

## GDF Suez Transnational Collective Agreement on Health and Safety: EWC as negotiating agent and the relevance of the ETUF leading role\*

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1. Introduction.	464
2. Transnational Collective Bargaining at European level.	466
3. A Legal Framework for EFAs?	467
4. Negotiating agents at European level: European Trade Unions Federations and European Works Councils.	468
4.1 Which link between ETUFs and EWCs? (an introduction).	469
4.2 EWCs and the academic unrest.	470
4.3 A trade union supremacy over collective bargaining (also) at European level?	472
4.4 A mandate procedure to negotiate European Framework Agreements.	474
5. GDF Suez Health and Safety agreement.	476
5.1 Methodology.	476
5.2 Company overview.	477
5.2 The negotiation.	479
5.3 Conclusion and Implementation.	481
5.4 The EMF role.	482
5.5 The Italian perspective and actors' evaluations.	483
5.6 Overall assessment.	486
6. Conclusions.	487
7. References.	490
Interviews.	493
Web Sources.	493
Letters/Emails.	494

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## 1. Introduction.

Since the 1970s, we have witnessed a general liberalisation of markets and the creation of multinational companies (MNCs) as global players. This tendency is even stronger in Europe. Indeed, the European Single Market (1992) with its four economic freedoms, free movement of goods, capital, services and persons, implies that companies operating in Europe can move and merge without, almost, any restraint.

The growing number of multinational companies has raised the necessity to create new players and develop strategies from the employee side, to prevent the undermining of European workers' rights, which is one of the side-effects of the regime shopping strategy often used by the MNCs. As a response to this scenario, "a new transnational collective autonomy is slowly emerging" (Sciarra 2009).

A European form of trade unionism has started consolidating since the beginning of the 1990s. In those years, European Trade Union Federations (ETUFs), at the time called European Industry Federations (EIFs), have strengthened, by increasing the number of affiliates, of total membership and enlarging the geographical scope, with the support of the European Trade Union Confederation (ETUC). However, ETUFs are not constantly present at (multinational) company level, indeed that is the role European Works Councils (EWCs). The 1994 directive provided for the establishment of EWCs in those MNCs having some specific features. The aim of the directive was to give a voice to the European workforce within the multinational companies, as to try to influence transnational corporate decision making (Mueller et al. 2010). EWCs enjoy the right to information and consultation and their composition is basically chosen on a case-by-case basis. A relationship between ETUFs and EWCs does exist, however it is not linear and the respective roles are not clearly defined yet.

In the last two decades, both the actors concerned with employment relationship at EU level (EWCs and ETUFs) have been engaging in a form of European transnational collective bargaining (TCB) with MNCs. The agreements resulting from these negotiations are also called European Framework Agreements (EFAs).

The importance of EFAs has been acknowledged also by the European Commission, which has created a database of TCAs and, in 2006, has started considering the possibility to strengthen these tools, nowadays completely based on practice, with a proper legal framework at EU level (Ales et al. 2006). A perspective lately welcomed also by the European trade unions, which have developed a proposal for an optional legal framework (Sciarra et al. 2014).

The issue of EFAs is, therefore, at the forefront, both in the practice and among scholars. The literature discussing the subject is reach and often based on empirical studies. Overall, the main focus is on the development of TCAs, on the negotiating procedures, on the actors and the dynamics existing between them and on a potential legal framework. The topic of EWCs negotiating EFAs is not new to the literature, and several publications present the results of case studies on this specific matter. The issue on which actors are legitimized and/or should lead the negotiation of a EFA at company level is highly controversial, not only among scholars. The debate is triggered by several factors, *inter alia*, the absence of a European legal framework and the fact that, in practice, the EWCs have negotiated a quite remarkable number of TCAs, without clarity over the role of workers' organizations, even though they are recognised only information and consultation rights.

The issue is also at the centre of a more political debate involving national trade unions, European trade unions, as well as EWC members. The European trade unions, both the Confederation and the Federations, support the supremacy of trade unions over collective bargaining. The academic and political debates have not been able to clarify, yet, what practical problems can arise during the negotiation of EFAs when is exclusively the EWC negotiating on behalf of the workers, and what could hamper the conclusion of an agreement widely agreed by all the players concerned with the negotiation. Therefore, the aim of this contribution is to investigate this point.

The research question leading my analysis is composed by two sub-questions. First, the following question will be answered: what are the problems of EWCs negotiating EFAs at company level? In order to find an answer, a case study is carried out. The case assessed has proved to be a crucial case, since it triggered a change in attitude in both the management and the EWC. The negotiation discussed in this dissertation ended with the conclusion of the GDF Suez Health and Safety agreement, in February 2010 (Original name of the agreement: “*Accord de Groupe sur les Principes Fondamentaux en Matière de Santé et de Sécurité*”). The negotiators were the management and the Special Negotiating Body (SNB), on behalf of the whole EWC, and the signatory parties were the management, the SNB and the EPSU EWC coordinator, who did not have a negotiating role.

The agreement was concluded with the objection of the Italian trade unions representing the Italian workforce. The opposition was due to both the content and the absence of the European Metalworkers' Federation from the negotiation. Indeed, the Italian EWC member, mandated by the Italian organisations to negotiate, was not allowed to sign the agreement. Discussions followed the signature and the management finally accepted to both negotiate the subsequent agreement with the ETUFs and apply the negotiating procedure they were proposing. In order to carry out the case study, a number of semi-structured interviews were conducted and primary sources consulted.

The case is complex and interesting under various profiles, as to focus in understanding what problems the EWC faced during the negotiation, the study mainly draws on the analysis of Waddington (2011) and Mueller et al. (2013). The first author illustrates which problems the EWC can encounter in relation to the exercise of the rights to information and consultation and how ETUFs policies are, or can be, applied, in this respect. The second essay is helpful since it frames the common attitudes of EWCs towards the negotiation of EFAs.

Once the problems of a EWC negotiating EFAs are illustrated, it is possible to move to the second, and more constructive, part of the research question, that is: could the involvement of ETUFs contribute overcoming them?

By “involvement of ETUFs” is meant the application of the ETUFs' policies on transnational collective bargaining, which normally consist of a mandate procedure and guidelines on how to conduct the negotiation. The answer to this second part of the research question is strongly based upon the existing literature and the ETUFs' documents. Especially, the EMF procedure will be assessed by making use of both the federation's documents and the analysis provided by Rueb et al. (2013). Although, nowadays, all ETUFs have a mandate procedure, the EMF procedure has been chosen for two reasons. First, the EMF was pioneering this policy and both the other ETUFs and the author of the optional legal framework were strongly inspired by the EMF. Secondly, if

the EMF was included in the negotiation it would have imposed the application of its mandate procedure.

The research adds empirical evidences to the argument in favour of the active involvement of ETUFs in transnational collective negotiation. The study shows how the application of a mandate procedure from the European federation is likely to foster the cooperation and mutual understanding among the national trade unions, strengthen the workers' side and lead to the conclusion of a widely applicable agreement. This point is crucial also in respect to the optional legal framework proposed by the ETUC in 2014, which envisages a leading role of trade unions in the negotiation of EFAs.

The academic production on the topic is wide and various and it won't be fully covered. The purpose of the first subchapter is to give credit to a vast academic debate that considers TCB as part of the transformation of Industrial Relations in Europe. Secondly, the developments regarding a European legal framework are reviewed. The third chapter moves on from the broader literature on EFAs to focus on the more specific subject of EFAs' agents: EWCs, ETUFs, with a focus on their role as negotiating agents of EFAs. The fifth chapter, composed by a number of subchapters, aims at describing in detail the case study carried out on the negotiation and conclusion of the GDF Suez TCA on Health and Safety, and it shows the complexity of the relationship among the various players.

