

European Works Councils and transnational company agreements on restructuring

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*Heinz Gabathuler, lic. phil., University of Zurich
Institute of Sociology, Andreasstrasse 15, 8050 Zürich, Switzerland
gabathuler@soziologie.uzh.ch*

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Abstract

Transnational company agreements with a global or European geographical scope have recently gained attention in industrial relations research. European Works Councils (EWCs) play a key role in the negotiation of such agreements as well as in their implementation. In some cases, they are the only signatories to such agreements, namely if their scope is limited to Europe, even if most European trade union federations claim that signing such agreements is in their genuine area of competence.

One of the main, if not the most frequent, topics in European company agreements is “restructuring”: They either lay down principles and standards of “socially responsible restructuring” or “anticipation of change”, or they deal with specific restructuring projects of a transnational character.

The paper presents a comparison of the content of four different substantial agreements that formulate general standards for restructuring, in four manufacturing companies from different sectors based in different countries. Only one of them has been signed by the respective European trade union federation, whereas the others have been entirely negotiated and exclusively signed by the respective EWCs. Besides two well known agreements, my analysis also contains two agreements which have not attracted attention yet. I will show that substantial determinations relating to restructuring can also be found in a “normal” EWC agreement, and that there probably is quite a high number of undetected cases of companies in which at least some guidelines and principles on restructuring are laid down in written documents agreed with their EWCs.

1) Introduction

Transnational company agreements (TCAs) are concluded between transnational corporations on one, and employee representation and / or trade union bodies on the other side. The first one was concluded in 1988 (European Commission 2015). They are negotiated, and agreed, with employee representatives from either within or outside the company, and therefore to be distinguished them from documents unilaterally issued by management (e.g. codes of conduct). They are either global (for the whole company), or regional, namely European, in scope. They deal with specific aspects of company-level industrial relations; agreements on the mere establishment and functioning of European Works Councils (EWCs) are not considered as TCAs. EWCs, however, play an important role in initiating, negotiating, concluding, and implementing TCAs namely covering the European operations of transnational corporations: According to Rehfeldt (2015), EWCs had signed 92 out of 127 TCAs covering Europe (also called “European Framework Agreements” / EFA), and in 62 cases, i.e. in almost half of all publicly available EFAs, the EWC was the only signatory. The role of EWCs as negotiating parties and as signatories of such agreements has been contested by trade unions on both national and international level (Jagodzinski 2012, Müller et al. 2013). Nevertheless, namely German companies are inclined to negotiate substantive agreements with EWCs alone, following well-established procedures and customs on national level – whereas French companies are more inclined to negotiate with trade unions on company level (Da Costa et al. 2012, Rehfeldt 2015). The role of EWCs in concluding TCAs is all the more remarkable, as the EWC Directive does not foresee such a role, and also as in many cases, they deal with topics that are not subject to information and consultation according to the Directive’s subsidiary requirements – such as health and safety, data protection, or equal opportunities and diversity.

Even though a legal framework for TCAs on EU level is missing (Sciarra et al. 2013), the phenomenon has attracted the attention of the European Commission who is maintaining a database on TCAs – even covering agreements with a global scope (European Commission 2015). This is remarkable, as there is no official database for EWC agreements, even though there is a legal framework for these (the EWC Directive) – EWC agreements are kept on a database maintained by the European Trade Union Institute (EUTI).

European level TCAs often deal with company restructuring, usually with the aim to limit the negative impact they have for employees. They may define general standards for restructuring projects, or they may be limited to guidelines in concrete, specific restructuring cases (Rehfeldt 2015). Looking at the official database, 31 out of 86 TCAs covering Europe deal with restructuring, either as the primary or as a secondary topic, whereas only 13 deal with fundamental rights of workers and trade unions, and 22 with health and safety. The numbers for all registered TCAs are reverse: We find 148 TCAs on fundamental rights, 146 on health and safety, but only 63 on restructuring (European Commission 2015).

Even though the literature on TCAs has been growing and recently also includes case studies (Rüb et al. 2013, contributions in the EURACTA 2 report), it is limited to agreements which are registered in the official database. There is evidence, however, that there are agreements on restructuring – either setting general standards or dealing with specific cases – which are kept confidential by the respective company, or which simply do not find their way into the official database. Substantive determinations on restructuring may also be found in “normal” EWC agreements.

