

**COMMISSION'S ANNOUNCED INITIATIVE ON AN
"OPTIONAL FRAMEWORK FOR TRANSNATIONAL COLLECTIVE BARGAINING"**

CEEMET POSITION

19 DECEMBER 2006

CEEMET represents the interests of employers' organisations in the metal, engineering and technology-based industries from 21 countries with a particular focus on social policy issues. Our national member organisations currently represent around 200,000 companies, employing some 12 million people.

Background

In its Social Agenda 2005-2010, the European Commission announced its intention to provide an "optional European framework for transnational collective bargaining" arguing that this "could support companies and sectors to handle challenges dealing with issues such as work organisation, employment, working conditions, training". Such an optional framework would also "give the social partners a basis for increasing their capacity to act at transnational level" and "provide an innovative tool to adapt to changing circumstances, and provide cost-effective transnational responses."

The European Commission has recently taken some preparatory steps by producing a working document on "The development of transnational agreements". This, together with the Report on "Transnational Collective Bargaining: Past, Present and Future", which was prepared by Prof Ales and his colleagues, was presented at a Seminar that the Commission organised for sectoral social partners in May 2006 at the end of which the Commission concluded that there was a need to deepen the analysis on current experiences on this issue. For this purpose, the Commission has organised a second seminar in November 2006, where the draft of a Commission study was presented.

The member organisations of CEEMET are, in general, the recognised social partners for the metal, engineering and technology-based industries at national level. For most of our member organisations, collective bargaining at sectoral level is their core field of competence and activity. A possible initiative of the European Commission on "transnational collective bargaining" is therefore of major importance and concern for CEEMET and, in particular, its national member organisations.

Over recent years, CEEMET has had an informal social dialogue with the European Metalworkers' Federation (EMF) and, earlier this year, a permanent CEEMET-EMF Working Group to discuss

matters of mutual interest was established. However, this social dialogue is different from collective bargaining at national level which is generally based on the willingness of the parties involved to reach binding results. CEEMET has stated that it does not intend to enter into any kind of binding European collective bargaining with the EMF. However, it is envisaged that its sectoral social dialogue with the EMF could result in non-binding declarations, findings or exchanges of good national practice on issues which are considered to be beneficial for our members.

Comments about an "optional European framework for transnational collective bargaining"

1. What are its objectives?

On the basis of the Commission's Social Agenda and working documents that are currently available, CEEMET finds it difficult to understand the goals that the European Commission intends to achieve with this initiative. We are also concerned about its stated goal to "*formalise the nature and results of transnational collective bargaining*".

CEEMET does not consider that there is a link between "transnational collective bargaining" and the different kinds of agreements, unilateral or joint declarations, codes of conduct, EWC activities, at European as well as at international level, that are described in the Commission's working document. We are also surprised that the study of Prof Ales and his colleagues refers to sectoral social dialogue committees as, until now, they have not been involved in collective bargaining.

The difficulties and concerns that CEEMET has identified stem from the fact that the underlying basic concepts and purpose of the planned Commission initiative have not been clearly defined. In particular, CEEMET considers that, in the sensitive area of collective bargaining, it is of crucial importance to have a clear and common understanding about the underlying concepts of transnational collective bargaining and about the idea of formalising the nature and results of transnational collective bargaining. Both seminars that have been organised by the Commission on this issue have shown that such a clear common understanding does not exist.

The link that has been made by the Commission between European social dialogue and transnational collective bargaining is in many respects misleading. First, there is clear empirical evidence that the topics dealt with in European social dialogue are very different from the topics dealt with in collective bargaining at national level. Whilst European social dialogue mainly covers "soft issues" in the area of social policy or minimum labour standards, "hard issues" (such as pay and working time) remain almost exclusively the subject of national collective bargaining at sector and/or company level. Although European social dialogue, in particular at sectoral level, can lead to joint opinions and, sometimes to mutual commitments, it is generally not intended to result in legally binding texts.

2. What is its legal basis?

The Commission has stated that the planned optional framework for transnational collective bargaining should address the enterprise as well as the sectoral level and should cover issues such as work organisation, employment or working conditions. However, pay has been deliberately excluded from the coverage of the EC Treaty (Art. 137 (5)). This is also the case for strikes, lock-outs and the right of association so that the EC Treaty does not contain the fundamental legal prerequisites for establishing a European collective bargaining system.

