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European Solidarity and Labour Law:  
Some Thoughts Stemming from the Question of  
Restructuring in Europe

Marie-Ange Moreau



EUROPEAN UNIVERSITY INSTITUTE  
DEPARTMENT OF LAW

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MARIE-ANGE MOREAU

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## **Abstract**

This paper explores the EU solidarity place inside the labour relations. The first part scrutinizes the context in which in the EU solidarity can be developed: Solidarity between workers has national roots, no place at the Eu Institutional level, is limited inside the European Social dialogue. The second part explores the new roads opened facing restructurings: new forms of collective actions through EWC, initiatives of the EU Commission, Anti globalisation Fund. If new road are open, the situation is therefore limited for the European Solidarity

## **Keywords**

Solidarity – European Social Policy – European Work Council – Restructurings – Globalisation – European Social Fund – European social dialogue



*European Solidarity and Labour Law: Some Thoughts  
Stemming from the Question of Restructuring in Europe<sup>1</sup>*

Marie-Ange Moreau

Solidarity should be understood as the basic value which underpins systems of labour law and social security, making it possible to overcome the particular circumstances of individual workers and enterprises in order to construct institutional rights and spaces for action which give a collective response to social risks, and, in the labour law context, the risks inherent to the employment relationship.

This fundamental value was neglected during the second half of the twentieth century, due in part to the decline and fragmentation of collective identities and the crucial shift from collective to individual solutions in this field, an evolution which has been seen in the majority of European Union Member States.

At the same time, a very high level of diversity between EU member states persists in the social field; the impact of the notion of solidarity remains extremely difficult to assess, as indicators such as the rate of unionisation, the scale and breadth of strikes and collective action, and the number of workers covered by collective agreements are not by themselves revealing of the importance which the notion of solidarity has in labour law and industrial relations in any given system, as such factors are themselves heavily dependent on the structure of the mechanisms underpinning those same systems.

It would seem that the profound changes linked to the fragmentation of the workforce, the decline in organised labour, along with the growth of certain vulnerable groups within the labour market often poorly represented within unions, coupled with the impact of the evolving strategies of employers, increasingly global in nature, cast doubt on the capacity of organised labour to construct the links of solidarity within employment relations to face up to the profound developments in terms of the emergence of networked enterprises, structured according to models often termed post-Fordist or post-modern.

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<sup>1</sup> This paper will be published in a book edited by Bo Strath and Paul Magnussion, *European Solidarity*, ed. Peter Lang 2007, forthcoming.

This organisational revolution is accompanied by emerging *global* strategies, fostered by an inequality in terms of the availability and use of new technologies and modes of production and organisation in the context of a globalised economy, which allows employers to relocate or outsource parts of their activities anywhere in the world, while workers, for the most part, remain territorially immobile. Globalised multinational enterprises are able to act relatively autonomously on their burgeoning global field of play, given the situation of territorially anchored organised labour. Links of solidarity, which have always found their roots in a proximity caused by shared working conditions, are being diluted in the context of increased mobility and relocation. In thinking about solidarity at European level, it is essential to focus on the opposition between *local* and *global*. Not only is solidarity threatened locally, it is also very difficult construct at the transnational level.

In the context of the European Union, it is not difficult to demonstrate that efforts to construct a viable pan-European solidarity have so-far found little success (I), although seeking to develop, at European level, new modes of building such solidarity would help to address the difficulties created by the continuous process of corporate restructuring (II).

## **I. European Solidarity in the Context of Labour Relations**

Constructing solidarity at European level requires overcoming the territorial divisions which are inherent not only in labour law but also in employment relations.

The presence of numerous barriers helps to explain the laboured emergence of a European level solidarity: the national framework of solidarity in the area of domestic labour laws, the exclusion of competence at Community level, the problematic issue of European level collective action, as well as the weakness of the Social Dialogue process given the conflict of interests which exist regarding the distribution of jobs in the European Community.

### ***1. The construction of solidarity in the national context***

The construction of solidarity can essentially be seen as the fruit of collective rights in labour relations, that is to say, the exercise of trade union freedoms, the right to collective bargaining, the right to strike, the right to take collective action and the right to worker participation. Although these rights are guaranteed in all Member States by widely ratified ILO Conventions, the European Social Charter<sup>2</sup>, and by certain provisions of the ECHR, these international instruments have not as yet led to the development of spaces to exercise collective rights other than at national level. They provide a guarantee for the survival and application of collective rights, and allow for,

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<sup>2</sup> Adopted by the Council of Europe in 1961 and revised in 1996



in line with the *acquis communitaire*, an evolution of the labour relations systems of the new Member States along the same lines.<sup>3</sup>

The national approach in terms of collective action and the organisation at national level of the labour market lead to the continued role of the national context as the chief framework within which solidarity operates.