This paper compares two “classical” examples of TCAs with a confidential one, and with one “hidden” in an EWC agreement.

2) Four examples – background

In the course of our research project on the relevance of EWCs for employees in Switzerland which had been funded by the Swiss National Science Foundation, we undertook 13 case studies – nine in companies based in Switzerland, four in companies based in other European countries. General findings of these case

studies have been presented at the IREC 2014 in Dublin (Ziltener / Gabathuler 2014). In a majority of the cases researched, management had signed TCAs which are either European, or, in rare cases global, in scope. In four cases, we found agreements that lay down general standards for restructuring. We found four more agreements that dealt with specific cases of restructuring or outsourcing of businesses within the respective company, and a few more agreements that dealt with other issues, such as health management, data protection, or general business principles (“code of conduct”, “social charter”).

The four TCAs dealing with general standards for restructuring are all European in scope, but they vary in their backgrounds, in their formal character and status, and in their contents. Three of them had been concluded in non-Swiss companies, only one in a Swiss company, even though the Swiss companies made up a clear majority in our sample.

a) Alstom “Agreement on the anticipation of Change or Developments” (2011)

Alstom is a major supplier for electrical transmission, power generation and rail transport equipment based in France. In 2014, Alstom employed 96’000 people worldwide, among them 52’000 in Europe. In 2010, when (re-)acquiring a part of the electrical transmission business of Areva, Alstom concluded a substantive agreement with the then European Metalworkers’ Federation (EMF, in the meantime merged into IndustriAll) – the “European Agreement on Social Commitments in the framework of the take-over of Areva T&D”. That agreement was negotiated according to the procedures laid down by the EMF, with national trade unions giving a mandate to EMF and, if necessary, to their respective EWC members (Eurofound 2009, Rüb et al. 2013).

In 2011, general standards for socially responsible restructuring were negotiated and signed in form of an “Agreement on the anticipation of Change or Developments”. Employee-side signatories were the same actors as in the other case: the EMF General Secretary, and the representatives of the respective national trade unions in all European countries where Alstom has operated at that time – and not only those represented in the EWC (Alstom 2011). Its duration is three years, with an option of renewal by mutual agreement. According to one of the involved actors from EWC side, there was a clear advantage of an agreement signed by national trade unions, compared to an agreement signed by the EWC: An agreement signed by external social partners would be as easy to enforce as a collective agreement on national level (interview with former employee representative Alstom, June 2014).

The agreement has been published in the European Commission’s TCA database as well as in the ETUI’s EWC database. Consequently, it is also listed in Da Costa / Rehfeldt (2011).

b) Unilever “Responsible Restructuring Guidelines” (2014)

Unilever is a major manufacturer of consumer goods (food, cosmetics, detergent) with global headquarters in the UK and European headquarters in the Netherlands. In 2014, Unilever employed 174’000 people worldwide and around 30’000 in Europe. A first document on “Responsible Restructuring” had been published as early as 2001, however it is not entirely clear whether it is actually a TCA, signed by the EWC (Da Costa / Rehfeldt 2011, European Commission 2015), or a unilateral document issued by the company after consultation with the EWC (Carley / Hall 2006). According to an employee-side actor, the first document had emerged in the context of a major wave of outsourcing of businesses (interview with employee representative Unilever, October 2013). In 2004, another TCA, or “joint statement”, was concluded with the EWC on the protection of personal data of employees. Both documents are recorded in the official database.

In 2014, management and EWC renegotiated the agreement, or guidelines on “Responsible Restructuring”. This agreement has not been published in any public database (yet), nevertheless we assume that it is not

confidential. Its geographical scope is “Europe”, which in this company’s terms means mainly the same countries as those represented in the EWC (excluding Russia). There is no limitation in the duration of the agreement. In the recent past, management and EWC were in negotiations on a few more TCAs, including topics such as health and safety, and equal opportunities (interview with employee representative Unilever, October 2013).

c) [BritCons] “Common framework” (2008)

[BritCons] is a manufacturer of consumer goods based in the UK. In 2014, the company employed 60’000 people worldwide, among which 8’000 were based in Europe (excluding Russia). Its EWC agreement has been concluded in 1996, and since then has never been adapted. The company is confronted with an ever stricter legal regulation of the main market in which it operates, and with a declining overall demand for its products among consumers, especially in the European region. Employees in Europe have been confronted with frequent restructuring and site closures, partly as a consequence of major acquisitions made.

