

5 November 2008

FRENCH PRESIDENCY CONFERENCE ON TRANSNATIONAL COMPANY AGREEMENTS - LYON 13-14 NOVEMBER 2008

BUSINESSEUROPE's input for the intervention of Mr Michael Stein at the Ministerial closing session on 14 November 11.15 – 12.45

1. Transnational Company Agreements have been part of the EU agenda for a number of years and under different headings. Building upon a state-of-play of company practices in this regard, the conference has been useful as it addressed the issue of Transnational Company Agreements from different angles, which include the role of such agreements in the case of restructuring, legal issues around the nature and effects of transnational company agreements, and the interactions between the different levels of social dialogue.
2. In July 2008, the European Commission (EC) published a communication on *"the role of transnational company agreements in the context of increasing international integration"*. The EC has identified a series of obstacles to the development of transnational texts, which mainly relate to the discrepancy between the "transnational scope of texts concluded and national norms and references". Furthermore, the European Commission wants to develop more knowledge on three related issues:
 - a. Actors and signatories of transnational texts
 - b. Legal effects of transnational texts in different industrial relations systems
 - c. Dispute settlement mechanisms in face of complicated provisions regarding applicable legislation and Courts' jurisdiction under international private law
3. In addition, in order to overcome present obstacles, the European Commission has proposed to set up an expert group gathering the social partners, governments' representatives, and international experts. Its mission would be to "monitor developments and exchange information on how to support the process under way".
4. BUSINESSEUROPE took note of the intentions of the European Commission and it will take part in the work of the Expert Group. BUSINESSEUROPE however continues to believe that there is no need for EU action in the field of Transnational Company Agreements.
5. Social dialogue between employers and employees in transnational companies is indeed a very complex phenomenon, which takes different forms. It results in outcomes of a different nature depending on the objective pursued, the issues discussed, the mandate given by management and labour, the capacity to follow on commitments made, the specificities of the industrial relations systems in which the company operates, and the levels at which discussions take place (group, company or establishment). Moreover, the situation is even more confusing as transnational texts sometimes pictured as "agreements" are in reality "codes of conduct", "joint opinions", "business principles".

6. As exemplified in our discussions during the last two days, a high degree of uncertainty remains in the field of Transnational Company Agreements. One can legitimately question whether it is meaningful to use the heading “Transnational Company Agreements” to address very different types of texts. Although it is true that a typology of different categories of existing texts at company level can be useful, it clearly appears from current practice that the EU level is not appropriate for further action in this field.
7. In view of the transnational scope of existing texts, BUSINESSEUROPE believes that instruments developed at international level – e.g. the “ILO Tripartite Declaration on Multinational Enterprises and Social Policy” and the “OECD Guidelines for Multinational Enterprises” - are more likely to serve as guidance or good practice than instruments limited to the European sphere.
8. At European level however, although it only applies to a specific form of social dialogue at company level, BUSINESSEUROPE believes that more can be done to improve the functioning of European works councils. That being said, it must be clear to all that European works councils, which are bodies enabling the information and consultation of employees at company level, have nothing to do with the negotiation of texts. BUSINESSEUROPE calls on all institutional actors involved, in particular the European Parliament, to support the balance found in the joint advice of European social partners and to enable an adoption of the recast directive before the end of 2008 on this basis.