## 2. Transnational Collective Bargaining at European level.

Kim (1999) mentions some of the reasons why a European form of collective bargaining is necessary. First, he argues that "European collective bargaining is desired not to replace national collective bargaining systems but to complement and coordinate bargaining activities at the national level" (Ibid, p.394). Moreover, it is added that it would be needed to avoid competition among national trade unions and contrast the regime shopping strategy applied by the employers (Ibid, p.394). Overall, European Framework Agreements at company level are part of that process known as Europeanization of industrial relations (Da Costa et al. 2012; Leonardi 2012).

Among scholars, there is a shared feeling that the process of Europeanization of Industrial Relations is still at an embryonic stage (Beneyto Rocha 2012). However, the industry level is considered to be the most feasible to foster Europeanization of collective bargaining. Also from national experiences it can be drawn that the sector or industry level may "operate as a catalyst for transnational collective bargaining" (Le Queux Fajertag 2001, p. 118). The development of a European industrial relations system will be attained especially thanks to the establishment of forms of European collective bargaining that will foster the convergence between national systems (Marginson and Sisson 1998).

Transnational collective bargaining (TCB) is a practice carried out both at International and European level. In both cases, the number of agreements has increased in the last decades (Telljohann et al. 2009a). According to the latest data published, by the end of 2013, 127 *European* framework agreements and 140 international framework agreements have been signed (Rehfeldt 2015, p. 27). Even though, the texts with global scope signed by MNCs and employee representatives have been called in different ways, such as *agreement on code of conduct* or *joint declaration on human rights and working conditions*, they can all be designated as International Framework Agreements (IFAs). These texts must be distinguished by the voluntary Codes of Conduct based on unilateral

initiative, where no negotiation with workers' representatives takes place and labour rights are not really addressed (Papadakis 2008; Telljohann et al. 2009a).

Some authors define EFAs as those TCAs signed by European Federations, thus implicitly excluding from the scope of the term those agreements signed by EWCs (see authors in Leonardi eds. 2012 and Le Queux Fajertag 2001). Other scholars emphasize the role of European Works Councils as negotiators of proper Transnational Collective Agreements (Jagodzinski 2007; Da Costa Rehfeldt 2007).

Several authors have carried out research aimed at collecting data on TCB and at providing an overview on the development of this practice, in Europe. According to the data collected up to 2013, 92 of the 127 EFAs have been signed by EWCs, 19 of which co-signed by ETUFs (Rehfeldt 2015, p. 27). However, there is no official EU agency collecting the EFAs, therefore the estimate is always approximate (Da Costa et al. 2012).

The interactions between the sectoral social dialogue (SSD) (Clawert 2011 on SSD) and transnational collective bargaining (TCB) have also been assessed (Léonard Sobczak 2010; Alaimo 2012). The scholars agree that the main, and significant, difference lies in the legal and institutional framework. Indeed, the company level is experiencing a complete absence of legal framework, while the sectoral level enjoys an institutionalized context and a clear legal basis formed by articles 152(2), 154 and 155 of the Treaty on the Functioning of the European Union (TFEU). Among the diversities, Alaimo points out that EWCs have been, by now, the main signatories of EFAs, whereas European Federations are engaged in SSD. While Alaimo highlights the differences in the actors involved at the two levels, Léonard and Sobczak prefer to underline that some of the actors involved in TCB are the same as those engaged in the European social dialogue.

All the commentators agree that TCB is normally favoured by employers, while workers' federations prefer to negotiate at sectoral level. Moreover, some procedural aspects are similar, especially as far as the follow-up is concerned and a consistent number of topics dealt with by the sectoral social dialogue are also present in the transnational agreements at company level. This phenomenon is called by Léonard and Sobczak a case of "convergence without coordination". Alaimo also underlines a further common point: both SSD and TCB share a critical aspect, i.e. non legally binding outcomes (Alaimo 2012).

### 3. A Legal Framework for EFAs?

The issue of a legal framework for EFAs is at the foreground. Negotiation and conclusion of European Framework Agreements at company level remains, nowadays, nothing but a practice normally based upon the initiative of the employer side. Once the agreement is signed by both parties, its enforceability is based exclusively on national legislation or in the reproduction of the content through national tools. Moreover, the workers' side cannot easily make use of a European form of collective action, given the absence of a transnational right to strike (Lo Faro 2012; Da Costa Rehfeldt 2007, p.317; For a deep analysis on the lack of a European right to collective action see Bercusson 2008).

The topic has caught the attention of the European legislator and, in 2004, the EU Commission has appointed a group of experts known as *Ales Group*. In 2005, the European Institution officially expressed the need for an *optional framework for transnational collective bargaining*. Moreover, it was clearly stated that "the Commission plans to adopt a proposal designed to make it possible

for the social partners to formalise the nature and results of transnational collective bargaining". The aim of a framework as such would be to support both companies and social partners (European Commission, 2005).

It is often argued that a legal framework would clarify several aspects, *inter alia* which are the legitimate actors, thus strengthening the legal certainty of the agreements themselves; simultaneously, it would still guarantee the autonomy of the social partners (Da Costa and Rehfeldt 2007; Ales and Dufresne 2012; Lo Faro 2012). Moreover, Sciarra underlines that a supranational legal tool would have an auxiliary function, since it could reinforce transnational collective bargaining, by supporting and enhancing the autonomy of the social partners (Sciarra 2010, p. 20).

However, not everyone agrees in prioritising the European legal framework. Indeed, André Sobczak argues that the effective implementation of an agreement mainly depends on the active involvement and commitment of the social partners, meaning both the management and the workers' representatives, who have a crucial role. Consequently, the legal status of the agreement is of secondary importance. Among the workers' representatives that should engage also in the follow-up of the agreements the author mentions ETUFs, national trade unions as well as EWCs (Sobczak 2012).

No proposal has been adopted, yet. However, ever since, three expert groups have intensively worked to concretely frame this option<sup>1356</sup>. Obviously, the bargaining agents at European level are discussed also in these legal studies.

The latest development towards a legal support for EFAs comes from an ETUC's project. The European Confederation appointed three European labour lawyers in order to draft the project for an optional legal framework (Sciarra et al. 2014). The project was elaborated together with the ETUFs and ETUC. Especially, the Confederation supported the idea to consider the IndustriAll-Europe procedure (previously EMF procedure) for the negotiation of EFAs, as a basis to elaborate the proposal (Dufrense 2012). The document underlines the "optional", but "legal", character of the proposal. Indeed, the aim is to provide a legal tool which has not a compulsory character for every actor engaging in transnational bargaining, but exists for those actors who clearly express their will to give the EFA legal protection.

#### **4. Negotiating agents at European level: European Trade Unions Federations and European Works Councils.**

The literature is rich of contributions assessing how the negotiations of EFAs are carried out and by whom. Moreover, the quantitative and qualitative analysis of the EWCs also provide insights over the role of EWCs as bargaining agents (The latest case studies on TCB at European level have been published in Leonardi eds. 2015). At the same time, a number of authors and the European Trade Unions are arguing that, notwithstanding the growing number of EFAs concluded by EWCs, the trade unions are the only actors truly legitimized to negotiate and conclude on behalf of the European workforce. Especially, European Trade Union Federations, mandated by the national affiliates, should conduct the negotiations.