If we turn our attention to the measures put in place regarding retraining and redeployment in the context of restructuring, it is apparent that this is an area which continues to occupy a central place within labour law; the duty to retrain and redeploy workers, which was recognised in France in 1992 as an implicit term of the contract of employment, could have been replicated in the legal systems of the Community in which similar principles, based on the Napoleonic Code, govern the law of contract (Belgium, for instance), which did not prove to be the case. The understanding of the modes of collective action prevalent in Sweden, made possible by trade union strength and the industrial relations system, is not shared in the neighbouring states, as the Vaxholm affair illustrates. The constitutional bases for collective rights are still governed by national mechanisms. Many more examples could be used to illustrate the point.

There have been many occasions on which this fragmentation of national legal systems has allowed employers to develop a strategy to decrease their social costs. One recalls the Hoover affair in 1993 which saw the relocation of a French factory to Scotland following the agreement by British trade unions to conditions which would have been unacceptable in France, including the investment of pension funds in the firm and a ban on striking due to a peace clause in the collective agreement, not to mention the differences in remuneration.

However, this national-level hegemony of solidarity within the field of employment should in the future be limited or at least softened: The Charter of Fundamental Rights, solemnly proclaimed in Nice in 2000<sup>4</sup>, affords the Community a solid point of reference upon which it should be able to build common platform of rights. Insofar as the Charter establishes collective rights of workers in the name of solidarity, it should allow for the future development of a structure of fundamental rights in this area. Its potential is however still dependent on the fate of the Constitutional Treaty, in which it is included, and on the future direction jurisprudence of the Court of Justice. The Nice Charter constitutes a basis for action for trade unions in the context of firms which operate at Community level who engage in corporate restructuring., an issue which is already touched by the *acquis* in the guise of information and consultation rights (Art 27). In particular, by emphasising the right to collectively bargain and to take collective action (Art 28), protection against unfair dismissal (Art 30), and the right to fair and just working conditions (Art 31), the Charter affords to social actors a bedrock of fundamental rights and potential bases for collective action which should suffice to

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<sup>3</sup> For detailed analysis of the role of international norms and their interaction with the *acquis*, see the recently published MA Moreau, Normes sociales, droit du travail et mondialisation, Dalloz, 2006. p. 190-, p.233-.

<sup>4</sup> Carlier (JY) et DE SCHUTTER (O.), dir. *La Charte des droits fondamentaux de l'Union européenne*, Bruylant, Bruxelles, 2002; DE SCHUTTER (O.) b, «L'affirmation des droits sociaux dans la Charte des droits fondamentaux et le droit social», in LYON-CAEN (A.), LOKIEC (P.), *Droits fondamentaux et droit social*, Dalloz, Paris, 2004, p. 145-185.

justify the development of a common, concerted and simultaneous exercise of these rights; by limiting the room for divergence between respective Member States in this area through the recognition of fundamental collective rights in the Union, the Charter lessens the chance of a general lowering of standards in this area in the future.

However, it does not go as far as to engender or encourage large-scale developments in the direction of new forms of transnational solidarity.

## ***2. The limited space for solidarity at European level***

The limited space which solidarity enjoys is the result of the express preference for normative competition within the European Union, and of the rejection of Community competence in elaborating common standards in the field of pay, the right of association and the right to strike. This exclusion of any competence (Art 137.6 of the EC Treaty) leads to the continued cohabitation of conflicting national rules, getting in the way of an effective concerted and coordinated exercise of these rights.

This is particularly marked in the case sympathy strikes at European level and boycott and lock-out actions, which are subject to different interpretations and control in different countries. The role of trade unions in any response to restructuring at European level is, from a legal point of view, still firmly at the national level.

As such, one observes a series of contradictions: On the one hand, the Community's competences have not altered the adoption of the Maastricht Protocol in 1992, although fundamental rights have, in the mean time, been the object of important developments in Europe, including the Nice Charter. On the other hand, the strategies of multinational enterprises operating on the European market take advantage of the opportunities afforded by the internal market and economic freedoms, while collective rights remain national in guise, and as such divergent, getting in the way of a level playing field at the European level.

