sometimes lay down a ‘plan of action’ accompanying a statement of policies (Schneider Electric, Total 2007 and, to a lesser extent the 2001 Eni Protocol). Some agreements on CSR also belong to this second group. It is the case of the PSA Worldwide agreement which goes beyond broad principles without laying down concrete rules or measures. The Total platform contains general rules as to the forward management of jobs and skills and the social consequences of changes, alongside precise rules on the social dialogue aspect.

The third category of provisions corresponds to **concrete, detailed rules** that the company intends to follow in a context of change. It is the case of the provisions of the Dexia amendment; the Suez accord 2007; or the Danone agreement signed in 1997, which contains precise and concrete rules such as ‘consultations should take place as early as possible, and not later than 3 months prior to the expected changes’ or ‘in the event of the partial or full closing of a facility, delegates of unions representing its employees may be granted time off with pay in order to perform their duties’. The Ford agreements and the Danone agreement reached in 2001 are certainly the texts that provide the most achieved examples of this group as they contain precise, detailed rules as well as concrete measures. This is not surprising since these texts are designed to give concrete answers to the employees’ concerns in specific circumstances of a restructuring plan. These latter examples illustrate the fact that the title (‘framework’ for the GM texts) does not necessary correspond to general provisions. The term ‘framework’ is indeed also used to mean that the texts have to be implemented into national or local agreements to be legally binding.

c) **The scope of the transnational texts dealing with restructuring**

This analysis is also taken from Mélanie Schmitt who analysed existing transnational texts dealing with restructuring in 2008 (see above and references in annex).

The scope of an agreement means both the geographical area in which it applies, the material situations and the individuals (employees and others actors) covered by its provisions.

As to the geographical scope, a major part of the joint texts analysed in the study stipulates – explicitly or not – their geographical scope that depends on their object. The global or European scope is often specified in their title.

It can indeed be observed that some agreements, e.g. those devoted to the social consequences of a specific restructuring exercise, apply in European countries, whereas framework agreements that contain general principles and fundamental rights, and those which expose the corporate social policy have an international or global scope. Thus, the Ford and GM agreements are explicitly European in scope. For example, the 2004 GM Framework is designed to explain the main elements of a large restructuring program that ‘will affect all brands, sites, plants and functions within GM Europe’. The title of the agreement signed at Danone in 2001 contains a reference to the ‘draft restructuring plan of its biscuits division in Europe’. The Danone texts signed in 1992 and in 1997 do not state any particular scope, but, according to Carley, they can be assumed to be worldwide, in that they often refer to the whole group, and IUF is a global trade union organisation. However the 1997 joint understanding suggests that IUF is signing it only on behalf of its European affiliates.

The “new generation” framework agreements often stipulate that they apply worldwide, should they not be entitled “global framework” (PSA, Rhodia) or “international framework” (EADS). Furthermore, the EADS agreement states that ‘EADS and the Group’s European Works Council have expressed their attachment to the aforementioned principles which they intend to promote worldwide” and, further ‘The provisions of this framework agreement define EADS standards to be applied wherever the Group operates’.

Even without such a precision, several expressions may suggest an international scope for agreements belonging to the first three groups, e.g. information on the group’s geographical perimeter (Danone 1997, Dexia 2003: ‘Taken as a whole, these principles form the basis of rules which will apply to all workers in the Group who have a contract, regardless of the business unit by which they may be employed’ and, further ‘given the fact that the Group has
subsidiaries and branches throughout Europe and the world, special attention will be given to language training’).

The employee-side signatory partie(s) can be seen as a meaningful clue. Agreements only signed by the EWC or by European federations are generally European in scope, whereas those signed by International trade unions – exclusively or alongside with the EWC or national trade unions – apply worldwide (Renault, Danone).

As to the material and personal scope, the one of agreements dealing with the social consequences of a specific restructuring plan is necessary limited to this operation and, as a consequence, to companies and employees affected by this restructuring. The 2000 GM framework covers the employees transferred from GM to Fiat; the 2000 Ford agreement applies to Visteon workers who will be transferred to Newco. The 2008 agreement on the Astra production covers all employees in the five plants affected by the restructuring plan. As to the material scope, the 2004 GM framework applies in a general way (the ‘restructuring program will affect all brands, sites, plants and functions within GM Europe’). This is also the case for the GM framework agreement on outsourcing that lays down provisions to be applied in any event of restructuring, while the first ones covered a single operation as the alliance GM/Fiat or the Visteon spin-off (Ford 2000).

Global agreements often contain a further provision specifying that they cover any operations they may conduct in the world (EADS, Lukoil).

Several of the most recent agreements contain detailed provisions dealing with the companies covered by them. The EDF agreement constitutes a particularly meaningful example since it distinguishes ‘companies over which EDF Group holds direct control’ and those in which it does not exercise any direct control’ (see also Lukoil). This text shall apply to the former, while the signatories will encourage the latter to adopt and apply its provisions. It is maybe even more the case of the Arcelor worldwide agreement which moreover states that ‘companies in which the ARCELOR Group has a significant presence, albeit without exercising a dominant influence there, along with contractors and suppliers also fall within the scope of this agreement’.

Both Total joint texts deserve also to be cited because they stipulate that they apply to all the TOTAL Group’s legally autonomous entities mentioned in the 1st article of the agreement concerning the European Works Council (EWC) of TOTAL dated 20 March 2001 and renewed on 29 June 2005.

As far as suppliers and subcontractors are concerned, several texts specify severe consequences of non compliance with their provisions. The Rhodia agreement is one of them as it stated that ‘Any serious violation of employee health and safety legislation, environmental protection or basic human rights that is not remedied shall lead to termination of relations with the company concerned in compliance with contractual obligations’ (see also Arcelor, EDF, PSA). It has to be noted that his sanction does not apply in the case of a violation of the provisions devoted to restructuring.

The EADS agreement, as the Renault Declaration settle for encouraging suppliers to apply the principles and rights they promote and to introduce and implement equivalent principles in their own companies.

Some other agreements contain provisions applying to successors in the event of business disposals (Total, Dexia 2007) but the commitments linked with social criteria explicitly oblige the sole Groups concerned.
Finally, a few texts involve local authorities, especially in the case where companies undertake to develop the local business (‘site rehabilitation’, see Danone 1997). The 2004 Total Platform considers as a priority to mobilise public authorities in the ‘Pro forma management of jobs and skills’. The PSA global agreement stipulates that: ‘In the event of changes in the business, PSA agrees to inform the relevant national authorities beforehand and to cooperate with them in order to better consider local interests’. This text, as well as the Axa Joint declaration, the 2007 Suez agreement and the 2004 and 2007 Total agreements are also filed with national or local government authorities.

7.1.2. Views of the actors on form and transparency of transnational texts

In the Commission’s 2006 survey, actors directly involved in the conclusion and/or implementation of transnational texts were asked questions regarding their views on their nature, form and dissemination of their text. The views of management, the European Works Council (EWC) representatives and the union representatives were very much in step with each other.

a) Nature of the texts concluded and concepts used

The perception by management, European Works Council and unions of the nature of the particular transnational text they have concluded is broadly similar. There are no fundamental differences in the views expressed on the same text and the latter is usually seen as a result of the European Works Council’s activities. However, the perception of the nature of such texts tends to vary significantly among companies, ranging from political declarations to company collective agreements.

There was in many cases difficulty in defining the nature of the text concluded and often concepts were used that normally apply in other contexts. This difficulty echoes the different views expressed by the social partners about the nature of the transnational texts on the occasion of the first stakeholder seminars and should call for a clarification of the concepts being used.

b) Dissemination of the text and collective ownership

Some transnational texts include mechanisms for its dissemination to local management and employees. Dissemination of the text is often considered to be extremely important for its implementation, in order to make sure that everybody in local management is familiar with the text as well as all the employees who are concerned by it.

Attention is drawn to the time needed to ensure collective appropriation of the text concluded. For example, at the 2006 second study seminar, the Nordea union representative described the process as follows: “As we see it, it is a necessity that the agreement is well known and accepted all over the organisation. This is not an easy task. The agreement is not one-way, but is reached by negotiations. It must be an understanding, a collective ownership. This is extremely important and takes time. I think a year is a short time. We also have to create a common platform to see that both the union and the management have the same goal. Our

26 For example: “It is a political declaration but not only that, there are other elements involved”; or “It is an agreement but it is not really a collective agreement in the way that one usually understands the term”.
goal is to have a healthy company, this is not only for the management or the shareholders. It is absolutely in the interest of the employees because it creates more secure jobs. When it comes to the agreement, many persons, both among management and employees, are involved. What we have achieved is that the employees throughout the bank now see the advantages of the consultative committees. They see that it makes a difference. Both management and the unions agree upon the fact that dialogue like this produces better results.”

Collective ownership of the text goes together with developing a European way of thinking, moving beyond the protection of own interests. Companies have done this in various ways, notably by training the EWC or enhancing union coordination.

The third element linked to the ownership of the agreement is that, if it is to be implemented everywhere, managerial action is needed. Some cases involve performance indicators for management linked to implementation of the transnational text on health and safety or equal opportunities.

One essential point is felt to be the follow-up by the union representatives and the EWC. The follow-up might either be carried out by those who actually negotiated the text or by different players. Here it all depends on the relationship between those who negotiated and those who are implementing the text later.

The key element of dissemination of the text is also referred to in the 2008 study for the European Foundation for the improvement of Living and Working Conditions27: "Most framework agreements provide the obligation to communicate the IFA to employees. Only the IFA between ICEM and Freudenberg and between UNI and Carrefour do not contain such provisions. In the case of Bosch and Rheinmetall, the local workers’ representatives have to be consulted in advance. But as a study of BWI28 shows, this responsibility is not always carried out: most employees (included in the study) do not have any information about the IFA. The employees of the Euradius Group, in contrast, have to be informed about the IFA by a note on their payroll slip; this information has to be repeated periodically."

7.1.3. Issues on form and transparency in transnational texts

Although form and transparency are not the foremost concern of the actors involved in the first transnational texts, the potential development of transnational negotiation makes it necessary to examine how to help social actors in this field.

a) Form of transnational company agreements

Even where transnational texts are signed by a party representing an employer and a party representing the employees and recorded under the title of agreements, their form and content usually don't follow the rules or requirements for collective agreements, in particular company agreements in any of the covered countries.

The existing transnational texts have varied titles, such as ‘joint opinion’, ‘joint declaration’, ‘draft’, ‘programme’, ‘convention’, ‘principles’, ‘framework’, ‘code of conduct’, ‘charter’,

27 “European and international framework agreements: Practical experiences and strategic approaches” p35, see authors and references in annex
‘framework agreement’, ‘agreement’ or ‘European agreement’. They may also be published in the form of brochures or as annexes to agreements setting up European works councils. There is no necessary link between the title of the text, its content, the procedure for negotiating it and the type of commitments it involves.

In addition, the fact that a transnational text does not have the legal status of a company collective agreement does not always prevent its signatories from considering it as such in practice, as emerges from the 2006 survey.

As to the title of the texts, useful reference can be made to the typology of European social dialogue texts drawn up by the Commission in 2004 and comprising four major categories:

- agreements laying down minimum standards and implemented autonomously or by a Council decision in accordance with Article 139 of the Treaty;
- process-oriented texts: frameworks for action, guidelines, codes of conduct, policy orientations;
- opinions, declarations and tools for exchanging information;
- procedural texts laying down rules on dialogue between the parties.

As to the form, the drafting of transnational texts should observe certain principles where the parties wish them to produce effects other than declaratory. For example, texts will be clearer and easier to implement if they are dated and signed and the name and capacity of the person signing are shown clearly, if the persons to whom the text is addressed are indicated, if the date by which its provisions are to be implemented and the way this is to be done are indicated and the rules for monitoring and settling disputes are shown, etc.

The Commission considered in 2008 that suggestions could be usefully done on how transnational texts could be made more transparent, as it was for the European social dialogue texts, without prejudice to the freedom of the parties.

b) Information of management and employees falling in the scope of a transnational text

Even where transnational texts are signed by a party representing an employer and a party representing the employees and recorded under the title of agreements, their dissemination and/or registration usually don't follow the rules for collective agreements and in particular company agreements in any of the covered countries.

As it appears from the facts and views referred to above, the employees and management coming in the scope of a transnational text are not always informed about its existence and do not always have access to its content. This is also the case for subcontractors.

This is not a problem for declarative texts but indeed has to be considered as an important one for agreements comprising reciprocal commitments, especially where they are stated in the form of concrete and detailed provisions or where their inobservance may have consequences.

c) Information of stakeholders about transnational texts concluded and database

Since 2005 the Commission has collated and analysed the transnational texts available to the public and has conducted a survey of cases covering the actors involved in concluding them.

Knowledge of transnational texts is still in its infancy, and during the study seminars in 2006, the social partners stressed the need to continue gathering and exchanging information on the subject. Considering this request and the interest of concerned stakeholders, the Commission's services went on in collating and analysing the texts it could know about.

In its 2008 staff working document and mapping, the Commission has listed 147 joint transnational texts in 89 companies; most of these have been concluded since 2000. In its working documents for the November 2009 meeting of the expert group on transnational company agreements, it issued an additional list of 49 texts (40 new texts, 9 updates) concluded in 43 companies (23 new companies, 20 already involved in transnational texts).

Against the aforementioned background, the Commission launched in 2009 a call for tender\textsuperscript{31} to collect, analyse and make available information concerning transnational company agreements via the website of the European Commission's DG for Employment, Social Affairs and Equal Opportunities\textsuperscript{32}. The information on transnational company agreements should be made available to the European institutions, to the European social partners and to company actors, to use both as a monitoring tool and as a case management tool. The contract for this database has been awarded to Planet Labor\textsuperscript{33}.

The main tasks to be carried out by the contractor are the following:

- Data collection on transnational company agreements: the contractor has to collect the full texts of existing transnational company agreements from various sources and to establish a mechanism to collect them systematically in the future.

- Analysis of data on transnational company agreements: the contractor has to analyse the agreements, characterise the companies in which they are concluded and input the information gathered into searchable fields.

- Input of data and dissemination of information concerning transnational company agreements: the contractor has to input the data collected and analysed on transnational company agreements using the Content Management System developed for the DG's website. The contractor has also to contribute to the promotion of the database on transnational agreements when it becomes available on-line.

\textbf{7.1.4. Form and transparency in transnational company agreements: lessons for today}

The secretary of the \textit{ClubMéditerranée} European Works council has kindly accepted to present its approach to form and transparency in \textit{ClubMéditerranée} transnational company agreements, notably the latest on transnational mobility. The team of Planet Labor to whom the contract has been awarded and the Commission's team involved will be present to discuss with the members about the database on transnational company agreements.

\textsuperscript{31} See \url{http://ec.europa.eu/social/main.jsp?catId=626&langId=en&callId=238&furtherCalls=yes}
\textsuperscript{32} \url{http://ec.europa.eu/social}
\textsuperscript{33} \url{http://www.planetlabor.com/}
How to give transnational company agreements the appropriate form and transparency is the purpose of the discussion of the expert group with them.

7.2 Discussion in the Expert Group on 7 May 2010

- 7.2.1. Introduction

The Secretary of the expert group introduced issues related to “form and transparency in transnational company agreements” through a presentation based on the issues paper produced for the meeting. At present, there is a large diversity in titles given to the texts, without clear correspondence with the main issue addressed in the texts and their imperative or declarative nature. Date, signatories, scope, addressees, duration are not always clear and the texts mix often drafting as political declarations and as agreements. Some of the texts however are group or company agreements under national law and/or are sent to the Commission for “registration” in the same way as national collective agreements. When looking more specifically to the texts dealing with restructuring, texts can be divided in three categories, with differences in the geographical, material and personal scope: frameworks, joint texts exposing the company social policy and “self-sufficient” texts. Views of the actors on form and transparency were recalled as well as areas for potential action: title in correspondence with typology, clear drafting and dissemination. The question is therefore how to give transnational company agreements the appropriate title, form and dissemination to ensure necessary or useful transparency.

The Acting Chairman thanked The Group's Secretary for her introductory remarks and noted that transparency also relates to the process. The trade union expert of NORD noted that important points have been raised as to form and transparency in TCAs and stressed that any agreement should be clear and properly disseminated. He considered however, as well as the trade union expert of EMF, that important developments occurred since 2006-2007, which were not reflected in the issues paper, and stressed the key role of industry trade union federations in that regard, notably through the procedures established for organising negotiations.

- 7.2.2. Insider views at Club Méditerranée

The Acting Chairman gave the floor to the representative of Club Méditerranée’s employees to talk about his views as to form and transparency issues. The EWC Secretary of Club Méditerranée explained the elements which led to negotiate the first agreement on the mobility of employees between EU and Turkey signed in 2004, in particular the need for retaining qualified support personnel over seasons (summer in Turkey, winter in the Alps) within the context of immigration legislation, and its enlargement to Switzerland and Africa in 2009. Trade unions were not opposed to transnational mobility as long as it is framed and accompanied by support measures, leading EFFAT and UIITA to conclude this “agreement on the respect of fundamental rights at work and transnational mobility of Club Méditerranée GE employees in the Europe-Africa zone” together with the General management of Club Méditerranée.

The agreement is built on the respect of fundamental rights enshrined in ILO Conventions and the provision of accompanying measures to transnational mobility of support personnel (some 400 employees). Concrete guarantees have been developed in that context, notably a notice of 15 days and a priority to local personnel. Important efforts have been dedicated to
disseminate and implement the agreement, notably through a series of visits of EFFAT representative to Turkish employees in ski resorts and the organisation, together with the European Works Council, of a welcome training in Turkey. The EWC Secretary stressed the positive results obtained in retaining employees for high quality services, reducing precarious work, providing concrete support to trade unions in the countries concerned and developing cooperation both between trade unions and with management.

The acting Chairman thanked the EWC Secretary for this interesting insight and opened the floor for discussion. The Head of Labour Policies and industrial Relations at Unicredit noted that the geographical scopes of the TCA and of the EWC do not necessarily correspond. The EWC Secretary of Club Mediterrannée acknowledged that this was one of the reasons for negotiating the Club Mediterrannée agreement within trade union federations where organisations of concerned countries (Turkey, Senegal,..) are member, the agreement being however presented to the EWC before its signature.

The employer expert of CEEP enquired about the relation to national trade unions and the reasons for the priority given to local employment. The EWC Secretary answered that French trade unions were deeply involved in the agreement and stressed the need to shift from importing employees for seasonal activities to managing internationally the stable employment needed for high value services. He noted that, as a result of this policy, the turnover at Club Med could be limited to 13%, compared to an average of 20% in this activity.

Asked by the ILO expert about the impact of the crisis and future developments, the EWC Secretary answered that the lack of financial resources created some difficulties in countries such as Greece and that parties to the TCA are looking to the challenges resulting from the development of the company in Asia and South America.