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<sup>1356</sup> Ales et al. 2006; Rodriguez et al. 2012 ; Sciarra et al. 2014.

Besides the arguments stressing the lack of legitimacy of the EWC to negotiate EFAs, it is not clear whether EWCs are practically able to successfully negotiate and conclude collective agreements. In other words, it has not been assessed, yet, if the EWCs are always able to overcome the problems that they may encounter during the negotiation, in order to achieve common goals and sign widely approved agreements (and not just sign a text, no matter under which conditions). Moreover, even if the ETUFs' policies towards EWCs have been analyzed, the studies published so far have never tried to make use of the ETUFs' policies on the negotiation of EFAs, that is the mandate procedures, in order to understand whether they could provide a solution to the difficulties that the EWC may not be able to face on his own.

The purpose of the research is to understand whether the negotiation of Transnational Collective Agreements, with European scope, involving as bargaining agents only the management and the EWC, presents some specific problems that can be avoided if the ETUFs' policies on TCB are applied. Among the literature mentioned in this chapter, the analyses conducted by Waddington (2011) and Mueller et al. (2013) are particularly useful in order to assess which problems may arise, while the EMF procedure and the related analysis provided by Rueb et al. (2013) are used to conclude the study. This special case has been chosen since the European Metalworkers' Federation has been pioneer in the development of such a strategy, indeed the other ETUFs have followed the EMF's example. However, the EMF procedure remains the most detailed and comprehensive one. In addition, if EMF would have been involved in the Health and Safety agreement negotiation, it would have very likely imposed the application of that procedure.

#### 4.1 Which link between ETUFs and EWCs? (an introduction).

What could be called a European form of trade unionism has started its meaningful development in the early 1990s. The most part of national trade unions existing in Europe are affiliated to the European Trade Union Federations (ETUFs), which in turn, are members of the European Trade Union Confederation (ETUC).

However, ETUFs are not constantly present at (multination) company level, indeed that is the role European Works Councils (EWCs). EWCs have been created in order to give a voice to the European workforce within the MNCs in Europe, as to try to influence transnational corporate decision making (Mueller et al. 2010).

A directive approved in 1994 (Directive 94/45/EC of 22 September 1994) provided for the establishment of European Works Councils (EWCs). The directive, entered into force in 1996, had the aim "to improve the right to information and consultation of employees" (Directive 94/45/EC Art. 1 par.1) at European level. The 1994 directive, as well as the recast directive, does not provide for any legal basis for the EWC to negotiate collective agreements with MNCs (however the issue is debated, for further elaboration on the topic see Frosecchi 2015, pp. 270-276).

The agreements to put in place a EWC have often been closely followed, not to say lead, by the ETUFs, especially the EMF was strongly engaged in this activity. Notwithstanding the absence of a role for the ETUFs in the directive (Mueller et al. 2010, p.514), in 1994, the European Metalworkers' Federation put in place a Task Force to supervise the negotiations of EWCs, and also other ETUFs followed the example. Since that time EWCs became "at the centre of the EIFs' company-related activities" (Ibid, p. 514). Later, in 2002, this body assumed a permanent connotation as the Company Policy Committee (Dufrense 2012, p. 110; Waddington 2011, p. 511).



The EMF had a pioneering role in transnational workers' representation at company level. Indeed, after the approval of the directive, it drafted guidelines on how to maintain a fair connection between trade unions and EWCs. A key step was the development of a new figure: the EWC coordinator, that should be appointed for each EWC (Telljohan et al. 2009a, p. 58). The ETUF EWC coordinator has a central function: he has to maintain the linkage between the two bodies of European level workers' representation (Rueb et al. 2013, p. 42). Especially, the EMF EWC Coordinator is "generally a union officer from the majority union of the company headquarters" appointed by the European Federation itself (Da Costa et al. 2012 p.125). "The main task of this coordinator was to ensure a constant flow of information between the EWC, national trade unions and the EMF" (Telljohan et al. 2009a, p. 58) and to ensure transparency (Ibidem). As a matter of fact, the role of the EWC coordinator varies depending on many factors, inter alia, the size of the company or its origins and the type of EWC he is involved in. For instance, only in some cases, the EMF EWC coordinator is really keeping the European trade union constantly updated on the EWC activity (Muller et al. 2011, p. 223; EMF 2000).

Besides the specific figure of the EWC coordinator, all ETUFs have tried to remain involved in the EWC activities, mainly by providing support and facilitating coordination. Especially, the Federations sustain the EWC with translation services, training, working materials; they set up databases containing detailed and updated information about all EWC existing and their activities, including negotiations and they provide political supervision (Mueller et al. 2010, p. 515).

#### 4.2 EWCs and the academic unrest.

Besides the literature offering data on quantitative and historical elements of EWC, the scholars have focused also in assessing this institution from a qualitative point of view. With the 1994 directive, a tough debate between academics started. The arguments have been divided into two main branches: Euro-pessimists and Euro-optimists (see, inter alia, Marginson Sissong 1996 and Streeck 1997). This debate is still ongoing, even if to a lesser extent. As a consequence, the scholars that contributed to the debate are numerous.

The literature on EWCs of the last years has tried to move forward from the classical debate, mainly through qualitative analysis of single EWCs, by applying case study methodology.

Overall, a number of researchers found out that, according to the respondents, all EWCs, to different extents, are useful for dealing with the different interests within the company and for improving employees' rights. However, their rights provided for by the Directive are not sufficient. Moreover, no discussion with the management, in order to face issues as productivity and competitiveness, is conducted; the employee are not interested in EWC's activities, especially because of the lack of information about these bodies, which implies that employees often do not know which are the activities of EWCs and struggle in understanding how the workers could be affected (Gold and Rees, pp 549-550). A lack of sufficient competence of the EWC representatives is also a problem. According to the respondents the unions should provide adequate training, as well promoting the role of EWCs at various levels (Hertwig et al. 2011; Gold and Rees 2013).

Other authors paid more attention to the internal dynamics of a single EWC. Timming (2010) studied a UK-based EWC, from the UK and Dutch perspectives. The purpose was to understand how national industrial relations (NIRs) influence, first, the "social psychology of workers' representatives", second, the representatives' willingness to form cross-national alliances (Ibid, p.



522). The author found this EWC as belonging to the “symbolic” typology<sup>1357</sup>. Moreover, he highlighted that the Dutch delegates were at ease with the role of the EWC, while there was uncertainty among UK delegates. Overall, he concluded that EWCs are more successful in promoting workers rights beyond borders due to some interrelated factors: identity, culture, material interests, composition of the MNC, managerial strategy and the economic environment (Timming 2010, p. 531).

The fact that the relationship between national trade unions and EWCs is ambiguous has been showed by Hann (2010)’s case studies. Indeed, the author shows even in case of unionized EWCs, trade unions members sitting in the EWC are not always aware of the respective trade union strategies and the lack of funding of the organization makes it hard for them to support strategies at international level. Last, national trade unions have different understandings of which role EWCs should have and this strongly influences the development of different strategies in their respect (Ibid).

Waddington (2003) studied European Works Council (EWC) representatives from six different countries. The findings presented by the author can be summarized as follows. First, the country of origin of MNCs is a key factor on how the EWC acts/develops; the perception on EWCs differs depending on the nationality of the representatives. There is a consent on the need to revise the directive to widen the scope of action of EWCs, as well as to specify the rules for information and consultation, to improve their quality and effectiveness (Ibid).