In 2008 a document called “common framework” has been agreed between the EWC and management, on demand of the employee side, and, according to an employee-side actor, without any resistance from management side (interviews with employee representative [BritCons], May and July 2014). The aim of the document is to define common principles between the two sides in how to deal with the impact of organisational changes upon the employees. The duration of the agreement is not limited, however there is a termination clause mentioning a mutual period of notice of three months. There is no explicit mention of a geographical scope, or a limitation to the European business of the company, however the text makes implicitly clear, e.g. by mentioning the EWC as a dialogue partner with management, that its scope in fact is limited to Europe. The agreement has been declared confidential, therefore the real name of the company is not being revealed in this paper.

d) Novartis Agreement on the Euroforum (2009 / 2013)

Novartis is one of the world’s leading pharmaceutical companies with headquarters in Basel, Switzerland. In 2013, Novartis employed around 135’000 people worldwide, with almost half of them (62’000) based in Europe. In 2009, Novartis concluded a “Supplement” to the existing EWC agreement, defining information and consultation procedures in a detailed way, as well as containing a section on “consequences of restructuring for employees” which outlines measures of staff reduction in order to avoid dismissals. Even though this document had been signed only by the EWC and not by any trade union, actors from both sides acknowledge that trade union expertise had been used by the employee side representatives (interview with management representative Novartis, October 2013; interview with trade union expert Austria, May 2014). The document mentions the recast EWC Directive which at the time of its conclusion, however, had not been adopted yet.

In 2013, the two parties renegotiated the EWC agreement, again without any trade union being directly involved in the negotiations. The main points of the “Supplement”, both its procedural and its substantive determinations, were included in the EWC agreement, making it a rather unique example of an EWC agreement containing substantive guidelines on “mitigating the individual social consequences of restructuring for employees”.

3) Four examples – comparison of content

Table 1 gives an overview on the contents of the four examples of agreements on restructuring.

Table 1

Company	Alstom	Unilever	[BritCons]	Novartis
Title	Anticipation of change or developments in Alstom, 2011	Responsible Restructuring in Unilever Europe Guidelines, 2001 / 2014	„Common framework“, 2008	Supplement to Agreement on Euroforum, 2009 Agreement on Euroforum, 2013
Status	Registered in European Commission database of TCA	Not registered but made available for all employees	Not registered and apparently confidential	Registered in ETUI database of EWC agreements (2013 agreement)
Employee-side signatories	European Metalworkers‘ Federation (EMF) and national trade unions	European Works Council	European Works Council	European Works Council
Core substantive determinations	<p>Safeguard of employment:</p> <ul style="list-style-type: none"> - Internal mobility - Requalification of employees - Short time working - Part time work <p>Redeployment of employees:</p> <ul style="list-style-type: none"> - Avoid redundancies - Voluntary (internal) mobility - Voluntary departures - Support to employee’s search for new job / start-up projects - Support to requalification - Support to creation of jobs in other companies in the same area 	<p>Avoid redundancies:</p> <ul style="list-style-type: none"> - Internal mobility - Outplacement support <p>In case of site closure:</p> <ul style="list-style-type: none"> - Site sale - Re-industrialisation <p>In case of disposal or outsourcing:</p> <ul style="list-style-type: none"> - Securing future terms and conditions in line with Unilever’s 	<p>Prior to restructuring:</p> <ul style="list-style-type: none"> - Flexible and fixed-term contracts - Part time work <p>In case of restructuring:</p> <ul style="list-style-type: none"> - Priority of avoiding redundancies over compensation for redundancies - Voluntary departures and early retirement - Internal mobility <p>In case of restructuring / site closure:</p> <ul style="list-style-type: none"> - Social compensation plan - Outplacement support - Support to requalification - Financial advice - Financial compensation measures - Cooperation with public authorities - no cash alternative to outplacement 	<p>Avoid redundancies:</p> <ul style="list-style-type: none"> - Early retirement, part-time retirement - Voluntary departures with financial compensation - Internal mobility - Requalification - Reduction of working hours