The representative of ILO enquired about the reasons for registering the Club Mediterrannée agreement at ILO. The EWC Secretary answered that French collective agreements need to be sent to national public authorities for registration and that it seemed therefore normal to send this international agreement at ILO for the same reason.

- **7.2.3. Database on transnational company agreements**

The Acting Chairman referred to the specifications of the call for tenders issued by the Commission for the database on transnational company agreements and gave the floor to the representatives of the consortium led by Planet Labor to which the contract has been awarded.

The team set up by Planet Labor was presented. Ms Lopez, director of Planet Labor, presented the agency activities in European social issues. She will act as coordinator for the database and focus particularly on decentralised sources of information through Planet Labor’s network of national correspondents as well as on ways to present and disseminate the information gathered. Mr Wild from Aritake & Wild will focus on the management side in multinational companies, ILO and CSR issues. Mr Voss and other members of Wilke, Maak & Partner will build on the study done on IFAs for the European Foundation and focus on the employee side in EWCs. As to data collection, the team will focus on the search for texts not yet known, through complementary channels -journalistic, employers and trade unions- and areas –restructuring, equality, H&S, CSR, etc...- Members of the expert group may be contacted shortly to this aim. The team will then analyse the data, to organize the information into searchable fields, and input it on the Commission’s website.

The employer expert of BusinessEurope and the trade union expert of EMF welcomed the creation of the database. The employer expert of CEEP considered that the database however
largely duplicates work already done by the European Foundation. The employer expert of NL noted that dissemination is key to make TCAs useful but employees may always choose not to use an information that is brought to them.

As to the texts to include in the database, the employer experts of CEEP and CEEMET stressed the difficulty to define TCAs and therefore to determine which texts are to be included in the database. The trade union expert of EMF considered that the database should be as complete as possible, notably by including texts signed by EWCs, but also well define the different categories of texts. He stressed the need to update the list of texts, noting that the situation as regards TCAs is moving fast, notably as a result of the procedure for negotiation established by European industry federations. Noting that the broader the database, the less important the definition will be, the employer expert of BusinessEurope also spoke in favour of a wide database with search possibilities and regular update.

As to confidentiality and ownership issues, the employer expert of NL noted that these texts are usually private owned. Mr Wild and the Secretary of the expert group explained that a system will put in place to check confidentiality issues and allow parties to a TCA to oppose the publication of the text.

As to the analysis of the texts, the employer expert of NL, stressed the difficulty to have a TCA analysed by an outsider. The employer expert of CEEMET added that there should be no external interpretation of TCAs. The Secretary of the expert group explained that the aim is not to interpret the texts but to allow putting the information into searchable fields. Mr Wild added that he will explain companies it is a factual analysis that does not involve any judgment. Here also, parties will be able to oppose or correct any information they consider as inappropriate or non-communicable.

Finally, the employer expert of NL indicated she would be happy to help establishing the database, provided the necessary guarantees as to confidentiality and checking the analysis are ensured. The employer expert of BusinessEurope noted that the obligation lies on the Commission in this regard.

7.3 Discussion in the Expert Group on 11 October 2011: database on transnational company agreements

The Chairman invited Mr Wild to present the database on transnational company agreements worked out for the European Commission by Planet Labor/ WMP Consult/ Aritake-Wild under the direction of Planet Labor and available on the Commission’s webpage34. Mr Wild first presented the actions undertaken to collect the texts: compile already known texts, carry out a literature research and contact social partners, companies and European works Councils. The main question here related to the characteristics of the texts to be included in the database. The definition of the Commission was used to guide the choice35, International Framework Agreements were included as a subset of transnational company agreements and agreements establishing European Works councils (EWCs) were excluded. However, there were some grey areas, in particular where procedural or even substantive rules in case of restructuring were agreed in form of an annex or a part of the EWC agreement which were


35 **"An agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers’ organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives" SEC(2008)2155**
excluded so as to not duplicate the existing database of EWC agreements, but the overall approach was to open the database as much as possible including all texts signed by two parties aimed at having a substantive transnational impact. Mr Wild then presented the analytical steps leading to the production of an analysis grid to file the text into searchable fields and to a profile sheets grid describing each agreement. The proper terms of the agreements were used and quoted as far as possible, so as to avoid any subjective analysis of their objectives and content. He presented the simple and advanced search possibilities and the results page format. In the test phase, feedback was received from social partners and academics. In the production phase, a user guide, a data dictionary, the full list of agreements and further information were added. Mr Wild concluded with the need to keep the database up-to-date.

The Chairman thanked Mr Wild for his presentation and opened the floor for questions. The employer expert of CEEP stressed the need to regularly update the database and asked how the transnational dimension of an agreement was determined. The employer expert of CEEMET asked about the criteria to determine if a text is a TCA and stressed the need to distinguish them from the agreements establishing EWCs. The expert of Eurofound noted the distinction proposed by the Foundation between International Framework Agreements (IFAs) concluded with Global Union Federations and European Framework Agreements (EFAs) concluded with European trade unions or EWCs. The trade union expert of EMF stressed the need for the social partners to help maintain the database and the obligations deriving from it. He stated that the EMF will always send the agreements it signs to the Commission as well as to ETUI. He considered that the social partners should have their own definition of what is a TCA, which should bear the signature of trade unions. However, he agreed with the database being large and providing for information on all kinds of transnational texts. Mr Wild answered that the database included the texts of transnational scope signed by two parties representing employees and management, with the exception of agreements establishing EWCs. The transnational dimension of an agreement was determined by the transnational impact it pursues. The type and level of signatory parties, which could be EWCs or national unions, as well as enforceability issues were left aside. He also stressed the total absence of interpretation of the texts, reference being made to their own provisions. As to the update of the database, the Secretary of the expert group indicated that the maintenance of the database is foreseen and will be subcontracted.

[36 http://www.ewcdb.eu/]

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8. **LINKS BETWEEN TRANSNATIONAL COMPANY AGREEMENTS AND OTHER LEVELS OF SOCIAL DIALOGUE (EXAMINED AT FOURTH MEETING)**

8.1 **Introduction provided by the Commission on 26 October 2010**

Upon invitation by the Chairman, the Secretary of the expert group introduced issues related to “links between transnational company agreements and other levels of social dialogue”.

As to the links with European social dialogue, she noted that some transnational agreements aim at implementing outcomes of European social dialogue at cross-industry level (ex on equal opportunities at Areva or on stress at PPR) or at sectoral level (ex on lifelong learning at Unicredit). Transnational agreements are also of interest for European sectoral social dialogue through the negotiating and implementation procedures established by European trade union federations, the role of TCAs in certain sectors such as energy or civil aviation and the discussion about TCAs in certain sectoral social dialogue committees such as chemicals.

As to the links with national social dialogue in the company, she referred to the involvement of national trade unions in some TCAs (ex EDF), the transnational scope of some national company agreements (ex on financial participation), the negotiation of a TCA after a national agreement has been concluded (ex skills planning in France/Europe), the implementation of TCAs through national agreements (Ex Ford restructuring) and the effects of transnational agreements on establishment, improvement or reinforcement of local social dialogue (many examples).

As to the links with national social dialogue beyond the company, she referred to the involvement of national trade unions in some TCAs (ex equal opportunities), the effects of transnational agreements on establishment, improvement or reinforcement of national social dialogue (ex of some new Member states or non European countries).

As to the links to global social dialogue, she noted that transnational agreements promote global social dialogue in companies, support international cooperation of trade unions and promote ILO Conventions and other international instruments relating to social dialogue. As to contents, she noted that topics such as training, restructuring, mobility, Health and safety or equal opportunities were addressed at different levels of social dialogue.

The question is therefore which link between transnational agreements and national, European and global social dialogue at cross-industry, sectoral and company levels already exist and would be useful as well as how to support and develop them.

8.2 **Presentation of study results on the interaction between levels of transnational social dialogue on 26 October 2010**

Mr Sobczak presented the main results of the study on the interaction between levels of transnational social dialogue he had carried out in 2008-2009 with Evelyne Leonard from
Université Catholique de Louvain for the French Ministry of Labour. He first noted that interviewed actors usually claimed they didn’t see any such interaction. He then observed that, as to links between different TCAs, informal consultations are held between employers in what can be considered as a process of innovation. On employee side, the same actors are found in different negotiations and standard agreements are developed. As to the relation between TCAs and European sectoral social dialogue committees, little link was found. On employer side, the actors are not the same, except for certain sectors such as electricity. On employee side, the coordination is easier and more developed through the action of industry federations. In relation to the content of the agreements, it was found that certain issues are specific to one level whereas some others are common to both company and sectoral levels. The methods for implementing the agreements and the difficulties faced were also considered as presenting similarities. As a result, the study identifies a potential and a need for interaction between company and sectoral levels of transnational social dialogue.

The Chairman thanked for the presentations and opened the floor for questions. The employer expert of CEEP enquired about the number of agreements concluded at sectoral level. The Chairman referred to the rent Commission Staff Working Document “on the functioning and potential of European sectoral social dialogue” (SEC(2010)964) which provides an overview of the some 500 texts of different kinds adopted by the sectoral social dialogue committees. Upon a question from the employer expert of ES about examples of links between TCAs and the committees, the electricity sector was referred to: after EDF had concluded a global CSR agreement, the different companies of the sector were invited to look into this issue and share practices.

8.2 Discussion in the Expert Group on 26 October 2010

- 8.2.1. Views from a company - PPR

The Chairman gave the floor to the representative of PPR management to talk about his views as to links between the levels of social dialogue with reference to the Charter concluded in 2010 with the EWC on quality of life at work and prevention of work-related stress. The PPR Group HR Director presented the context, bodies (Group works council, EWC) and various topics (equal opportunities, training, diversity, transport, restructuring,...) of social dialogue at PPR group level. He referred to the two charters already concluded in 2008 on the employment of disabled persons and seniors and stressed that these texts go beyond mere declarations, as shown by the fact that their observance is included, together with CSR objectives, in the evaluation and remuneration of managers. He explained the origin of PPR’s dialogue on psycho-social risks, stressing the economic, social and legal challenges to address, the need to develop a shared management of these risks in a context of increased pressure of change, the objective to work on concrete areas with a renewed EWC and the will to give a concrete impetus to the implementation of the two European framework agreements on work-related stress and violence and harassment at work. He described the approach taken to negotiate and implement the Charter, building of the exchange of experiences, using external European references, defining and validating core principles (identifying and assessing factors of work-related stress, establishing preventing measures and informing and listening to employees) and working out mechanisms to implement and monitor the application of the Charter before adopting it and making it a true agreement of European scope. In this context, he stressed the importance of using the definitions and provisions of European texts and agreements as references.
The Chairman thanked the HR Director for this interesting insight, particularly in the context where the Commission is about to publish its evaluation on the implementation of the European agreement on work-related stress, asked whether the national frameworks had an influence on the treatment of this issue and opened the floor for further questions.

Upon a question from the employer expert of CEEP, the HR Director answered that the EWC needs to get all useful information and is also to be consulted in an appropriate timing. The representative of the PPR Group Directorate for Social Development noted that French authorities had indeed pressed companies to achieve results on stress-related issues, pushed by public opinion in the context of a series of suicides at work. She considered however that this pressure was more an embarrassment, as social dialogue needs serenity, and did not have much impact on the agreement. She observed that actual interaction with national contexts was rather related to the differences between Member States in the dissemination and implementation of the European agreements on work-related stress and violence and harassment at work, leading to a large variety of practices. She concluded however that the common, clear and simple reference provided by these European agreements allowed to go ahead in the company.

- **8.2.2. Views from national social dialogue - Belgium**

The Chairman gave the floor to the representative of Belgian social partners to talk about her views as to links between the levels of social dialogue with reference to the Belgian system.

The advisor at CSC-ACV recalled the historical construction of Belgian social dialogue, based on the 1944 social pact, which provides for a high level of organisation (55 to 70% of trade union membership, 75% for employers) and coverage by collective agreements (around 90%) as well as an active and loyal social dialogue. The traditional levels of social dialogue (cross-industry, sectoral and company) are articulated: there are complementarities and a hierarchy providing for ascendant and descendent solidarity, a framework to implement collective agreements and enough flexibility to integrate new areas or “atypical” workers or sectors.

She then compared the national system with the European one, noting that they present similarities but that the company level is missing in the European system and that the relation between information-consultation and negotiation needs to be better worked out.

She stressed that the present pragmatic approach as to the “implementation” of transnational company agreements into local binding agreements is not satisfactory because it leads to multiply national negotiations in a non-rational manner and needs to become more simple. To conclude, she quoted the debated text of October 2010 Congress of the CSC trade union pleading for internationalising the conclusion of company agreements with multinational companies, providing a statute for these agreements through a European framework for European agreements and an ILO framework for international agreements as well as mediation mechanisms at European and international levels in case of deadlocks.

- **8.2.3. Views from sectoral social dialogue – Chemical industry and civil aviation**

The Chairman gave the floor to the representatives of the sectoral social dialogue committees in chemical industry and civil aviation to talk about their views as to links between the levels of social dialogue with reference to sectoral social dialogue.
As to the **chemical sector**, the EMCEF member of the chemical industry sectoral social dialogue committee presented the issues dealt with in sectoral social dialogue, such as life-long learning, restructuring or CSR, and the role of the industry trade union federation EMCEF involved in merging talks with EMF and ETUF-TCL. Exploring the different levels of European social dialogue, he referred to the 2006 multisectoral agreement on crystalline Silica and the on-going negotiations on a sectoral binding agreement on life-long learning dealing with job profiles, skills/competence certificates and the establishment of a European sectoral council on employment and skills.

As to transnational company agreements, he noted the existence of some agreements, mostly global, in the sector and observed that, in the absence of a European framework, European trade union federations have adopted own mandating procedures. He then described the EMCEF procedure adopted in 2010: 2/3 majority among affiliates to decide opening negotiations, platform and delegation (with veto rights for country with over 10% of employees), all countries to decide (by 2/3 internal majority) to approve an agreement for it to be binding on affiliates, implementation under responsibility of EMCEF affiliates. He stressed that EWCs have no mandate to negotiate collectively but that EWC members may take part to the negotiating delegation where appointed by trade unions.

To conclude, he noted the present need to implement a transnational agreement by national collective agreements to make it binding and effective and stressed the interest of a European legal framework to simplify such mechanism.

Commenting on this presentation, the employer expert of NL stressed that the intention of the parties needs to be taken into account to make an agreement binding and that the absence of involvement of the EWC while agreeing company policies with management is not in line with usual practice and may lead to difficult situations. The trade union expert of NORD expressed the need to look more closely at the kind of agreements at stake, notably whether or not it may have material consequences for the workers.

As to **civil aviation**, the ECA Vice-President of the civil aviation sectoral social dialogue committee presented main aspects of the sectoral social dialogue committee, including the agreement concluded on working time for mobile staff, the learning culture developed and the working groups established, for example on ATM (controllers).

He then went to the reasons for an interest in transnational company agreements in the aviation sector, particularly for crews, to cope with bases opened in different countries and merging of airlines as a result of liberalisation of the sector. He explained that where, before 2000, the was one contract with all pilots and cabin crew, situations occur now where different contracts may apply to pilots and cabin crew within the same crew of succeeding in the same plane because they refer to different national rules. These situations are challenging as to equal pay, working conditions and other social requirements. He referred to the initiatives of the single contract concluded for SAS pilots of NO, SE and DK concluded under Swedish law and registered in all countries and of negotiation of Easyjet pilots association with the company for that purpose.

The search for an enabling legal framework for such transnational company agreements for civil aviation was discussed during a 2007 pilots seminar, the 2008-2009 EU-US labour forums in the context of opens skies negotiations, where mechanism for transatlantic representation and central negotiations were at stake, and the aircrew working group.

- **8.2.4. General Debate**
The Chairman thanked for the series of presentations on the links between transnational company agreements and other levels of social dialogue. He noted that any interaction should result in beneficial effects, such as in the example on work-related stress. He noted however that reasons for concerns and warning had been expressed, showing that coexistence may not always be peaceful. He recalled the increasing number of transnational company agreements and their interest as well as the dynamism of sectoral social dialogue. The question is how can they develop together and mutually reinforce. Two difficulties are notably to be addressed: the uncertainty as to implementation at national level and the respective roles of trade unions and EWCs in negotiations. Such difficulties, for example if conditions for mandating procedures are too heavy, could be an obstacle for the further development of agreements. Recalling that the discussions on the subject may end in legislative proposals, The Chairman opened the floor for the debate as to lessons on links between levels of social dialogue.

The employer expert of BusinesssEurope thanked for the variety of examples provided and considered the meeting as very useful. He expressed respect for the individual solutions found at the satisfaction of the company actors. The examples, notably on stress, also illustrate the need to accommodate the diversity in national industrial relations systems. He shared the conclusions of the study as to the absence of structured link and considered that it will take time to build it. In this process, he stressed the need to learn from experience and not to create problems for companies by forgetting that transnational company agreements are mainly a business for companies and their employees themselves. The employer expert of NL shared these conclusions and added that very interesting cases had been presented. She stressed the need the diversity in industrial relations systems and avoid a too legalistic approach, as content is of higher importance. The employer representative of CEEP considered that flexibility is needed so as not to block the development of TCAs in the interest of employees and companies, notably for framework and procedural agreements while understanding EMF and EMCEF approaches to secure mandates. He recognised the challenges in implementing transnational agreements, which might prove more difficult in restructuring matters than on stress, and the need for legal certainty. He stressed the different natures and objectives of the texts which should lead to avoid uniform solutions, distinguishing notably between frameworks and substantive agreements (for example on restructuring).

The trade union expert of NORD considered that the developments showed clear orientations. There is a need for rules and procedures to ensure that transnational agreements can be negotiated with the appropriate negotiating partners and deliver their promises while taking into account the different types of agreements. He called on the Commission to develop appropriate processes to that aim.
9. **LEGAL EFFECTS OF TRANSNATIONAL COMPANY AGREEMENTS**  
(EXAMINED AT FIFTH MEETING)

### 9.1 Introduction to the issue provided by the Commission on 3 May 2011

Upon invitation by the Acting Chairman, the Secretary of the expert group 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?

### 9.2 First results of the study on the characteristics and legal effects of agreements between companies and workers' representatives presented in the Expert Group on 3 May 2011

The Acting Chairman gave the floor to Mr Rodriguez from Labour Asociados 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.

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.

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.

The Acting Chairman 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 from ITC ILO 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.

9.3 Discussion in the Expert Group on 3 May 2011

9.3.1. Insider views – The approach to effects of transnational company agreements in Pfleiderer AG Social Charta

The acting Chairman invited the representatives of Pfleiderer AG to share their experience and views on the subject. First, the HR Director corporate functions, policies and programs 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).

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.

The HR Director 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, the HR Director 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.

The Chairman of Pfleiderer EWC 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.

- **9.3.2. Debate on the lessons on legal effects of transitional company agreements**

The Acting Chairman 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. The Chairman of Pfleiderer EWC 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, The Pfleiderer HR Director 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.