In 2011, Waddington published the results of a further study assessing the level of actual performance of European Works Councils in relation to ETUFs’ policies. Overall, the author argues that EWCs are influenced by trade unions’ policies, but this impact should increase and become wider. The quality of information and consultation at EWCs is poor, often much less than what provided for by the EWC establishing agreement. However, it is underlined that these bodies are still “an institution in process” (Waddington 2011, p. 510).

As far as the main ETUFs’ policy is concerned, that is the EWC coordinator, the author notices that two are the risks. First, that the EWC coordinator is not appointed at all. Second, that the quality of the EWC coordinator is not sufficient to strengthen the EWC and increase its effectiveness, especially where the coordinator does not engage with the EWC. Indeed, the author stresses that it is not enough to enhance the number of EWC coordinators, but also the quality of their presence and involvement must be increased (Waddington 2011, p. 526).

A further source of difficulty concerns the fact that EWC members have to rely on national unions for support and training, but formal and informal communications with trade unions are not homogeneous. Indeed, a number of EWC representatives is not supported at all by trade unions. Anyway, even where the representatives are backed up by the national trade unions the EWC is not homogeneous, since national unions can, or are willing to, make use of different amounts of resources for this purpose and the EWC representatives’ preparation turns out to be different. As a consequence, a real transnational identity with EWCs can hardly develop. In addition, among

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<sup>1357</sup> Lecher in 2001 considered three possible types of EWCs. Symbolic EWCs, where not real participation takes place; service-oriented, where the only activity revolves around information; project-oriented EWC which implies some kind of cooperation among workers and a common agenda; participative EWCs are the ones where it is possible to find “real consultation, negotiation and transnational links”.

the main problems, the author found a lack of communication among the EWC members, besides the formal plenary meetings of the EWC (Waddington 2011).

To sum up, EWCs function better when the members are unionized and a ETUF representative is actively taking part in the EWC (Waddington 2011, p. 526). Waddington's study shows that information and consultation at EWCs are better where the ETUFs policies are applied and there is the support of ETUFs representatives. Indeed, the author concludes that a way to improve the performance of EWCs is "to increase the number and the quality of EWC coordinators" (Ibid, p. 526).

#### 4.3 A trade union supremacy over collective bargaining (also) at European level?

Mueller et al. included, among the controversial issues around European Framework Agreements, the choice of which are the actors that should take on the negotiating role. According to the authors the choice could fall on "the European Works Councils and/ or the affected national trade union organizations, and/or the relevant European or global trade union federations" (Mueller et al. 2011, 219).

The legitimacy of whom is negotiating on the workers' side is one of the main problems related to EFAs, that, according to most scholars, could be solved by a European legal framework (Da Costa Rehfeldt 2007 p.317; Sciarra 2010; Ales et al. 2006).

The relationship between the EWCs and ETUFs is complex, since EWCs, on the one hand, enjoy autonomy, but on the other hand, in many cases the ETUFs, especially the European Metalworkers' Federation, played a key role in negotiating the agreements to set up the EWC itself. The relationship becomes even more complex when the negotiation of a EFA is at stake. As a matter of fact, notwithstanding that the ETUFs are more and more leading the negotiations, the process of EFAs is mostly triggered by EWCs, which often conclude agreements independently (Da Costa et al. 2012; Mueller et al 2011, p. 221; Telljohann 2009a).

The strong distinction between EWCs and trade unions is due to the fact that the European bodies could be, at least potentially, completely independent and unrelated to trade unions. For instance, that is the case where no EWC representative is a trade union member. Obviously, also the contrary is possible and EWCs can be fully unionized, thus appearing as real trade union bodies at company/European level (Mueller et al. 2011, p. 221). However, even in those cases, either internal dynamics or too different national perspectives can lead to malfunctioning negotiations by EWCs (see EWC case studies in the previous chapter). In addition, Cilento (ETUC Adviser) states that "experience shows that [within EWCs] good trade union practices are not frequent, not enough structured and likely to fade away" (Cilento 2012, p. 122).

The approach of EWCs towards the specific activity of negotiating collective agreements has not been widely studied in a qualitative way. So far, only a publication of the European Trade Union Institute has studied this aspect through interviews (Mueller et al. 2013). The authors investigated on both formal and informal arrangements between EWC and the management, with a special focus on "the attitude of the actors towards a negotiating role" (Ibid, p. 24), in order to understand which are the prospects for a future development in EWCs role. The study suggests that a notable number of EWCs have gained a participative role and, especially EWC of MNCs with German headquarter have concluded several formal and informal agreements. This findings demonstrate that, at this stage, the critics to the EWCs by Streeck are not realistic (Ibid, p. 86). Therefore,

the number of arrangements, both formal and informal, between MNCs and EWCs is likely to grow, even if an exponential increase is not to be expected (Ibid, p. 85).

Müller, Platzer and Rüb (2013), in a recent publication, assess the quantitative increase of transnational agreements in the metalworking sector, including also the undocumented agreements, and their potential future increase. The data have been collected through more than 80 interviews to EWC members, based on a semi-standardized questionnaire. Both formal and informal agreements where EWC were actively involved in the negotiation and conclusion had been included. By “informal arrangements” is meant those agreements between the management and the EWC, not having a written form (Mueller et al. 2013, p. 9).

The core point of the study is to evaluate the EWCs' approach towards transnational negotiations in the metalworking sector. The 57% of the agreements concluded with involvement of EWCs has been found in accordance with the EMF statutory procedure (Mueller et al. 2013).

The researchers found out that the EWC age plays a role in the conclusion of transnational collective agreements. Indeed, “the overwhelming majority (91%) of European Works Councils in the metalworking sector that have negotiated and concluded formal transnational agreements are more than ten years old and none of them have existed for five years or less (91%) has existed for over ten years” (Mueller et al. 2013, p. 64). The authors conclude that transnational collective bargaining is a step that the EWCs are able to make once they have strengthened their internal structure and the EWC representatives have learned how to communicate among themselves and with corporate management (Ibid, p.64).

As to the influence that the EWC chair nationality can have over the negotiation of EFAs is significant. The data reveals that, where the EWC chair is German, the EWCs have been actively involved in the conclusion of both formal and informal agreements. While, EWCs with French chairs are far less engaged in collective negotiation (Mueller et al. 2013, p. 66). In the case of formal agreements it is generally the management that takes the initiative and, if this happens, all EWCs interviewed seem to be very keen to positively engage in negotiations and willing to conclude the agreement (Mueller et al. 2013, p. 68).

Besides the importance of the topics dealt with in the agreements, such as restructuring or health and safety, also other reasons motivate the EWCs to negotiate agreements at company level. Especially, when it comes to formal agreements, the general feeling is that, even if the agreement may not be excellent, the negotiation in itself will, first, foster the consolidation of the EWC, second, it will reinforce the role and the legitimacy of the EWC face to the management (Mueller et al. 2013, p. 69).

The vast majority of EWCs that have not negotiated or concluded any agreement expressed the need to enter into negotiations. The EWC members of German companies were the ones expressing the least this need, mainly due to the general structure of the company that well integrated the EWC (Mueller et al. 2013, p. 70).

The survey moves on analyzing the reasons why some EWCs do not enter into negotiations with the management. In most of the cases, the main cause is a *structural* inability. For instance, members do not have regular contacts, communications are difficult due to language obstacles and the existence of very different cultures of industrial relations within the same EWC, coupled with the tendency of the representatives to pursue national interests, does not help to create a solid

basis to negotiate. Other reasons cited are, *inter alia*, the lack of interest of members, or the feeling that it is worthwhile to first strengthen the information and consultation rights before moving to the negotiation (Mueller et al. 2013, p. 75).