Nonetheless, the ECJ's recognition in the *Poucet-Pistre*<sup>5</sup> and *Albany*<sup>6</sup> cases of solidarity's status as a value of the Union in order to resolve the emerging conflict between competition law and workers' social security schemes illustrates that solidarity should be seen as a European value. In effect, with these dicta, the Court accepted that social security structures and institutions created by collective agreements with trade unions should not be subject to the demands of competition law, due to their basis in worker solidarity, rather than market values. Through recourse to solidarity, the Court protected national institutions charged with guaranteeing fundamental rights such as the right to health, the right to social security and the right of elderly people to social protection<sup>7</sup>. To date, the Court has not used solidarity as a means of solving the emerging conflict between national models of worker protection based on solidarity and

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<sup>5</sup> ECJ, February 1993, C-159/91 Rec. I-637. case on the question of the implementation of the competition law to the social security schemes. The ECJ reserves the possibility to have a monopoly position for legal social security shemes based on solidarity as the French legal social security regime.

<sup>6</sup> ECJ, February 1999, C-67/96, Rec.I-5751. The Albany case is also a case at the boarder line between competition law and social law. The ECJ has excluded the agreement based on collective bargaining from the field of competition law beause the collective agreements are based on solidarity.

<sup>7</sup> De Schutter, 2005, p. 177

the economic freedoms. It will however get the chance in the coming months<sup>8</sup> to direct its dicta towards a reinforcement of fundamental rights, just as it has recently done in the Mangold case<sup>9</sup>, when it unexpectedly relied on the principle of equal treatment of workers to limit the level of precariousness of contracts offered to older workers in Germany.

The growth of the internal market multiplies the common interests of workers, not only because the latter all find themselves subject to the same economic forces, due to the Union's economic and financial policies which reduce the margin for action of national governments and employers, but also because they find themselves subject to the same centralised decisions of groups which are based in various Member States, making European-scale collective action desirable.

### ***3. The emergence of European-scale Collective Action***

The emergence of collective action at the European level has been relatively recent: The episode of the closure of the Renault factory in Belgium in 1997<sup>10</sup> was the first stage of the development of European level collective action. The Renault group being a flagship French firm, French trade unions 'naturally' mobilised in favour of the Belgian workers, and were able to extend this mobilisation to Spain. The collective action was articulated around an issue of common interest: the brutality of the closure of a 'model' factory, which seemed to put all Renault plants in the community in danger. From a legal perspective, the lack of information to the European Works Council, and the violation of Belgian provisions on information and consultation of workers, provided a justification for this European-scale mobilisation and for the successful legal actions brought by unions in France and Belgium. Subsequently, not only has the ETUC led European-scale mobilisations on occasions when jobs were at risk at the European level during political summits (for instance, Nice in 2000), it has also strongly supported sectoral unions which coordinate action during restructuring by firms of Community-wide dimensions<sup>11</sup>. In this respect, the European Metalworkers' Federation (EMF) has been particularly active. European-scale mobilisation assumes that the fate of workers can be taken into account by Community authorities: thus efforts are concentrated on mobilisation when employment is seriously threatened by a merger approval by the Commission, when industrial developments depend on a recapitalisation or heavy financial investment by public bodies (classed as state aid, and as such subject to approval by the Commission), and when pressure on public bodies resulting from media coverage has the effect of limiting any violation of workers' rights and directing attention to alternatives to restructuring. As such, a remarkable level of mobilisation

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<sup>8</sup> In the context of the Vaxholm case

<sup>9</sup> ECJ, 22 November 2005, aff C-144-04, Europe 2005, n°18, obs. L. Idot. the ECJ has judged that the German law creating fixed term contract for seniors was not respecting the anti discrimination directive because the employment contract created a discrimination based on age. the ECJ has told that the principle of anti discrimination based on the age was a general principle of EU law.

<sup>10</sup> DIDRY (C.), « European Rusted through its Products: the Renault-Vilvoorde Affair and its Implication for Industrial and Employment Policies », dans *Europe and the Politics of Capabilities*, dir. SALAIS (R.) et VILLENEUVE (R.), Cambridge, University Press, 2005, p. 21-37

MOREAU (M.-A.), « A propos de l'affaire Renault », *Droit social*, mai 1997, n°5, p. 493-509.

<sup>11</sup> MOREAU (M.-A.), *Restructurations et comité d'entreprise européen*, *Droit social*, 2006, p.308-318.

was achieved in the Alstom affair<sup>12</sup>. Chronological analysis of the action by the actors demonstrates that the European Works Council played a key role during the Arcelor merger. In contrast, in the episode involving Marks and Spencer, the crucial factor was the level of media condemnation. It would seem that several factors contribute to European-scale mobilisations: a transnational common interest in the face of threats to jobs in several countries, media support, the right or duty of state or community authorities to intervene, the coordination of workers by a transnational actor, such as a European trade union, a European Works Council or transnational coordination between unions<sup>13</sup>.