9.4 Final results of the study on the characteristics and legal effects of agreements between companies and workers' representatives presented in the Expert Group on 11 October 2011

The Chairman invited Mr Rodriguez of Labour Asociados to present the final results of the “study on the characteristics and legal effects of agreements between companies and workers’ representatives” carried out under the coordination of Labour Asociados for the European Commission. Mr Rodriguez recalled the objectives of the study, which first results were presented at the May 2011 meeting of the Expert Group: to provide a comprehensive review of the characteristics and legal effects of company agreements under national rules, identify obstacles TCAs are faced with to get legal effects in this context and explore options to
overcome them. As the review of the national systems of company agreements was presented and discussed at previous meeting, Mr Rodriguez focused on the latter. He stressed the difference between legal effects and implementation or application of the agreements. As to the methodology, he referred to a bottom-up approach based on what makes a company agreement at national level and to a top-down approach of what would be required to give legal effects to TCAs based on a simulation exercise with real TCA cases.

Three main obstacles found for a TCA to have legal effects. The first relates to the legal capacity and competences of the concluding parties under national laws, in particular on workers’ side where the capacity to become obliged may depend on the scope and nature of the contents agreed and be restricted to trade unions or works councils (Austria and Germany) having legal competences under national law. The second obstacle relates to the binding nature and enforceability of an agreement under national law, with the distinction between the normative and obligatory clauses and the path towards incorporation into individual labour contracts to be taken into account, UK and Ireland forming singular cases to this regard and an important aspect being the personal enforceability to all workers or its limitation to members of a signatory trade union. The third obstacle relates to the TCA’s position within the hierarchical structure of collective agreements at national level, which is particularly important in systems where each collective agreement has its own status depending on the scope and the content (Belgium for example) and as regards deviations from the law or from agreements at higher level which are restricted to deviations in melius in many national systems.

Mr Jaspers presented the study results as to the three options examined to overcome the obstacles identified for TCAs to get controlled legal effects. The first option is to provide uniform legal effects to a TCA throughout the Member States. This could be envisaged through uniform application of a TCA by either mandatory application or voluntary acceptance of the parties, involving in any case severe and likely insufficiently justified EU intervention. This could also be envisaged through the framing of national collective agreement systems to recognise the priority of TCAs over national agreements, interfering in the different national systems of industrial relations. The second option is to make the legal effects of a TCA vary according to the will of the parties, implying a procedural framework at EU level dealing with the formal requirements and changes in domestic law enabling a TCA to achieve legal effects. This would be a more flexible intervention leaving room to the autonomy of the parties, but would involve complex issues as to the representativeness of the parties and bring uncertainty in the application of the agreement in the national systems. The third option is to give TCAs the same or equivalent legal effects in Member States as company agreements concluded at national level. A mandating procedure would be followed in this case to ensure the representativeness of the negotiators and concluding parties but would not per se enable to achieve legal effects as the negotiators of a TCA have no capacity at national level. An adhesion agreement at national level would be the way to enable the TCA to get legal effects equivalent to the ones of a company agreement and well adapt to the national systems. The signatory bodies of the adhesion agreement at national level and the consequences of one of these bodies refusing to sign would however to be determined.

Mr Rodriguez concluded the presentation with the study results as to suggestions and guiding principles in establishing an EU framework for TCAs. This framework would need to be non-invasive, optional and flexible with an interaction between EU and national levels. To get TCAs recognised at national level, it would need to provide for a definition of what makes a TCA. To enable TCAs getting legal effects, it would need to include rules as to the
signatory parties referring to the national situations, as to the subjects covered referring to the most favourable norm and as to the transparency and deposit requirements.

The Chairman thanked Mr Rodriguez and Mr Jaspers for this presentation and opened the floor for comments and questions. The employer expert of BusinessEurope expressed his recognition of the efforts provided, but also his scepticism. He noted that the legal approach tends to set the most complicated system as the benchmark, that industrial relations are not a legal discipline and that legal effects are marginal in achieving results and compliance. He thus considered that the report remains theoretical and hypothetical but that it provides for useful information on the different national systems. The employer expert of CEEP stressed the difference between charters and TCAs intended to have an impact on individual labour conditions. He noted that only the latter are concerned by legal effects, which are an issue for national law, eventually framed at European level. He considered that the option of the adhesion agreement was the most interesting but that two issues need to be addressed to avoid any discrimination: the representativeness of trade union organisations and the consequences of the absence of signature of the adhesion agreement. The trade union expert of EMF thanked for the study which he considered to well address concrete issues faced when negotiating TCAs, for example the non-regression clause. He pointed to an aspect missing in the report: the consequences of mergers or acquisitions on the effects of a TCA, the solution followed so far being that the inclusion of new companies or countries in the scope needs to be discussed. As to the mandate, he stressed that it is also an issue for the company side and that the mandating procedure needs to be very clear and compulsory. As to the options, he suggests combining the procedures for mandate and adhesion and making the adhesion agreement in coherence with national procedures (for example by the works council in Germany and by the trade unions in France). Whereas no obligation should be made to conclude an adhesion agreement in a country, unilateral application of the provisions by management should be avoided where no agreement has been reached. The employer expert of CEEMET considered that the tender presupposed that a legal framework was needed to give TCAs legal effects but that no need was felt in reality. He considered that the will of the parties needs to be respected, that flexibility is required, that boundaries between collective agreements and company agreements risk to be blurred and that heavy intervention of the EU should be avoided. The governmental expert of DE noted the important differences between national systems that are described in the report and the related difficulty to find appropriate solutions for a TCA. She indicated looking at the third option with interest, considered that national parties need to give their agreement and asked about what happens if this agreement is not achieved in all MS.

Mr Rodriguez expressed his satisfaction that the study is felt as bringing useful information. He recalled that the report did not intend to provide for one solution but instead consider a wide range of approaches, which could be combined. The mandating procedure in particular should be considered as a part of any solution but would not be sufficient to provide legal effects at national level. As to the impact on individual working conditions, he indicated that eventual problems could be solved by the inclusion of a more favourable clause. As to the integration of new entities, he noted that the adhesion procedure could be used. Mr Jaspers added that the solutions depend on the option chosen and need to take into account the subject addressed in the agreement and the extent to which employees are covered by a company agreement under national rules.

The Chairman concluded that the study helps to structure the options to be considered as to the legal effects of TCAs, an issue included in the expert group’s mandate since its
establishment. He considered that the report provides for useful information as to measures and provisions existing at national level, which need to be accommodated while integrating TCAs and which had been neglected so far in the course of the expert group. He invited national experts to provide for feedback on their part of the report and thanked the authors for their work.
IV – Review of research, training and exchanges of experience in transnational company agreements

Review of research and training activities
Lessons learned from a series of workshops of ITC ILO
Experience of members of the European HRD Circle for social responsibility

10. REVIEW OF RESEARCH AND TRAINING ACTIVITIES (Examined at Second and Following Meetings)

10.1 Review of research activities of the International Labour Organisation (ILO)

- 10.1.1. Presentation and discussion in the Expert Group of 29 November 2009

Mr Papadakis presented the ILO research projects on cross-border dialogue and agreements. He stressed the gap between the increasing transnational dimension in which the economic actors intervene with the development of Multinational Enterprises (MNEs) and the still largely national dimension of the social actors.37

From an ILO perspective IFAs are particularly interesting because they are firstly establishing cross-border social dialogue structures and secondly promoting specific ILO instruments.

As regards the period from 2006 to 2009, research was primarily focused on collaborations and information exchange with external experts and academics in the field of IFAs. During the above mentioned period 3 research workshops took place about mapping, research methodologies and impact of IFAs. Furthermore an Edited Book and a Working paper were published and an "E-survey on management perceptions" was carried out.

Whether IFAs are "collective agreements" in the sense of the Recommendation 91 on Collective Agreements is not absolutely clear. IFAs possess some, but not all, of the essential constitutive elements of industrial relations instruments akin to collective agreements.38

As to motivations for companies to signing agreements in extra-EU countries, field research was carried out on agreements concluded in companies headquartered in South Africa, Russian Federation and Japan. The guided interviews revealed that civil pressure combined with anticipatory factors were a catalyst in explaining the decision of the companies.

Then Mr Papadakis presented the main findings of the conducted E-Survey of MNEs. In this survey, in which 17 companies39 employing about 2.2 million workers40 participated, management perceptions on the impact of IFAs41 have been analysed.

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37 As a response to this mismatch the number of voluntary initiatives emerged significantly in recent times.
38 There are still a number of other outstanding issues such as content, effectiveness of machinery for monitoring and follow up or dissemination.
39 17 companies out of 63; that means ¼ of signatory companies.
40 2.2 million workers out of 5.9 million covered by IFAs, 40% of the workforce.
Regarding dissemination the E-Survey found that IFAs largely remain an internal document. As to monitoring the E-survey stated that periodic labour management meetings take place and also some degree of institutionalisation is notably at EU level whereas World Employee Committees remain an exception.

As main impacts the E-survey identified the increased trust and credibility of the company towards shareholders and investors but not, although often claimed, significant impacts on the increase of market share or any productivity or innovation improvement.

As biggest challenges in the field of IFAs conviction of managers in foreign operations and existing prohibitive local laws and practices are detected. However IFAs generate relatively high potential for collective bargaining and negotiations at foreign operational levels. Relatively low potential was found instead for increases in wages to "higher common denominator of foreign operations" or for information leaks to competitors.

Subsequent to the already completed research in this field there will be a publication on the impact of IFAs in March 2010 and another project in this area.

Based on the presented facts Mr Papadakis described the present objectives of the ILO to act as a repository of knowledge. ILO instruments and functioning are still mostly driven by national level priorities and less by "cross-border" initiatives. Therefore he very much welcomed the Maritime Convention as a very innovative instrument. Concerning new developments in the field of IFAs he mentioned the MULTI Help Desk (2008), the ILO Declaration on Social Justice for a Fair Globalisation (2008), the ILO Strategic Policy Framework 2010-15 and Debates at the June 2009 International Labour Conference which led to the Global Jobs Pact.

The Acting Chairman thanked for the interesting presentation and opened the discussion.

Firstly Head of international coordination of labour law at ArcelorMittal commented on Mr Papadakis presentation. He explained the choice made by ArcelorMittal to conclude an agreement on the establishment of health and safety committees providing for locally adapted structures that are suitable for each country through national/local negotiation. He stressed how far reaching commitment and concrete tool such agreements represent to develop social dialogue and improve working conditions in the context of a steel company with important safety challenges. He noted that the company preferred that kind of concrete agreement to the renewal of the 2005 Arcelor global agreement on CSR and referred to possible (legal) risks regarding the extent of CSR commitments, in particular the incorporation of ILO conventions. The Head of European Industrial Relations at Solvay pointed out the importance of appropriate interlocutors and partnership of actors. He also stressed the importance to go beyond declarations towards follow-up ad concrete application of commitments included in TCAs.

Following the previous speakers, the trade union expert of ES pointed out the difference of approach between IFAs involving rights and competence of actors (EWC/TU) and CSR perspectives. She was interested to learn more about the practical implications of this

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41 Especially in regard to successes, challenges in implementation, costs and benefits but also potential developments.

42 While line managers and managers in foreign operations are mainly informed; consumers, labour force and suppliers are rarely informed.

43 In comparison to many other globalised industries he underlined that in the Maritime sector not only workers but also employers are organized at the global sectoral level.
differentiation. Mr Papadakis answered that IFAs are industrial relations' issues but with important CSR components. He referred mainly to the distinction between CSR (unilateral, geared towards consumers) and IFAs (joint, addressing common concerns workers/employers) as set out in extenso in the relevant studies produced by ILO and Eurofound.

### 10.1.2. Presentation and discussion in the Expert Group on 26 October 2010

Mr Papadakis, from the ILO's Industrial and Employment Relations Department informed about latest activities of ILO in the field of TCAs. ILO (DIALOGUE) is developing a number of research and policy development activities in cooperation with practitioners and academics. Fresh activities in this field include the results of an e-survey on management perceptions on the impact of IFAs and a review of the role of labour-management agreements in socially responsible restructuring practices in times of crisis. ILO is also establishing a database of IFAs to be regularly updated with analytical tables available online. Policy dialogue and workshops are also carried out with Global unions, the International Organisation of Employers and businesses. Documents are to be found at [http://www.ilo.org/public/english/dialogue/ifpdial/info/xborder/index.htm](http://www.ilo.org/public/english/dialogue/ifpdial/info/xborder/index.htm)

Mr Papadakis presented selected findings of this on-going work. Some 6 IFAs have been concluded every year since 2006, which represents today 80 IFAs in companies employing some 6,3 million workers (out of 77 million employees working in transnational companies). IFAs go beyond core labour standards by dealing with everyday issues such as restructuring, thus enabling win-win situations during the crisis and avoid downward spiral of wages and jobs. As to the effects, IFAs entail recognition of workers' representatives at global level, increased possibilities for workers to organize at local level and to coordinate, capacity to end the deadlock in longstanding situations and resolve disputes. They also bring about increased level of trust for management. Effective implementation of IFAs however needs improved ownership on both union and management sides through negotiating procedures and increased involvement of local actors.

The acting Chairman thanked for the presentations, stressed that TCAs are not only a European issue and opened the floor for discussion. The employer expert of NL enquired about the research methods and the possibility to distinguish between the effects of an agreement and the ones of the overall company's HR policy. Mr Papadakis answered that a good HR policy is indeed crucial for good economic and social results and that TCAs are to be considered as a part of such policy, which usually go along with other good practices enabling to find win-win solutions, such as timely employee information and consultation or Health & Safety programmes. The trade union expert of NORD observed that agreements in place provoke change in organisations with qualitative jumps and push for more substantive initiatives at European level and as well at global one. Mr Papadakis noted that global unions form alliances and develop organisational change allowing them, not only to negotiate in a structured way, but also to better promote TCAs.

### 10.1.3. Presentation and discussion in the Expert Group on 11 October 2011

The Chairman invited Mr Papadakis, from the Industrial and Employment Relations department of the ILO to present the just issued ILO publication he edited on “Shaping global
industrial relations: the impact of international framework agreements. Mr Papadakis presented the book co-published with Palgrave MacMillan which will also be available online and comes from a research project undertaken by the department since 2009 with the contribution of 15 researchers, including Eurofound and ETUI. The publication focuses on the impact of IFAs on the promotion of ILO core labour standards, in particular conventions 87 and 98 on freedom of association and collective bargaining and is organised in three parts: mapping the perceptions of management and Global union Federations (GUFs), case studies on the implementation of IFAs on the ground and related initiatives. A database of IFAs is provided in Annex reviewing the parties, content with reference to ILO and other multilateral instruments as well as follow-up procedures in IFAs. Key conclusions are that IFAs do have the capacity to improve the implementation of global labour standards by that there is room for improvement, in particular through the standardisation of mandating procedures, the cross border coordination of trade unions and the involvement of local management and trade unions in the process. He referred to the interest for the signatories of IFAs to go beyond core labour standards and address issues such as restructuring and anticipation of change. He concluded by thanking the Commission for the possibility to participate as an observer to the expert group, which has provided for a wealth of information on the emerging area of TCAs, and by looking forward to continuing such a fruitful cooperation.

The Chairman congratulated Mr Papadakis for the publication and opened the floor for questions. The employer expert of ES asked about criteria used and difficulties faced to measure the impact of IFAs on labour relations. Mr Papadakis indicated that a workshop on methodology was organised in 2009 and that perception and data of both management and trade unions, at global and local levels were used. However, each author has used his own methodology. Objective elements related to the content of the agreement, such as the organisation of local workers, were thus used as far as possible and the ILO ensured that all opinions were reflected.

10.2 Research activities of the European Foundation for the improvement of living and working conditions presented in the Expert Group on 27 November 2009

Christian Welz from Eurofound gave a presentation about "IFAs and European Framework Agreements (EFAs): 'essai' of a qualitative analysis". At the beginning Mr Welz gave a general overview about the system of European social dialogue by illustrating the contexts between the different factors with a graphic. Whereas an IFA is a company agreement signed by a Multinational Company (MNC) and a Global Union Federation, an EFA is a company agreement signed by a MNC and a European Industry Federation (EIF) and/or a EWC. Already from the definitions it is clear that these two types of agreements affect different actors. Common to both, however, is that a legal framework for such agreements doesn't exist, neither at the European nor at the international level.

In October 2008 most IFAs have been concluded in DE, NL, FR and SE. Regarding the content of IFAs it is interesting to see that there is very often a general reference to the ILO (69% of all agreements), to ILO core conventions (55%), to the UN Declaration on HR


45 Relations between the Intersectoral social dialogue, Sectoral social dialogue, EWCs, IFAs, EFAs, SEs and national social dialogue.
(26%), to Global Compact (23%), to the OECD Guidelines (19%) and to the ILO Tripartite Declaration (13%). In contrast to that, EFAs mainly deal with restructuring, social dialogue, Health & Safety and only very few with CSR. Regarding the level linkages at EU level there is apparently a clear trend towards an increasing interaction between the different players.\textsuperscript{46} To sum it up, Mr Welz noted that EFAs (compared to IFAs) cover other topics, are signed by different negotiators and have different scopes. However it is striking that IFAs and EFAs mainly reflect traditions of European IR and are concentrated in social market economies with collective interest representation.

Moreover Mr Welz discussed the issue of inclusion of suppliers and subcontractors in the application of IFAs. In 31% of all analysed IFAs suppliers/sub contractors were not mentioned. In his final remarks Mr Welz noted that transnational dialogue at company level mainly takes place between stable actors on the employer side, but variable ones on the trade union side.

\textbf{10.3 Studies presented in the various meetings of the Expert Group}

The results of two studies commissioned by the Commission have been presented in the Expert Group:

- The report of the study on "International private law aspects of dispute settlement related to transnational company agreements" carried out by A. van Hoek and F. Hendrickx was presented and discussed in the context of the analysis of "implementation and disputes relating to transnational company agreements" on 27 November 2009 and 7 May 2010 (see Chapter 6)
- The results of the study on "the characteristics and legal effects of agreements between companies and worker's representatives" carried out by Labour Asociados were presented and discussed in the context of the analysis of "the legal effects of transnational company agreements" on 3 May 2011 and 11 October 2011 (see Chapter 9)

The results of the study on "the interaction between levels of transnational social dialogue" carried by A.Sobczak and E. Léonard, Audencia and Université Catholique de Louvain for the French Ministry of Labour was presented and discussed in the context of the analysis of "the links transnational company agreements and other levels of social dialogue" on 26 October 2010 (see Chapter 8)

See Annex II for complete references.

\textsuperscript{46} This is the case between Intersectoral and sectoral dialogue in both directions, between the sectors and but also between sectoral and company level as well as between companies.
11. **LESSONS LEARNED FROM A SERIES OF WORKSHOPS OF ITC ILO ON TRANSNATIONAL COMPANY AGREEMENTS WITH AND FOR MANAGEMENT REPRESENTATIVES (EXAMINED AT FIFTH MEETING)**

At the meeting of Expert Group on 3 May 2011, the Chairman 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.

