

European Commission – DG Employment, Social Affairs and Equal Opportunities
Invitation to tender N° VT/2008/022

**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

Background document

for the facilitation of a meeting of the Restructuring Forum
devoted to transnational agreements at company level

July 2008

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ACKNOWLEDGEMENTS

The author would like to thank the *Fondation Europe et Société* and its President Mr. Jacques Moreau for inviting her to work on similar issues for two conferences (one on restructuring and social dialogue in Europe in 2007; the other on transnational texts negotiated at company level in 2008) and for allowing her to use here parts of the reports delivered to *Europe et Société* on these previous occasions (Béthoux, 2007, 2008a).

INTRODUCTION

In the last *Commission Staff Working Document* on “the role of transnational company agreements in the context of increasing international integration” (SEC(2008)2155 of 2 July 2008)¹, a transnational company agreement is defined as “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 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” (p. 3). This background document deals precisely with ***transnational texts or agreements adopted or negotiated at company level***. Although the role of industry federations in company transnational negotiations is emphasised, transnational cross-industry and industry-level negotiations are not studied in-depth themselves. European cross-industry and industry-level negotiations are indeed distinct from company transnational negotiation in that they are clearly defined by European law. On the contrary company transnational negotiation is currently developing without any legal framework. Similarly, negotiations observed at the national level are only mentioned in as far as they are linked to specific transnational developments (for instance, regarding the preparation or implementation of a transnational agreement).

Furthermore, emphasis is placed on texts ***that are exclusively or dominantly European in scope***. Hence, international framework agreements (IFAs), frequently worldwide in scope and often dealing with corporate social responsibility issues, are not the core subject here². However, examining such agreements raises a number of issues that help understanding the specifically European development of transnational negotiation at company level.

Similarly, we study the development of negotiation practices ***between employers and employee representatives***, and not unilateral approaches undertaken by one or another of the parties – adoption of company codes of conduct on the one hand; trade union coordination of collective bargaining on the other for instance (Schulten, 2005). However, these elements throw light on various European developments affecting the transnational negotiation processes discussed here.

Finally, in the perspective of the next session of the European Commission Restructuring Forum (Nov. 2008), we pay specific attention to the transnational texts or agreements adopted or negotiated at company level which relate to ***anticipation and management of change and restructuring***. The aim is thus to analyse the role and potential of transnational agreements and texts for the anticipation and management of change, including the preparation of workers and other related parties, such as subcontractors, and for the making and implementation of restructuring decisions.

Studying the transnational agreements and texts negotiated or adopted by multinational companies (MNCs), the background document refers to a more general question which is that of ***the social regulation of multinational companies’ activities***. From the 1990s on, one can then identify three major steps in the study of transnational regulation at company level: 1°) in

¹ See: http://ec.europa.eu/employment_social/labour_law/documentation_en.htm#5

² See the specific study by P. Wilke and K. Schütze on IFAs for the meeting of the Restructuring Forum devoted to transnational agreements at company level (June 2008).

the 1990s, the development of a new wave of *codes of conduct* first raised much interest (Sobczak, 2002); 2°) after 2000, *IFAs* were put in the forefront as more and more of them were negotiated; 3°) more recently, studies have focused on *European agreements or texts* negotiated or adopted at company level. This broad evolution, with necessary overlaps, led the way to comparative analyses on the development, characteristics and effects of these various tools – thus questioning the complex links between globalisation and Europeanisation³, and their effects both on the dynamics of industrial relations and the definition and implementation of public policy.

The document is organised in three parts.

1. The first part presents a brief summary of ***the major stages in the history of company transnational negotiations*** as they developed from the 1960s.
2. The second part presents ***an inventory of company transnational agreements and texts in Europe***, based on the censuses carried out by the European Commission. The body of agreements is presented according to their main characteristics: nationality and activity of the company, date of the agreement and signatory parties, subjects discussed and scope.
3. On the basis of this general overview, the third part focuses on ***transnational texts and agreements dealing specifically with restructuring issues***.

The institutional and academic references mentioned in the document are listed at the end.

³ N. Fligstein and F. Merand (2002), for instance, argue that at least part of what is usually referred to as “globalization” is in fact a process of “Europeanization” that can be best described as “the result of [European] states’ deciding to build rules for market integration in Europe”. The fact that the largest European corporations have increasingly focused their investments across Europe and worked to gain market share within the EU is for them a clear evidence of such a process.

1. THE DEVELOPMENT OF TRANSNATIONAL NEGOTIATIONS AT COMPANY LEVEL

Transnational company agreements or texts have recently become more widespread and are arousing the interest of a growing number of actors, such as European, national⁴ and local public authorities, employers, trade union representatives, representatives of NGOs, etc. Yet they are not a totally new phenomenon. This first section thus broadly reviews the historical development of transnational negotiation at company level. It identifies four major stages in this development: the early debates and attempts of the 1960s-1970s (1.1.); the negotiation of the first transnational texts in the late 1980s (1.2.); the development of EWCs prompted by the adoption of the 1994 European Directive (1.3.); and the recent debates around the European Commission's proposal of an "optional European framework for transnational collective bargaining" (1.4.).

1.1. Early debates and attempts 1960s-1970s

The 1960s and the 1970s correspond to an initial period during which numerous theoretical and practical debates and questions were crystallised. This was a period when multinational companies were specifically observed: the question raised was how to respond to the growth of multinational companies and the challenges they represented concerning the regulation of work and employment, the organisation of employee representation and the expression of collective action. This was the context in which the possibility of developing transnational company negotiations was first considered.

Academic and union-based literature (in particular North-American) reviewed the consequences of the growing internationalisation of companies on industrial relations, examined union strategies in response to these developments, and raised the issue of a possible internationalisation of protest actions, claims and collective bargaining⁵. Job security, transparency and location of decision-making, transposition of foreign practices where human resource management and social relations were concerned, risks of relocation, pressure on wages, these were some of the issues that weighed on union strategies.

In that perspective, two types of initiatives were mainly analysed:

- attempts to *regulate multinational companies on the part of international organisations*, such as the OECD, ILO or UN⁶ ;

⁴ See for instance, in France, the 2007 record of collective bargaining edited by the French Ministry of Labour. For the first time, in its initial chapter "on collective bargaining developments in 2006", the Ministry devotes a few pages to the "social dialogue in Europe". In the "company social dialogue" section, company transnational negotiation is mentioned through the reference to "an example of European company agreement on equal opportunities set up by the Areva group", signed on 16th November 2006 between the group and the EMF (Ministère du travail, des relations sociales et de la solidarité/DGT, DARES, 2007, p. 45). The 2008 record mentions six other transnational company agreements concluded in 2007 at RWE, Suez, Schneider and Danone (Ministère du travail, des relations sociales, de la famille et de la solidarité/DGT, DARES, 2008, pp. 87-90).

⁵ For an overview of the literature, apart from books and articles of the time, see the recent review presented by R. BOURQUE within the framework of his report for the ILO «International framework agreements and international collective bargaining in the globalisation era» (Bourque, 2005).

⁶ See in particular: *Guidelines for Multinational Enterprises* adopted by the OECD in 1976 (revised in 2000) and the *Tripartite Declaration of Principles concerning Multinational Enterprises and social policy* of the ILO in 1977 (revised in 2001).

- *trade union experiences led in a few multinational groups, with the support of International Trade Secretariats (ITS).*

These last experiences, particularly where the metal (mainly the automotive industry), chemical and food sectors were concerned – three sectors in which internationalisation was relatively far advanced at the time – attracted the attention of commentators. In order to favour exchanges of information between the employee representatives of a particular company and to be better able to coordinate union activity, the International Trade Secretariats recommended the set up of **World Works Councils** within a number of MNCs (da Costa & Rehfeldt, in Papadakis, 2008). The idea, put forward in the 1950s by the American automotive union, was relayed by the International Metalworkers' Federation (IMF) – especially through the action of Charles LEVINSON who was then its Under-Secretary-General. It led to the set up of the first automotive “company world councils” in 1966 (at Ford, General Motors, Chrysler-Simca-Rootes and Volkswagen/Daimler-Benz). In the chemical sector, a first “Permanent Council” was set up at Saint-Gobain, with the help of the International Federation of Chemical and General Workers' Unions (ICF), in 1969. Despite the set up of some fifty “world group councils” during the period, the experience was a failure from the point of view of the total number of multinational companies, because of the conflicting interests and ideological divisions inherent to these bodies, and also because of their way of operating that was frequently rather unstable (Rehfeldt, 1993).