These European-scale forms of mobilisation exemplify an escape from exclusively national collective action, are still currently an exception, as trade unions are territorially ‘anchored’ and embody a particular national culture, and because in the field of jobs, competition between locations and countries, both in situations of recession and of boom, functions as an obstacle to potential dynamics of solidarity.

#### ***4. The weakness of the European Social Dialogue***

The European Social Dialogue is, at the institutional level, the space in which solidarity has been created on a European scale; its continued development since 1992 illustrates its vivacity. Not only has the number of interprofessional agreements increased steadily, one has also witnessed the gradual development of sectoral agreements, possibly thanks to a slow coming together of the actors at sectoral level<sup>14</sup>. Furthermore, the social partners are developing a so-called ‘voluntary’ form of negotiation, which operate outside the dialogue taking place as a result of Commission proposals, and which have yielded answers in issues such as stress at work. With this expansion in the volume of agreements, their limited and weak nature is underlined, with a large part of the agreements being merely guidelines for national social partners, without even being framework agreements to be transposed at the national level<sup>15</sup>.

The weakness of the social dialogue clearly emerges when one examines the areas where solidarity between workers is necessary for a normative effect to emerge from the social dialogue. If social dialogue is an extension of a general Directive, as was the case with the elaboration of the rules on working time, pressure from the Commission can cast a positive *shadow* over negotiations between the social partners in the sector concerned, according to the idea that *a good agreement is better than a bad Directive*. However, in the absence of the threat of binding normative regulation, the European social partners are unable to engage in negotiations on subject matters of a highly

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<sup>12</sup> Jobert (A.) dir, *Les nouveaux cadres du dialogue social: l'espace européen et les territoires*, Rapport pour le Commissariat général au plan, IDHE, Université Paris X Nanterre, p. 220-.

<sup>13</sup> Jobert, op. cit. p. 245, Moreau 2005, p. 310

<sup>14</sup> On this evolution, see DIDRY (C.), MIAS (A.) *Le moment Delors*, PIE Peter Lang, 2005, FAULKNER (G.), "The Interprofessional Social Dialogue at European Level, Past and Future", KELLER (B.), PLATZER (H.W.) (dir.), *Industrial relations and European Integration, Trans- and Supranational Developments and Prospects*, Ashgate, 2005, p. 10-29, MARGINSON (P.), SISSON (K.), *European integration and industrial Relations*, Palgrave, 2004, p. 143 et s.; Moreau MA, op. cit. p. 326-.

<sup>15</sup> For a list of agreements signed and the Commission's proposed typology, see COM(2004) 557 final, 12 August 2004

political nature. Consensus only finds room to emerge in fields which are exclusively professional in nature, which do not cause employers to substantially rethink their economic strategies on the European market.

At the present time, the social dialogue has 'broken down'<sup>16</sup>; the issue of restructuring serves to illustrate the difficulties which the social dialogue has in operating in complex, sensitive areas which have strongly felt social consequences. In 2003, negotiations did yield a declaration of common objectives, which underlined the importance of the Directives adopted in the fields of redundancy and transfer of undertakings as a basis of workers' rights, and listed 'good practices' put in place by European-scale enterprises. This document was not ratified by the general assembly of the ETUC as the agreement not did generate any new guaranties for workers in Europe affected by restructuring.

In its Communication of 31 March 2005<sup>17</sup>, the Commission called for the opening of a second phase of negotiation, which was unreservedly rejected by UNICE. What is at stake for the respective Member States is very divergent in terms of how change should be managed<sup>18</sup>, and is also very much linked to market liberalisation; the current state of affairs shows certain countries being 'winners', gaining jobs, and other losing theirs, which is not conducive to developing an innovative social policy for 25 members.

Opposition, of both a political and an economic order, has grown in Europe since enlargement, rendering the transition phase even more difficult than any institutional change had already been made through the stalling of the process of adoption of the Constitutional Treaty.

This negative state of affairs regarding solidarity in Europe in the context of industrial relations demonstrates the need to move to transnational labour relations.<sup>19</sup> These are emerging and may lend themselves to recommend new approaches to adjustment.