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, 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.

The Chairman 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.
12. The experience of the members of the European HRD Circle for social responsibility in the field of transnational company agreements (examined at Fifth meeting)

At the meeting of Expert Group on 3 May 2011, upon invitation of the Chairman of the expert group, Mr Barou, coChairman of the European HRD Circle, composed of senior HR Directors across Europe, presented its activities 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 transnational company agreements 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 at http://european-hrd-circle.org/yves-barou-the-european-social-dimension/).

Mr Vivien, HR Director at Areva, member of the European HRD Circle, 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.

The Chairman 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.

The Chairman 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, HR Director at Converteam, outlined that his company, 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.
13. **AIRFRANCE KLM / REORGANISATION OF SALES AGENCIES (EXAMINED ON 26 OCTOBER 2010)**

On 26 October 2010, The Vice President HR of Air France KLM introduced the 2010 framework agreement on the reorganisation of AirFrance KLM airport sales agencies in Europe. For KLM, HRR of KLM explained the origin of the agreement in the need to anticipate the decrease in the use of airport ticket offices and to redeploy related workforce through training, mobility and flexibility measures. The working group established within the EWC suggested establishing a European framework based on best practices identified to cope with these challenges while protecting permanent employment and managing change in a spirit of trust. As a result, the framework agreement identifies the procedures to be followed at different levels, recognizes the authority of local actors and develops the transparency and monitoring role at European level. In addition, The HRR of Air France stressed the need for a consistent and transparent approach at European level to set the rules for management at all levels, “keep family together” and provide for quality service to customers with happy staff. He explained that the process and agreement enabled to overcome initial fears of well organised staff as to potential outsourcing plans by Air France. The Vice President HR of Air France KLM concluded this presentation by stressing the decisive contribution of the EWC to social dialogue by channelling employees’ expectations, discussing strategic orientations and enabling to build joint working frameworks.

The acting Chairman noted the importance of Human Resources issues a core of company strategies and opened the floor for discussion. Upon a question from the employer expert of NL on the concrete results of the agreement, the HRR of KLM explained that it was key, through the transparency it provided, to overcome the fears of staff as to risk of outsourcing AirFranceKLM sales activities and that it forced everybody to look into the future of airport ticket offices. As a result, some insourcing of activities even occurred. The employer expert of CEEP noted that a framework agreement enables respect of local legislation, practice and cultures, while providing for orientations and incentives. The Vice President HR of Air France KLM referred to the flexibility provided by the agreement concluded.
14. **ALSTOM / ANTICIPATION OF CHANGE(EXAMINED ON 3 MAY 2011)**

On 3 May 2011, The Responsible for Alstom 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.

The Alstom representative 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, he 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.

The Chairman thanked the Alstom representative 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. The Alstom representative 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. The Alstom representative 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. The Alstom representative 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, the Alstom representative 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.

15. **ARCELORMITTAL / FUNDAMENTAL RIGHTS, HEALTH & SAFETY AND ANTICIPATION OF CHANGE (EXAMINED ON 27 NOVEMBER 2009)**

The experience of ArcelorMittal was presented and examined in the context of the analysis of "implementation and disputes relating to transnational company agreements" on 27 November 2009 (see Chapter 6)


The experience of Areva was presented and examined in the context of the analysis of "Actors involved in transnational company agreements" on 14 May 2009 (see Chapter 5 p ) and in the context of the European HRD Circle for social responsibility in the field of transnational company agreements (see Chapter 4)
17. **Club Mediterranée / Transnational Mobility and Fundamental Rights (Examined on 7 May 2010)**

The experience of Club Mediterranée was presented and examined in the context of the analysis of "form and transparency in transnational company agreements" on 7 May 2010 (see Chapter 7).

18. **ETEX / Environment, Health & Safety (Examined on 3 May 2011)**

On 3 May 2011, the ETEX HR Director, briefly presented the ETEX Group headquartered 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. She 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, the ETEX HR Director 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 a major priority. The ETEX HR Director 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.

The Chairman thanked the ETEX HR Director 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, the ETEX HR Director 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.
19. **FORD OF EUROPE / MANAGEMENT OF CHANGE AND RESTRUCTURING**  
**EXAMINED ON 14 MAY 2009**

The experience of Ford of Europe was presented and examined in the context of the analysis of "transnational company agreements in times of economic changes and restructuring" on 14 May 2009 (see Chapter 3).

20. **GDF SUEZ / FORWARD LOOKING MANAGEMENT OF EMPLOYMENT AND SKILLS – HEALTH & SAFETY**  
**EXAMINED ON 26 OCTOBER 2010**

On 26 October 2010, the GDFSuez Director of Group industrial relations described the post-merger context of GDFSuez with the need to address the future of TCAs concluded before that merger, its growing international dimension with 182000 employees in 25 countries, its activities falling within the competence of different European union federations and the challenges for industrial relations herein.

While presenting the 2010 European agreement on job and skills planning, he stressed the strategic role of HR policy, the need to address the collective dimension of employability and the importance of social dialogue. He explained the role of the European agreement in triggering new dynamics and facilitating the achievement of concrete results through procedures, joint committees and training at European, national and local levels.

As to the 2010 Health & Safety agreement, it was first signed at European level and enlarged worldwide, with the objective to take H&-related risks into account in every decision making, including at the highest levels of the company, and design prevention measures through a participative process.

The GDFSuez representative explained the negotiating procedure for these agreements between a special negating body (same setting as for the negotiation of EWCs + EMCEF and EPSU) and the group management which led to the signature of the agreements in February 2010 except by the Italian representatives and EMCEF. He stressed the challenges of such negotiation in the absence of clear rules, notably the difficulty to deal with six different European trade union organisations claiming their competence which coordination is not yet fully worked out and the need to keep the contact with both national and European level organisations.

The Acting Chairman opened the floor for questions and comments. The trade union expert of ETUC enquired for the reasons leading Italian trade unions not to sign the agreements, the employer expert of CEEMET asked the same for EMCEF and whether the closer relationship between EMF and EMCEF may have any impact in the future. The trade union expert of EMCEF explained that negotiations with management went in a good spirit but that EMCEF had to respect its mandating procedures adopted in September and was therefore not in the position to sign the agreement. He stressed that EWCs have no negotiating capacity and that negotiating teams should have union mandates. He added that most European federations have adopted similar negotiating procedures, that EMF, EMCEF and ETUF-TCL are having merger talks and that discussions are on-going between European federations on coordinating rules, which should facilitate negotiations of this kind in the future. The trade union expert of
NORD stressed the different national traditions as to how collective agreements are signed, notably as to the role of works councils which do not sign agreements in the Nordic context, which explain the need for strong mandating procedures to enable having an agreement applied everywhere. The GDFSuez representative explained that the Italian trade unions disagreed with the negotiation through an SNB which they considered to be of the same nature of the EWC, although it was composed by national union representatives and counted with European union federations. He observed that the question of the actors to take part in the negotiation is still open: European industry federations and if yes, which ones and with which relation to national organisations? National organisations with a link to European federations?

The employer expert of CEEP raised the legal problem faced where substantive agreements are not signed by all competent organisations, problems that are not encountered with framework or procedural agreements which need national implementation to produce effects. The employer expert of CEEMET noted the importance of the levels of responsibilities in H&S and the related challenge for a substantive European agreement in this area. The GDFSuez representative explained that the agreements at GDFSuez go beyond procedures but that the issue of legal effects has to be considered in a pragmatic way. He stressed that the agreements design a company policy negotiated between social parties and that there is no reason for such policy to have less binding force than a unilateral policy designed by the sole management. Every manager will therefore have to apply it within the scope initially defined.

Upon questions from the employer expert of CEEMET, the GDFSuez representative explained that there was a link between the European agreement on job and skills planning and the French legal requirements in this area, both in background to the negotiation and in the fact that the European agreement is to have direct effect in all French companies. The Acting Chairman thanked for the presentation and exchange of views and noted the interest and growing importance of company policies on anticipation and H&S designed at European level.

21. PFLEIDERER AG / SOCIAL CHARTA (EXAMINED ON 3 MAY 2011)

The experience of Pfleiderer AG was presented and examined in the context of the analysis of "legal effects of transnational company agreements" on 3 May 2011 (see Chapter 9)

22. PPR / PREVENTION OF STRESS (EXAMINED ON 26 OCTOBER 2010)

The experience of PPR was presented and examined in the context of the analysis of "links between transnational company agreements and other levels of social dialogue" on 26 October 2010 (see Chapter 8 p )
23. **RHODIA / INTERNATIONAL FRAMEWORK AGREEMENT (EXAMINED ON 14 MAY 2009)**

The experience of Rhodia was presented and examined in the context of the analysis of "transnational company agreements in times of economic changes and restructuring" on 14 May 2009 (see Chapter 3).

24. **SOLVAY / CSR, HEALTH & SAFETY, JOINT VENTURES, SUBCONTRACTING (EXAMINED ON 27 NOVEMBER 2009)**

On 27 November 2009, the Acting Chairman gave the floor to the representatives of Solvay to talk about their experience of charters on corporate social responsibility, health & safety and social policy in joint ventures as well as practices for subcontracting.

The Head of European industrial relations and the Secretary of the EWC together presented the TCAs concluded in the Solvay Group. The management representative firstly stressed the importance of having a shared vision and a common desire to deepen and enrich the social dialogue at European level. He considered the EWC as an extremely important vector for developing TCAs, as it provides for a permanent structure. The EWC representative also praised the existence of a common shared vision regarding employee involvement within the Solvay group and stressed that a well functioning EWC should put forward European proposals, particularly through TCAs. Subsequently the management representative explained the functioning of the existing framework and its structures, mainly emphasizing the role of the permanent secretary.\(^{48}\) Besides the permanent secretary which prepares new proposals in cooperation with the Solvay Directors, The EWC representative mentioned the functioning of the established working group\(^{49}\) and underlined the importance of a regular reflection forum to guarantee the balance between the partners.

The management representative described the negotiation process which is divided into five stages: Firstly, a theme of negotiation must be chosen; secondly, the preparation of the canvas of issues in the draft agreement takes place; thirdly, the draft agreement is submitted to the members of the EWC; fourthly, the draft agreement is finalized by the permanent secretary in cooperation with the Director of Social Affairs and fifthly, the final draft agreement is proposed to the members of the EWC. Concerning the choice of subjects for negotiations the EWC representative added that issues were jointly identified and selected by both parties, particularly in the regularly organized seminars.

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\(^{48}\) Which consists of three elected members and is allowed to take external experts on board.

\(^{49}\) Consisting of 6 members of the EWC and 6 members from the management.
The management representative expressed satisfaction with the four existing Solvay charters and pointed to further potential developments in the future. Next he summarized the common content of the existing agreements and explained that all of them contain general principles consistent with national laws and legal systems of European countries as well as provisions reflecting reciprocal commitments to be taken over in the framework of social dialogue in each country.

The EWC representative then stressed the role of the seminars organised to implement the texts and noted that for example in France already 4000 out of 5000 employees participated in the discussions.

The management representative concluded the presentation by underlining the importance of the seven developed general principles which have to be specified later at national level and described TCAs as a powerful tool and a good answer to meet the challenges of globalization, particularly in view of social matters and sustainable development!

The Acting Chairman opened the discussion. Prof. Valdes firstly asked about the degree of effectiveness such charters have within the Solvay group and he subsequently was interested in the general implementation of these charters, the treatment of claims in conjunction with these principles and if the staff feel involved in this complex implementation process. Secondly, he wanted to know whether Solvay has established a system for resolving emerging disputes and if so, how it looks like. The trade union expert from DGB was interested whether more initiatives for concluding TCAs are coming from the employees’ or the employer's side and if proposals, put forward by the staff, are really considered. As to implementation, the trade union expert from Nordic Ind. Emp. asked about the application of the principles regarding remuneration in practice. The acting Chairman wondered how representatives from outside Europe are involved in those agreements that are signed by the EWC.

As to the effectiveness of the Solvay Charters, the management representative explained that social dialogue is not only focused on the central level but also takes place at national level. Action plans can be set by central and national level. He further reported that a steering committee and the EWC have an important role in monitoring and implementing the agreements. Solvay doesn't expect a lot of conflicts, but in case one occurs, any dispute over compliance with the agreed commitments is handled by dialogue between management and staff representatives in representative bodies at the level in which this dispute may arise. Potential problems of interpretation, which Solvay has not known yet, would be treated at the level of the Secretariat and the Directorate of European Social Relations. As to the implementation, the EWC representative illustrated that for example once in Bulgaria health standards had not been correctly implemented but a plan was immediately adopted by the management after the employees had raised this issue. Furthermore he added that several new awareness raising seminars will take place, presumably in Italy, Spain and the Netherlands. Regarding the principles regarding remuneration the management representative answered that remuneration should be fair and objective according to the principle of equal work-equal pay.
25. **Statoil / Global Agreement (Examined on 7 May 2010)**

On 7 May 2010, the Senior Advisor Reward and Industrial Relations at Statoil welcomed a discussion on issues he considers becoming more and more important. He showed how Statoil has grown international, with 30000 employees in 40 countries and the challenge for industrial relations in this process. He stressed the importance of the set of values, laid down in the “Statoil book”, which guide Statoil’s activity and include the involvement of employees. He referred accordingly to a need for an industrial relations strategy to support the international strategy. He explained the challenges and risks of working in countries not having implemented the ILO conventions and the interest of working together with an international trade union federation in that context. Together with Mr Myhre, he presented the global agreement concluded between Statoil and ICEM updated in 2008, and its importance in the concrete management of Statoil’s international development.

The Chair of ICEM's energy industries section explained the way the first agreement was developed in 1998 and its link with the Norwegian system of industrial relations, as perceived by the workers. At that time, the present 70 IFAs didn’t exist and the way to proceed with a transnational agreement had to be invented. The agreement was signed by Statoil, ICEM and the Norwegian trade unions. Since then, the agreement is discussed every year and revised every second year. He stressed the importance of these regular meetings on the agreement, not only to share information but also to develop a work in common. He then gave a series of examples where the agreement was of concrete relevance in Algeria, Poland, US, Turkey. He notably described the joint six year-training programme established for union members and HR managers in Azerbaijan.

The Chairman enquired about the participants in the annual meetings, the management and trade union representatives answered that only the parties to the agreement (ICEM and Norwegian unions) attend these meetings but that parties of each country work on the agreement’s implementation at national level. The employer expert of NL enquired about potential conflicts with national negotiations. The management representative answered that there is no risk as the content of the agreement is generic and the trade union representative added that national trade unions and ICEM work closely together. The trade union expert of NORD expressed enthusiasm about the results achieved by this agreement and the prospect of developing such IFAs. He noted however the difference between global agreements, such as this one, reflecting fundamental principles of management and European agreements having a material content. The employer expert of CEEP considered that framework agreements prove positive through their national implementation and noted there are no legal problems in that context. The AT governmental expert asked about the practical way conflicts in the implementation of IFAs are addressed where Human Rights are not respected. The employer expert of CEEMET asked about relations with other companies in that context. The trade union representative provided an example on how it was finally possible to work in a country despite of the initial impossibility even to have a contact with the employers’ organisation. The management representative first recalled that national law prevails. He then referred to the importance of the principles enshrined in the agreement for the company, stressing that their implementation has to be seen in a time perspective, the question being therefore “when’ this implementation takes place. He referred also to the expectations of Statoil shareholders, in particular the Norwegian State, as to the high standards in which the company develops internationally and its contribution to the ILO decent work policy.
26. **Thales / Annual Activity Discussion, Forward Looking Management of Employment and Skills (Examined on 24 October 2010)**

On 24 October 2010, The Vice President Human Resources of Thales Germany presented the 2009 "idea" (improving professional development through effective anticipation) and 2010 "talk" (transparent annual activity discussion for mutual listening and developing professional knowledge) European collective agreements concluded with EMF. She stressed the need for dynamic HR policy and social dialogue at European level to reinforce the attractiveness of the company for the highly skilled workforce required to its activities in a context of growing international integration. Built on the existing best practices across the group, "Idea" provides for tools to anticipate medium term evolutions by job family and enrich actions to address related training needs and "Talk" aims at guaranteeing transparent and respectful procedures for the annual activity discussion. The negotiating team comprised representatives from both European and local levels on union and management sides. The Thales representative informed that an identical text is signed in each country to implement the European agreement, which provisions cannot supersede local laws, agreements and practices more favourable to employees, that every employee gets an individual information about the agreements and that a follow-up is done by commissions both at European and national levels. She noted that both agreements have been also voluntarily implemented in Australia.

Upon questions from the Acting Chairman and the employer expert of NL on the categories of employees concerned by the agreements, the Thales representative answered that training actions cover every employee, who should go into training every three years and that talent management also includes processes for senior personal to use their knowledge as consultants and to transfer it to young personal through twinning systems. The employer expert of NL enquired on the choice of the partners in the negotiation. The Thales representative stressed that European agreements would have been difficult to concluded in the context of the EWC given its composition and that the EMF helped employee representatives and trade unions communicate with management in a structured way. The employer experts of CEEMET and CEEP as well as the governmental expert of AT enquired about the link to salary reviews and policies as well as to the situation where objectives are not attained and the procedures for dispute resolution. The Thales representative answered the agreements are not about salaries, which remains in the remit of national actors and adapted to local rules (example of Tarifvertrag in Germany), that differences in descriptions of jobs across countries would prevent having a global salary policy in the company and that benchmark with other companies is also important. Where objectives established at Group, team and individual levels are not fulfilled, this may indeed impact on the level of variable pay. "Talk" agreement is too fresh for disputes to have already occurred, but futures ones would be dealt with by the European commission formed as a successor of the negotiating group to follow-up twice a year the implementation of the agreements and settle disputes.

The Acting Chairman thanked for the interesting discussion and referred to the procedure established by the EMF to negotiate and sign TCAs, such as the ones discussed.
27. **UNICREDIT / TRAINING, EQUAL OPPORTUNITIES (EXAMINED ON 7 MAY 2010)**

On 7 May 2010, the Unicredit Head of Labour Policies and Industrial Relations and the Unicredit Head of Industrial Relations International presented the 2009 joint declarations concluded with the EWC on equal opportunities and non-discrimination as well as on training, learning and professional development in the context of a company growing international since 2005. The Head of Labour Policies considered social dialogue as a facilitator and a need in the internationalisation of the company, the cooperation between the parties building sustainability and sound bases. He noted that the EWC does not have negotiating rights but that the process developed in concluding the joint declarations forms a virtuous circle and that the texts concluded are de facto agreements although they are not named as such. The Head of Industrial Relations recalled the origin of the texts in joint committees established in 2008 on professional development and equal opportunities. She presented the means used for the internal dissemination of the joint declarations: translation into 22 languages, distribution to all new employees in their welcome kit, inclusion in trainings, website, meetings in Member States and local initiatives, discussion at EWC meeting with presentation done by representatives of the Member States. The joint declarations also form part of the identity card of the company in external communication. The Head of Labour Policies noted that TCAs have a value, independently from their legal status, and that guaranteeing their implementation and respect is key for the image of the company. He concluded by stressing the positive role played by the process established with these texts for developing a culture of social dialogue in the Member States.

