Ten years ago, in an article with my colleague Keith Sisson, we posed the question as to whether European Works Councils might open the door to European-level collective bargaining? I am grateful to the organisers of this colloquium for providing an opportunity to return to the issue.

Recent years have seen a relatively small, but growing, number of multinational companies (MNCs) negotiating agreements or joint texts with representatives of their workforce at transnational level. There is both a European and a global dimension to this process: some of these texts cover the European operations of companies, whilst others extend to cover their worldwide activities. In view of the central theme of the colloquium, I shall primarily focus on developments amongst European Works Councils (EWCs).

My remarks will be structured as follows:

- numbers of agreements concluded by EWCs and global trade union federations with MNCs, and overlap between the European and global dimensions
- topics addressed
- the regulatory nature of the agreements
- motives of the parties
- employee-side negotiating agent and mandate

Finally, I will touch on two broader questions:

- the conclusion of joint texts is the most visible aspect of transnational negotiating activity in enterprises; important too is the use of transnational structures for ‘context setting’ in local negotiations
- the extent of any complementarity with the sector social dialogue

**Numbers of agreements**

*European-level.* European Works Councils are structures established for the purposes of transnational employee information and consultation. Reflecting this, very few of the agreements establishing EWCs anticipate any negotiating role for these bodies. A review in 2000 of the provisions of some 450 agreements found that just 2% of agreements concluded under Article 13, and 5% of those concluded under Article 6, specified the possibility of a negotiating role for the EWC (Carley and Marginson, 2000).

Yet, in practice a small but growing number of EWCs have engaged in negotiations resulting in the adoption of a joint text or agreement. A 2001 report for the European Foundation indentified
seventeen joint texts concluded by, or within the context of, EWCs in nine MNCs (Carley, 2001). By early 2005, these figures had increased to 46 such joint texts concluded in 32 companies (EWCB, 2005). New agreements during the course of 2005 have brought the total up to 53 joint texts in 32 companies.

The practice of negotiating and concluded such agreements is by no means limited to those few EWCs with express provisions to do so. Indeed, a 2003-04 survey of 39 multinational companies undertaken by ORC management consultants, found that fourteen companies had concluded some kind of joint text through their EWC. In none of these 14 companies did the EWC agreement anticipate any negotiating role (ORC, 2004).

The practice of negotiation does, however, appear to be concentrated amongst a small group of companies: 31 of 53 joint texts are accounted for by ten MNCs.

Global level. In addition, the recent period has seen the emergence of a growing number of global agreements. A few of these are agreements between world works councils and companies, such as those concluded at DaimlerChrysler, SKF and VW.

Numerically more important are ‘international framework agreements’ (IFAs) between international trade union federations and multinational companies addressing basic labour rights and core labour standards, concluded in the context of debates and actions on CSR (corporate social responsibility). Estimates suggest that IFAs have been concluded with around 50 multinational companies (Hammer, 2005). According to a current survey we are undertaking of multinationals with operations in the UK, in four out of every five cases the UK operations are covered by a company CSR policy. This is reported to have been negotiated with an international trade union organisation, or an EWC, in 20 per cent of cases (Edwards et al., 2006).

In one-third of these cases, ‘global’ and ‘European’ agreements coincide – EWCs are co-signatories with international trade union federations to 16 agreements. In a further three cases, the EWC is the sole signatory (Ford, Lyonnaise des Eaux, Vivendi). Elsewhere, as in Arcelor’s 2005 global agreement, the signatories are international trade union federations (IMF and EMF), but the EWC has a specified role in the implementation and monitoring of the agreement’s provisions.

Topics addressed

The topics addressed by agreements can be grouped under four broad headings:

- corporate social responsibility, covering basic labour rights and core labour standards. An important aspect of these agreements is that their application reaches up the supply chain, aimed at ensuring adherence to core labour standards by supplier companies. Indeed, one recent article on IFAs regards this as an essential feature of any such agreement (Hammer, 2005). French-German-based MNCs seem well represented in this group.

- elaboration of key principles which underpin company employment and personnel policies [e.g. Dexia and Total’s platform agreement]

- business restructuring and its effects (the central theme of 12 of the 53), in which two sub-types might be identified:
  - statements of general principle as to how restructurings should be handled [e.g. Axa’s 2005 agreement; Deutsche Bank’s 1998 joint text]
- framework agreements relating to the handling of specific restructuring decisions [e.g. GME (four occasions), Ford (two occasions) and Danone (biscuits, 2001)]

- specific aspects of company policy, of which the most common are health and safety and data protection / privacy / e-communication [e.g. series of agreements at Danone]

Inevitably, some agreements cover more than one of these headings – or are ‘hybrid’ in nature. In particular, several agreements addressing core labour standards also elaborate key principles underpinning company employment and personnel policies [e.g. Air France, Lyonnaise des Eaux, Vivendi].

