EU Labour law, transnational collective bargaining and restructuring

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The issue

• concerns about the potential impact of liberalization of ownership and control on labour, in particular through restructuring/cross-border mergers and operations

The response

• social dialogue/collective bargaining are the best way to anticipate and manage change
• public authorities have to facilitate this social dialogue/collective bargaining process, with appropriate instruments
Summary

1. The principle of collective bargaining is well established in the EU

2. There are EU legislative instruments to help dealing with the impact, and the process of restructuring with a transnational dimension. These instruments protect the rights of workers and promote the information and consultation of workers at national and transnational level.

3. There are also EU legislative instruments to deal with cross border mobility/operations. The “Rome 1” Regulation specifies what is the law applicable to employment contracts.

4. Transnational social dialogue is an important dimension of the implementation of these instruments. We can build on the dynamic of transnational social dialogue.
Initial remark on the EU context

- **Social policy** is a shared competence between the EU and its Member States
- a number of EU instruments, including labour law, social dialogue and policy coordination
- but also national provisions, and implementation of EU instruments at national level taking into account national traditions, institutions and circumstances
1. The principle of collective bargaining

- All EU Member States recognize the right to collective bargaining: all have ratified the ILO core conventions; Member States recognize collective bargaining in their national law.

- The EU Charter of fundamental rights (2000) recognizes the freedom of association, the right to information and consultation of workers, and the right of collective bargaining and action.

- The EU Treaty strongly recognizes social dialogue: Art. 138 and Art. 139.

- The EU has promoted EU social dialogue at cross-industry level and at sectoral level (one sector is civil aviation).
2. EU labour law to deal with restructuring

Aim

i. to ensure the protection of workers’ rights
ii. to provide for the involvement of workers representatives in the restructuring process

- EU directives are binding on the Member States as regards the objectives to be achieved, although the latter are free to determine how and by what means they intend fulfilling their Community obligations within their legal system

- In addition, national legislation and practice may provide for a higher degree of worker protection than the directives in the area concerned
2.(i) Protection of workers’ rights

• The directive on **employer insolvency** provides minimum protection for employees in the event of insolvency of their employer. Member States have to establish a body which guarantees the payment of employees’ outstanding claims.

• The Directive on **transfer of undertakings** provides that rights and obligations arising from a contract of employment or an employment relationship that exists on the date of the transfer must be transferred from the transferor to the transferee. It further provides that the transfer shall not constitute grounds for dismissals.

• Special provisions on information of workers are established in the case of **collective redundancies** and of **transfer of undertakings**.
2.(ii) Information and consultation of workers at national and transnational level (1)

- Employee involvement part of the labour relations and corporate governance patterns in Europe

- National level: Directive establishing a general framework for informing and consulting employees (2002) applying to companies with at least 50 employees or establishments with at least 20
2.(ii) Information and consultation of workers at national and transnational level (2)

- **Transnational level**: Directive establishing the European Works Councils (1994) applying to companies or groups with at least 1000 employees and at least 150 employees in each of two Member States

- **Transnational level**: information consultation and participation in the supervisory board or board of directors in companies adopting the European Company Statute, the European Corporative Statute, or deriving from a cross-border merger
3. There are legislative instruments to clarify what is the law applicable to contractual or non-contractual obligations, which are important for cross-border operations/mobility

- The so-called “Rome 1” Regulation (503/2008) is applicable as from 17 December 2009

- As regards working contracts, the law applicable results from the parties’ choice; but this choice cannot deprive the worker of protection under such mandatory provisions as are applicable by default (usually that of the country where the worker habitually carries out his work, or if the worker does not habitually carry out his work in one and the same country, that of the country where the establishment that employs him is located)
4. A dynamic of (EU driven) transnational social dialogue and collective bargaining

(i) There is a dynamic a transnational social dialogue through the development of European work councils
  
  • 2260 companies in the scope, 820 EWCs active, including Aerlingus, Air France/Klm, Alitalia, British Airways...
  
  • 14.5 million employees represented (60% of those employees concerned) by 15000 employees representatives
  
  • Overall positive assessment by the social partners
  
  • the Directive is under revision (to increase the number of EWCs and make them more efficient)
4. (ii) There is also a dynamic of social dialogue through agreements concluded in transnational companies (1)

- a new and promising trend in corporate governance, which is not based on EU legislation but which is largely EU driven and to which the EU is attentive

- the Commission examines the possibility to establish a voluntary EU legal framework for such agreements
4. (ii) There is also a dynamic of social dialogue through agreements concluded in transnational companies (2)

- at least 150 transnational texts negotiated within multinational companies (the number is likely underestimated)
- Commission study in 2007: 147 texts recorded, out of which 76 “European”, 59 “global”, 12 “mixed” (concluded in 89 companies, 75 headquartered in EEA)
- Most of the European/mixed texts concluded within EWCs
- Agreements in Air France/Klm and in Czech Airlines
4. (iii) There is also a dynamic of development of pan-European social partners’ organizations through EU sectoral social dialogue

- A “joint civil aviation committee” established in 1990; the sectoral civil aviation social dialogue committee established in 2000
- Strong social partners’ organizations
- Successful negotiation on working time of mobile workers (2000) with an agreement transformed into EU legislation
- Contribution to the debate on the future of the industry
- Synergy with the dynamics within EWCs and multinationals (e.g. Air France/Klm)
Conclusion

• EU experience of decades of restructuring is that change has to be anticipated and managed, and that social dialogue /collective bargaining is crucial in this respect

• There is generally an asymmetry between costs and benefits: benefits are diffuse both in time and scope, while costs are immediate and concentrated on certain categories or certain regions

• The response is to involve stakeholders in a proactive management of change.