The Chairman of Unicredit EWC presented the views of the Unicredit EWC. He expressed his satisfaction with the social dialogue established in the company at European level. He noted the difficulty of disseminating the TCA in countries where trade unions are not present. He stressed the need to link TCAs with European sectoral social dialogue and referred in particular to the link between Unicredit text and the 2002 declaration on lifelong learning in the banking sector.

Upon a remark from the trade union expert of PL that the implementation of Unicredit TCAs is working well in PL, the EWC Chairman noted the correspondence with the national system of industrial relations in that country where collective agreements are concluded at company level. The Head of Labour Policies added that the implementation of the agreement by local parties is encouraged, thus favouring local and national social dialogue. He took the example of RO where this process led to conclude the first collective agreement in the bank and develop training in the country. The employer expert of NL stressed that, whereas European social dialogue outcomes represent an opportunity for parties at other levels to address particular issues, there is no automatic implementation process from European to national and company social dialogue. The Head of Labour Policies agreed that there was no direct link but noted that the fact that the 2002 European declaration on lifelong learning had been integrated in the national collective agreement in Italy has helped its use in the company. He considered that European, national and company social dialogue should not be viewed as different stages in the process but as different sources.

The Chairman thanked for the interesting discussion and noted that lifelong learning is to become a key element of European policies in the coming period, notably in the context of the EU 2020 policy.
28. **Volkswagen / Labour relations (examined on 27 November 2009)**

On 27 November 2009, the Director of Volkswagen Group Human Resources International and the Secretary of the Group Works Council presented their experiences of the 2009 Volkswagen Charter on labour relations. The Charter on Labour Relations within the Volkswagen Group was concluded between the Group executive management, the German VW Group Works Council and the VW Group Global Works Council. The employee representative recalled the historically grown work culture at VW (for example the pioneering role of Volkswagen in collective agreements) and referred to the 2006/2007 discussions between employee representatives about a future strategy for 2020, including standards to apply to employees, co-determination and innovative working relationships. The employee representative pointed out that so far no external third party has ever been called to settle a dispute. The Charter on labour relations itself is based on the motto "Motivation of staff through participation", which is to be supported by transparency and participation. The employee representative considered that operational democracy needs participation; however this also means more responsibility for employees. He stressed that with this charter the parties have established in-house participation rights of democratically elected employee representatives and recognised country-specific trade-union traditions within the VW Group. The Charter provides a binding framework within which existing labour relations are further developed. At the local level, the respectively involved parties shall define implementation of this Charter into a "site-specific participation agreement". The employee representative draw attention to the terminology of "participation rights" (information, consultation and co-determination) used in the Charter. Finally he gave an overview about the general rules of procedure subsequent to the conclusion of the agreement. As to the clarification and agreement procedures The employee representative explained the established 2-level resolution system. In his final remark he praised that all costs incurred in connection with the aforesaid process are borne by the company.

The management representative also referred in his presentation to the long historical tradition of VW in the field of employee participation and cited many previously concluded international agreements since 1990. On the question why the company is so interested in proposals made by employees' representatives, he answered that participation creates competitive advantages. The charter aims to create a "new performance contract" promoting competitive advantages through fair balance of interests. In practice this means for instance that employee representatives are informed about economic trends and product news before the final planning. Then the management representative explained the designed matrix of participation rights in the Charter. Most issues dealt with consultation under EU law are dealt with co-determination in the Charter. The selection of participation rights are at the discretion

50 The course of conflicts mainly depends on how parties deal with each other and how effectively they can reach agreements and implement them. According to Mr Riffel crucial elements for a solution are information and participation of all stakeholders, and to ensure mutual recognition and respect.

51 As general rules of procedures are particularly noted: 1- Declaration on maintaining secrecy, 2- Right to external consultants, 3- Clarification and agreement procedures, 4- Communication with the workforce, 5- Establishment of a Control group and 6- Takeover of costs.

52 In general the parties concerned shall install a local agreement committee. In case that no agreement can be reached at this level, the president and secretary-general of the VW European Group Works Council or the VW Group Global Works Council on the one side and the director of labour and head of Group HR International on the other shall be called upon to help resolve the situation.

53 There are also countries outside Europe like China in the scope of the agreement.

54 According to the management the involvement of employees will lead to increased productivity and ultimately will help to make VW Automobile Manufacturer number 1 worldwide.
of the responsible employee representatives. Finally he talked about the procedure for the conclusion of a "Site-specific participation agreement" as mentioned before by the employee representative.

Prof Valdes asked how the participation rights are implemented within the VW group and if participation takes place according to national rules. Secondly he wanted to know who the negotiators of the Charter have been and what VW actually understands under the term "democratically elected members"? As to the participation regime, the management representative answered that in countries where only information rights are given to the employees by the legal order, VW group provides co-determination rights to all employees in every VW site. Concerning the second question the management representative said that negotiators of the Charter have been the Global Works Council (together with the German Group works council) and the Group executive management and that the Charter is applicable to all VW Works Councils worldwide, but not to external trade unions. Members are directly elected in VW site and work together with external trade unions. The employee representative agreed with the management representative and added that with exception of South Africa where recently Works Council elections took place all members of the Global Works Council signed the Charter.

The trade union expert from EMF pointed to the difference between global and European agreements. The expert of Eurofound was interested in VW's point of view regarding the influence of European Union law and the necessity of having an optional framework for transnational collective bargaining. The management representative responded that VW group practice already goes beyond EU scope in everyday's business as VW is not only operating in Europe but worldwide. As regards the question "when employees should be involved" he illustrated that VW group applies a more progressive approach than present EU law stipulates. But VW group does not intend to harmonize local collective bargaining to European ones. From the VW's philosophy every worker should be able to live decently, this means to receive best wages within his region but it does not mean to have equal wages in all countries. Therefore VW doesn't support the idea of common transnational collective bargaining. The trade union expert from EMF noted that there seems to be a language misunderstanding when talking about collective bargaining. He wanted to raise awareness to the fact that company agreements are nearer from "Betriebsvereinbarungen" than from "Tarifverträge" following German terminology and added that European agreements, however, cannot be extended to a global scope, as any legal basis for such an extension is missing. The Secretary of the expert group also confirmed that under the term "transnational company agreement" the German "transnationale Betriebsvereinbarungen" are meant. Finally the expert of ILO raised the question which impact or contribution the Charter that is intended to provide crisis management has made to the current crisis. The management representative illustrated that due to the crisis the production had to be reduced dramatically (-45 %) and many flexible instruments were necessary to handle the difficulties. However, because of the good cooperation and the standardization of the proceedings VW group was able to keep all directly employed workers and to provide employment security. The employee representative also emphasized the use of flexible measures to overcome the crisis and talked about the importance of a fair distribution of risks and chances among all parties, and of consultation.
VI – Elements for conclusions

29. **DRAFT ELEMENTS FOR CONCLUSIONS SUBMITTED BY DG EMPL (EXAMINED AT SIXTH MEETING AND REVISED ACCORDINGLY)**

**Introduction**

In July 2008, the Commission published a Staff Working Document on "The role of transnational company agreements in the context of increasing international integration"\(^{55}\), where it drew the attention to the key role and potential of such agreements in an increasingly globalised business environment. The document started a discussion at EU level about the main issues raised by their implementation such as the determination of the parties to an agreement, its effects and the settlement of any disputes that may arise in its interpretation and implementation.

In this Staff Working Document, which was framed by the 2005-10 Social Agenda's plan of an optional European framework for social partners wishing to formalise the conduct and the outcome of transnational collective bargaining, the Commission announced its intention to set up an expert group on transnational company agreements (TCAs) whose mission would be to monitor developments and exchange information on how to support the process under way. The Commission further committed itself to providing the expert group with its initiatives and work on the subject, which would focus on:

- developing a database of transnational texts;
- organising exchanges of experience and analyses;
- reviewing the effects produced by company agreements and the way norms relate to each other in the Member States;
- clarifying the rules of international private law in connection with transnational texts.

The group, gathering experts from Member States and the EU social partners, as well as academics and researchers, representatives of European institutions and company actors held six meetings between May 2009 and October 2011. The aim of the present document is to draw the main conclusions from the work of the group. Its focus is placed on the European dimension of transnational company agreements.

\(^{55}\) SEC(2008)2155 of 02.07.2008. In this document, a transnational company agreement was proposed as meaning an agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers’ organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives.
The document is structured around the main issues identified in the 2008 document and concludes with a review of the options considered to address them:

- I- Role and development of transnational company agreements
- II- Actors involved
- III- Form and transparency
- IV- Implementation and links between levels
- V- Legal effects
- VI- Disputes.

This working document is mainly analytical and is meant to encourage debate. It has benefited from discussion and contributions given by members of the expert group on an earlier version presented at its last meeting on 11 October 2011. However, it does not represent the position of the group of experts, nor does it represent the final position of the European Commission.

### 29.1 Recognizing the role of transnational company agreements and contributing to their development

Resulting from voluntary initiatives, transnational company agreements have already gained in significance, as over 10 million employees work in the companies concerned. They play a positive role in identifying and implementing agreed solutions at company level to the challenges posed by a constantly changing business environment. They represent an interesting and promising development of social dialogue at transnational level and for that reason, they are increasingly a subject of analytical, legal and policy attention at EU level. However, companies and workers may face difficulties in the conclusion and implementation of particular transnational company agreements and a series of open questions is raised by their development.

#### 29.1.1. The emergence of transnational company agreements and its drivers

Since the early 2000s, a new phenomenon can be observed at corporate level, consisting in a transnational negotiation processes. The joint texts resulting from this process cover situations located in the different countries where the European/multinational companies operate. These transnational company agreements stem from purely voluntary initiatives and there is no rule at national, European or international level to govern their negotiation or conclusion.

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. End 2009, about 9.8 million employees worldwide were working in companies involved in TCAs, whereof 6.5 million in companies having texts with a European or mixed scope. Mid 2011, the database on transnational company agreements listed 215 agreements (some of them having been already renewed several times) in 138 companies employing over 10 million employees.

Companies involved in concluding transnational company agreements are mostly big multinationals in the metal, construction, chemicals, food and financial sectors, headquartered in Europe and having well established European Works Councils.
Of the transnational company agreements listed in the database mid 2011, 102 have a European scope, of which 15 include non EEA Member states, and 113 have a global scope. While global 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 addition to the organisation of social dialogue itself, the agreements address specific subjects such as health and safety at work, equality in employment, training and mobility, planning of employment and skills needs, measures to avoid dismissals and accompanying measures in case of restructuring.

Transnational company agreements differ very much from each other, as parties adapt the text to their needs. They are issued under various titles, including declarations, joint opinions, guidelines, charters, framework agreements or European agreements and may or not be meant as legally binding documents.

Drivers for engaging in transnational negotiations include the company context, for example the need to favour corporate European integration after a merger, strategic Human Resources (HR) policy, for example as to anticipation or Health & Safety, active European Works Council (EWC) and trade union objectives.

Actual results depend on the agreements’ substantive content, for example where training measures, job security or the maintenance of terms and conditions of employment in case of transfers are provided. In this respect, agreements with a European scope have shown greater capacity to attain their initial objectives than global agreements, since they may refer to a more homogeneous set of rules and traditions.

For those companies having engaged in transnational agreements, these were meant to

- Have a positive impact on understanding and facing challenges, for example as regards the need for and design of measures to anticipate and manage change;
- Promote new ways of thinking on both management and employee sides, notably a forward-looking approach to change or equal opportunities;
- Bring in a European dimension, contribute to a stronger sense of group-wide corporate common identity across borders;
- Constitute a driving force for further action on social issues and introduce managerial principles throughout the group;
- Give substance to the role of European representative bodies and link them more strongly to developments at the national and/or local levels;
- Improve mutual understanding and confidence between management and workers’ representatives at both transnational and lower levels.

**29.1.2. Opportunities in the development of transnational company agreements**

The constant growth of TCAs confirms their relevance as instruments of social dialogue particularly when, in times of crisis, it appears more difficult for social partners at national or sectoral level to conclude successful negotiations.

Despite their concentration in a small number of companies, transnational company agreements already have acquired a significant dimension as they involve:

- At least 10 million employees and 100 multinationals headquartered in Europe,
- A significant part of the most important companies of the metal and financial sectors headquartered in the EU,
- Most European and international trade union federations and 10% of the European Works Councils.
Transnational company agreements are seen as having contributed to promote:

- Sustainable economic development and competitiveness, notably by developing best practices as to anticipation and management of change and skills needs in a coordinated way across Member States
- Socially agreed responses at European level to the challenges generated by the economic crisis
- Stronger European dimension in companies, notably by enabling the development of cross-border solidarity and facilitating cross-border mediation of interests
- Innovation in the social sphere at European level, for example in the areas of Corporate Social Responsibility, equal opportunities and Health and Safety at Work
- New forms of social dialogue adapted to an increased international integration of multinational companies
- A social dimension in international relations through the promotion of social dialogue, fundamental social rights and socially responsible HR policies alongside with economic, financial and trade relations

**29.1.3. Challenges**

Many companies have been successful in negotiating, in concluding and often in implementing transnational company agreements. This does not mean however that the emergence of these purely voluntary initiatives is free of problems and questions.

At company level, management and employee representatives face difficulties in negotiating, concluding and implementing transnational company agreements, in particular:

- Complexity, delays or even failure to start content-related negotiation due to the need to negotiate on the procedure before being able to negotiate on the content without any guidance or recognised reference;
- Disagreements between parties or problems in implementing the agreements resulting from the lack of clear capacity and/or legitimacy of the signatories;
- Lack of consistency in the implementation of TCAs between countries and subsidiaries resulting from the absence of rules or practice as to the effects and implementation of the agreements;
- Legal risks associated with uncertainties as to the legal effects of transnational company agreements and to a highly complex application of international private law rules to disputes relating to transnational company agreements;
- Resentment among managers and workers’ representatives at lower levels about the top-down imposition of measures agreed at upper level, or even perceived interference with national systems of industrial relations and norms, resulting from the absence of mandating procedures and to mechanisms to link the levels of dialogue and norms.

The lack of specific regulations on TCAs at EU level can partly explain some of these difficulties. As a result, a series of open questions regarding actors, transparency, implementation, legal effects, links with other norms and dispute settlement have been raised. However, it has been recognized by stakeholders that the higher level of integration in European legal and economic environment can help to mitigate the uncertainties which companies and trade unions have to face when they are engaged in worldwide negotiations.

The difficulties will be described more in detail in the following chapters, together with the open questions and suggested options to be considered.
29.1.4. Recognising the role of transnational company agreements and providing for an adapted support to their development

The recent development of TCAs has given them an increasingly relevant position in social dialogue at EU level. Their role has been recognised by the social partners, academics and the ILO\(^{55}\). They start to catch the attention of national authorities at least in those countries where transnational companies have their headquarters or are most strongly established. The difficulties listed above may be considered to hamper the development of their potential.

Two issues may be raised at this stage. The first issue is whether the difficulties mentioned above are sufficiently important so as to hamper the development of the potential of TCAs. The second issue is whether it is justified for the EU to take a policy-related, rather than just an analytical interest, in this matter. It is undisputed that the phenomenon of TCAs is of EU-wide importance since the agreements are established between actors that have a representative status in a multinational context – management of transnational companies and EU Union federations or European Works Councils.

Is it justified to provide support at EU level to the development of TCAs by addressing at that level the difficulties and challenges just identified? The work of the expert group did not allow for generating a convergence of views around these central issues. On the one hand, employers' organizations held that no legislative action needs to be taken since such difficulties are not sufficiently serious and have not so far hampered the continuous growth of TCAs. Indeed, any legal instrument could have the opposite effect of discouraging transnational companies from entering into negotiations with workers' representatives, for fear of legal complications\(^{57}\). On the other hand, trade unions sustain that more clarity and better implementation of TCAs are needed and that there is still considerable uncertainty as to the effects of TCAs when they are applied in Member States with different internal regulations and industrial relations' systems. In their view, the further development of transnational company agreements would need adequate EU support, including by means of a legal framework that would address the challenges identified.

As an emerging factor in EU social dialogue, TCAs deserve to be promoted in line with the competences given by the Treaty (Article 152 and 153) and the Charter of Fundamental Rights (Article 28). It is also clear that they serve a useful goal – to identify and implement feasible negotiated solutions adapted to the structure and circumstances of each company, particularly in case of large restructuring processes. This is coherent with the principles and objectives underpinning the EU 2020 Strategy and the flexicurity agenda.

It is recognized that support to be provided at EU level could contribute to alleviate some of the difficulties faced by companies and workers when negotiating, concluding and implementing TCAs with a European scope. However, such a support would need to be:

- Flexible, adapted to the needs of the companies and workers concerned;
- Designed in close cooperation with the European social partners, or preferably still initiated by them;

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\(^{57}\) This opinion was not shared by some individual employers having taken part in TCA negotiations, who recognize the need for further legal clarity.
Optional, as companies and workers should be able to innovate and operate outside any instrument provided to support transnational company agreements; as parties should be free to negotiate and conclude agreements that are custom made to their needs and to a specific situation.

29.1.5 Addressing open questions

A series of open questions are raised by TCAs and should be addressed, to provide an adequate support to their development. These open questions, detailed in the following chapters relate to:

- The actors to be involved in transnational company agreements, their capacity, their legitimacy, their role;
- The form and transparency of transnational company agreements and transparency;
- The implementation of transnational company agreements and the links between them and other levels of social dialogue and norms;
- The legal effects of transnational company agreements;
- Settling disputes over the interpretation and application of transnational company agreements.

29.2 Supporting the actors in transnational company agreements and clarifying their role

The issue of who the actors are is crucial in a transnational negotiation, as in any negotiation. The question is how to ensure actors have legitimacy and capacity in negotiating, signing and implementing transnational company agreements so as to facilitate their conclusion and develop their positive results.

29.2.1. Situation: Different categories of actors are involved in transnational company agreements

The following categories of actors play today a part in representing workers in the context of transnational company agreements:

- European Works Councils (EWCs) generally play a key role in practice. The initiative to start a transnational negotiation often takes its origin in the activity of the EWCs. They have also signed an important part of the texts, particularly the European ones, even though they have no negotiating powers under Directive 2009/38/EC.
- European and/or international workers’ federations sign a majority of texts, notably global ones. Their role has increased, as a result of some union federations’ strategies in triggering and organising transnational negotiation mechanisms in the European sphere.
- National workers’ organisations, generally the ones active in the country of the company's headquarters, often sign global texts along with international workers' federations.

On management side, the involvement of national and local management, together with corporate one, varies from one company to another.
As to the process, it may be very centralised, being limited to the European HR Director and the coordinator of the European works council or actively involve local actors at various stages.