**Regulatory nature of agreements**

Joint texts and agreements vary in the ‘softness’ or ‘hardness’ of the voluntary regulation which they introduce – in other words, the extent to which they are intended to be binding on the signatory parties and on management and employee representatives within the different operations of the company across Europe. As with the sector-social dialogue, the ‘title’ or nomenclature of a text is not a good guide as to its regulatory nature. Some so-called ‘agreements’ are little different in their regulatory nature to other texts titled ‘joint declarations’ or ‘charters’.

Examining the provisions of agreements, however, it is possible to distinguish four main types of regulation according to the extent to which agreements or texts are intended to be binding on the national and local operations of the company (Carley, 2001):

- elaboration of general principles for company policy which do not necessarily imply any specific actions [e.g. Suez and Vivendi charters]

- agreements which commit the signatory parties to specific actions [e.g ENI – establishment of health and safety observatory, Deutsche Bank]

- voluntary frameworks inciting actions by management and employee representatives at lower levels in the organisation, but which they are not required to comply with [e.g. Danone (training), Philip Morris (smoking guidelines)]

- obligatory frameworks which require actions by the parties at lower levels within the company, but where national and local-level discretion in implementation can vary [e.g. GME and Ford restructuring framework agreements]

Amongst agreements dealing with particular topics, there are variations in the nature of the regulation provided. For example,

- the provisions of some agreements on core labour standards are advisory, whilst others are mandatory. The same goes for their application up the supply chain (Hammer, 2005).

- an important factor lying behind this difference is the nature and extent of any monitoring of implementation provided for

- agreements mapping out general principles for the handling of restructuring also vary as to whether they are advisory (Deutsche) or mandatory (Axa), whereas those agreements addressing specific restructuring processes tend to be mandatory

**Motives of the parties**
Discerning the motives of the parties for concluding agreements is difficult given that most of the available evidence rests on analysis of their contents. However, findings from interviews conducted with management and trade union actors involved in the negotiations of specific texts (European Works Councils Bulletin, various issues; Arrowsmith and Marginson, 2006), suggests three main sources of motivation on the part of either management or employee (most often trade union) representatives:

- **legitimation of pan-European, company policies on employment and personnel matters.** In companies which are looking to adopt common, cross-border policies or policy guidelines / frameworks across their European operations, management may see advantages in reaching an agreed statement through the EWC in terms of the additional legitimacy for a policy that employee representatives’ consent or approval can bring. [e.g. Danone]

- **minimising the transactions costs potentially entailed in a series of parallel local negotiations.** The conclusion of a common European frame in negotiation with employee representatives at the EWC can avoid the transactions costs, in terms of management time and resources, involved in a series of local negotiations each searching for a solution to a common problem. This is particularly relevant on ‘new’ issues which are not currently the subject of local agreements, such as privacy and e-communication. Considerations of transactions costs are also relevant to cross-border restructurings, where securing agreement on a set of principles for handling a restructuring at European level can expedite the series of local negotiations that will nonetheless have to take place.

- **employee-side capacity to coordinate local negotiations, and if necessary forms of action, and thereby pressurise management.** Such capacity rests on a strong cross-border network, effectively resourced by relevant national trade unions working in cooperation with the relevant European industry federation [e.g. GME].

In practice, two or even all three of these motivations may come into play in the decision to negotiate any given agreement.

**Employee-side negotiating agent and mandate**

**Negotiating agent.** A significant difference between international framework agreements on core labour standards which cover the global operations of MNCs and European-level joint texts concluded through EWCs is the employee-side negotiating agent. In the case of IFAs, it is in almost all cases an international trade union federation (usually global and in some cases regional as well) (European Works Councils Bulletin, various issues).

In the case of European-level joint texts, and the handful concluded by world works councils, the negotiating agent is the employee-side of EWCs, an elected body of all employees, and not a trade union organisation. In practice, the distinction is not always as clear cut as this. As noted earlier, EWCs are also a signatory to around one-third of IFAs. European industry federations have also played a role in the negotiation of some, but by no means a majority of, European-level joint texts. So too have national trade unions in some cases, either from the country in which a company is headquartered and/or from those countries where a company has its major operations.

The Commission’s proposal for a measure to give legal underpinning to transnational collective agreements, where the parties so wish, has brought the issue to the fore. Trade union concerns,
stronger in some parts of Europe than others, over the emerging negotiating role of EWCs are underlined by a resolution adopted by ETUC/CES in December 2005, which called for the right to sign transnational agreements to be confined to trade unions. In ETUC/CES’s view EWCs ‘are not appropriate bodies for negotiations given the current state of legislation’ (EIRO, 2006).

Employee-side mandate. A second issue relating to the employee-side in any negotiations undertaken through EWCs is that of securing a mandate to negotiate from each of the relevant national works council and union-based representative structures present within a company’s European operations. This issue arises most sharply where the intention is to conclude an obligatory agreement or framework which requires particular actions at national and local levels – as in the case of European-level negotiations in the context of specific restructuring processes. How the mandating issue has been addressed in such circumstances can be illustrated by two examples:

- the negotiation of four European-level framework agreements addressing the handling of specific restructurings by GM’s European Employee Forum has been on the basis of each of the national works council or trade union structures involved agreeing to give an issue-limited negotiating mandate to the EWC. The implicit principle is one of unanimity (Herber and Schäfer-Klug, 2002).

