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COMMISSION EXPERT GROUP ON TRANSNATIONAL COMPANY AGREEMENTS, BRUSSELS, 14 MAY 2009

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1. Transnational Company Agreements have been part of the EU agenda for a number of years under different headings. Building upon a state-of-play of company practices in this regard, the discussions have been useful as they 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 its communication on *"the role of transnational company agreements in the context of increasing international integration"*. The EC had 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 this context, the European Commission decided to set up this expert group, gathering representatives of the social partners and of governments, and international experts. Its mission is 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 demonstrated during the conference in Lyon in November arranged by the French Presidency, a high degree of uncertainty remains in the field of Transnational Company Agreements. One can 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 existing 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 rather than instruments limited to the European sphere.
8. Regarding the specific question raised at today’s meeting on the actors involved in negotiating and concluding transnational company agreements the position of BUSINESSEUROPE is clear. This is a question that the organisations and companies involved must decide themselves. Although the note presented deals exclusively with trade union representation the same type of academic or theoretical analysis could be carried out for companies. But – evidently – these decisions will have to be taken by those involved and those represented - for the text to have the necessary legitimacy to lead to the results and objectives established – and to develop the mutual trust necessary to make any agreement a success.
9. At European level BUSINESSEUROPE believes that the recast directive on European works councils is a good basis for the development of social dialogue at company level. 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.