In particular, the experience failed to give rise to the “international collective bargaining” its promoters hoped to summon. C. LEVINSON, who had become Secretary-General of the ICF in 1964, was the most ardent defender of these initiatives (see his book published in 1972). As he sees it, union action has to become international, as happened with companies following three successive phases: actions involving **support and solidarity** between national unions representing the various employees of a single multinational should give rise to **coordinated action**, that is, collective bargaining per branch of industry, within the company, leading finally to **negotiations** that are integrated at the multinational company level, for all its branches. As concerns the first phase described by LEVINSON, various social conflicts with a transnational dimension attracted a lot of attention from observers of the time: the conflicts at Akzo, Michelin, Saint-Gobain and particularly Philips were very frequently quoted - the latter being the one that most closely resembled an example of transnational company negotiation. To explain the limited development of such negotiations, I. DA COSTA and U. REHFELDT (2008, *ibid.*) underline three other reasons: “the persistent refusal of the management of most MNEs to recognize ITSs as bargaining counterparts, particularly outside the EU; the economic crisis of the 1970s that led the unions to become more defensive, giving rise to national or local strategies of job protection and the internal difficulties of organizing transnational union coordination.”

Concerning these first experiences, there are however several points to be made.

* First of all, the issue of possible company transnational collective negotiation arose on a **worldwide scale** – particularly because it was driven by North American actors – before investing the more specifically *European* area.

The issue is that of the scale on which transnational actions are to be promoted: historically there was a shift from the search for international regulation – borne, on the one hand, by international organisations and, on the other, by international union organisations – to the promotion of specifically European regulation, in which both European public authorities and European social partners progressively invested, though to differing degrees.

* Next, it is important to stress the close link between the perspective of transnational company negotiation and *the set up of transnational employee representation structures* – at that time, the world works councils; later on the European Works Councils.

* It is also important to note the link between the negotiation attempts observed and the restructuring and conflict situations that gave rise to them: *industrial restructuring* is by no means a new thing, both *as the subject of company transnational negotiation and the engine for it*.

* Finally, from the start there was *tension* between *action* that remained specifically *trade union-based* (in particular, via transnational coordination and solidarity actions) *and* transnational *negotiation between social partners*.⁷

1.2. The first transnational negotiation experiences, 1980s-1990s

The **first European agreements** were **concluded in the late 1980s** (di Ruzza *et al.*, 1995) within the **BSN-Danone** group, whose pioneering experience is worth reviewing⁸.

From 1986 on, European meetings were organised between the International Union of Food and Allied Workers' Association (IUF) and group management, at the initiative of the international trade union federation. These annual meetings, organised at the headquarters of the ILO in Geneva, led to the adoption of a first **“Joint opinion” in August 1988** that listed four “themes on which BSN management and IUF members agreed to work on together”: promotion of relevant social and economic information, professional equality between men and women, training, and right of association within the companies making up the group.

It should be noted that although informal, the IUF considered the meetings as a “stage on the way to international-level negotiations”. In harmony with the programme defined in 1988, they led to the adoption of four joint texts, referred to as **“platforms”**, and committing the parties: on social and economic information and professional equality in 1989, on training in 1992 and on the right to organise in 1994.

These texts aimed to deal with the difference in social measures and employee status that existed within the subsidiaries of the French company. The texts were short, and were essentially framework agreements designed to encourage or stimulate negotiation at the local level. Their content was fairly wide so as to facilitate agreement between the parties. Finally, the IUF, as an international federation, and in view of the growing internationalisation of the food company at the time, intended to open the meetings with the management to the representatives of employees outside Europe and wanted to widen the range of the texts established. The agreements should thus cover the entire operations of the company on a worldwide scale.

⁷ As D. Gallin recalls it: “International coordination was viewed as a tool through which unions could build up a countervailing power comparable to that of the TNCs they were facing. From that perspective, IFAs, although a logical outcome of international negotiations, were not the principal objective. That was to build union strength at TNC level to achieve any number of basic trade union aims, such as successfully conducting solidarity actions.” (Gallin, in Papadakis, 2008, p. 25).

⁸ For a more detailed assessment of the negotiation of the BSN/Danone transnational texts, see the contribution of D. Gallin, then the representative of the IUF that signed the IUF/BSN 1988 text (in Papadakis, 2008, pp. 26-31).

1.3. From 1994 on, negotiating the set up of European Works Councils

In parallel with the above, **the development of European Works Councils (EWCs)**, particularly after the adoption of the European Directive dated 22nd September 1994, contributed to the development of transnational negotiation at corporate level. The development of European Works Councils appears as a reference on two main aspects.

* It gives the example of a ***legally structured negotiation at the European level*** (even though, in parallel, the social partners have a considerable extent of contractual freedom).

* It gives also the example of negotiation processes that rest, with the set up of ***special negotiating bodies*** (SNBs), on the existence of a new transnational negotiation agent⁹.

The aim of the 1994 Directive was thus to organise a framework for transnational negotiation and to be able to generalise the first voluntary experiences carried out in some MNCs from the mid-1980s. In order to do so, the Directive conferred on the negotiated agreement setting up a European Works Council a specific legal force. For A. LYON-CAEN “the way the Directive ensured the ***legal efficiency of the agreements***” was “the most original aspect” of the text (1997, p. 361).

Recent censuses list more than 900 EWC agreements negotiated in companies or groups of companies, among which over 780 correspond to currently active EWCs (Kerckhofs, 2006). Recourse to negotiation has thus opened the way to ***a cumulative experience of company negotiation with a European dimension***. Therefore the dynamics that underlie the negotiation of EWC agreements are worth observing in order to learn more about the current facets of company transnational negotiation on a European scale. Three main aspects can be emphasised in that perspective:

* first of all, ***the model role played by the subsidiary provisions of the 1994 Directive***, serving as a central support for negotiators, without hindering the wide variability of agreements necessary to adapt them to the economic and social reality of each firm

* secondly, ***the implication of European trade union federations*** that back up the national negotiators and find a new theatre of action in the development of EWCs. Identification of the companies concerned by the EWC Directive, awareness of and familiarity with the agreements already signed, assistance in negotiating the agreement or proposal of agreement models all contribute to making transnational company agreements a perspective that is also relevant to sectoral actors.

* finally, ***regular re-negotiations*** of EWC agreements in that they feed these dynamics by making the negotiation of the agreement an open process that leaves it the freedom to evolve.

⁹ S. Laulom commented that “one of the major contributions of” the 1994 Directive is that it defined “the rules for identifying the actors concerned by the negotiation and who will represent the employees of the company” (2005, p. 46).

1.4. Towards a “European optional framework for transnational collective bargaining”?¹⁰

In the conclusion to its **Communication on *Enhancing the contribution of European social dialogue of August 2004*** the European Commission introduced the idea of setting up a “framework” for negotiating European collective agreements, having noted the development of these practices, particularly within multinational companies. The framework proposed by the Commission at that time was not limited to company transnational collective bargaining, it also included both sector-level and cross-industry negotiation¹¹. This represented a new step in the development of and debates on transnational negotiation at company level.

The proposal has been included in the Commission ***Social Agenda 2005***, in order to organise and structure the European social dialogue at all levels. The proposal is based on the idea of an **“optional” framework**: the legal framework would be available to social partners for their negotiations if they want it but they are not obliged to use it.

Providing an optional framework for transnational collective bargaining at either enterprise level or sectoral level could support companies and sectors to handle challenges dealing with issues such as work organisation, employment, working conditions, training. It will give the social partners a basis for increasing their capacity to act at transnational level. It will provide an innovative tool to adapt to changing circumstances, and provide cost-effective transnational responses. Such an approach is firmly anchored in the partnership for change priority advocated by the Lisbon strategy.