The fact that EWCs may carry out collective negotiation at company level is not uninteresting to trade unions, mainly for two reasons. First, the topics dealt with in the European agreements may be relevant for the collective bargaining at national level, thus causing an *uncomfortable overlapping*. Second, the authors highlight that European industrial relations will be shaped according to what the practice is now, therefore, they seem to imply that a negotiating role for the EWC may favour a European IRS not strongly trade union-centric (Mueller et al 2011, p. 221). Moreover, we can remind that EWCs, operating without sectoral level coordination by EIFs, risk to foster the creation of a form of "transnational micro-corporatism" (Schulten 1996).

Someone strongly concludes that, notwithstanding the undeniable number of texts signed by EWCs, these bodies cannot be considered reliable trade union tools and it would be misleading to think that they could be the foundation for "a reliable structure for collective bargaining at cross-border level" (Leonardi p. 26; Cilento 2012, p. 122).

For these, and other, reasons, the European Trade Unions, both the Confederation (ETUC) and the Trade union Federations (ETUFs), are strongly emphasizing the central role of the trade unions as negotiators of collective agreements (Leonardi p. 26). Consistently, ETUC tried to highlight the importance of a clear role of ETUFs within the EWCs, also in the occasion of the revision of Directive 95/45/EC (ETUC 2004).

In order to make sure that the primacy of trade unions over collective bargaining will be maintained also at European level, and to avoid a too strong detachment of them from the EWCs, it is very important for the European federations to foster the trade union presence in EFAs' negotiations (Mueller et al. 2010, p. 516). Especially, the ETUC judges the ETUFs to be the most adequate organizations to fulfil this role (Cilento 2012, p.122). Moreover, the best way to overcome the competition that can arise between trade unions and EWCs, about who should negotiate the European level collective agreements, is to build a real and stable cooperation among whole the players involved and interested (Alaimo 2012 p.57). Indeed, Da Costa and others (2012) found out that, in general, a crucial factor for the successful conclusion of EFAs is the coordination between all the actors at EU and national level (Da Costa et al. 2012, p. 134).

The ETUFs have tried to achieve these goals by framing clear rule and internal mandating procedures for the EFAs' negotiation, providing for the inclusion of unionized EWC members both in the procedure and in the follow-up (Alaimo 2012, p. 68). In the following chapter what this strategy entails will be clarified.

As far as the negotiating agents are concerned, the proposal for an optional legal framework published in 2014 by the ETUC envisages an agreement signed by a legal representative of the employers' side and at least one ETUF or two national labour unions, without automatically excluding the EWC. Therefore, the proposal supports a central role of trade unions in the negotiation and conclusion of EFAs. Furthermore, there must be a disclosure of the mandate to negotiate from both sides, however, the parties should be left free on how to operate the mandate.

#### 4.4 A mandate procedure to negotiate European Framework Agreements.

Nowadays, almost all the European federations have framed negotiating procedures to negotiate

EFAs (Dufrense 2012). Cilento (2012) underlines some common features of the currently existing procedures, included in the ETUFs' Statute. First, the role of EWCs is recognised especially in as much as they create the right environment to negotiate transnationally. Second, the European federations are supposed to lead the negotiation and conclude the agreement. Third, the national unions' interests are important, but they have to be coordinated within the mandate procedures. The forth point follows: democratic principles are applied in order to have a wide consensus. Fifth, the idea is always that a clear and democratic mandate procedure will strengthen the agreement and make them as binding as possible. Last, coordinating bodies of the ETUFs are always updated about the negotiation, but the implementation phase is of national unions' competence (Cilento 2012, p. 124).

The EMF has pioneered this strategy and developed the first detailed procedure (Da Costa et Al. 2012 p. 126; Dufrense 2012). Both for this reason, and since the empirical research focuses on a case where the EMF, if involved, would have likely applied its mandate procedure, the following pages focus exclusively on this case.

In 2001, the EMF adopted a position paper where it clearly declared that trade unions have a monopoly over collective bargaining. Four years later, in June 2005, the executive committee of the same federation adopted a further paper in order to define a strategy to counter the growing phenomenon of cross-border restructuring (EMF 2005). The key point of the strategy was to establish a trade union coordination group that would have, eventually, lead to the definition and development of the European company negotiation. In the same years, EWCs were developing, both in number and activities; European companies seemed more and more opened towards European Collective bargaining and, on the other hand, the national tendencies to decentralize collective bargaining needed a counter-action to be taken at higher level. Additionally, the European Commission announced the possibility for a legal framework for European collective bargaining at company level (Rueb et al. 2013, pp 85-89).

In 2004, some national trade unions affiliated to EMF raised some concerns with regard to the negotiation of an agreement with Arcerol's management. Especially, they underlined that the EMF did not have a specific mandate to negotiate. This triggered a two year discussion, within the CB committee, finalized to clarify the negotiating procedure. Also the company policy committee, representing the EWCs' position, the executive committee and experts from the national affiliates took active part in the process (Rueb et al. 2013, pp 89-93).

The topics that caused the strongest debates among the affiliates were two. First, there were two different positions on the role that the EWCs should have had in the procedure. Some trade unions, IG Metall in the lead, supported a proper negotiating role for EWCs, while other affiliates rejected the idea that EWCs could have had such a role. Second, there was no consent on who should have the authority to sign the agreements. Indeed, German trade unions were arguing that also the EWC coordinator should be entitled to conclude the agreements. Perspective completely rejected by the Italian trade unions that accepted as signatories only the EMF representatives (Dufrense 2012, p. 212; Rueb et al. 2013, p. 98).

Obviously, the "Internal EMF Procedure for negotiations at multinational company level" (EMF 2006), adopted in June 2006, was the result of various compromises. The introduction to the guidelines contains some core statements. Indeed, it is underlined that "Collective bargaining is a core competence of national trade unions and their local representatives" and EWC do not have

the mandate to negotiate, which, instead, rests with trade unions. Therefore, EMF commits to involve national trade unions also in TCB.

The procedure applies when the company, the EWC or the trade unions involved show the will to start a negotiation. The first step consists in preliminary information and consultation involving the national trade unions, the EMF coordinator, the EWC select committee and the interested EWC. In this way the national trade unions agree upon the negotiating team (which always includes someone representing the EMF and can be composed also by EWC members which are also trade unions members) and the main positions to be taken during the negotiation. The draft agreement must be approved by the national trade unions (EMF 2006).

The mandate for negotiating as well as the approval on the draft text must be granted on a case-by-case basis; where possible the mandate should be unanimous, however “If unanimity cannot be reached then the decision [...] should be made by at least a two-thirds majority in each country involved.” (par. 2). Only a country representing more than 5% of the total European workforce can block the negotiations. The document underlines that the trade unions are free to use national methods to define the majority in their country, however the procedure applied should be transparent. The EMF is responsible for signing the agreement. The implementation is a matter for national unions, that have to respect the relevant national practices and laws (EMF 2006). As a consolidated practice, the European trade union’s representative in charge of the negotiation explains, during preliminary meetings, the mandate procedure to both the management and the EWC. The same person will very likely be the spokesperson during all the negotiating meetings (this information were collected during a six week internship at the Collective Bargaining and Social Policy department of IndustriAll-Europe in February and March 2014).