Therefore, we do not see an appropriate legal basis for this initiative, even if this is to be an optional framework.

In our opinion, an appropriate instrument for transnational social dialogue already exists at European level. Article 139¹ of the EC Treaty gives the social partners an instrument to formalize their dialogue and implement its results at national and European level. Adding new tools would inevitably change the nature of existing agreements and we consider that this would be contrary to the provisions of the EC Treaty.

3. What is the need for this initiative?

One of the objectives of the Report on “Transnational collective bargaining – Past, Present and Future” was to “*provide the Commission with a sound knowledge basis to assess the need for the development of community framework rules*”.

Having thoroughly studied the Commission documents and the above Report, CEEMET does not see the need for an optional European framework for transnational collective bargaining for the sector it represents for the following reasons:

a. As far as the company level is concerned, CEEMET’s national member organisations are unaware of any request for it to have been expressed by companies in the metal, engineering and technology-based industries.

b. In the context of the European sectoral social dialogue committees, social dialogue already exists and is formalised in a flexible way according to the social partners' needs and wishes - as is illustrated in various Commission publications.

c. The reference to Directive 94/45/EC in connection with the notion of "transnational collective bargaining" is misleading. A European Works Council is a forum for worker representatives to be informed and consulted on transnational issues and is not a collective bargaining body. Furthermore the negotiations between management and workers’ representatives to set up a European Works Council cannot be considered to be "collective bargaining".

d. With regard to the Commission working document, "The development of transnational agreements", which examines the different current unilateral or joint European declarations, codes of conduct and international framework agreements, most of which are concerned with human rights or basic working conditions, we would like to draw attention to the findings of a United Nations interim report on the issue of human rights and transnational corporations and other business enterprises² in

¹ “1. Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

2. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 137(2). In that case, it shall act unanimously.”

² PROMOTION AND PROTECTION OF HUMAN RIGHTS - Interim report of the Special Representative of the Secretary-General of the UN on the issue of human rights and transnational corporations and other business enterprises – 22/02/2006

which the appropriateness and effectiveness of legally binding norms in the field of human rights are questioned.

4. Respecting the autonomy of the social partners

CEEMET also believes that introducing this instrument would be contrary to the principle of the autonomy of the social partners, which was reaffirmed in both the Social Agenda and the Commission's Communication "Partnership for change in an enlarged Europe - Enhancing the contribution of European social dialogue" (*COM (2004) 557 final of 12 August 2004*). Furthermore, CEEMET considers that there is a threat to the important principles of not only the autonomy of the social partners but also the freedom of contract. This is because the Commission's 2005-2010 Social Agenda not only proposes a framework for transnational collective bargaining but also suggests some concrete topics for discussion, e.g. working and employment conditions. Even if the Commission's idea is to establish "only" an "optional framework", we are concerned that this will distort existing national industrial relations systems and set precedents.

CEEMET therefore cannot support the idea of establishing an "optional framework" through a binding "European Directive", as is proposed in Prof Ales' report.

5. It is contrary to the trend for the decentralisation of collective bargaining

CEEMET considers that the trend towards more flexibility in and the greater decentralisation of collective bargaining arrangements that are now evident in many EU Member States is in sharp contrast to the Commission's idea of establishing a framework for transnational collective bargaining. In the important area of collective bargaining, which is the core activity of many of our national member organisations and which reflects their different industrial relations histories and cultures, particularly in the enlarged European Union, such an intervention would be totally inappropriate.

Conclusion

For the reasons stated above, CEEMET is strongly opposed to the Commission's idea of introducing an optional framework for transnational collective bargaining. It considers that art. 137 pp of the EC Treaty already provides a suitable framework for social dialogue at European level which, in addition, respects and is compatible with the different existing industrial relations systems in EU Member States.

CEEMET believes that the Commission's concluding remarks at the Seminars on the "Optional European Framework on Transnational Collective Bargaining" in May and November 2006 indicate that it understands these concerns about the need for this planned Commission initiative and its potential adverse impact on well-established collective bargaining arrangements as it stated that there should be further analysis of and discussions on the forms of social dialogue that currently exist.

In view of the importance of this issue for our national member organisations, CEEMET would be very keen to continue to be involved in discussions with the European Commission on this issue following its participation in the seminar organised by the European Commission on 27 November 2006.

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