The Commission plans to adopt a proposal designed to make it possible for the social partners to formalise the nature and results of transnational collective bargaining. The existence of this resource is essential, but its use will remain optional and will depend entirely on the will of the social partners.

European Commission, 2005.

The proposal then gave rise to a European legal study, coordinated by Edoardo ALES¹². Since Spring 2006, European social partners have expressed their varied opinions both on the need and on the possibility of setting up such an “optional regulatory framework for transnational collective bargaining”.

More recently the European Commission announced its decision to “set up an expert group on transnational company agreements whose mission will be to monitor developments and exchange information on how to support the process under way”, the social partners, governmental experts and experts of other institutions being invited to take part as well¹³. It clearly reaffirmed its will to support the conclusion of transnational company agreements as “a key factor in the development of the European actors’ future capacity to conduct a social dialogue” which could keep with “the increasingly transnational nature of company organisation and the need to anticipate change and have strategies to deal with it”. Facilitating the anticipation and

¹⁰ On this issue, see also the contribution by D. Bé in Papadakis (2008).

¹¹ Hence an issue: should the optional framework be “wide-ranging” and cover these various levels of social dialogue, or should it be rather more “restricted” and only cover the company level?

¹² See the final report of February 2006 entitled *Transnational Collective Bargaining. Past, present and future*, as well as the French summary of the report presented by S. Laulom (2007).

¹³ *The role of transnational company agreements in the context of increasing international integration*, Commission Staff Working Document, SEC(2008)2155 of 2 July 2008, pp. 10-11.

management of change is thus high on the European agenda regarding the development of social dialogue and transnational negotiations in general.

1. THE DEVELOPMENT OF TRANSNATIONAL NEGOTIATIONS AT COMPANY LEVEL

A look back on the general history of transnational negotiation at company level since the 1960s reveals three major conclusions for the current understanding of the specific development and potential of European texts and agreements on anticipating and managing change.

- ✓ *First we see that its development results from of a twofold movement that involves bottom-up initiatives – through voluntary transnational negotiations experienced in a growing number of multinationals – and top-down proposals – especially through initiatives undertaken by the European Commission to recognise and encourage such initiatives and endow them with a firmer legal basis¹⁴.*
- ✓ *Second the social regulation of multinational companies' activities appears to have been best addressed on a European rather than on a worldwide scale. This makes the economic, social and legal European space a relevant and appropriate one to develop “transnational tools” that are more adequate to the transnational nature of MNCs than national ones and could be more efficient than the general principles developed at the global level.*
- ✓ *Finally it appears that restructuring has been a trigger for transnational negotiations at company level from the start.*

2. REGULATING MULTINATIONAL COMPANIES THROUGH TRANSNATIONAL AGREEMENTS: AN OVERVIEW OF CURRENT EUROPEAN DEVELOPMENTS

This second section presents an overview of the existing agreements on the basis of the censuses carried out by the European Commission (2.1.) and questions the current dynamics of transnational negotiations at company level in Europe (2.2.).

2.1. Company transnational texts and agreements: what is the record like for Europe?

The census drawn up by the European Commission's DG Employment and Social Affairs *at the end of 2005* listed *over 95 texts – signed in 65 companies*. 38 of these texts, generally grouped under the term “International framework agreements” (IFAs), dealt with fundamental workers' rights within the specific context of corporate social responsibility (Commission, 2006). Since the end of the 1990s, several international trade union federations have been actively promoting the set up and signature of IFAs¹⁵. Recording and collecting all the texts ensuing from company transnational negotiations thus represents a first challenge and the idea of setting up a “European

¹⁴ In this respect, this twofold movement is not dissimilar to that observed from the mid-1980s onwards in the case of the European Works Councils and that led to the adoption of the European Directive of 1994. In particular, this is how P. MARGINSON (2000) analysed the situation.

¹⁵ For a systematic analysis of the stakes involved in the negotiation of IFAs, see R.-C. Drouin (2006). See also the analysis by N. Hammer (2005) introducing the idea that IFAs are either “rights”-oriented or “bargaining”-oriented.

legal deposit” of such texts has been suggested. Public knowledge, analysis and discussion of the texts signed have indeed an important role to play in generalising these voluntary negotiation practices. In that perspective, in May and November 2006, DG Employment organised two study seminars on transnational agreements to discuss initial results and analyse trends¹⁶.

In its last *Staff Working Document* on this issue dated from July 2008¹⁷, the European Commission announces to have recorded **147 transnational texts in July 2007**, among which 59 are focused on respect for fundamental rights primarily outside Europe and can be described as ‘global’ or IFAs for most of them; 76 are focused on Europe and 12 are considered as ‘mixed’ being global in scope but addressing specific European issues or strongly involving the EWC. It is however rather difficult to draw a clear line between texts that are uniquely European in nature and those that have a global dimension. These 147 texts were **negotiated or adopted by some 89 companies**, which represent about 7.5 million employees.

The studies by the Commission make the following observations.

* First of all, **most of the texts have only recently been signed**, essentially since 2000, so although this is not an emerging phenomenon, it is definitely still at the development stage (see Box No. 1).

* Furthermore, their **names remain varied**: “framework agreement”, “overall agreement” or “European agreement”, “position statement”, “joint declaration”, “principles” or “guideline”, “charter” or “code of conduct” for example. Such terms do not necessarily explicitly highlight the negotiated nature of the text or indicate the main issue addressed in it.

* **The significant implication of European firms** in the conclusion of these texts is noticeable – particularly French (for European and mixed texts), German (for global texts) and Nordic firms. In 2005, 44 of the 65 firms concerned had their head office in the European Union. In 2007, the number raises to 75 out of 89 firms. There are also important texts set up by American companies specifically for their operations in Europe.

* European texts and global texts differ in their content. **Texts centred on the European space** are generally concerned with the set up of **social dialogue** or with substantive themes such as **equal opportunities, health and safety, training, management of competencies or restructuring**, whereas **texts with a worldwide dimension** mostly deal with **fundamental social rights**, with reference to the principles defined by the ILO. Some texts are best qualified as mixed¹⁸.

* The **metal sector** is particularly active in company transnational negotiations since it accounts both for a third of the companies concerned and for a third of the texts concluded. Regarding texts with an exclusive or dominant European focus, the metal sector is followed by the financial and the food and drink sector, and to a lesser extent, by companies in the energy,

¹⁶ Consult the relevant documents at: http://ec.europa.eu/employment_social/labour_law/documentation_fr.htm#5

¹⁷ See the Staff Working Document mentioned above, as well as the European Commission study *Mapping of transnational texts negotiated at corporate level* (Brussels, EMPL F2 EP/bp 2008).

¹⁸ For a more detailed presentation of the provisions in the texts on these various points, see: *Transnational texts negotiated at corporate level: facts and figures*, Study seminar «Transnational Agreements», DG Employment and Social Affairs, 17th May 2006 (drafted by É. Pichot, with the assistance of C. Vogt), as well as the more recent *Mapping of transnational texts negotiated at corporate level* (Brussels, EMPL F2 EP/bp 2008).

chemical, construction and transport sectors. Apart from the metal sector, global texts are found mostly in utilities and telecommunications, construction, packaging and paper and other services.

* Where the *employee representatives* are concerned, the wide *diversity of signatories* is striking: European Works Councils and world works councils, European and international trade union federations as well as national trade unions all participate in these transnational negotiations and sign the resulting texts; in about half the cases, they signed jointly.

- In the case of IFAs, the signatures of international trade union federations are strongly present. In the chemicals and energy sectors, their signature is often accompanied by those of national trade union organisations; in the metal sector, it is more often the signature of the European Works Councils that is found.

- Indeed, it seems that *the European Works Councils were implied on two thirds of the texts signed*, in particular, those centred explicitly on the European space. However, this “implication” means different things, depending, on the one hand, on whether the EWC intervened “alongside” international trade union federations, or merely European and/or national trade unions, “in their name”, or “alone”; and, on the other hand, whether the EWC is or is not a signatory to the text adopted.

- The study also notes that the joint implication of the EWCs and international or European federations is more frequent in the most recent texts, and also in the texts signed within French, German and American companies. On the other hand, where Scandinavian, British and southern European firms are concerned, there is generally the joint signature of the international federations and the national organisations.