It has been underlined (Rueb et al. 2013) that there is a duty to involve EWC members only in the first phase of the procedure. On the contrary trade unions are taken into high considerations. Indeed, each main stage of the process needs the approval of national affiliates and the minimum requirement for the proposals (negotiating team and draft agreements) to be approved is quite high. According to the analysis provided by Rueb, Mueller and Platzer (Rueb et al. 2013) there are two main reasons for such stringent requirements. First, this would make sure that national trade unions remain the main character of the collective bargaining story. Second, the fact that the possibility for an opt-out clause has not been included makes sure that the agreement will be applied widely and at a truly European level. Moreover, “trade unions can show employers that they can commit their memberships to agreed outcomes” (Rueb et al. 2013, p.96).

The EMF procedure allows trade unions to be in control of transnational collective bargaining. However, a faithful application of the procedure is essential to achieve this objective and this is possible only if the national trade unions commit towards sharing experiences and fostering close cooperation (Mueller et al. 2011, p. 222). This procedure is now an appendix to the IndustriAll European Trade Union Statute (IndustriAll-Europe 2012). Therefore, it applies to all negotiations with MNCs employing a wide range of workers, including chemical, textile, energy and metal workers.

## **5. GDF Suez Health and Safety agreement.**

### **5.1 Methodology.**

On the basis of the literature reviewed in this chapter, in order to answer my research question,

I chose the GDF Suez agreement on Health and Safety negotiated by the EWC SNG with the (passive) presence of EPSU and EMCEF coordinators. This specific agreement has been chosen since not the whole special negotiating body (SNB) signed, therefore, the result of the negotiation cannot be considered positive, in as much as the workers' side did not act in a united way.

The study of the negotiation is based on semi-structured interviews and primary sources. The first interviews were carried out in IndustriAll- Europe in March 2014. I choose to talk about the case with Bart Samyn (Deputy General) and Isabelle Barthese (Policy Advisor) (both of them, at the time of the negotiation, were in the same positions for EMF) who were informed about the negotiation by the FIOM European department secretary and got involved with GDF Suez right after the conclusion of the Health and Safety EFA. These first explorative interviews were necessary for three reasons. First, I had a first idea of what the case was about. Second, the respondents clarified some key points: how the EMF was informed and by whom; which was the EMF position towards the negotiation/conclusion of the agreement; how the role of EMF vis-à-vis the GDF Suez management changed subsequently to the negotiation of the Health and Safety agreement. Third, the respondents helped me to identify the key persons to interview to clarify how the negotiation developed.

The interviews with the EWC coordinators from EPSU and EMCEF were useful to understand the role of the ETUFs coordinators present in GDF Suez EWC and the extent to which they were involved in the negotiation. The EPSU representative's interview happened in written form, while with the EMCEF coordinator was interrogated by telephone.

The EWC members with whom I had telephone interviews are the Italian representatives and the French one from CGT. Moreover, I had telephone interviews with the person in charge with GDF Suez in Italy in 2009 and 2010 and with the FIOM European department secretary. Thanks to these interviews, carried out from June to August 2014, I was able to reconstruct the negotiation and to understand the arguments of the national trade unions. Furthermore, the respondents were keen to share their points of view on the problems faced during the negotiation and on how the obstacles met could be solved.

The primary sources I consulted are: the agreement itself, letters and e-mails (collected in different moments) exchanged between the EMF secretariat and the FIOM European department secretary and those between the workers' representatives (both EWC and trade unions) and the management. The content of these primary sources was almost always coherent with the answers of the respondents. However, they were really helpful to both clarify the main events' dates and reconstruct faithfully the controversies that arose because of the negotiation.

## **5.2 Company overview.**

GDF Suez is a Multinational Company with its headquarter in France. It was founded in July 2008, following the incorporation of Suez (with French and Belgian origins) by Gaz de France (French company) (GDF). It operates in the production and distribution of energy services (gdfsuez.com).

According to the latest data presented by the company, GDF Suez has 147.200 employees worldwide and it has activities in 70 countries. In Europe, it employs 133.400 people and the 2013 revenues amount to 65.8 billion Euros (gdfsuez.com).

According to a survey made by EMF, with collaboration of the national affiliates, in Europe, in 2010, GDF Suez total employees in the metal sector were 24.099, the 13,27% of total employees



in Europe (at the time). In detail, the metalworkers were spread as follows: 852 in Germany, 10263 in Belgium, 2984 in Italy, and 10000 in France. Indeed, GDF Suez is not a pure metal company and it was only for the smallest part metal, otherwise the main sectors concerned are public services and energy (Samyn 2014: Interview).

As for health and safety, in 2002, Suez had published an international Charter on Health and Safety at work. In 2007, the Charter was endorsed in an agreement on Health and Safety signed by the Suez management and various bargaining agents, among others: the EWC and French trade unions (ewcdb.eu). In October 2009, the newly constituted GDF Suez decided to renegotiate the agreement originally negotiated at Suez.

The GDF Suez EWC has a complex history and peculiar features<sup>1358</sup>. In the following paragraphs, only those aspects useful to understand the negotiation of the Health and Safety agreement are highlighted.

The EWC of Gaz De France was originally negotiated in 2001 (ewcdb.eu). After the incorporation of Suez, and the establishment of GDF Suez, a new EWC fully representative had to be negotiated (ewcdb.eu). Eventually, in May 2009 the GDF Suez European Works Council agreement was concluded.

Given that GDF Suez is a very large company (Kerckhofs 2014: Interview) and the EWC is composed by nearly 70 persons, it was not feasible to negotiate with the whole EWC (Ibid). Therefore, once they had to negotiate the GDF Suez EWC, after the 2008 merger, a Special Negotiating Body (SNB) was set up. The SNB was established “giving a weight” to each country in relation to the percentage of workers present in the various countries. In GDF Suez the French trade unions play a crucial role (Ibid). However, the French representatives agreed in reducing their weight from 60% to nearly 40 %, in order to give more space to other countries. Italy had the right to have only one representative in the SNB (two in the EWC of GDF Suez) and the mandate was given to Stefano Bassi (Bassi 2014: Interview).

GDF Suez, as a French company, was aware of the complications that may arise from a collective negotiation carried out with the exclusion of trade unions (Samyn 2014: Interview). As a consequence, the GDF Suez management developed a strategy to make sure that the national trade unions would have been involved: the members of the Special Negotiating Body (SNB), in order to be considered fully allowed to negotiate the *GDF Suez EWC agreement*, had to request the respective national trade unions to provide them with a sort of authorization to negotiate on their behalf, something like an informal mandate (Ibid). Most, but not all, national trade unions agreed as long as they would have been kept informed and no core topics, as wages, would have been negotiated (Ibid). In this way the SNB was set up. The management request for this sort of mandate from the national trade unions makes the GDF Suez EWC a singular case, inasmuch as it is not common among MNCs to demand this kind of formal involvement of national trade unions in the EWC negotiation.

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<sup>1358</sup> An article by Isabelle Da Costa and Peter Kerckhofs, providing a case study of the GDF Suez EWC, will be published in the next months.

For what concerns the EWC coordinators (also sitting in the SNB), the ETUFs choose to appoint representatives of the main European federations (EPSU and EMCEF<sup>1359</sup>), instead of a trade unionist form a national organization. This decision was taken, given the complexity and size of the company (Ibid).

## 5.2 The negotiation.

The initiative to negotiate the Health and Safety agreement was taken by the management and the first meeting was held at the beginning of October 2009. The aim of the company was to conclude the agreement as quickly as possible (Textoris 2014: Interview).