- **29.2.2. Problem: Actors face problems of legitimacy and capacity which hamper the conclusion and implementation of transnational company agreements**

1. Before any real negotiation can start, it is necessary to determine who are the negotiating parties to the future negotiation, which in turn requires a negotiation. In concrete terms, the question is who will sit at the table on the employee side. As no rules or reference procedure exist, several worker representatives may feel legitimated to have a seat and the company management may feel free to choose its counterpart. The choice made risks to be perceived as arbitrary, leave non-chosen parties dissatisfied or entail compensatory measures for the company or the actual negotiator on the employee side. In some cases, the negotiation between management and employee representatives cannot even start, as the negotiation on the process could not be successfully concluded.

2. In several Member States, none of the categories of actors on the employee side has the full legitimacy or the legal capacity needed to conclude transnational agreements with an effect equivalent to that of company agreements under national rules and/or/practice:

- The competences of European works councils under Directive 2009/38/EC are information and consultation, not negotiation. Their membership is tailored to that end and determining their representativeness is problematic given the frequent lack of proportionality when set against the worker head count. Furthermore, their involvement in negotiations is at odds with national systems that make a clear distinction between the consultative role of elected bodies (works councils) and the negotiating mandates entrusted to trade unions (in France for example) or which utilise a single trade-union channel for worker representation (in Italy or in the Nordic countries for example).

- The representativeness of European and international workers’ organisations and their mandates to negotiate and sign are not always clear. After the European Metalworkers’ Federation has paved the way in this respect, several other European industry federations (EMCEF, EPSU, FSE-THC, UNI-finance, UNI graphical) have adopted internal rules of procedure to that aim, but not all have done so. The involvement of trade-union organisations in negotiations on matters such as restructuring also comes up against national systems under which the works council is responsible for such matters (in Germany for example).

- When it comes to concluding transnational texts, the crucial limitation affecting national workers’ organisations lies in their national field of competence.

3. The further implementation of a transnational agreement is burdened with uncertainties. Negotiators need to innovate to ensure the text agreed is accepted as widely as possible and has the desired impact. Where the signatories’ capacity to represent and enter into commitments is not recognized by the workforce or local management, the actual application of a transnational agreement is at risk. "Opt-outs" have also occurred in some cases, following disagreements between national actors and the negotiators. In further cases, the text remained simply ignored locally.

4. Where the process to conclude transnational agreements is unclear, conflicts of competence may occur between European-level and national-level bodies as well as between elected and trade union bodies representing the employees. In particular:
• In countries where works councils are competent to sign company agreements, the involvement of European or transnational trade unions in company-related issues is not well understood;
• In countries where trade unions are competent to sign company agreements, the signature of a transnational agreement by the European Works Council conflicts with the national system;
• The signature of a transnational agreement by European bodies which does not involve, in a way or another, all actors entitled to negotiate the issue at national level is seen as illegitimate or a threat to national prerogatives.

29.2.3. Options to be considered: Supporting the actors in transnational company agreements and clarifying their role

The issue of the actors is crucial for the development of transnational company agreements. How to develop the positive results that may be attained through transnational company agreements, by ensuring the actors have the legitimacy and capacity to negotiate, conclude and implement transnational company agreements while fully respecting parties' responsibility and autonomy is the purpose of the following options to be considered.

1. An optional reference (or framework) for the actors to be involved in the conclusion of transnational company agreements could be provided:
   • Parties could use this reference/framework to avoid difficult pre-negotiations where they so wish;
   • This should not prevent the negotiation and conclusion of transnational texts to take place outside this reference/framework where companies wish to innovate or to conclude texts which are not intended to produce the effects of company agreements;
   • This reference/framework could be provided for example through guidelines; European social partners, at cross-industry or sectoral level, should be given a primary role in defining or contributing to this reference/framework.

2. The legitimacy of the negotiating and signatory parties would need to be ensured by the parties themselves, where appropriate with the support of procedures and arrangements worked out by the social partners at sectoral or cross-industry levels:
   • Information, consultation and mandating mechanisms could be established to enable employee-side representatives to negotiate and sign on behalf of all employees of the multinational, its subsidiaries and, where relevant, its suppliers/contractors;
   • Employees could be given greater assurance that management representatives are able to deliver the commitment of the multinational company itself, its subsidiaries and, where relevant, its suppliers or contractors;
   • On the employee side, the respective role of trade-union industry federations with established procedures as to the negotiation and conclusion of transnational company agreements and European Works Councils could be clarified;
   • The actors negotiating on the issue at stake at national level should take part from an early stage in the negotiation and conclusion of a transnational agreement.

3. The capacity of the negotiating and signatory parties would need to be ensured where the agreement is intended to produce legal effects:
   • The negotiators and the signatories could be given a clear mandate to do so on behalf of the employees and companies in scope;
   • The mandating process could involve all actors entitled, under national rules and/or practice, to negotiate the issues included in the negotiation;
• The legal capacity of the signatory parties to take commitments could be checked.

29.3 Promoting transparency in transnational company agreements

Clarity about the aim and the consequences, identification and information of the persons affected are important for transnational company agreements to fulfil their purpose, as for any agreement. The question is how to give transnational company agreements the appropriate form and transparency to enable them to fulfil the objective assigned to them by the parties and respect the rights of any person they affect while fully respecting parties' responsibility and autonomy.

• 29.3.1. Situation: Variety in the form of transnational texts and in their dissemination

1. At present, particularly for the oldest transnational company agreements, there is a large diversity in titles given to the texts, without clear correspondence with the main issue addressed in the texts and their imperative or declarative nature.

2. Similarly, there is a large variety in the form and drafting of transnational company agreements even though standards have been established by European and international trade union organisation over time. Date, signatories, scope, addressees, duration are still not always clear and the texts mix often drafting as political declarations and as agreements.

3. In most cases, signatories to a transnational company agreement provide for means aiming at its internal dissemination upon its conclusion. In some companies, important efforts have been dedicated to the dissemination and implantation of the agreement. European and international trade union organisation have also started to establish procedures to this regard. The employees and management coming in the scope of a transnational company agreement are however not always informed about its existence and do not always have access to its content. This is even more the case for subcontractors and suppliers entering into its scope, although over one third of the agreements contain provisions covering them. The information of the addressees is also not always ensured over time.

4. Some of the transnational company agreements form a specific category, being drafted and treated as group or company agreements under national law and in some cases sent to national authorities and/or the Commission for “registration” in the same way as national collective agreements.

5. Many texts of transnational company agreements are available to the public through a series of websites, notably established by trade unions, research institutes or consultancy firms. As announced by the Commission in its 2008 documents and discussed in the expert group, the establishment of a searchable database on transnational company agreements has been commissioned to Planet Labor. The database has been made available in 2011 to the stakeholders and the public on the Europa website at http://ec.europa.eu/social/main.jsp?catId=978&langId=en. Mid-2011, it fully displayed 199 of the 215 identified transnational company agreements with additional information on the company concerned and possibility to search the agreements with criteria related to company, country of headquarters, sector, type of text, employee signature parties, geographical scope, functional scope, main and other topics addressed as well as through keywords.

• 29.3.2. Problem of clarity and respect of the rights of the affected persons
1. There is a lack of clarity in the way many transnational company agreements are drafted, particularly the oldest ones, which may be a source of confusion:
   - The title of the text does not necessarily reflect its content and the type of commitments it involves, which may create uncertainty in particular as to its declarative or binding nature;
   - Basic and necessary information such as date, name and quality of the signatories, scope, addressees and duration are not always clearly displayed which makes it difficult to assess the consequences, ensure appropriate implementation or follow-up.

2. Transnational company agreements usually cannot produce the effects associated to collective agreements, in particular company agreements in any of the covered countries, even if the parties would wish so, because their form, content or process don't follow the rules or requirements for them.

3. For transnational company agreements comprising reciprocal commitments, especially where they are stated in the form of concrete and detailed provisions or where their inobservance may have consequences, the fact that employees, management or subcontractors coming in the scope of a transnational text are not always informed about its existence and do not always have access to its content directly affects their rights.

4. The absence of disclosure of the content of transnational company agreements comes up against national systems under which collective/company agreements are necessarily public documents and need to be put to the knowledge of all stakeholders (in France or Spain for example). The systematic disclosure of such content can on the contrary be perceived negatively by signatories coming from Member States in which company agreements –and even collective agreements at sectoral level- are generally considered as private documents (in Nordic countries or the Netherlands for example).

   - **29.3.3. Options to be considered: Supporting best practices, ensuring information of the affected persons and promoting transparency**

1. When concluding a transnational text, signatories could give it a title clearly indicating the type of text it is, notably distinguishing between agreements comprising reciprocal commitments, process-oriented, declarative and procedural texts

2. Where the parties wish them to produce effects other than declaratory, the drafting of transnational company agreements could observe certain principles, which could be developed in the form of a standard contract or good practice body of rules, in particular
   - be dated and signed,
   - show clearly the name and capacity of the person signing,
   - indicate the persons to whom the text is addressed,
   - provide for a date by which its provisions are to be implemented and the way this is to be done as well as rules for monitoring the agreement and settling disputes.

3. Management and employees falling in the scope of a transnational company agreement could be guaranteed information on its existence and access to its content.

4. As to the public disclosure of transnational company agreements which favours transparency, knowledge and best practices in this area:
   - Signatories could always be in a position to refuse public disclosure of the text they have signed or correct incorrect information related to this text;
• The database on transnational company agreements could be maintained and the parties invited to transmit new agreements or amendments for its update;

• Notification of new or renewed texts to a public authority or a joint body promoted by the social partners could be encouraged.

5. European social partners, at cross-industry or sectoral level could be invited to issue guidance or rules as to the form and transparency in transnational company agreements.

6. A coordination could be organised between the EU and the ILO in view to improve information on transnational company agreements.

29.4 Enhancing the implementation of transnational company agreements and the links with other levels of social dialogue

The quality of the implementation of a transnational company agreement depends on its provisions, on measures adopted to ensure ownership of the agreement in the company and also on the way it inserts itself in the landscape of social dialogue. The question is which link between transnational agreements and national, European and global social dialogue at cross-industry, sectoral and company levels already exist and would be useful as well as how to support and develop them while fully respecting parties' responsibility and autonomy.

• 29.4.1. Situation: Diversity in implementing practices and links with other levels of social dialogue

1. At present, particularly for the oldest transnational company agreements, there is a large diversity in implementing practices ranging from the absence of any measure to follow-up the conclusion of a text to far-reaching projects to ensure an agreement is being "deployed" across all sites of the company.

2. European and international trade union organisation have started to establish procedures to ensure the involvement of the national trade union organisations and the European Works Councils or ad hoc committees/instances in the conclusion of transnational company agreements and their proper implementation.

3. As to the links of transnational company agreements with other levels of social dialogue, initiatives exist but they are not systematic not integrated:

• As to the links with European social dialogue, some transnational agreements aim at implementing outcomes of European social dialogue at cross-industry level (e.g. on equal opportunities or on stress) or at sectoral level (e.g. on lifelong learning in the financial sector) or use the definitions and provisions of European texts as references. Transnational agreements are also of interest for European sectoral social dialogue through the negotiating and implementation procedures established by European trade union federations, the role of TCAs in certain sectors such as energy or civil aviation and the discussion about TCAs in certain sectoral social dialogue committees such as chemicals or electricity.

• As to the links with national social dialogue in the company, one can note the involvement of national trade unions in some TCAs, the transnational scope of some national company agreements (e.g., on financial participation), the negotiation of a TCA after a national agreement has been concluded (e.g., skills planning in France/Europe), the implementation of some TCAs through national agreements and the effects of...
transnational agreements on establishment, improvement or reinforcement of local social dialogue.

- As to the links with national social dialogue beyond the company, one can refer to the objectives of international coordination of national trade unions, the decent work agenda of national partners, the implementation of national sectoral or cross-industry collective agreements through some TCAs (e.g. equal opportunities), the effects of transnational agreements on establishment, improvement or reinforcement of national social dialogue (e.g. for some new Member states or non European countries).

- As to the links to global social dialogue, one can note that transnational agreements promote global social dialogue in companies, support international cooperation of trade unions and promote ILO Conventions and other international instruments relating to social dialogue. As to contents, topics such as training, restructuring, mobility, health and safety or equal opportunities are addressed at different levels of social dialogue.

- As to the links between transnational social dialogue in different companies, informal consultations are held between employers in what can be considered as a process of innovation. On employee side, the same actors are found in different negotiations and standard agreements are developed.

### 29.4.2. Problems in implementing transnational company agreements and conflicts between levels of social dialogue

The following problems have been identified in the implementation of transnational company agreements, in addition to the ones related to the actors involved in such agreements and described above in paragraph 29.1.2.

1. Some transnational company agreements do not produce the effects intended by the signatories because of the lack of follow-up measures or conflicts with national norms or views of the actors at national level

2. The present approach as to the “implementation” of transnational company agreements into local company agreements is not satisfactory because it is too complex and leads to multiple national negotiations in a burdensome and often incoherent manner.

3. Incoherence and conflicts between different outcomes of social dialogue stems from the lack of organised links between transnational company agreements and other levels of social dialogue. TCAs may thus interfere with the application of collective agreements at national level and the absence of non-regression clause becomes a reason of concerns amongst social actors and raises issues for labour law.

### 29.4.3. Options to be considered: Supporting procedures to implement transnational company agreements and promoting coherency between levels of social dialogue

1. Where the parties wish transnational company agreements to produce effects other than declaratory, they could provide for procedures to implement them.

2. An optional reference or framework for the implementation of transnational company agreements could be provided:
   - Parties could use this reference/framework to avoid difficulties in implementation where they so wish;
• This should not prevent the implementation of transnational texts to take place outside this reference/framework, in particular where companies wish to innovate or to conclude declaratory texts;

• This reference/framework could be provided for example through guidelines; European social partners, at cross-industry or sectoral level should be given a primary role in defining this reference/framework.

3. The links and coherence between transnational company agreements and other levels of social dialogue, in particular European social dialogue, could be reinforced, notably through the promotion of best practices.

4. The interaction between the different levels of social dialogue could be subject to further work of the European Commission together with social partners at different levels and other stakeholders.

29.5 Improving legal certainty in the effects of transnational company agreements

To facilitate the development of transnational company agreements, 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?

- 29.5.1. Situation: the legal status of transnational company agreements is unclear and varies from one Member state to another

1. The parties' intentions as to the effects of transnational company agreements may vary widely from declaratory texts to binding agreements producing direct legal effects.

2. 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 or a contract under certain laws and that its legal status may vary from one country to another. In fact, the legal effects of an 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.

3. National rules as to what makes a collective agreement at company level differ, in particular regarding the capacity to negotiate, the link between company agreements and other norms and levels of social dialogue and the effects on individual working contracts. 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.

4. A study on the characteristics and legal effects of agreements between companies and workers' representatives has been commissioned by the Commission to Labour Asociados with the objectives to 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. Results have been issued in 2011.
29.5.2. Problem: legal risks associated with transnational company agreements and absence of correspondence between wished and actual legal effects of the agreements

1. Legal risks are associated to the conclusion of transnational company agreements, particularly for company management.

2. There is no direct correspondence between the parties' intentions as to the effects of the transnational company agreement they conclude and the actual legal effects produced, which remain therefore largely uncontrolled by the parties.

3. There is no coherence across Member States as to the present legal effects of a given transnational company agreement.

4. Interferences may be created in the legal effects of national, local or company based collective agreements by the absence of links between TCAs and other levels of agreements.

29.5.3. Options to be considered: Improving legal certainty in the effects of transnational company agreements

1. The parties could clearly state their intentions as to the legal effects of the transnational company agreement they conclude in the agreement.

2. Where a transnational company agreement is intended to produce legal effects, certain rules could be observed:
   - The capacity of the negotiating and signatory parties could be ensured as described under 29.2.3;
   - The drafting of the agreement could observe the principles described under 29.3.3;
   - Procedures to implement the agreement could be provided as described under 29.4.3;
   - Possible contradictions with other levels of norms and agreements could be subject to prior scrutiny and avoided, and derogations in peius could not be possible;
   - Particular attention could be given to ensure the legitimacy of the negotiating and signatory parties as described under 29.2.3, the information of management and employees falling into its scope as described under 29.3.3 and the link with other levels of social dialogue as suggested under 29.4.3.

3. A mechanism aiming at giving controlled legal effects to transnational company agreements could be worked out:
   - Parties could use this mechanism where they so wish;
   - This should not prevent transnational texts to be concluded outside this mechanism;
   - The design of this mechanism could be worked out by or in close cooperation with European social partners;
   - Provided the signature of the agreement follows the rules described under 2, in particular as to the capacity of the parties, the mechanism could:
     o Either provide for automatic legal effects similar as the ones produced by company agreements under national law and/or practice
     o Or provide for an invitation or obligation for the appropriate /mandating bodies at national level to take the necessary measures to enable the agreement to produce the legal effects of a company agreement under national rules and/or practice.
29.6 Enabling the prevention and settlement of disputes

Social actors should be able to implement and protect transnational company agreements concluded, to follow their development and to resolve any differences of interpretation and disputes that may arise in their application. How to do it while fully respecting parties' responsibility and autonomy?

- 29.6.1. Situation: Few mechanisms in place to handle disputes

1. Some transnational agreements contain provisions addressing dispute settlement. This is usually done in vague terms but some agreements provide for more detailed provisions in this regard, notably through the involvement of joint monitoring committees established specifically for the agreement in case. The type of text is not a crucial criteria: dispute settlement provisions are not more frequent in texts addressing restructuring and/or anticipation of change at European level than in global agreements.

2. Some transnational agreements do specify the linguistic version to be referred to, as well as the applicable legislation and competent jurisdiction, preference being given in this case to the ones of the country of the company’s headquarters. Most agreements however do not contain such indications and some of the last generation’s agreements explicitly rule out the competence of any external body to settle disputes over the interpretation or implementation of the agreement.

3. In some transnational company agreements, penalties or compensatory payments are provided, for the employees or management, in the event of a failure to observe the provisions of the agreement.

4. As a result of a transnational company agreement, transnational transfer of employees’ personal data may be necessary. In this case, EU legislation on protection of personal data would need to be complied with. It notably provides that, in order for "binding company rules" to constitute a valid instrument for making transfers of personal data processed in the Member States to other companies in a transnational group which are established in non-member countries, such rules shall be legally enforceable by data subjects whose personal data are processed by the group and by data protection authorities, so that they may have a right to enforce compliance with the rules by lodging a complaint before competent data protection authorities and competent courts issues.

5. So far, no party to a transnational company agreement or person affected by a transnational company agreement seems to have brought a dispute before the courts or before an out of court dispute resolution body.

- 29.6.2. Problem: Lack of awareness, complexity and difficulties as to the possibility to settle disputes in and out of court

1. Signatories of transnational company agreements and affected parties are rarely well equipped to prevent and resolve internally disputes that may arise on their interpretation or implementation.