* Finally, *most of the texts define procedures for implementing and following up* the proposals put forward, but *few of them present the terms for settling disputes* that might occur. Follow-up is either to be ensured by an advising committee, or to be entrusted to the European Works Council and generally comprises yearly evaluation of text application. We should also note that several of these texts target not just the parent company and its subsidiaries but also commercial partners, subcontractors or suppliers and all these parties are also expected to comply with the provisions set out in the text.

Box No. 1. Three transnational agreements for the Suez group in 2007

Early in July 2007, the Suez group acquired three transnational agreements signed by the management, French national trade union organisations, the European Trade Union Confederation, the European Managers' Confederation and the Instance européenne de dialogue (IED), the name of the Suez European Works Council, within which the negotiations were carried out from 2006 onwards.

The agreement concerning “commitment to promoting equality and diversity in the company” and that concerned with forward-looking management of jobs and skills (GPEC) were signed unanimously. The first covers all the employees in the group and is concerned with three specific themes – differences linked to gender, age and disabilities – discussed within three working groups set up at the European level. The agreement provides for an annual review of the situation within the group, the set up of approaches to promote diversity, as well as specific measures targeting young people, senior employees and disabled employees. The agreement is to be backed up by specific agreements within the subsidiaries and its application will be assessed, two years after its coming into force, by the IED's “Equality and Diversity” Committee.

The GPEC agreement applies to Europe as a whole. The aim of the agreement is to “anticipate the foreseeable quantitative and qualitative evolution of professions (growth/regression), whatever the reasons for these evolutions: be they linked to technology, markets or strategy”. To this end, the agreement provides for the set up of new authorities: a “European GPEC Committee” comprising a legal representative for each country with at least two *business units* whose duty it is to ensure transnational compliance with the agreement (two meetings per year); in parallel, a GPEC Committee to be set up in every country with at least two subsidiaries in order to ensure the missions defined at the European level are implemented, and also to serve as “observatories” noting “the evolution of jobs and competencies and effects on employment per region”. The appendix includes a “European framework agreement on mobility”.

The last **agreement** on “**association of the employees in results**” was not signed by the CGT. To be applied on a world scale, signed for a three-year period, it provides a system whereby employees are associated in company results, on the basis of group consolidated performance and not on the individual results of each company. The agreement introduces four share-out methods: uniform (principle approved in 2007 in the form of free allocation of shares), proportional to the presence in the company during the fiscal year, proportional to salaries or taking these criteria jointly into account. The IED bureau will be involved in following up the agreement.

2.2. The dynamics of company transnational negotiations in Europe

What are then the main dynamics at work in the current development of company transnational negotiations in Europe? Two elements should be mentioned, one that concerns the specific European characteristic of these negotiations, the other that is concerned with their sector-specific characteristics.

2.2.1. The European characteristics of company transnational agreements

* To examine the specifically European characteristics in the development of company transnational agreements, one should consider first *the propensity of the employer and trade union actors to negotiate such agreements*.

As stated above, European firms account for the majority of the companies having undertaken transnational negotiations. This observation is all the more impressive for the fact that it goes hand in hand with another parallel development: the growing number of multinationals having adopted unilateral codes of conduct. Several studies then underline the fact that ***where agreements signed in the framework of transnational negotiation mostly concern European companies, it is mainly North American companies that sign codes of conduct***, adopted in a unilateral and voluntary way by company managements (for comparative analyses of IFAs and codes of conduct, see T. Edwards, P. Marginson, P. Edwards, A. Ferner and O. Tregaskis, 2007; Schönmann et al., 2008).

Examining the role of European companies in the development of international framework agreements, I. DAUGAREILH (2006, p. 119) has identified various “factors that ‘predispose’ a company to transnational social dialogue”, among which “corporate culture, the level and quality of social dialogue within the group, the status of the group in the country of origin (public/private company with a tradition as a social showcase or laboratory), the personality of

the company manager (training or political or religious commitments) [or] the origin of the major investors” for instance.

Furthermore, beyond the way they are adopted that distinguishes them from negotiated texts, the actual contents of the codes of conduct transmit the image of a highly hierarchical company keeping the implication of employees and their representatives at arm’s length (Béthoux, Didry, Mias, 2007), although this implication is precisely considered by some as “an original, and specifically European, model of company governance” (Aglietta, Rebérioux, 2004, p. 91).

* This leads us to look at *the content of the texts ensuing from company transnational negotiation*. International framework agreements, for instance, are said to “transmit a conception of the global company and a vision of globalisation of their own in which European ‘traces’ may be spotted.” (Daugareilh, 2006, p. 121). This is what the contents of the transnational agreements show, through the way various problems are treated or the way certain realities are presented. Reference to ILO standards, and particularly to its *Declaration on Fundamental Labour Rights of 1998*¹⁹, remains the main reference. Yet **some of these rights are presented “in a European manner”**: for instance, issues relating to health and safety at work are presented in terms of prevention; the issue of equal opportunities and non-discrimination borrows from the European concept of “diversity”; that of training echoes the European formula of “life-long learning”. However, it is above all in the way restructuring is dealt with in these texts that there is an evident continuity with the elements that make up the European social model (cf. *infra*, part. 3). Finally, it should be noted, as I. DAUGAREILH points out, that these references remain largely implicit, revealed by the use of this or that particular term: they are not explicit as are the references to international law and to fundamental rights as defined by the ILO in particular.

* However, the fact that transnational negotiations at company-level appear mostly as **a European-driven process** – both in terms of companies undertaking such negotiations and in terms of the content of the texts resulting from them – launches an interesting discussion on the specificity of corporate governance in Europe. For some, it thus becomes necessary to think of a new way of defining the companies involved in such European social practices and developments – their involvement making them something more than a simply “multinational” (and all the more so “national”) company. In a previous study on EWCs, P. MARGINSON (2000) used the term “*Eurocompany*” in that perspective, while M.-A. MOREAU (2006b) recently formed the concept of “*company with a European identity*” referring not only to the development of EWCs, but also to that of CSR practices, transnational negotiations and European-wide restructuring processes.

2.2.2. The sectoral characteristics of company transnational agreements

It has also been pointed out that the propensity to negotiate transnational texts or agreements varies significantly from one sector to the next. Such initiatives are frequent in the metal, chemical or food sectors and more limited in sectors such as banking and insurance. Such agreements are also absent from the textiles and clothing sector, whereas a large number of textile companies and groups have adopted their own codes of conduct, within the framework of

¹⁹ For a presentation and analysis of this declaration, see I. Duplessis, 2004.

the corporate social responsibility approach²⁰. For Doug MILLER (2004), the difficulties encountered by the International Textile, Garment and Leather Workers' Federation in promoting such practices have several explanations: the particular configuration of the sector's production activities, certain employers' anti-union attitude, the unfavourable opinion of international framework agreements held by employers' organisations, or the fact that sector companies may have undertaken other voluntary regulation initiatives.

More generally, such sectoral differences must be examined in the light of both the *economic dynamics specific to each sector* (growth rate, production structure, degree of internationalisation, restructuring cycles, etc.), and the *social dynamics* at work therein, and, particularly, the type and state of the balance of power between the employers' parties and the union parties. Where the national or international balance of power is non-existent, weak, or largely unequal, it will be all the more difficult to establish and ensure the development of company transnational negotiation.

2. REGULATING MULTINATIONAL COMPANIES THROUGH TRANSNATIONAL AGREEMENTS: AN OVERVIEW OF CURRENT EUROPEAN DEVELOPMENTS

Three general conclusions can be drawn from this record of company transnational negotiation in Europe.

- ✓ *Firstly, the dynamism of these negotiations should be noted in that it raises two important issues: knowing the meaning and interest economic and social actors give to and see in this practice; defining how to consolidate the results obtained so far and encourage their further development.*
- ✓ *Secondly, the wide variety in type, form, content, status and range of the texts adopted questions the necessity and the means to achieve greater formalisation and transparency of the negotiations and their results, in order to endow them with clearer legal effects in particular.*
- ✓ *Thirdly, the specifically European developments of transnational negotiation at company level echo the debates on the transformations of corporate governance models by introducing the idea of a possible "European model" which would be currently under construction.*

3. NEGOTIATING RESTRUCTURING PROCESSES

How do these texts tackle the issue of restructuring?