## **II. Towards new approaches in responding to the issues caused by restructuring in Europe?**

The statistical analysis currently being carried out by the observatory set up in Dublin<sup>20</sup> clearly demonstrates how firms are relocating within the European market: Mobility towards the accession countries is particularly marked in the industrial production sector (cars) and in the advanced technologies sector, and this movement is only directed to regions which have been targeted due to the phenomenon of polarisation, which leads to concentrate the economic activities on some territories/clusters/ regions (for instance, only two regions in Poland are affected by the expansion of activities).

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<sup>16</sup> DEGRYSE (C.), POCHET (Ph.) (dir.), *Bilan social de l'Union européenne en 2003*, Observatoire social européen, 2004, et *Bilan social de l'Union européenne en 2005*, OSE, 2006

<sup>17</sup> "Restructuring and employment – anticipating and accompanying restructuring in order to develop employment: the role of the European Union"

<sup>18</sup> F. V «La dimension européenne des restructurations» *Droit social* 2005, p. 260-273

<sup>19</sup> A theory developed in *Normes sociales, droit du travail et mondialisation*, cit.

<sup>20</sup> EMCC, [www.emcc.eurofound.eu.int/](http://www.emcc.eurofound.eu.int/)

As such, within the European Union, there are countries which are expanding and others which are in a phase of 'redeployment', in which restructuring is leading to large reductions in manpower, and, sometimes, to the creation of new activities<sup>21</sup>. The latter very often require highly skilled labour, which is not therefore necessarily 'transferable'. Debates between economists regarding the impact of the new distribution of activities and analysis of what accelerates this process remain of crucial importance<sup>22</sup>.

On a legal level, such changes are authorised by the economic freedoms guaranteed by the ECJ in the name of the functioning of the internal market<sup>23</sup>. The Court settles conflicts between non-market values and economic freedoms through the use of the proportionality principle.

Competition for jobs is, as such, an issue of economic policy for governments seeking to attract investment to their countries, but also of social policy in terms of keeping jobs. It is also an issue of central importance for trade union organisations and similar actors which must adapt to the changing situation sparked by the globalisation of the economy<sup>24</sup> in its various guises: seeking to keep local jobs is a priority. German trade unions, in particular in the car industry, have had to negotiate guarantees of the maintaining of job levels due to their inability of being able to oppose the setting up of new plants in Eastern Europe.<sup>25</sup> In the most recent period we have seen also the use of participation powers by German representatives et the board used to close a plant in Belgium (Volswagen), showing the lack of any solidarity in the group. Other examples as for EADS shows the impossibility of creation any links between the different entities of the group when national considerations are mixed with restructurings and lay-offs<sup>26</sup>.

For want of an orchestrated coordination in the context of sectoral restructuring at the European level, several new approaches are emerging, regarding both courses of action and from an institutional point of view.

### ***1. New forms of coordination between actors***

A new form of mobilisation of actors within European-scale firms has been advocated by the EMF since June 2005<sup>27</sup>: The EMF proposes, with the help of European Works Councils, to coordinate the different stages of restructuring which take place in different countries. Recent restructuring, such as that at ST Microelectronics or Pechiney-Alcan

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<sup>21</sup> F. Vasquez, loc.cit. p. 260

<sup>22</sup> See discussion in the Lorenzi/Fontagne Report, LORENZI (J.H.), FONTAGNE (L.), *Désindustrialisation, Délocalisation, Rapport du Conseil d'analyse économique*, Paris, 2004 et les opinions développées dans FAYOLLE (J.) (dir.), *Restructurations, nouveaux enjeux*, revue de l'IRES, 2005/1, n° 47

<sup>23</sup> See the jurisprudence of the Court regarding the freedom of establishment and the freedom to provide services (Daily Mail, Uberseering, Inspire Art. See Bruno Mestre, June Paper 2006, IUE, unpublished.

<sup>24</sup> BLAS-LOPEZ (E.), «Le cadre d'action des partenaires sociaux européens: panorama, mutations et enjeux à l'heure de la mondialisation», *Droit social* 2006, p.540

<sup>25</sup> International Congress of the International Law Association, 5-8 septembre 2006, general Report by Lance COMPA, *Libéralisation du commerce et droit du travail*, forthcoming

<sup>26</sup> JJ. Paris, loc. cit. *Droit social* 2007, p. 2026

<sup>27</sup> www.afdt.fr

demonstrate that the stages of restructuring in Europe are orchestrated by the firms management in stages, playing on workers' rights in the laws of the country of the *restructured* location and the ability for workers to mobilise at local and European level. The European Works Council is usually, in a situation of crisis, marginalised in the face of national level organisations, and may also have great difficulties in communicating information, and *a fortiori* coordinating European level strategies<sup>28</sup>.