The proper negotiation phase started on the 27<sup>th</sup> October 2009, but the whole negotiation lasted a bit longer than expected (5 months instead of 3), due to some pressure coming from one side of the Special Negotiating Body (SNB). No specific procedure was applied to the negotiation and the SNB had to follow the lead of the company (Textoris 2014: Interview). In addition, the most part of the agreement has been written by the company (Ibid). The company proposed a draft text and the SNB studied the text and added some points, however, at first, the management was not willing to accept amendments to the text (Ibid).

In the meantime also an agreement on *“anticipation of jobs and skills needs”* was negotiated, however this analysis will focus on the negotiation and conclusion of Health and Safety EFA, since the major problems arose in this case.

The agreement was negotiated between the management and the special negotiating body (SNB), with the same composition as the one that negotiated the EWC agreement (Bassi 2014: Interview). Also in the case of the Health and Safety agreement the SNB was operating on the basis of the authorization to negotiate originally given from the national trade unions. According to EPSU general secretary, this implies that the SNB can be understood as a trade union body (Goudriaan 2014: Interview). Indeed, both the representatives from CGT and from the Italian trade unions confirmed that they had been given an official mandate both to participate in the SNB and to negotiate collective agreements (Breda 2014: Interview; Textoris 2014: Interview).

Overall, every member of the negotiating body had an active role, meaning that they all shared the experiences and collective agreements on Health and Safety in the respective countries (Bassi 2014: Interview).

Both the EPSU coordinator and the EMCEF coordinator were kept informed during the whole process. None of the EWC coordinators neither conducted nor took active part in the negotiation. The reason for this approach was, according to the EPSU coordinator, that there was no need since they were only dealing with the transposition of an already existing agreement, which was necessary after the merger of Gdf and Suez in 2008, only to avoid the content of the text to fell (Epsu.org). Moreover, from the interview with the EPSU coordinator, it came out that EMCEF and EPSU did not have any contact among them in order to discuss the negotiation and they did not even consider the involvement of EMF, since, in Goudriaan's words, “at the time its presence [in

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<sup>1359</sup> Currently, the European Federation of Public Service Unions (EPSU) and IndustriAll European Federation for Industry and Manufacturing workers (IndustriAll) are the two ETUFs concerned with GDF Suez. IndustriAll-Europe was created in May 2012 from a merger of the European Metalworkers' Federation (EMF), the European Mine, Chemical and Energy Workers' Federation (EMCEF) and the European Trade Union Federation: Textile, Clothing, Leather and Footwear (ETUF:TCL).

the company] was not strong” (Goudriaan 2014: Interview). As a matter of fact, the two coordinators sitting in the EWC did not have a duty to inform the EMF, on the other hand, the Metalworkers’ Federation was not expecting that. Indeed, even if it is suggested that perhaps coordination vis-à-vis EMF could have gone better, the EMF does not blame the coordinators for not having informed them (Samyn 2014: Interview).

EPSU and EMCEF coordinators were not negotiators, indeed this is not one of the roles of the EWC coordinator (Samyn 2014: Interview), but the EWC, specifically the SNB, was the negotiator (ibid). The CGT representative confirmed that the coordinators have followed the negotiation but they were not negotiating parties and they had no mandate from the national unions to do so. In that negotiation, they had more an individual role (Textoris 2014: Interview).

The first problems arose during the third negotiation meeting (24/11/2009). In this occasion some EWC members made some negative comments in relation to the last version presented and they expressed their disagreement about some core points and about the follow-up to the agreement (Letter to GDF Suez Management, 21st December 2009).

On the 8<sup>th</sup> December, the company sent to the SNB a text, that was supposed to be the “final version” of the Health and Safety agreement. The SNB did not react positively to this final version.

On the 21<sup>st</sup> of December 2009, some of the trade unionists sitting in the special negotiating body sent a letter to the management (Textoris 2014: Interview). The letter was signed by 10 EWC representatives, coming from 9 different countries: Italy, Spain, Czech Republic, Hungary, Romania, Belgium, Poland, Norway and France.

The initiative to draft the letter came from the Italian and French representatives. Afterwards, also other trade unionists sitting in the SNB agreed that a number of points had to be revised and joined the letter (Textoris 2014: Interview). However, not all SNB members signed the letter, even if not in complete disagreement with its content (ibid). The choice to use a letter, co-signed by several EWC members, to officially communicate the disagreement was a consequence of the absence of clear rules, among the trade unions, on how to deal with the negotiation (ibid).

The main aim of the letter was to force the management to understand that the negotiation was not over yet and to stress that some points of the agreement had to be discussed further, inter alia the suppression of a working body that as dealing with Health and Safety in GDF Suez (Textoris 2014: Interview).

The first concern, raised in the letter, referred to the way in which the negotiation was conducted and to its rapid conclusion. Secondly, they were complaining that the observations made during the meeting on the 24<sup>th</sup> had not being taken into consideration in the final text. The SNB members made clear that they would have needed a further SNB meeting in order to discuss the so called “final version”. In this way, the SNB members could have gone through the controversial points and found a compromise that would have favoured the signature from all the national trade unions. In order to further stress their points, the signatories of the letter pointed out that, at that stage, the text could only be considered as “a text of company policy or a good conduct code on health and safety” (Letter to GDF Suez Management, 21st December 2009. Translation by G.F., original: “un texte de politique d’entreprise ou un code de bonne conduit en matière de santé et sécurité”).

In conclusion, the letter asked the company to delay the signature of the agreement and to plan a new meeting (Letter to the GDF Suez Management, 21st December 2009). As a result of the letter, a new meeting to agree upon a final text was organized between the SNB and the management. Subsequently, the text was modified and shared with the whole EWC to be signed and no further meeting was held (Textoris 2014: Interview).

### 5.3 Conclusion and Implementation.

Most of the SNB agreed in accepting the changes proposed by the management, since, according to some trade unions, they represented a good compromise (Textoris 2014: Interview). Only the Italian trade unions did not find the outcome satisfactory. According to them the management was welcoming only minor changes, which would not have been meaningful enough (Bassi 2014: Interview).

On the 23<sup>rd</sup> of February, the agreement was signed by the management and by the whole SNB, but Stefano Bassi, the representative for the Italian federations concerned (9 trade unions in all). Bassi received pressures from the management to sign the agreement, even if just personally, notwithstanding the disagreement of the National trade unions, but he kept the point (Bassi 2014: Interview).

The two EWC coordinators, maybe due to the fact that they belonged to ETUFs, were also included among the signatory parties (Bassi 2014: Interview). EPSU coordinator decided to sign the agreement since none of the affiliates, including the Italian unions, opposed to it (Goudriaan 2014: Interview). EMCEF did not sign, but gave an official reason for this decision later in 2010. It is important to point out that the signature of EPSU does not mean anything for the Italian workers. Indeed, GDF Suez workers are not represented by any federation affiliated to EPSU (Ibid). The management expressed some discontent about the missed signature of EMCEF (Barthèse 2014: Interview).

On the same day of the signature, the company made a press release very generally speaking about the conclusion of an agreement on Health and Safety. Indeed, it did not even specify who, for the worker's side, signed the text (GDF Suez 2010).

The Italians were disappointed by the fact that the other national trade unions were willing to conclude, although the trade unions from one country did not want to sign the agreement. Especially, the feeling was that the French trade unions and some organizations from the north and east Europe were accelerating the negotiation to conclude the agreement (Breda 2014: Interview).