For M.-A. MOREAU (2006a), transnational texts dealing with restructuring display four main objectives:

- drafting a procedural framework prior to any restructuring crisis;
- building up social dialogue in a State in which it is non-existent or difficult;
- guaranteeing employee training and/or placement rights;
- laying down arbitration rules for dealing with conflict in the MNC.

²⁰ The first international framework agreement between the ITGLWF and a multinational in the textile sector (Inditex SA, world No. 2 clothing chain) was signed on 4th October 2007 and aims to ensure decent conditions in the textile, clothing and leather working industry.

See: <http://www.etuf-tcl.org/index.php?s=3&rs=home&uid=294&lg=fr&pg=1>.

This first analysis shows how both general and more specific aims, long-term and short-term ones, are indeed mingled when negotiating transnational texts or agreements on restructuring issues. This is also what is underlined by studying more closely the facts (3.1.), the process (3.2.) and the consequences (3.3.) related to transnational negotiations on the anticipation and management of change.

3.1. The facts: transnational texts and agreements on restructuring

Even if increasing, the number of transnational texts dealing with restructuring issues is still relatively small in absolute terms – M. SCHMITT (2008) indicates that 37 transnational joint texts in a total of 22 companies are dealing with restructuring and/or anticipation on change, in a specific, general or brief manner. But from a relative point of view, the figures are much more striking: the establishment of partnerships to deal with restructuring, reorganisation and anticipative measures stands as the core aim for *European* transnational texts – 24 out of the 76 European texts being focused on such issues²¹. The development of such texts and agreements has thus drawn more and more attention.

➔ For instance, in their study of the role of “European Works Councils facing transnational restructuring”, M. CARLEY and M. HALL (2006) analyse those texts whose negotiation has involved the company EWC and put forward a typology taking into account two main criteria:

- the position given to restructuring in the negotiated text – considering it is exclusive, principal or secondary;
- the relation between the text and the restructuring situations which is observed in the company – depending on whether they are effective and underway, or merely possible at some time in the future.

Here again, we see how relevant the tension between general and specific, long-term and short-term perspectives, is to understand the content, scope and range of such texts.

At the time of their study, the authors listed 19 texts dealing with restructuring and involving the EWC and distinguished three main types among them.

1^o) The first type refers to **texts negotiated specifically in response to a European restructuring project** announced by the company or group management.

They listed 8 texts in this category (see table below), that have all been negotiated after 2000 and in just four groups. These “agreements” or “joint statements” introduce guarantees or accompanying measures for employees affected by the project. More specifically, their provisions refer to four main subjects: avoiding redundancies, transfer and redeployment guarantees, other accompanying measures (such as early retirement, voluntary separation or outplacement assistance) and procedural rules on employee representation and social dialogue (Schmitt, 2008, pp. 4-6). Local or national authorities are entrusted with the implementation of the project. The EWC is often responsible for follow-up and general monitoring.

²¹ Cf. *Mapping of transnational texts negotiated at corporate level* (Brussels, EMPL F2 EP/bp 2008): § 7.

Danone	France	Food and drink	Oct. 2001	Agreement	<i>Social standards applicable in restructuring of biscuits division in Europe</i>
Ford	USA	Motor manufacturing	Jan. 2000	Agreement	<i>Consequences of Ford's spin-off of Visteon for employees' status, employee representation and sourcing</i>
			2004	Framework agreement	<i>Restructuring (international operations synergies)</i>
General Motors	USA	Motor manufacturing	July 2000	Framework	<i>Consequences of alliance between GM and FIAT for employees' status and employee representation</i>
			Mar. 2001	Framework agreement	<i>Current restructuring initiatives</i>
			Oct. 2001	Framework agreement	<i>Restructuring of Opel division</i>
			Dec. 2004	Framework	<i>European restructuring initiatives</i>
Unilever	Netherlands –UK	Household goods	Oct. 2005	Joint statement	<i>Framework for responsible restructuring in transition to 'shared services'</i>

Source: adapted from M. Carley and M. Hall, 2006, p. 25

The *automotive sector*, affected by wide-ranging restructuring, is much in view at this point, through the agreements relating to restructuring and the safeguarding of employment signed as early as 2000 with Ford and General Motors (da Costa, Rehfeldt, 2006a). Among the factors in favour of the development of negotiating activities in this sector, I. DA COSTA and U. REHFELDT (2006b) stress the following elements: the considerable involvement of the EMF, the sustained activity of the EWCs in the two MNCs, the fact that for each case the parent company is outside Europe, and finally, the weight of the German workers in the European activities of the two groups, which ensures their representatives have pride of place in their respective EWCs.

Box No. 2. Industrial restructuring, a subject of transnational negotiations at General Motors Europe²²

On the occasion of the alliance between GM and Fiat, an initial agreement was signed in **May 2000** between GM management and its European Works Council (EWC) that had been set up in 1996. Negotiated together with IG Metall, acting in the name of the European Metalworkers' Federation (EMF), and in coordination with the Fiat EWC, the agreement sets out protection measures for GM employees transferred to GM-Fiat *joint-ventures*. Should the alliance fail, as it actually occurred in 2005, the agreement stipulates that employees shall go back to their former employer.

In **March 2001**, the EWC signed a second European agreement on industrial restructuring and this time, it covered all the group's employees in Europe. The impetus for this agreement came from the announcement, made by GM management, of a restructuring programme involving the loss of 10,000 jobs around the world, among which 6,000 in Europe. Setting aside the principle of local negotiations, that generally relies on pitting the various sites against each other, together with the EMF, the European council called a «European action day» against plant closures in January 2001, which was well attended. The agreement signed after this transnational action stipulated that the management would avoid laying people off and would, instead, negotiate alternative

²² Adapted from I. da COSTA et U. REHFELDT, 2006, 2007.

solutions with the employee representatives on the various sites (such as part-time work, voluntary severance or early retirement programmes).

The announcement of further job cuts led to the signing of a third agreement in **October 2001**, whereby the EWC stated its support to the general objectives in the plan set up by the management in return for the management's commitment to implement its changes without closing down any sites and without any compulsory redundancy.

The further restructuring plans announced for Europe in 2004 led the EMF to set up a «European union coordination group» that brought together the EMF secretariat, national trade union representatives and members of the EWC. Following a further European action day, a fourth agreement was signed in **December 2004** by the group management, the EMF, national trade union organisations and the EWC: the economic difficulties facing the manufacturer together with the need to cut costs and reduce its workforce were acknowledged, while the principles of the previous agreements were re-affirmed. Whereas the implementation of the restructuring plan affected the various sites, and had been negotiated at this level, the EWC steering/select committee was placed in charge of supervising and following up the agreement.

In June 2006, GM Europe announced the closure of a Portuguese plant. Despite the rise of coordinated actions in all European plants, and the group's promise to negotiate a new European agreement, the plant was shut down.

Two other specific agreements were negotiated by the company in 2008.

2°) The second type concerns **texts that define general rules in the form of guidelines to apply in cases of potential restructuring**, at the individual or collective level. M. Carley and M. Hall describe two sub-sets within this general category:

** General texts that are only concerned with restructuring*, as for the “positions” or “joint statements” by Danone (as early as 1997), Deutsche Bank or Diageo – the latter being appended to the revised EWC agreement.

Danone	France	Food and drink	May 1997	Joint understanding	<i>Changes in business activities affecting employment or working conditions</i>
Deutsche Bank	Germany	Banking	March 1999	Joint position	<i>New structures, job security and employability</i>
Diageo	UK	Food and drink	Oct. 2002	Statement (appended to revised EWC agreement)	<i>Best practice guidelines on redeployment, redundancy and outplacement</i>

Source: adapted from M. Carley and M. Hall, 2006, p. 25

** Texts that discuss restructuring at some length though not exclusively*, as is the case for the “principles” adopted by Axa or Dexia and the Total “social platform”.