The setting up of a trade union platform and a strategy for action in the context of European-scale firms under the aegis of the EMF should in the future allow light to be cast on strategies of division used by employers, and the sharing of union strategies deployed in the first countries to experience restructuring<sup>29</sup>, as well as joint mobilisation along common lines. What is relevant in the European coordination of workers' responses is both to establish a concentration of power to allow credible alternatives to emerge in the context of international management of the firm to reductions of the workforce, as well as the ensuring the possibility of negotiating, when this is permitted in the framework of industrial relations, measures to deal with the effects of restructuring: the differences between respective Member State laws remain marked, although a floor of information and consultation rights has emerged thanks to the Directives on redundancy, transfer of undertakings and the setting up of European Works Councils. In particular, negotiation *with a view to reaching an agreement* regarding the measures to be adopted during restructuring gives rise to divergent multifarious practices, since they are informed by each respective country's culture.<sup>30</sup>

The move to a transnational mode of action demands above all the effective obtaining of information, capable of creating a basis for links of solidarity<sup>31</sup>. Solidarity can in this way adopt a new guise through the sharing of expertise which could be useful to the European-scale firm, making possible the development of alternatives at the local level, while still taking into account the transnational, and even global, dimensions of the firm.

This strategy of sharing by the intermediary of the European trade union, with this role taken on by the European Works Council in transnational firms, should lead to supplying trade union organisations with the necessary means not only to deal with the reorganisation of firms and their activities within the European market, but also outside of it.

The researches shows in the field of EWC's action that some favourable conditions are necessary to give to the EWC concrete possibility of action: acceptance from national representative to use the transnational body, agreement of the management to approach

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<sup>28</sup> On the obstacles, see MA Moreau et JJ Paris, Case studies AGIRE and the role of the EWC IUE, WP 2007, forthcoming.

<sup>29</sup> For instance regarding the negotiation of agreements on methods of redeployment, not common in the UK or in Spain, or proposals to revitalise the labour pool in border regions (not known in Belgium, for instance)

<sup>30</sup> SACHS-DURAND (C.) (dir.), *La place des salariés dans les restructurations en Europe communautaire*, P.U. Strasbourg, Strasbourg, 2004

<sup>31</sup> JOBERT, *op.cit.*, MOREAU 2005, *loc.cit.*, JJ. Paris, «Les organisations collectives de travailleurs face aux stratégies des multinationales», *Droit social* 2007, p. 1026-1043

the EWC<sup>32</sup>, transnational culture within the firm, favourable agreement given tools, competencies and funds to the EWC<sup>33</sup>

The policies of specialisation and externalisation of multinational firms are carried out on a global scale<sup>34</sup> and therefore require the forms and modes of solidarity put in place by trade union organisations to establish coordination within the network with the goal of limiting the negative effects on European jobs of firms setting up in India or China while not aiming at penetrating non-European markets. Action in the guise of international coordination can, in this way, lead to boycotts and media campaigns, and the possibility of campaigns targeted at shareholders and collective action related to product quality, bringing the company image under scrutiny<sup>35</sup>. These 'new' forms of collective action which rely on public scrutiny of a firm's image have thus far been more heavily explored and developed by American trade unions and international organisations than by European unions.<sup>36</sup>

Furthermore, restructuring by firms such as Alstom or Arcelor, which have very complex company structures, demonstrates that transnational forms of action are not only paramount in the face of transnational company policies but is also made possible by the transnational structure of the actors in Europe (a European trade union federation and European Works Councils). However, these actors often lack power due to cultural and legal factors<sup>37</sup>. Their actions are not always seen as complimentary to domestic actors, but rather as rivalling the latter, given the lack of a foundation constructed on a broader-scale conception of solidarity.

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<sup>32</sup> see the very detailed analysis by Thomas Fetzter, and in Normes sociales, droit du travail et mondialisation, op. cit. p.