58 See Opinions and documents of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data lay down guidelines on how personal data are to be processed in accordance with the principles set out in Directive 95/46/EC
2. The risks for management and employees concerned of someone ‘going it alone’, of action being taken by associations external to the company or of non-compliance with previous commitments following a merger or restructuring are not well addressed in the present situation.

3. For court settlement of disputes, the 2010 study on international private law aspects of dispute settlement related to transnational company agreements shows in detail the particular difficulties raised by the application of international private law rules to transnational texts in order to determine the applicable legislation and the competent jurisdiction. Main instruments are the Rome Convention, replaced by the ‘Rome I’ Regulation since 17 December 2009\(^59\) and the ‘Brussels I’ Regulation\(^60\).

4. For out-of-court settlement of disputes, such as conciliation, mediation or arbitration, it is considered that parties would face major difficulties in using existing mechanisms. Although national industrial systems provide for developed mechanisms to that aim, those are not competent or adapted to transnational company agreements. A study commissioned by the Commission will explore further this aspect in the course of 2012.

5. As to data protection issues raised by transnational agreements, most actors are not aware of them and the obligation to provide for compliance enforcement rights when data are transferred outside the EU seems not implemented so far (See above).

- **29.6.3. Options to be considered: Favouring prevention and out of court dispute settlement**

1. To prevent disputes, where parties wish a transnational company agreement to produce effects other than declaratory, they could provide for:
   - Monitoring mechanisms and indicators to enable parties to assess results and control risks;
   - Adaptation mechanisms to enable improving provisions of the text that prove difficult to apply over time, adapting to changing needs, developing actions, addressing change in the structure of the company;
   - First-level dispute resolution mechanisms to enable fast resolution of problems or disagreements in interpretation or implementation of the agreement.

2. To limit the risks associated to court settlement of disputes over the interpretation or implementation of a transnational company agreement, parties to a transnational company agreement could consider stating the applicable law and the competent jurisdiction in the agreement.

3. The content of EU rules on data protection as well as results of the 2010 study on international private law and the forthcoming study on out-of-court dispute settlement mechanisms could be further brought to the knowledge of the actors involved in transnational company agreements.

4. The European social partners, at cross-industry or sectoral levels, could be invited to work on guidance or negotiate agreements on dispute resolution mechanisms such as first-level

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dispute resolution mechanisms, conciliation or mediation so as to facilitate the prevention and out-of-court settlement of disputes on transnational company agreements.

5. The Commission could consider the recommendations contained in the 2010 study on international private law aspects of transnational company agreements to minimize difficulties in court settlement of disputes.

29.7 Conclusion

Transnational company agreements require policy attention at European level. They play a positive role in identifying and implementing agreed solutions at company level to the challenges posed by a constantly changing business environment, in particular in the context of corporate restructuring and over 10 million employees are concerned.

The work of the group of experts enabled to examine issues relating to transnational company agreements, identify difficulties when negotiating, concluding and implementing TCAs and explore possible ways to address them.

The dynamic of this work led to identify a series of options on the different issues raised by TCAs, addressed to the actors directly involved in TCAs, to European social partners or to the Commission. A review of such options is provided in annex, according to their addressees and to the instruments envisaged.

The area of transnational company agreements pertains to social dialogue and therefore requires as far as possible convergence, consensus and joint initiatives of the social partners. These conclusions stemming from the work of the group of experts are now meant to encourage debate, in particular between social partners, on support to be provided at EU level that could contribute to the development of TCAs in the European area.
30.  DISCUSSION BETWEEN THE EXPERTS AT SIXTH MEETING

30.1 Introduction
On 11 October 2011, the Chairman opened the session dedicated to the discussion of the results of the work of the group of experts. For about 2 years, actors directly involved in TCAs have shared their experience, the Commission has fed the group with the results of studies, information and opinions were exchanged between the experts, knowledge about the phenomena was improved and a database was created which will allow for a systematic capture of TCAs in the future. A number of problems were identified, notably as to the implementation of TCAs, and possible solutions were outlined to deal with them. However, different opinions have been expressed on the solutions amongst social partners and Member States. Also the degree of priority the social partners attach to the problem is not identical. Although such differences of views have to be taken into account, the Commission believes that the time has arrived for drawing conclusions and disseminating the main results of the work by the group.

Drawing conclusions from the work of the expert group is the Commission’s task and responsibility. However, by consulting the members on draft elements for these conclusions, the Commission wants to ensure that it is interpreting correctly the members’ views and come as close as possible to conclusions that can be shared. It is DG EMPL’s intention to publicise such conclusions by means of a staff working document after involving other services in their discussion. Such a document should be based on a strong analytical background and adopt a holistic approach to address the problems and gather solutions. It could be seen as a contribution to the EU 2020 agenda, in particular its components on flexicurity, restructuring and smart regulation.

The Secretary of the expert group presented the structure of the documents to be examined by the expert group. There are two components: The “draft report of the expert group”, submitted to adoption, is factual and describes the work done between 2009 and 2011. It compiles the working documents produced and minutes of meetings, and it is organised in 5 parts: the first on the expert group itself, the following relating to the activities carried out in the field of TCAs: review of developments, analysis of issues, review of research and examination of company examples.

The “draft elements for conclusions” is analytical, and presents elements for conclusions by DG EMPL. It presents an analysis of the situation of TCAs, problems and options to be considered, and it is organised in 6 parts corresponding to issues raised regarding TCAs: role and development, actors involved, form and transparency, implementation and links between levels, legal effects and disputes.

30.2 First reactions of the members of the expert group:
The Chairman then invited the representative of the Polish Ministry for Labour and social policy, the representative of BusinessEurope and the representative of ETUC to express their first views on the outcome of the expert group and the draft documents provided.
The representative of the Polish Ministry for Labour and social policy indicated that only general observations could be made at this stage, as more time would have been needed for an in-depth analysis. She thanked the Commission for having arranged the meetings which gave the opportunity to analyse the situation and problems regarding TCAs and in particular to be aware of the different frameworks on company agreements existing at national level. As a conclusion, she suggested emphasising the role of transnational social dialogue and the need to combine it with different national systems of industrial relations. However, she stressed the need to be cautious about legislative options to regulate TCAs. She expressed the belief that agreements should remain voluntary and that parties to a TCA should agree themselves on what is the most appropriate to them, notably as to the scope, enforcement and legal effects. She further noted that the various options proposed by the Commission would need deeper consideration.

The representative of BusinessEurope expressed a statement on behalf of her organisation. She recalled that the discussion on TCAs started five years ago with the optional legal framework proposed by the Ales report. She stressed that it is difficult to follow the draft elements for conclusions proposed by DG EMPL, consisting in promotion of best practice, financial support and establishment of a reference. She considered that the draft conclusions as presented by the Commission do not take on board the analysis carried out by employers, in particular the criticism already made by DBA to the Ales report and the outcome of BusinessEurope’s work with the ILO training centre on reasons for engaging or not engaging in TCAs. As a result, she considered that there is a bias in the draft conclusions, as they do not reflect employers’ arguments against signing TCAs, the fact that a very small minority of companies have engaged in TCAs and the absence of need and wish of companies for a framework or reference. She presented a series of arguments against EU action on TCAs: the European level is not pertinent, no European legislation is needed in addition to the EWC Directive, the promotion of good practices discriminates against companies not wishing to engage in TCAs and concluding TCAs is not necessarily a good thing. She added that there is no need for financial support to TCAs, and she saw no link between TCAs and the agendas on EU2020, flexicurity and smart regulation. She stressed that producing legislation at EU level is unrealistic as it is not wanted, it would not solve any problem but instead create important ones. If the Commission’s intentions were to give direct legal effect to TCAs, this would go against the necessary respect of national traditions and create a bureaucratic monster. She considered that it is necessary to further work on the legal effects of the texts concluded as their signatories may not be aware of them; however, no EU action is required to that aim. As a result, she stated that the work in the expert group has been exhaustive, that the draft conclusions should reflect that work in a more balanced way, that no further EU action is needed and that DG EMPL and the Commission should not continue working in this area.

The representative of ETUC then expressed the views of his organisation. He thanked the Commission for the good work carried out in the expert group, in particular as it enabled transfers of know how, received the valuable input of studies and achieved concrete results. He considered the draft report presenting a reasonably accurate image of this work but indicated that ETUC would have suggestions for improvements of the draft conclusions, notably as to the respective role of trade unions and EWCs. He considered that spontaneous and voluntary engagement was important and enabled to free energies toward the conclusions of TCAs. He stressed that we are entering now in a new phase where opportunities of the past should not turn into threats for the future. Considering that TCAs are concluded in the benefit of the parties and a source of innovation, notably in the field of industrial relations, he expressed the ETUC’s wish to help TCAs develop beyond their natural growth. He
considered that social partners should take responsibility in relation to actual developments and sit together with a blank paper to agree on concrete procedures and support that would be helpful to those actors wishing to engage in TCAs. He considered that the Commission should assist the social partners in this direction and continue to provide technical support on the file.

The employer expert of CEEP considered that no firm conclusions can be drawn at this stage as the discussion is not finalised and that the draft proposed is not balanced enough. He considered that the expert group was useful to learn from experience and discuss the problems. However, he stressed that the small number of companies engaged in TCAs cannot form the basis for the others, that TCAs have not been conceived to have legal effects and that it is unsure whether companies would continue signing agreements if there was a framework.

The Chairman thanked for the views expressed and indicated that a textual revision of the draft elements for conclusions will be undertaken, in particular to provide for a more balanced text. However, he stressed that the document presented is an analytical paper that should not be mixed up with political conclusions or a consultation of the social partners. He stated that, in his opinion, there is added value for an EU action in the field of TCAs. It is Commission's duty to promote social dialogue at European level, which does not only take place at cross industry or sectoral level but include TCAs as a key component of European social dialogue at company level. What is at stake is the search for the most effective ways to support the actors engaged in that dialogue, legislation being one but not the only option to consider to that aim.

### 30.3 Role and development of Transnational Company Agreements

Upon invitation by the Chairman, the Secretary of the expert group introduced the first item “the role and development of TCAs”. She recalled the work carried out in the expert group on this issue. A meeting was dedicated to TCAs in times of economic and social changes in May 2009, whose results are to be found in chapter II.3 of the draft report of the expert group. Updates on developments, review of research, training and exchanges of experiences as well as examination of company examples were included in all meetings and are to be found in parts II.4, IV and V of the same report. Part I of the draft elements for conclusions addresses this field under the title “recognizing the role of TCAs and contributing to their development. It recalls that TCAs, emerging since the early 2000’s as a result of European integration, HR policies, active EWCs or trade union objectives, have already gained significance as 215 texts concluded in 138 companies with over 10 million employees were already known mid 2011. TCAs present opportunities for companies and society by promoting socially agreed change, responses to the economic crisis and sustainable development. However, the complexity actors wishing to engage in TCAs have presently to face, significant legal risks and disagreements over the actors' legitimacy present challenges for the development of TCAs. As a conclusion, it is proposed to recognize the role of TCAs, address the open questions they raise and provide for an adapted support to their development.

The Chairman opened the floor for discussion on this topic. The expert of BusinessEurope noted that the document proposed would require improvements but that this meeting was not suited as a drafting session. He indicated that BusinessEurope would give its views by writing at a later stage. The expert of CEEMET regretted the short notice to examine the documents and expressed his concerns as their contents which he considered to form a top down approach imposing legislation against the wish of social partners and Member States. He considered that social partners should be more involved to get fair and balanced outcomes for
the group and asked the Commission for its plans as to next steps and deadlines. The Chairman suggested giving experts ten days for written comments on the content of the documents and that amended documents would be sent to the members for a new examination. As to the approach of the Commission, the Chairman stressed that a number of options could be envisaged to answer the open questions, but not all necessarily would involve new legislation.

The expert of EMF stressed that he wished a follow-up to the work on TCAs done in the expert group. As to the draft conclusions, he considered that the distinction between European agreements and IFAs should be made clearer and conclusions limited to European agreements. The trade union expert of PL stressed the factual changes in TCAs since 2006 should be recognized, that a discussion on this subject cannot be avoided and that the same opposition of social partners to Commission’s initiatives in this area should not be repeated. He notably referred to the growing number and importance of TCAs, the positive impact they have on social dialogue in central European Member states such as Poland and the need and right for employees to engage in pan-European agreements. He considered that there is a need for social partners to discuss further about the issues raised by TCAs, in particular as to negotiating parties and legal effects and suggested that the topic forms part of the social partners’ work programme.

The expert of ES and of CEEP suggested the statements of the social partners to be annexed to the document and the conclusions to be more balanced and limited to European agreements. Mr Silva answered that there is no problem to accept suggestions and added that the conclusions should clearly indicate that they limit themselves to European agreements. They should better reflect the different views and the options to be considered. He recalled however that the expert group is a body established by the Commission, which involves 27 Member States and the social partners, not a structure of the European social dialogue, and that the conclusions commit the Commission. Whereas the draft conclusions are therefore not a document for social partners’ statements, the reviewed text should enable better integrating the different views of the experts.

The expert of ETUC expressed the willingness of ETUC to contribute to the content of the draft conclusions so as to better reflect the work done. He considered that the work in the expert group allowed to learn a lot and also showed that there are a number of areas on which a discussion between social partners could improve the situation. He expressed the wish to avoid freezing or opposing positions at this stage to leave it open for dialogue.

The expert of DE considered that the analysis in the draft conclusions is correct and welcomed the integration of the national perspectives by the Commission. She noted that the options are too vague at this stage for positions to be taken and asked whether the Commission has already defined a direction for future action.

The expert of BusinessEurope expressed the acceptance of employers to renew the discussion on what to do on TCAs but stressed that employers do not see a problem to be solved, and do not wish to promote TCAs against the wish of companies. He indicated his agreement with the procedure proposed by the Chairman.

The Chairman thanked for the interventions and recalled that the aim is to produce an analytical document to describe the phenomenon, identify problems and list options in terms that could reach the largest possible acceptance.
30.4 Actors involved in Transnational Company Agreements

The Secretary of the expert group introduced the second item “actors involved in TCAs” by recalling the work carried out in the expert group on this issue. A meeting was dedicated to actors involved in TCAs in May 2009, whose results are to be found in chapter III.5 of the draft report of the expert group. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part II of the draft elements for conclusions addresses this field under the title “supporting the actors in TCAs and clarifying their role”. It recalls that different categories of actors are involved in TCAs: different levels of management on company side and EWCs, European, international and national trade union organisations on employee side. The problem identified is that these actors face problems of legitimacy and capacity which hamper the conclusion and implementation of TCAs and produce interferences with national systems of industrial relations. The options considered include the provision of a reference, actions to ensure the legitimacy and capacity of the negotiating and signatory parties as well as financial support to the actors. Mr Silva opened the floor for discussion on this topic.

The expert of Eurofound referred to the research carried out at the Foundation on the impact of national industrial relations systems on TCAs. Clusters of TCAs could be defined (DE, FR, NL, Nordic) and it was observed that consensual industrial relations at national level seem to favour TCAs in companies of that country. The expert of EMF noted that IFAs should not be referred to in this part of the draft conclusions and that the question of legitimacy is also an issue for management side. He indicated that he could live with the options presented, even if some of them are not the ones he would support. The expert of CEEP repeated that it is too early for conclusions and asked about the intentions of the Commission. The employer expert of ES agreed that the document should not support a specific proposal and that the objective was to get the analytical information needed to assess the situation and to consider all options even if there is not a full consensus on them.

The Chairman recalled that that the objective is to list options independently of future choices between them, including the status quo, where company actors are able to find solutions themselves. Future choices will need the involvement of other Commission's services and the consultation of social partners.

30.5 Form and transparency in Transnational Company Agreements

The Secretary of the expert group introduced the third item “form and transparency in TCAs". She recalled the work carried out in the expert group on this issue. A meeting was dedicated to form and transparency in TCAs as well as to the discussion on the future database on TCAs in May 2010, whose results are to be found in chapter III.7 of the draft report of the expert group. The establishment of the database was further discussed at following meetings. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part III of the draft elements for conclusions addresses this field under the title “promoting transparency in TCAs". It recalls that there is a variety in the form adopted by transnational texts and in their dissemination. The problem identified is the lack of clarity and respect of the rights of the affected persons. The options considered include actions to support best practices as to the title and the drafting of the agreements, to ensure information
of the affected persons and to favour public disclosure of the texts, notably by maintaining the
database on TCAs. The Chairman opened the floor for discussion on this topic.

The expert of EFFAT expressed his wish that European social partners provide guidance and
support on practical issues such as the ones highlighted in this chapter. He considered that it
would be an enormous shame if the work done in the expert group and the monitoring were
lost because cross industry social partners would not go forward. He expressed hope that we
are at an early stage of a dynamic process and that European federations and competent
employers' organisations will take over on this issue.

The Chairman stressed that the kind of problems highlighted on this topic can be addressed in
a way that does not require legislative support. He agreed that joint work of social partners on
guidance and practical support tools to be used on a voluntary basis are likely to produce
positive results.

30.6 Implementation of Transnational Company Agreements and links between levels

The Secretary of the expert group introduced the fourth item “implementation and links
between the levels”. She recalled the work carried out in the expert group on this issue. A
meeting was dedicated to implementation and disputes in TCAs in November 2009 and
another to links between levels, with the discussion of study results, in October 2010, whose
outcomes are to be found in chapter III.6 and III 8 of the draft report of the expert group
respectively. Examination of company examples was included in all meetings and is to be
found in part V of the same report. Part IV of the draft elements for conclusions addresses this
field under the title “enhancing the implementation of TCAs and the links with other levels of
social dialogue”. It recalls the diversity in implementing practices and the fact that initiatives
to link TCAs to other levels of social dialogue (European, national,…) exist but are not
systematic nor integrated. Problems are identified in the implementation of TCAs and in the
incoherence or conflicts between different outcomes of social dialogue. The options
considered include support to procedures and a reference for the implementation of TCAs and
actions aiming at promoting coherence between levels of social dialogue. No comments were
expressed on this particular issue.

30.7 Legal effects of Transnational Company Agreements

The Secretary of the expert group introduced the fifth item "legal effects of TCAs". She
recalled the work carried out in the expert group on this issue. A meeting was dedicated to the
legal effects of TCAs in May 2011, with the discussion of study results in May and October
2011, whose outcomes are to be found in chapter III.9 of the draft report of the expert group.
Examination of company examples was included in all meetings and is to be found in part V
of the same report. Part V of the draft elements for conclusions addresses this field under the
title “Improving legal certainty in the effects of TCAs". It recalls that the present legal status
of TCAs is unclear and varies across Member States. The legal risks associated with TCAs
and the absence of correspondence between wished and actual legal effects of TCAs are
identified as problems. The options considered include promoting the observance of rules
where a TCA is intended to produce legal effects and working on a mechanism aiming to give
controlled legal effects to TCAs where parties so wish.. No comments were expressed on this
particular issue.