Axa	France	Insurance	April 2005	Principles	<i>Management of the social dialogue in Europe</i>
Dexia	Belgium/France	Finance	Dec. 2002	Principles	<i>Principles of social management</i>
Total	France	Petro-chemicals and energy	Nov. 2004	Platform	<i>Employee relations (joint text signed by unions, but in context of EWC and giving EWC enhanced role)</i>

Source: adapted from M. Carley and M. Hall, 2006, p. 25

These texts, negotiated without any specific connection with a given restructuring project, define *general principles of social management of restructuring* on which management and workers' representatives agree. The questions covered range from preventive measures (training plans for instance) or measures to implement in case of actual restructuring (either concerning the employees or the territories) to information-consultation procedures to be fulfilled or to the role the European Works Council may be called on to play under such circumstances.

For instance, the transnational text on “conducting social dialogue within the Axa group” drafted at the end of 2004 enacted 9 principles to serve as a guide for the *local* management of restructuring: 2 relate to the information-consultation process itself, 3 to employment loss social management measures, 1 to the recognition of the “freedom, rights and functions” of workers' representatives, 1 to training and the final two, that are more general, to the non-discrimination principle and to health and safety issues.

3°) The third type concerns texts that refer to restructuring, although this is not their main focus.

This is the case for the text signed with Danone as early as 1992, that was concerned with training issues and that discussed how training plans had to be adapted should restructuring occur.

Danone	France	Food and drink	April 1992	Framework agreement	<i>Skills training</i>
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Source: adapted from M. Carley and M. Hall, 2006, p. 25

It is above all the case of *international framework agreements that focus on corporate social responsibility*²³. These texts that have an international rather than merely European dimension are fairly recent. The Suez international social charter dates from 1998, but the Renault, PSA and EADS texts were all signed between 2004 and 2006. Their negotiation and signature involved other actors such as international trade union federations, and whereas their contents review fundamental rights as defined by the ILO, the cases discussed also include provisions relating to restructuring that either deal with maintaining jobs and protection of employment or the limiting of job loss and its effects. Furthermore, all texts stress the role of trade union and worker representatives in information and consultation procedures in the context of restructuring.

EADS	Netherlands	Aerospace	June 2005	International framework agreement	<i>Minimum social standards</i>
PSA Peugeot Citroën	France	Motor manufacturing	March 2006	Global framework agreement	<i>Social responsibility</i>
Renault	France	Motor manufacturing	Oct. 2004	Declaration	<i>Employees' fundamental rights</i>
Suez Lyonnaise des Eaux	France	Utilities and communication	Oct. 1998	International social charter	<i>Fundamental rights and principles for human resources policy</i>

Source: adapted from M. Carley and M. Hall, 2006, p. 25

²³ For further information on possible overlap among “restructuring, corporate social responsibility and relocation”, see the text by J. Fayolle (2006).

Other agreements of this type have been signed since 2005 (at Arcelor, EDF, Rhodia and France Télécom), reflecting the growing importance of this approach.

In fact in their study on IFAs and restructuring, P. WILKE and K. SCHÜTZE (2008) note that around 20 % of the 59 IFAs they analysed include “a direct reference to restructuring situations”. These texts were negotiated in a broad variety of industrial sectors, but mostly by French companies, followed by Benelux and non-European ones (USA, New Zealand, Russia). Looking at the content of these texts, they distinguish “two main categories of IFAs including restructuring provisions” depending on the importance of the commitments, tasks and measures they define.

* A first category refers to transnational agreements including “*a proactive and sophisticated approach of addressing restructuring*” related to concrete measures and programmes for improving the employability of employees. The authors mention two main factors to explain the adoption of such texts (Wilke, Schütze, 2008, p. 17): on the one hand, the fact that “restructuring is high on the agenda and European focus” of these companies – the IFAs, though global in scope, being directly linked to and determined by comprehensive restructuring programmes; on the other hand, the influence of the French shaped corporate culture and strong trade union based social dialogue – see the IFAs signed at Danone, EDF²⁴, France Télécom, Renault and EADS.

* By contrast a second category refers to IFAs including merely *general reference to restructuring and corporate change and measures to deal with them*. These texts thus “lack precise commitments, tasks or measures” – see the IFAs signed at Arcelor, Chiquita, Fonterra, Lukoil, PSA Peugeot Citroën and Rhodia.

➔ M. SCHMITT (2008) presents a typology of transnational joint texts on restructuring and change which is close to that of M. Carley and M. Hall. However it is distinguished from the latter in that it identifies a fourth – and more recent – type of texts which consists of ***agreements specifically or mainly dealing with the anticipation of change***, and more precisely to *forward-looking management of jobs and skills*. Their aim is thus to establish a long-term social policy to ensure the future of employees. The agreements signed in July 2007 at Suez (see Box No 1.) and at Schneider Electric are characteristic of this innovative type of agreements in which the role of social dialogue in anticipating change – especially through the EWC activity – is particularly emphasised.

²⁴ The 2005 EDF agreement for instance, signed by four international trade union federations, broaches the issue of “anticipation and social accompaniment of restructuring” basing its recommendations on principles presented to the European Works Council in May 2003. Anticipation is understood here as taking into consideration the social consequences of the strategic decisions planned, as well as developing social dialogue with the unions and workers’ representatives and adopting a responsible attitude towards the social and economic development of the regions which might be affected by restructuring plans.

3.2. The process: towards a European coordinated response to restructuring initiatives?

Beyond the facts presented above, three elements should be mentioned regarding the process that leads to the negotiation of transnational texts on restructuring. The first relates to the way transnational negotiations are integrated into unions' strategies and responses to restructuring processes; the second refers to the role of EWCs in such practices; the third puts the stress on the dynamics of transnational negotiation that develop over time in some companies.

These three elements thus raise the question of how transnational texts and agreements are progressively becoming new tools in the hands of unions and workers' representatives to define European coordinated responses to transnational restructuring initiatives and processes.

3.2.1. The union claim for transnational negotiation on restructuring at company level

Even if it did not lead to the adoption of a transnational agreement, the case of the InBev group and its 2005-2006 European restructuring process is interesting in that it shows clearly how the claim for transnational negotiations on restructuring is being integrated into unions' strategies and combined to the collective action and protests they coordinate on a transnational level.

Box No. 3. Requesting a transnational agreement in case of restructuring: the InBev example

Following the merger between the Belgian brewer Interbrew and the Brazilian brewer Ambev in 2004, the new InBev group announced late in 2005 and early in 2006 restructuring plans to be conducted first in Belgium and in France, and later on in other European countries. As explained by A. MARTIN (2007), these announcements led to European-wide reactions on the part of various actors: the International Union of Food and Allied Workers' Association (IUF), the European industry federation, the group EWC, as well as national and local unions and workers. Apart from organising protest action days and asking for more information on the restructuring plans, *the "European trade union front" requested to negotiate with management a framework agreement on minimum standards for restructuring in Europe.*

A. MARTIN recalls that "the idea, or concept, originated in the EWC" and that "the link was then made through the EWC coordinator, who transmitted the initiative to the EFFAT secretariat, in order to put the concept into practice. The EFFAT secretariat therefore elaborated a first draft for this framework" that was presented to all its affiliates involved in InBev, and amended consequently. The proposed agreement defined principles to be observed in restructuring situations on issues such as redundancies, early retirement, internal moves, outsourcing or entitlement to compensation. The request for negotiation was then sent to the group management, but received no positive answer.

This example, among others, illustrates how union actors see in transnational texts or agreements adopted or negotiated at company level a way not only to assert general principles but also to secure precise guarantees when dealing with restructuring processes on a transnational scale. Furthermore it shows how *requesting such an agreement is not an isolated claim but is necessarily combined to other means of actions*, both at the local and European levels. Finally it indicates that the EWC may play a central role in the development of such practices.