- at General Electric Advanced Materials (formerly GE Plastics), management and EWC employee representatives have agreed a framework for negotiating European-level agreements. Essentially this involves EWC representatives seeking a negotiating mandate from their relevant constituencies at national level – trade union structures, works councils and other structures. Local works councils and national trade unions which do not wish to give the mandate can then ‘opt out’ of the negotiation, and from being covered by the subsequent agreement (EWCB, 2005).

Context setting for local negotiations

Joint texts and agreements concluded by EWCs have been described as the ‘tip of an iceberg of negotiating activity in EWCs’ (EWCB, 2005: 7). Without trying to guess at the likely dimensions beneath the surface of this iceberg, there is evidence – particularly in sectors where the activities of MNCs are highly integrated across borders, and where trade unions are well organised – of EWCs being mobilised in what has been termed ‘arm’s length bargaining’ across borders (Marginson and Sisson, 1998). The ‘arm’s length’ idea is that the two sides continue to bargain at national and local levels, but that in any given company these negotiations become more and more informed by the European context and by the exercise of cross-border comparisons by either side. As a result local bargaining outcomes become increasingly similar, or ‘Europeanised’. EWCs are a potential focal point in establishing the European context and in facilitating cross-border comparisons.

In a study of collective bargaining between decentralisation and Europeanisation, which focused on two sectors – metalworking and banking, we found clear evidence of EWC involvement in such context setting in the automotive part of metalworking, but not in banking (Arrowsmith and Marginson, 2006). Both management and employee representatives can mobilise the EWC for context setting, as the following examples illustrate:

- in a large, integrated car producer, management explicitly referred to the value of the EWC in setting the context for local negotiations over costs and flexibilities. Employee
representatives reported that, through the information provided and the dialogue at the EWC, representatives at each of the main sites were well aware of the European context and of the comparisons of performance which management continually drew. The employee representatives also conducted their own cross-country surveys of various working conditions, to provide contextual data for local negotiations (and to counter management proposals).

- at a European-scale automotive supply company, the employee-side of the EWC had begun to undertake surveys of aspects of working conditions at the company’s sites across Europe with the aim of providing comparative information to be used in local negotiations.

- at a large mobile equipment manufacturer, with plants in several European countries, management commented on the usefulness of the EWC as a forum to make representatives from higher cost countries aware of their comparative cost and productivity situation, with a view to shaping the context for domestic negotiations in these countries.

Findings from an earlier study of EWCs in the automotive sector also underline the way in which management engages in such context setting activity (Hancké, 2000).

The sector-social dialogue

Complementarity between social dialogue at company level, through EWCs, and at the sector level – called for by the Commission in its current social policy agenda (European Commission, 2005) - cannot be presumed. One can observe an alignment between the social dialogue at the two levels in certain respects. Similar topics are being addressed in some of the joint texts concluded under the sector social dialogue as their counterparts negotiated through EWCs. Concerns with core labour standards and basic labour rights, and with addressing the consequences of restructuring are evident amongst the joint texts concluded at both levels. But there are also differences in the substance of the topics addressed.

There are similarities also in the regulatory nature of joint texts being agreed at both levels, particularly comparing the ‘new generation joint texts’ being concluded under the sector social dialogue, which actively incite implementation at national level and establish mechanisms for monitoring and follow-up, with the ‘softer’ frameworks negotiated through EWCs. But there are no joint texts emanating from the sector social dialogue which are comparable with the mandatory frameworks concluded through some EWCs.

There is, of course, a crucial difference in the employee-side interlocutor between the sector and company social dialogues, which potentially invokes considerable differences of vertical coordination for the trade union and employee representative actors involved.

More generally, the extent to which any current complementarities arise from deliberative actions by the parties at the two levels is very much an open question. In terms of deliberative actions, two contrasting approaches can be envisaged: ‘top-down’ and ‘bottom-up’.

Under a ‘top-down’ approach, the parties engaged in the sector-social dialogue would actively seek to engage the support of company-level actors in securing the implementation of joint texts negotiated at sector-level. EWCs might be targeted and encouraged to engage with the issues addressed in sector joint texts. Such an approach is likely to be easier in sectors where large companies are directly represented in the sector social dialogue, such as telecommunications,
railways and sugar (Branch, 2005). In other sectors, the social partners might look to draw in large companies (and their EWCs) through ad hoc meetings and workshops. Another possibility might be the establishment of ‘sub-sector’ dialogues, where direct representation for large companies becomes more feasible.

According to a ‘bottom-up’ approach, the parties engaged in the sector social dialogue would look to build on what was already occurring amongst EWCs. Here the conclusion of a joint text or agreement on a particular topic by several EWCs in the sector might be the cue to negotiate a joint text of sector-wide application, thereby generalising the voluntary regulation embodied in the EWC agreements.

The two approaches are not necessarily mutually exclusive. And both would be strengthened to the extent that EWCs looked to secure compliance with the provisions of any joint text or agreement not only amongst companies’ own operations, but also amongst other companies up the supply chain. Here too the sector-level parties could have an important role to play.

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