30.8 Disputes in Transnational Company Agreements
The Secretary of the expert group introduced the sixth item “disputes in TCAs”. She recalled the work carried out in the expert group on this issue. A meeting was dedicated to implementation and disputes relating to TCAs in November 2009, with the discussion of study results in November 2009 and May 2010, whose outcomes are to be found in chapter III.6 of the draft report of the expert group. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part VI of the draft elements for conclusions addresses this field under the title “Enable preventing and settling disputes”. It recalls that few mechanisms are in place to handle disputes on TCAs. It identifies as a problem the lack of awareness, the complexity and difficulties to settle disputes in or out of court. The options considered include information about the content of international private law and data protection rules, actions to prevent disputes and to favour out of court dispute settlement.

The Chairman opened the floor for discussion on this topic. The expert of EMF expressed his interest for first level dispute settlement and external mediation and asked for clarification as to a reference to applicable law and competent jurisdiction in the agreement. The Group's Secretary clarified that the situation to this regards differ between the obligatory and the normative parts of the agreement. The expert of CEEP considered that a collective agreement could not be brought before a European court.

30.9 Follow-up of the meeting

The Chairman opened the last part of the meeting dedicated to concluding the work of the expert group. He recalled that the options considered have different addressees: the actors at company level, the Commission as facilitator, source of information and support, the Commission as initiator of law and the European social partners. The options also envisage different instruments. These different addressees and instruments should be better highlighted in the revised document. The baseline scenario (status quo) should also be added to the options and the financial support left aside. The Chairman expressed his confidence that, with the observations collected at the meeting and further written comments, the new document should better reflect the diversity of views.

The Chairman concluded by thanking all participants for their contribution to the work of the expert group. He considered that, with the help of actors on the ground, academics, Eurofound, ILO, social partners and Member States, it was possible to go a long way to understand the phenomenon, analyse the problems and explore possible solutions regarding TCAs
THE GROUP OF EXPERTS ON TRANSNATIONAL COMPANY AGREEMENTS,
Having regard to the Commission staff working document on "the role of transnational company agreements in the context of increasing international integration"61, and in particular its conclusions,
Having regard to the standard rules of procedure established by the Commission62, 
HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Article 1
Convening a meeting

1. Meetings of the group are convened by the Chair, either on its own initiative, or at the request of a simple majority of members after the Commission has given its consent.

2. Joint meetings of the group with other groups may be convened to discuss matters falling within their respective areas of responsibility.

Article 2
Agenda

1. The secretariat shall draw up the agenda under the responsibility of the Chair and send it to the members of the group.

2. The agenda shall be adopted by the group at the start of the meeting.

Article 3
Forwarding of documents to group members

1. The secretariat shall send the invitation to the meeting and the draft agenda to the group members no later than thirty calendar days before the date of the meeting.

2. The secretariat shall send drafts on which the group is consulted and all other working documents to the group members no later than fourteen calendar days before the date of the meeting.

3. In urgent or exceptional cases, the time limits for sending the documentation mentioned in 1 and 2 may be reduced to five calendar days before the date of the meeting.

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Article 4

Opinions of the group

1. In addition to any conclusions drawn by the Commission, the group may issue its own opinions.

2. As far as possible, the group shall adopt its opinions by a consensus.

3. In exceptional circumstances, the group may adopt its opinions by a vote where no consensus proves possible. In this case, the adoption of the opinion or report is obtained by a favourable vote of a simple majority of the members and the summary minutes shall reflect the different positions expressed.

Article 5

Sub-groups

1. With the consent of the Commission, the group may set up sub-groups to examine specific questions on the basis of terms of reference defined by the group; they shall be disbanded as soon as they have fulfilled those terms of reference.

2. The sub-groups shall report to the group.

Article 6

Admission of third parties

1. The Commission representative may invite experts or observers with special expertise on a matter on the draft agenda to participate in the group's or sub-groups’ work where appropriate and/or necessary.

2. Experts or observers are not present when the group adopts an opinion or report.

Article 7

Written procedure

1. If necessary, the group’s opinion on a specific question may be delivered via a written procedure. To this end, the secretariat sends the group members the drafts on which the group is being consulted and any other working documents.

2. However, if a simple majority of group members asks for the question to be examined at a meeting of the group, the written procedure shall be terminated without result and the Chair shall convene a meeting of the group as soon as possible.

Article 8

Secretariat

The Commission shall provide secretarial support for the group and any sub-groups created under Article 5(1) above.
Summary minutes of the meetings
Summary minutes on the discussion on each point on the agenda and the opinions delivered by the group are drafted by the secretariat under the responsibility of the Chair and submitted to the members for approval.

Article 10
Attendance list
At each meeting, the secretariat shall draw up, under the responsibility of the Chair, an attendance list specifying, where appropriate, the authorities, organisations or bodies to which the participants belong.

Article 11
Prevention of conflicts of interest
1. At the start of each meeting, any member whose participation in the group’s deliberations would raise a conflict of interest on a specific item on the agenda shall inform the Chair.

2. Members appointed in a personal capacity shall sign a declaration certifying that their participation will not result in conflicts of interest.

3. In the event of such a conflict of interest, the member shall abstain from discussing the items on the agenda concerned and from any vote on these items.

Article 12
Correspondence
1. Correspondence relating to the group shall be addressed to the Commission, for the attention of the Chair.

2. Correspondence for group members shall be sent to the e-mail address which they provide for that purpose.

Article 13
Transparency
1. The principles and conditions concerning public access to the group’s documents are the same as laid down in Regulation (EC) No 1049/2001. It is for the Commission to take a decision on requests for access to those documents.

2. The group’s deliberations are confidential.

3. In agreement with the Commission, the group may, by a simple majority of its members, decide to open its deliberations to the public.

Article 14
Protection of personal data
All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EC) No 45/2001.


64 Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. (OJ L 8, 12.1.2001, p. 1).
Annex II : References

Useful links

Database on transnational company agreements as well as all studies, presentations and documents related to the expert group to be found on the Commission's website dedicated to transnational company agreements
http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214

Webpage of the International Labour Organisation (ILO) on Cross Border social dialogue and agreements

References of studies and documents

Elodie Bethoux, Transnational agreements and texts negotiated or adopted at company level—European developments and perspectives: the case of agreements and texts on anticipating and managing change, July 2008


European Commission, DG Employment, Social Affairs and Equal Opportunities, Mapping of transnational texts negotiated at corporate level, 2 July 2008


Telljohann, Volker; da Costa, Isabel; Müller, Torsten; Rehfeldt, Udo; Zimmer, Reingard, *European and international framework agreements: Practical experiences and strategic approaches*, European Foundation for the improvement of living and Working Conditions, 2008

Fernando Valdés Dal-Ré (Director), *Labour conciliation and arbitration in European countries*, Ministerio de trabajo y asuntos sociales, Madrid, 2003


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
A. GOVERNEMENTAL EXPERTS

Denmark, Finland and Sweden
The governmental experts of Sweden, Finland and Denmark issued joint comments. They considered that the Expert Group on TCAs has been an excellent opportunity to discuss and learn more about the different kinds of TCAs, their form, subjects, partners as well as their legal effects. They believe that the database on the agreements can be a very helpful tool and can provide inspiration for new agreements as was the intention. They do not believe, however, that the work in the expert group unequivocally has indicated a need for regulation of TCAs. The expert group was responsible for investigating a relatively new phenomenon in the labour market and the discussions in the group showed the difficulties we had even on defining the TCAs. It is their view that the need for supporting rules or systems for TCAs is a question that is best left to the social partners. Key elements in TCAs are the freedom to negotiate and conclude agreements that is custom made to a specific situation. The role of the social partners is crucial in this context and therefore they would recommend that any measures in this area should be initiated by the social partners, as they are best qualified to assess the best approaches.

Germany
The governmental expert of Germany considered that, given the important differences in labour laws across Member States, a single and binding legal framework for TCAs would be difficult to achieve. She stressed that, for future work on this issue, the involvement rights of national actors need to be ensured and noted that the German social partners are of the same view. She referred to the possibility developed in the study of Labour Asociados, to give legal effects to TCAs without major changes in national legal orders. Given these results and in view to address the German concerns, she suggested to clarify that the actors negotiating on the issue at stake at national level should take part from an early stage on in the negotiation and conclusion of a transnational agreement.

Poland
The governmental expert of Poland stressed the appreciation for the work done by the European Commission in the field of TCAs and ensured that Poland is open for discussion and welcomes initiatives which could play a positive role in developing social dialogue across border. As to suggestions for further activities, non-legislative intervention, such as social partners' guidelines, is preferred. From the Polish perspective, the priority in describing the way of concluding transnational company agreements should be given to signatory parties of such agreements. It should allow them to tailor flexible instrument appropriate for their needs.

Spain
The Director General of Labour at the Spanish Ministry of Labour and Immigration considered that the new version of the draft elements of conclusions, circulated after its
examination by the expert group, better reflected the situation and work carried out in the group, especially as to the indication that the work of the expert group did not allow for generating a convergence of views on the need to provide support at EU level to the development of TCAs. He noted however a contradiction between the references to the respect of the autonomy and responsibility of negotiating parties and the consideration of actions to address difficulties by establishing a reference or framework through guidelines or more prescriptive instruments such as a recommendation, an agreement between social partners or a directive. He considered that any framework on TCAs has to be voluntary, not only to guarantee the autonomous exercise of the parties' will, but also because there are no EU instruments applicable to collective bargaining in the Member states and because it would be very questionable to introduce them where the negotiation takes place between actors located in different Members states or with third country actors. He therefore stressed that instruments such as a recommendation or a directive would not be adequate, but that, on the contrary, an agreement between social partners would be welcome.

B. SOCIAL PARTNERS' EXPERTS

European Trade Union Confederation (ETUC)
The trade union experts, under coordination of ETUC, considered that the first version of the draft conclusions reflected faithfully the debate held in the expert group. They suggested amendments to the text, so as to better specify some points raised during the meetings. In particular, it was suggested to refer to the role of TCAs in facilitating cross-border mediation of interests, promoting socially agreed actions to tackle social disruptions generated by the crisis and boosting social and contributing to the social and economic integration of the EU. References were made to the specificities of European agreements, in relation to the higher level of integration in the European legal, economic and social environment, leading to mitigate uncertainties and helping to attain the agreements' objectives. It was suggested to better take into account the role of European industry federations and the problems of capacity and legitimacy that can also arise on employer side. It was propose to highlight the need for non-regression rules of TCAs on national, local or company level collective agreements. It was further suggested to encourage notification of the new or renewed TCAs to a public authority or a joint body promoted by social partners.
The experts thanked the Commission for having considered these comments in the revised document.

BusinessEurope
BusinessEurope forwarded the statement made by its representative at the expert group meeting on the first draft elements for conclusions. It recalled that the discussion on TCAs started five years ago with the optional legal framework proposed by the Ales report. It considered that the draft conclusions presented by the Commission do not reflect the work in the expert group, do take on board the analysis carried out by employers, in particular the outcome of BusinessEurope’s work with the ILO training centre on TCAs, are biased and may be seen as an objective to reinforce the bargaining power of European trade unions in company negotiations. Employers’ arguments against signing TCAs were considered as not being reflected. The fact that a very small minority of companies have engaged in TCAs and the absence of any need and wish of companies for a framework or reference were stressed. A series of arguments against EU action on TCAs was developed: the European level is not pertinent, the promotion of good practices discriminates against companies not wishing to engage in TCAs, concluding TCAs and social dialogue are not necessarily a good thing, there
is no need for financial support to TCAs. It furthermore indicated that BusinessEurope has no intention in entering into negotiations on a European reference on the conclusion and implementation of TCAs. As a conclusion, it stated that TCAs need to be transposed in the countries concerned to produce legal effects at national level so as to respect the diversity of rules and traditions that prevail across and acknowledged that some work may be necessary to ensure that management and workers better grasp the possible legal implications of the agreements. However, no EU action was considered to be required to that aim and the responsibility of each side of industry to provide support to their member companies and/or workers was highlighted.

**CEEMET**

CEEMET sent comments on the first draft elements for conclusions. It welcomed the Commission's initiative to exchange views related to the relatively new phenomenon of TCAs with different stakeholders and interested parties, in particular the presentation of company examples and of studies. However, the first draft elements for conclusions were considered as biased and not reflecting the experiences and views presented at the expert group. Given the fact that only a small number of companies and Member States are concerned by these initiatives and that TCAs are mostly international in scope, it considered that TCAs are not an issue for EU wide initiatives and that the EU level is not sufficient as a regulatory level when it comes to TCAs covering third countries. It felt that the draft failed to reflect diversity amongst TCAs and that the EU level is not sufficient as a regulatory level when it comes to TCAs covering third countries. It considered that TCAs should not be mixed up with European social dialogue, collective bargaining and EWCs and stated that CEEMET would not support the proposed option to give priority to financing TCAs on a budget line related to social dialogue. It stressed that TCAs stem from purely voluntary initiatives and the need to respect the parties' responsibility and autonomy was highlighted. It stressed that companies do not express any need or wish for an optional framework at European level which, on the contrary, would reduce the flexibility they need and their willingness to sign TCAs. It felt that more emphasis should be given to the needs of companies to get a more balanced view of the situation. It stressed that the option to set up a reference through guidelines or more prescriptive instruments is very far reaching and unnecessary, in particular as it was felt that TCAs can already be made legally binding if the parties so wish. It considered more realistic that the Commission aims at providing an updated database of TCAs, organising exchanges of experience and analysis, reviewing the effects produced by TCAs and how norms relate to each other in the MS as well as clarifying rules of international private law as regards TCAs of a legally binding character. It stated that CEEMET is not in favour of setting binding references at European level but looks forward to open and objective discussions on the role TCAs play and should play in the future, underlining that these discussions must be carried out in such a way that they are transparent and that they fully respect the autonomy of the social partners.

In commenting the revised draft elements for conclusions of December 2011, CEEMET said it regrets to see its major concerns were not taken on board. Even if presented as options, the suggestions to consider more prescriptive instruments such as a recommendation, an agreement between social partners or a directive led to deep concerns. It considered that the document ignored the comments made in first instance, in particular that many company representatives considered even an optional framework not necessary and potentially limiting the necessary flexibility in this area while maintaining instead the disconcerting idea of a possible directive on the topic. It considered the revised draft as still being biased and not reflecting experiences and views presented in the expert group and therefore saw a need for further revision.
C. OTHER CONTRIBUTIONS

**European HRD Circle for social responsibility**

In a written contribution to the group of experts, Mr Barou, coChairman of the European HRD Circle, composed of senior HR Directors across Europe, shared the lessons drawn from the experience of the members, who signed 20 TCAs covering 1 million employees. The first lesson is that TCAs are an opportunity to explore new fields not addressed so far in social dialogue. Secondly, by basing these agreements on the sharing of good practices, solid foundations are given to TCAs. Thirdly, a pragmatic move is happening 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. The last lesson refers to the importance of follow-up, often done by a convention meeting every six to nine months, which needs to be treated as seriously as other managerial responsibilities at all levels. As to the development of TCAs, it was 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. It was pointed out that the European model is based on social dialogue, which has no equivalent in the USA or in Asia and insisted that this collective heritage has a great value. It was considered that 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. The belief of the members that the European Commission has a responsibility to support these actions, notably by providing a flexible optional framework, was stressed. 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.

Annex IV : Review of the options considered

REVIEW OF THE OPTIONS ACCORDING TO ADDRESSEES

Actors directly involved in TCAs are addressees of the options inviting them to:

- Ensure legitimacy and capacity of the negotiators and signatory parties
- Bring clarity in the title and the drafting of TCAs
- Inform the persons concerned by TCAs
- Provide for procedures to implement TCAs
- Check and avoid possible contradictions with other levels of social dialogue and norms
- State their intentions as to the legal effects of TCAs
- Provide for monitoring and adaptation mechanisms to prevent disputes and provide for first level dispute resolution mechanism to enable fast resolution of disputes
- Consider stating applicable law and competent jurisdiction
- Transmit new agreements or amendments for the updating of the database

The European social partners, at cross industry or sectoral level, are addressees of the options inviting them to:

- Provide a reference or a framework at the disposal of parties wishing to use them, for the actors to be involved in the conclusion of TCAs so as to ensure legitimacy and capacity of the negotiating and signatory parties
- Transmit new agreements they conclude to maintain the database
- Issue guidance or rules at the disposal of parties wishing to use them, as to the form and transparency in TCAs
- Provide a reference or a framework at the disposal of parties wishing to use them, for the implementation of TCAs
- Identify best practices to reinforce and promote links and coherence between TCAs and other levels of social dialogue
- Work on guidance or negotiate agreements on dispute resolution mechanism so as to facilitate prevention and out of court settlement of disputes on TCAs

The Commission is addressee of the options to:

- Abstain from any further action
- Consult the European social partners on the options considered, in particular for the references, at the disposal of parties wishing to use them, on the actors to be involved in the conclusion of TCAs and on the implementation of TCAs; envisage initiatives should the social partners not wish to negotiate in these areas
- Work on form and transparency in TCAs and on the interaction between different levels of social dialogue, for TCAs intended to be other than declaratory, together with the social partners and Member States, should the social partners not wish to work autonomously in these areas
- Consult the European Social Partners and work in close cooperation with them to design a mechanism aiming at giving controlled legal effect to TCAs where parties so wish
- Maintain the database on TCAs
• Coordinate with ILO in view to improve information of TCAs
• Inform about the content of EU rules on data protection as well as results of studies in the areas of TCAs
• Consider the recommendations contained in the studies on International Private Law aspects of TCAs

REVIEW OF THE OPTIONS ACCORDING TO INSTRUMENTS

None = status quo

Optional References or frameworks at the disposal of parties wishing to use them, for example in form of guidelines
• Reference/framework for the actors to be involved in the conclusions of TCAs
• Reference/framework for the implementation of TCAs

Guidance, promotion of good practice and recommendation to the actors
• Invitation to the actors to take actions in order to
  o ensure legitimacy and capacity of the negotiators and signatory parties,
  o bring clarity in the title and the drafting of TCAs,
  o inform the persons concerned by TCAs,
  o provide for procedures to implement TCAs,
  o check and avoid possible contradictions with other levels of social dialogue and norms,
  o state their intentions as to the legal effects of TCAs,
  o provide for monitoring and adaptation mechanisms to prevent disputes and provide for first level dispute resolution mechanism to enable fast resolution of disputes,
  o consider stating applicable law and competent jurisdiction,
  o transmit new agreements or amendments for the updating of the database
• Guidance as to form and transparency in TCAs
• Guidance on dispute resolution mechanisms
• Identification and promotion of good practice on links and coherence between TCAs and other levels of social dialogue and norms

Maintenance of database of TCAs

Coordination with ILO

Further work on particular issues
• Interaction between levels of social dialogue
• International Private Law aspects of TCAs

Working out a mechanism aiming at giving controlled legal effects to TCAs where parties so wish

Information on
• National provisions regulating company agreements,
• Rules on data protection
• Rules of International Private Law