3.2.2. The role of EWCs in negotiating transnational texts and agreements on restructuring at company level

Analysing the specific cases of the Ford and GM transnational agreements on restructuring previously mentioned, I. DA COSTA and U. REHFELDT underline how experienced EWCs “together with union organizations at national and transnational levels, were able (a) to put forward an innovative and important strategy to go beyond national divisions [...]; and (b) to elaborate a coordinated European-level response to management restructuring strategies – sharing the burden”, finally leading to “the signing of several agreements at European level aimed at preventing plant closures and forced redundancies” (in Papadakis, 2008, p. 58). It is important to stress, following the authors, that such results were obtained first by “*experienced*” EWCs, and secondly by *EWCs acting alongside union actors*. These two remarks are indeed of the greatest importance considering that the place and role European Works Councils can adopt and play in the development of transnational negotiation is still the subject of intense debate.

The development of company transnational negotiation represents for some a necessary stage in the development of EWCs’ activities. Others, adopting the reverse position, see the EWC as a means for furthering the “cause” of pan-European collective bargaining, in view of the new union coordination they enable²⁵. Hence the following dialectic: born of the difficulties encountered in the 1970s in promoting collective bargaining at the global level of multinational groups, the European Works Councils, now largely “institutionalised”, are in a position to become in their own turn both the locus for and the actors in this transnational negotiation process.

Yet the issue remains the subject of debate – even though it seems to us that it is less controversial today than it used to be in the past, probably because of the *de facto* growing involvement of EWCs in the process, especially where restructuring issues are dealt with²⁶. Interrogations concern ***on the one hand the capacities and on the other hand the legitimacy of the European Works Council in taking part into transnational negotiations at company level.***

* The ‘*capacity argument*’ calls on the idea that it is first necessary to boost the full exercise of the information and consultation rights of the EWCs before setting them on the path to negotiation. Numerous cases, *particularly in restructuring situations*, have indicated that despite the progress achieved, employee information and consultation rights within EWCs have not been fully ensured and observed, for a number of reasons – management by-passing the EWC, poor communication or coordination between employee representatives, difficulty in linking up the EWC and national work councils, etc.

However, EWCs, even though they have been set up to deal with all aspects of the company regular activity, are expected also to deal directly with restructuring and related issues. Such expectations have grown higher and higher in the recent years, not only from the part of workers, but also from that of European public actors, as the on-going debates on the revision of the 1994

²⁵ “In view of the fact that they are standardized and institutionalized networks of employees across borders, the EWCs represent a new potential coordination mechanism and could operate in transnational firms as a Trojan horse for pan-European collective bargaining” (Boeri *et al.*, 2001, pp. 82-83).

²⁶ See the analysis of the signatories of transnational texts specifically or mainly addressing restructuring and/or anticipation of change in M. Schmitt (2008, pp. 12-13): the author indicates that the EWC signed the text in 19 out of 27 cases. Even if not a signatory, the EWC was however clearly involved in the negotiation process or its members were part of the signing union delegation.

Directive or the 2005 European social partners' joint consultation on restructuring and EWCs illustrate (Béthoux, 2007). In that perspective the growing involvement of EWCs in transnational negotiations on restructuring and anticipation of change is also an answer to these public orientations.

* Furthermore, in countries that operate according to the “dual model” of worker representation, such as Germany or France, defending the union prerogative for negotiation is the argument most frequently put forward by those who disagree with EWCs entering transnational negotiations. This argument is based on two main elements: on the one hand, the fact that the EWC, as an information and consultation body, is not entitled to negotiate and does not have a mandate for it; on the other hand, the fact that since its composition depends on national laws and practices, the EWC does not only comprise union representatives but also representatives who are not unionised.

However, in France, Germany, Italy and the UK, “the multiplication of representation agents” and the “tangling of functions” that have been observed over the last few years are upsetting the traditional distinction between single and double representation channels and “indicate that company collective bargaining is no longer an activity strictly reserved for unions” (Laulom, 2005, pp. 284-287)²⁷. *This is all the more noticeable for the fact that*, as A. JOBERT (2008) points out in relation to the French case, *negotiation has to deal with the issue of anticipating and managing restructuring within the company* (see below on the French “*accords de méthode*”). Furthermore, the terms whereby EWCs participate in the transnational negotiation process actually cover a wide diversity of practices: they can initiate the negotiation²⁸, contribute information, participate fully in it, taking an active part through to the signing of the agreement or being entrusted with overseeing its implementation (with material and financial means that should be further questioned and investigated).

Another argument in favour of EWCs' involvement in company transnational negotiation lies in the lack of symmetry between the negotiating partners when they involve only collective and sectoral actors on the side of the employee representatives (through the involvement of the international, European and national union federations); and individual actors on the side of the company management. On the employer side, because institutional employers – international, European or national employer organisations – remain in part hostile to the development of company transnational agreements²⁹, company management teams actually undertake such negotiations on an individual, and not a collective, basis³⁰. A. SOBCZAK (2006) has then noted that negotiating with the European Works Council makes it possible to avoid this lack of symmetry: as he sees it, ***the joint intervention of union federations and European (or World) Works Councils is the best means for “balancing” the negotiating parties.***

Finally, the example of the negotiations that give rise to the EWCs, as defined by the 1994 Directive, fuels debate on the way company transnational negotiations could possibly also rest on

²⁷ Even though “questioning the union monopoly takes very different forms in the various countries” (*ibid.*).

²⁸ Within the framework of what B. TEYSSIÉ calls a «*pre-negotiation of transnational agreements*», «*to be classified along with the resolutions that this type of body [the EWC] is likely to vote*» (Teyssié, 2005, p. 986).

²⁹ See for instance the positions expressed by the International Organisation of Employers (IOE, 2004).

³⁰ As R.-C. Drouin puts it: “*This lack of symmetry regarding actor configuration has its origin in the reticent attitude of existing employers' organisations to transnational collective bargaining and by the fact that in some sectors there is no organisation to link up the companies*” (2006, p. 713). A similar situation was observed in the case of the first voluntary European Works Councils at the end of the 1980s and early 1990s.

the set up of a *special transnational negotiating body* acting as a specific negotiating agent. It also questions the possibility of setting up a new function for the purpose, through the position of *European union delegate*, that would represent the company employees in these negotiations³¹.

3.2.3. Transnational negotiations on restructuring at company level: a spill-over effect?

The above mentioned typologies of transnational texts and agreements on restructuring are most helpful to give an idea of the variety of these texts in terms of aim and content, but they do not really underline the specific dynamics of negotiation that develop over time in some given companies. In that perspective the negotiation of a transnational agreement cannot be considered as an isolated fact but should rather be seen as an element which is part of a wider and longer process. One could speak of a kind of “*spill-over effect*” in so far as the negotiation of a transnational agreement is followed by that of another one, which in turn leads to a third negotiation and so on. This expresses also a kind of *learning-by-doing process*, which contributes to the progressive institutionalisation of transnational collective bargaining.

This is particularly the case in the automotive sector with the series of agreements signed at Ford, GM or more recently at Daimler-Chrysler (in May 2006 on the content and practical arrangements of information and consultation, in September 2006 on measures to adjust staff levels, in July 2007 on the regulation of the realignment of the sales organization after separating with Chrysler.). In some cases, as for the 1997 and 2001 Danone agreements for instance, a first *general* agreement (namely on measures taken in the event of changes in business activities affecting employment or working conditions) serves as the basis for a second *specific* agreement (here on social standards applicable to all plants affected by the industrial restructuring plan for biscuit operations in Europe) (Gallin, in Papadakis, 2008, p. 28).

Yet the multiplication of such agreements in a company can be seen as a double-edged sword in that it indicates “both the strength of trade union strategy coordinated at the European level but also the fragility of the agreements signed” (da Costa, Rehfeldt, 2006b).

Box No. 4. Negotiating restructuring processes in France: the recent development of a new type of company agreements (“accords de méthode”)³²

In France, the recent development of a new type of company agreements on restructuring – called “*accords de méthode*” – echoes several of the previous conclusions. The negotiation of an “*accord de méthode*” (which has been introduced by law in 2003 and generalised in 2005) appears to be an important step in the restructuring process itself and is not an isolated practice. On the contrary it is closely articulated to other negotiation practices within the company, to information and consultation procedures, as well as to collective action in some cases. This negotiation thus contributes to the above-mentioned blurring of the boundary between the competences of trade unions on the one hand and that of elected worker representatives on the other. The content of these new agreements is both procedural (in particular regarding the

³¹ In the case of the French Sanofi-Aventis group, management and the EWC have recently attempted to negotiate a European agreement on the set up a specific representative body – called the *European Negotiating Body (Instance européenne de négociation)* – that would be dedicated to conducting transnational negotiation within the group. The idea was to escape the difficulties encountered by the EWC itself when it comes to taking part in transnational negotiation, as well as to set up a stable and long-lasting negotiating body. The project has failed so far, especially because of the European federation’s opposition to it.