Company	Alstom	Unilever	[BritCons]	Novartis
Further substantive determinations	Further HR methods: - Yearly meetings between each employee and his / her manager - Mid-career evaluation - End-of-career management		Further dimensions of corporate social responsibility / corporate citizenship	Reference made to ILO norms concerning the termination of employment
Procedural determinations	Steering committee for follow-up, composed of trade union representatives, EWC and management, regular meetings Respective follow-up at local level to be implemented by social partners Detailed procedure for information and consultation with EWC; national level information equal to European level information Set of quantitative key indicators for follow-up at European and local levels (focus on HR methods, internal mobility and requalification)	Review within five years after conclusion of agreement EWC may get information update “in the normal course of business” Restructuring to be managed at local level and according to national legislation and collective agreements Reference to EWC Agreement	Detailed procedure for information and consultation with EWC sub-committee Social compensation plans to be negotiated on local level with employee representatives and / or trade unions Transparency towards each employee on social compensation benefits available to him / her	Detailed procedure for information and consultation with EWC and if desired by EWC with employee representatives of concerned sites not represented in the EWC Social compensation plans according to national legislation

4) Discussion and outlook

Looking at Table 1 it is apparent that the only one of the four TCAs which has been signed by trade union actors according to a procedure established by the respective European trade union federation (the one concluded by Alstom) is also the most comprehensive agreement. It does not only include the most detailed substantive determinations when it comes to avoid redundancies, embedding them into a more comprehensive company-wide HR policy (individual yearly meetings and career planning). It is also the only document defining detailed procedures for follow-up, as well as indicators for its implementation. Nevertheless, the Unilever agreement is original, and in the sense that it defines not only principles to be followed in order to avoid redundancies and / or make them less harmful for the concerned employees, but also defines principles on how to find alternatives to site closures, e.g. to prioritise the sale of the respective business and / or the re-industrialisation of the site. Unilever also acknowledges its responsibilities as an employer beyond the actual contract, such as in case of the disposal of a site or the outsourcing of a business. Alstom, on the other hand, agrees to engage itself in the support of the creation of new job opportunities in the area concerned. The Alstom agreement does not mention financial compensation in case of redundancies but focuses entirely on listing alternatives to forced redundancies. This probably reflects the dogma of the involved trade unions not to acknowledge the necessity of redundancies.

The Novartis agreement is original on a formal level: The employee side managed to include at least some basic substantive determinations into the actual EWC agreement. This shows that even if a company is unwilling to negotiate “real” TCAs, it may still be possible to “smuggle” substantive determinations into a classical EWC agreement, however in this concrete case this was only possible through the detour of a “supplement” referring to the recast EWC Directive. However, the Novartis case is the poorest in content, and actually the only one not fostering the principle of safeguard of employment prior to restructuring: It is limited to a mere listing of measures to avoid forced redundancies which are usually included in social compensation plans. On the other hand, being part of the EWC agreement, the Novartis determinations are subject to potential legal enforcement, whereas the Unilever and [BritCons] agreements seem to have no legal significance at all, being entirely internal company documents. The quality of their implementation thus entirely depends on the good-will of the concerned managers, and the respective EWC’s ability to effectively address the issues covered by the agreement.

This paper focussed on the formal aspects and on the content of the four randomly chosen examples of TCAs on restructuring. In the course of this research it was not possible to compare their actual implementation in a systematic manner. One of the actors involved acknowledged that the Alstom agreement (as we have seen above the most substantial one among our four examples) hardly contains any added value for employees in “high-standard” countries such as France or Germany, but rather aims at improving standards in countries with comparably low standards, e.g. in Central and Eastern Europe (interview with former employee representative Alstom, June 2014). In the case of [BritCons], the agreement seemed to have helped local employee representatives in countries where local consultation in restructuring processes had been “difficult”: They were in a position to confront local management with a document that had been signed by central management and that defined certain principles – such as the obligation to negotiate social compensation plans with local level employee representatives (interview with employee representative [BritCons], May 2014).

None of the agreements discussed in this paper had been judged as “irrelevant” or “useless” by any of the involved actors, nevertheless more research is needed to assess not only the way how TCAs are concluded, but also the way how they are implemented, thus the difference they make for industrial relations on company level.

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