<sup>33</sup> see Thomas FETZER, see also for a deep analysis of EWC experiences, Elodie Bethoux, Entreprises multinationales et représentation des salariés en Europe. L'expérience ds comités d'entreprise européens, Thèse Nanterre, december 2006

<sup>34</sup> Adalberto PERULLI et Rafaële DE LUCA DE TAMAJO, decentralisation productive et droit du travail, General report, World Congress, September 2006, Paris, International association of Labour Law, forthcoming, www. Afdt.fr

<sup>35</sup> DAUGAREILH (I.), «La responsabilité sociale des entreprises transnationales et les droits fondamentaux de l'homme au travail: un contre-exemple des accords internationaux», in *Mondialisation, travail et droits fondamentaux*, Bruylant et LGDJ, Bruxelles et Paris, 2005, p. 349-384. DENIS(J.M), « Les mobilisations collectives européennes: de l'impuissance à la nécessité d'alliance », *Droit social* 2006, p.671, Moreau MA, op. cit. p.392-

<sup>36</sup> See the impressive analysis in ELLIOTT (K.A.), FREEMAN (R.B.), *Can Labor Standards improve under globalisation?*, Institute for International Economics, Washington D.C., 2003

<sup>37</sup> There is a large diversity from one EWC to another, in terms of competences and means available, due to their setting up through agreement. Since 1997 these agreements have become increasingly detailed but a diversity remains. For developments in the area of the EWC, see MARGINSON et SISSON, op. cit, KELLER et PLATZER, op. cit., MOREAU, op.cit; p. 341 et s.; see also, WADDINGTON (J.) «European Works Councils: what is the current state of play?» *Transfer*, 2003, vol.2, p. 322-339. TELJOHANN (V.), «The European Works Councils – a role beyond the EC Directive?», *Transfer*, 2005, vol.1, p. 81-96.



## **2. Towards European adjustment and anticipation policies?**

Two paths for establishing new bonds of solidarity emerge: the first at the institutional level, aiming at economic adjustment, the second, more prospective in nature, having in view mechanisms to anticipate restructuring.

### *a) The creation of anti-shock funds*

European-level solidarity is also capable of adopting an institutional guise, as is demonstrated by the principle of economic and social cohesion contained in the Treaty. European social funds allow for redistribution within the Union through structural funds aiming at reducing inequalities between different regions of the EU.

In the face of the scale of restructuring and the need for ever more frequent interventions on the part of public authorities in terms of the regional consequences thereof, at the Hampton Court Summit at the end of 2005, the Member State governments agreed on the creation of 'anti-shock' funds to finance steps to deal with the social effects of restructuring, focusing on the adjustment of regional economies in the context of globalisation. The initiative to establish such funds was adopted during the large-scale restructuring of the Rover Group in the UK while Tony Blair held the Union presidency. At the same time, with the restructuring of Hewlett Packard (HP), the President of the Commission was inundated with demands on the part of governments (in particular from Chirac) concerning the persistent inequalities between Member States and the indirect impact of structural funds in the accession countries, accentuating the existence of *winning* and *losing* countries.

The creation of the fund is under way.<sup>38</sup> Its goal should be to provide substantial assistance in the retraining of workers so that they are able to adjust to the changes in the European economy. Such action is informed by the theory that there is, in order to cope with the 'shocks' of globalisation which are felt in Europe, the need to build a transitional labour market in Europe<sup>39</sup>, a necessary, if perhaps insufficient step, given the acceleration in restructuring in Europe.

### *b) Towards anticipating restructuring?*

A policy seeking to anticipate restructuring may seem the most realistic approach to developing a European adjustment policy which limits the social effects of restructuring at European level, given the lack of a political consensus regarding a more active policy at the present time<sup>40</sup>.

- A first stage of building solidarity between winning and losing countries could stem from a slowing down of restructuring operations; the European

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<sup>38</sup> F. VASQUEZ, loc. cit. p. 262; the criteria for the distribution of the funds by the member state have not been defined. yet

<sup>39</sup> FAYOLLE, op. cit.

<sup>40</sup> Research projects financed by the ESF are under way, notably the MIRE and AGIRE (Alpha-EUI) projects.

Commission, which is pursuing a policy of accelerating competition on the European market in all sectors, is strongly opposed.

According to the most recent analysis<sup>41</sup>, the restructuring phenomenon has now become a continuous, rather than exceptional, process of reorganisation in stages, caused in the recent past by an acceleration in stock market operations and independent takeovers<sup>42</sup> of industrial or economic projects.

However, the slowing down of this process is not aided either by the current developments in EU policy, nor by the economic rules the game.