³² On this development, see C. Didry and A. Jobert (2008).

timing and means of the restructuring plan) and substantive (including anticipation and economic diagnosis, social accompanying measures to avoid redundancies, to secure internal or external redeployment, to assist workers for outplacement, etc.) However most of these agreements are reactive more than proactive and are negotiated while the restructuring plan has already been decided and is underway.

In spite of these similarities between transnational agreements and the French “*accords de méthode*” negotiated at national level, it should be noted that the negotiation of the latter is very rarely linked, in a way or another, to the negotiation of a transnational company agreement, even in companies or groups in which the restructuring process is European or global in scope.

3.3. The consequences: from the implementation of existing agreements to the negotiation of new ones thanks to industry-wide initiatives

Adopting or signing a transnational text or agreement on restructuring or change – how great an achievement it may be – is not an end in itself. It is thus important to question the consequences of the development of transnational negotiation at company level by looking first at the issues raised by their implementation and secondly at the way industry federations progressively take this development into consideration to redefine their own company policy on restructuring.

3.3.1. Putting transnational texts and agreements into practice

As A. SOBCZAK (2006) observed, the way to guarantee the legal impact of transnational agreements is either to link them to legally binding standards (as with subcontracting contracts), or to **insert them into national collective agreements or into company agreements** in each of the subsidiaries of the group in question. The interest lies in the ***legal force thereby endowed on the contents of the transnational agreement***, its limitations in the ***potentially variable nature of this legal force, depending on the various national legislations*** and leading to an unevenness in the effects of the agreement. For some, the diversity of these national negotiations tends, in the end, to undermine the value and role of company transnational negotiation. For others, on the contrary, the main advantage of the latter lies precisely in the fact that it makes it possible to “stimulate” national negotiations and encourage their development. In that perspective, the company transnational agreement, signed at the European (or global) level, plays the role of a **framework agreement** that national negotiations relay and embody.

In view of these national transpositions, the choice of the signatories for a transnational agreement can be decisive. The IFA signed at EDF in 2005 is an example of an original solution with, on one side, the signature of the parent-company management, and on the other side, the signature of all the national trade unions of the countries where EDF subsidiaries have been established. The hypothesis is that “such a choice could facilitate the transposition of the framework agreement in the various countries where the group is present” by relying on “a principle of subsidiarity endowing the framework agreement with a role as a catalyst for decentralised negotiations in the various countries and subsidiaries of the group, while also defining a number of fundamental rights that are applicable throughout and that are guaranteed by the parent company” (Sobczak, 2006, p. 102).

Yet putting transnational texts and agreements into practice should be understood in a comprehensive way: *from dissemination and communication* on the adopted agreement – which are seen as a crucial element for most signatories considering the agreement will remain ineffective unless local and national management, workers and representatives are well aware of its existence, content and potential and do collectively “own” it³³ – *to dispute settlement provisions*. M. SCHMITT notes that specific implementation procedures are less frequently mentioned in global agreements than in European agreements addressing restructuring or anticipation (2008, p. 17). The latter then indicate the actors responsible for implementation and follow-up (from the local to the transnational level) and sometimes create *ad-hoc* structures or regular meetings devoted to the guidance and control of the agreement’s implementation.

Finally the *time constraint* – whether the agreement pursues short-term or long-term goals – obviously influences the way it can be implemented and followed-up.

3.3.2. The EMF initiatives: negotiating transnational framework agreements... in response to transnational restructuring

Taking the increasing development of transnational negotiation into account, as well as the lack of legal basis it rests on, *some European industry federations have undertaken to define their own framework for company transnational negotiation to be applied in their particular sector*. There are several objectives involved: the unions wish to make the practices more formal and thereby encourage them, but they also wish to ensure the presence of the industry-wide trade union actors within the negotiations.

The European Metalworkers’ Federation (EMF) gives a telling example of such an initiative. Indeed it has not only defined its own general mandate in order to represent affiliated organisations in a negotiation carried out at the European level – at the sector, sub-sector and company levels³⁴ – but also explained, in its 2006 specific *Handbook*, “how to deal with transnational company restructuring”. Dealing with such situations thus includes the attempt “to negotiate a European framework agreement” with the aim to secure jobs prior to any national negotiations (EMF, 2006, p. 15). Interestingly enough, I. DA COSTA and U. REHFELDT note that “the GM experience [in negotiating on restructuring at transnational level] served as a model for the EMF’s European company policy on restructuring and framework agreements” – which might in turn favour the development of such agreements in other companies.

Hence we see that the dynamics which support the development of transnational texts and agreements adopted or negotiated at company level do not rest only on company-specific factors but that the company and industry dimensions are closely interrelated into this phenomenon.

³³ On this idea of collective ownership of transnational agreements, texts or codes, see Schönmann *et al.*, pp. 59-62 and p. 85.

³⁴ As stated in the *2007-2011 EMF Work Programme*: “For the EMF, extending good practices within multinationals aiming to improve and harmonise working conditions involves developing European company framework agreements. The EMF shall encourage the negotiation of European company framework agreements by relying on the mandate procedure specific to the EMF. There shall be regular monitoring and evaluation of the use made of the said mandate. It is important to ensure the EMF coordinators and the EWC Secretaries are fully aware of the importance of these European framework agreements.”

3. NEGOTIATING RESTRUCTURING PROCESSES

Four main conclusions can be drawn from this review of transnational texts and agreements dealing with restructuring processes or anticipation and management of change.

- ✓ Firstly, the diversity of texts that is currently observed reveals that transnational texts and agreements on restructuring are used in very different ways, thus answering different needs that are situated along a continuum that goes from general principles to specific provisions, from long-term aims to short-term goals, from proactive positions to reactive ones. However these options are not necessarily exclusive and some companies experience transnational negotiations of these various types.
- ✓ Secondly, the role of EWCs in the development of such texts and agreements appears to be determinant. Yet several observers underline that this is the case only with well-functioning and experienced EWCs. This reveals the complex link between EWCs and restructuring – the former being potentially destabilised on the one hand but consolidated or legitimised on the other in case of restructuring.
- ✓ Thirdly, there seems to be significant influence of the national laws and practices of the company's country of origin (or country with the majority of the workforce) as the case of French companies best illustrate.
- ✓ Finally, in a few cases, negotiating on restructuring issues at transnational level has become part of the continuous restructuring process the company undergoes, contributing to the institutionalisation of such practices (idea of a "routine").

CONCLUSION

The various issues raised by the European development of transnational agreements and texts at company level lead to the conclusion that the objective of the "transnational" standards thereby set up "is not so much to harmonise national systems as to regulate aspects that escape the jurisdiction of national systems because of their transnational dimension" (Laulom, 2007, p. 623). This appears to be particularly relevant for texts and agreements dealing with transnational restructuring or anticipation and management of change.

In that perspective, the adoption of such a text or agreement is also a way to officially recognise the *transnational* nature and dimension of the restructuring process that is dealt with. This is in itself an interesting result considering that defining what is a "transnational" restructuring process is not an easy task: it often raises tension between management, workers and their representatives who disagree on whether the transnational nature of the plan refers to the decision leading to restructuring and/or to its effects (Moreau, 2006c).

Furthermore, it thus appears that company transnational negotiation cannot be considered as an extra level of negotiation that overlays existing national negotiations: it rather fits into and uses the established mechanisms, procedures and practices currently operating in European industrial relations systems. At the same time, the diversity of the national negotiation systems in Europe makes it difficult to define company transnational negotiation procedures that could either "combine" elements taken from the various systems or "borrow" explicitly from one or the other – and especially when it comes to restructuring. Therefore the further development of company transnational negotiation demands the definition of original principles and brand new rules that can only be partially inspired by what exists at national level.

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