- The second stage is to establish anticipation mechanisms within European policies: Above all, it would be necessary to refine our means of observing and monitoring restructuring observations<sup>43</sup>, in order to supply national and Community authorities with real time information, by sector, region and country, on the changes within firms and their social consequences. The work done within the framework of the European *Equal*<sup>44</sup> programme demonstrates the utility of regional observations, to go with the work done by local authorities, professional associations, trade unions and university researchers.
- Furthermore, it is necessary to revisit the issue of the impact which economic policy has on firms' decisions regarding how to react to change. It is incomprehensible that the EU failed to anticipate the changes in the textiles industry when negotiating the Multifibre Arrangement, which, from the outset, foresaw a ten-year regional and sectoral adaptation period. This link between the foreign trade policy of the EU and economic changes due to restructuring grants a means of anticipating the latter. For the moment, such anticipation of restructuring is not very integrated into policies of state aid. As for a European industrial policy, it is still emerging.<sup>45</sup>
- Further, it would be useful to examine how the actors within firms, however large or complex, are able to manage changes within the firm in order to avoid crisis, mass lay-offs and obstacles to retraining. Forward-looking employment measures, such as emergency measures (*mesures d'alerte*) in France are not sufficient in many firms to allow for steps that effectively anticipate a crisis.<sup>46</sup> They are unheard of in several European countries and are difficult to conceptualise within the Anglo-Saxon model of the firm, run more on the basis of corporate governance thinking (shareholders/stakeholders), instead of the granting of rights to workers' representatives. Decisions about restructuring are an intimate element of the managerial prerogative, which may restrict the

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<sup>41</sup> FAYOLLE, op. cit. Jobert, op. cit.

<sup>42</sup> The merger involving Arcelor and Mittal Steel is currently provoking a stake of shock in France.

<sup>43</sup> The restructuring observatory in Dublin has the difficulty of basing its analysis on the European press. At present, there is no objective indicator of restructuring. Finding one poses particular difficulties due to the difficulties in understanding the very process of restructuring.

<sup>44</sup> Observation project in Spain, presented at a seminar in Brussels, 30 May 2006, unpublished.

<sup>45</sup> All these issues are being looked at in the AgirE research programme (2005-2007), financed by the ESF (article 6).

<sup>46</sup> AUBERT (JP) et BEAUJOLLIN BELLET (R.) «Les acteurs de l'entreprise face aux restructurations: une délicate mutation», *Travail et Emploi*, n°100, octobre 2004, p. 99-112

political<sup>47</sup> possibilities of establishing processes of anticipation, but may allow a procedural framework.

New approaches are emerging, linked to the practices of EC-scale firms, in which there is a built-in representation of workers: several agreements signed with internal federations (International Framework Agreements)<sup>48</sup>, often down to the action of European Works Councils, contain provisions regarding jobs and restructuring, opening the way for an international negotiated framework within transnational firms. Finally, local, regional, national and European retraining policies have become not merely an aspect of measures dealing with the social effects of restructuring, but also anticipatory measures, by virtue of the increasing speed with which the process of change is occurring. Such policies require the building of active partnerships between public actors and firms, and should determine the appropriate level for intervention<sup>49</sup> in firms where the location is regional and the organisations are transnational.

At the present time, the relationship between local employment and its connection to European level issues is extremely difficult to capture or even conceive of.

Anticipating restructuring therefore involves several stages, a complex relationship between actors and the need to build effective levels of regulation around this aim, as, without doubt, the restructuring process demands changes in national and regional policy (often very effective in countries such as Spain or Germany), which are generally territorial in nature, but also at the sectoral level (subject to national, European and international and regulations and practice), as well as at the European level<sup>50</sup>.

As such, the example of restructuring in Europe illustrates the need, in the face of profound transformations within the EU, to establish new approaches founded on a renewal of solidarity, overcoming national competition.

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<sup>47</sup> and also legal, due to the existence of freedom of enterprise in many Constitutions. At the political level, there is little hope at the present time (late 2006) of a Directive which increases workers rights in this regard.

<sup>48</sup> DAUGAREILH (I.), «La négociation collective internationale», *Revue Travail et Emploi*, 2005, 69-84. DROUIN (C.R.), *International Framework Agreements, A Study in Transnational Labour Regulation*, Thèse de doctorat, Cambridge, January 2006, unpublished. BOURKE (R.), «Les accords-cadres internationaux (ACI) et la négociation collective internationale à l'ère de la mondialisation», Institut international d'études sociales, *DP/161/2005 BIT*, Geneva, 2005

<sup>49</sup> J. FREYSSINET, «Quels acteurs et quels niveaux pertinents de représentation dans un système productif en restructuration?», dans FAYOLLE dir, op. cit., *La revue de l'Ires*, n° spécial 47, 2005.

<sup>50</sup> Necessarily a 'multi-level governance' approach. Marginson et Sisson, p. 290-.