On the same day of the signature, the CGT released a declaration (CGT 2010) where it expressed disappointment on how the negotiation was carried out. Especially, it underlined the difficulties to find a compromise on the most controversial points.

As far as the implementation is concerned, one of the most problematic phases of EFAs, the answers are not homogeneous and further research should be necessary. The agreement provides for a follow-up body, responsible for the implementation of the agreement, which is supposed to meet once a year. The follow-up body is composed by some EWC members elected, now 15 (Textoris 2014: Interview). However, the work of this body is not very relevant because it provides statistic surveys on some issues, as serious accidents, but it does not measure the progresses

made by the companies or the actions undertaken in order to improve health and safety at work (Ibid).

The agreement has been implemented in France (Textoris 2014: Interview). However, the French respondent highlights that the French law already protect well the workers, so, in France, it can be really meaningful only in few cases. According to the CGT member, in some countries something has been done to implement this agreement; however, he is aware of the problems related to the EFAs implementation. Indeed, for instance, the GDF Suez workers in UK did not even know about the agreement on Health and Safety (Ibid).

In Italy, eventually, the agreement has not been implemented (Breda 2014: Interview). The Italian respondents do not acknowledge any implementation of the agreement in any country, but France. The feeling is that it is only an *piece of paper*. According to Breda, the fact that the agreement has not been widely implemented confirms that it had more political, than concrete, purposes (Ibid). The CGT trade unionist confirms that this agreement has a symbolic effect for the management, that is it is a *vitrine sociale* (literally translated as “social showcase”). However, the French representative underlines the trade unions’ responsibilities in order to make good use of an agreement (Textoris 2014: Interview).

#### 5.4 The EMF role.

The EMF became aware of the negotiation only when the Italian affiliates, FIOM on the lead, took contacts with them (Samyn 2014: Interview). While the negotiation was ongoing the EMF was made aware by Sabina Petrucci (FIOM European department) that GDF Suez was negotiating two transnational agreements. The trade unionist was especially concerned about the one on Health and Safety due to a negative evaluation of the text proposed. In this communication the Italian federation also asked the EMF to intervene in order to clarify the procedure, especially given that nearly 30.000 metal workers in GDF Suez are represented by EMF (E-mail to EMF, 19th November 2009).

Within the SNB, Bassi repeatedly raised the problem of the absence of the EMF, since the beginning of the negotiations (Breda 2014: Interview). But the company was not eager to welcome EMF (Bassi 2014: Interview). Indeed, the fact that the European federations present at the negotiating table were EPSU and EMCEF and the presence of EMF was not envisaged was one of the reasons why the Italian trade unions did not judged positively the negotiation.

At that time, the CGT representative did not feel the need to involve EMF, since the management had chosen as interlocutors the SNB, who had negotiated the EWC agreement, and the general feeling within the SNB was that the only ETUFs to be involved were EPSU and EMCEF (Textoris 2014: Interview).

Following the warning of the FIOM representative, on the 22<sup>nd</sup> of January the EMF sent a letter to the GDF Suez management. The letter recalled the concern expressed by the national trade unionists on the 21<sup>st</sup> of December letter, about the way in which the negotiation was carried out. The Federation also underlined that only the trade unions are legitimized to negotiate and sign collective agreements and it reminded the existence of an EMF internal procedure to negotiate TCAs, already successfully (e.g the case of Schneider, Thales, etc.). The deputy general (Bart Samyn) made clear that the EMF wouldn’t like the case of the Health and Safety agreement to be repeated further, since this would mean concluding a EFA without the agreement metalworkers’

representatives. Indeed, he asked for the EMF to be involved in the following negotiations in order to guarantee also the metalworkers' representation (Letter to GDF Suez management, 22nd January 2010).

In an email of the 29<sup>th</sup> of January, Sabina Petrucci informed the EMF about an informal answer to the letter of the 22 of January, given to the FIOM shop steward sitting in GDF Suez of EWC. At that stage, the company seemed still unwilling to negotiate with EMF, since they only wanted to negotiate as they had negotiated the EWC agreement (E-mail to EMF, 29th January 2010).

It is interesting that the CGT, although expressing its intention to sign the Health and Safety agreement, communicated to the EMF that it would appreciate if the metalworkers' ETUF would take contacts with the management (E-mail to EMF, 10th February 2010). On the next day, the management met for the first time with EMF and started taking into account its concerns (E-mail to the EMF affiliates, 11<sup>th</sup> February 2010). However, the meeting did not deal with the Health and Safety agreement, but it was the beginning of a new attitude of the management which, from thereon, decided to involve all the three European federations concerned (after EMCEF and EMF merger there are only two ETUFs in GDF Suez).

At the beginning, the management was not willing to change the procedure that already existed just because EMF, the smallest ETUF, was asking that and they wanted to stick to their usual method (Textoris 2014: Interview). The argument of the EMF persuaded the company. The European Federation made clear that, although of course the company was free to choose with whom to negotiate, if the EMF was not involved and the mandate procedure not respected, the agreements signed at GDF Suez were not going to be implemented for the metalworkers in Europe (Samyn 2014: Interview). Moreover, this was not just a problem limited to Italy, since also the other affiliates had agreed that the EMF procedure application had to be supported (Ibid). Last, according to the French representative, the management accepted to apply the procedure, since it had already been used in several European companies especially in the metal sector (Textoris 2014: Interview).

For the next negotiation (on equal opportunity at work) a meeting was organized among EPSU, EMCEF, EMF and the management (Barthèse 2014: Interview). In order to change the way of conducting future negotiations at GDF Suez, the three ETUFs met. The main reason for a meeting as such was to find a compromise among the minor differences between EMF and EPSU procedures (the EMCEF one was a pure copy of EMF) (Samyn 2014: Interview). EMF, EMCEF and EPSU eventually agreed on a procedure. The main points were, first, that there would be only one spoke person (Ibid), second, the 2/3 majority necessary to approve the agreement was not to be considered for each sector but on the total (the three sectors) (Ibid). Moreover, the SNB is still supposed to take part to the negotiations (Textoris 2014: Interview).

As far as the Health and Safety agreement is concerned, EMF left the choice to the company whether to open a consultation process on the text with the Italian trade unions, in order to implement it in Italy, or not. However, they have not done it yet (Samyn 2014: Interview).

### 5.5 The Italian perspective and actors' evaluations.

All the Italian trade unions present in GDF Suez had given the mandate to negotiate to Stefano Bassi. Therefore, Bassi was representing all the workers present in the GDF Suez in Italy (Breda 2014: Interview). In reality, FIOM was the more active federation in following the process and the

other federations were not really concerned about the negotiation. Therefore, they left quite a space of maneuver to FIOM and Bassi and they limited their involvement in adhering to the main, formal, decisions (Bassi 2014: Interview).

Nevertheless, during the negotiation, the Italian federations were constantly updated by Bassi. They often shared comments about the proposed texts, they met once in order to discuss the text and they sent a letter to the management saying that they would have not signed the agreement (Breda 2014: Interview; Bassi 2014: Interview). Ultimately, all the trade unions agreed that it could not be implemented in Italy (Breda 2014: Interview). The other EWC members were aware that the Italian trade unions did not sign because of the content of the agreement which did not improve the condition of the workers in Italy (Textoris 2014: Interview).

The reasons for rejecting the agreement were mainly three. First, the Italian trade unions unanimously disagreed on the content of the agreement, since it undermined the rights recognised by the Italian law on health and safety, in as much as it was giving some responsibilities to the workers in case of injury at work or absence of safe conditions (Bassi 2014: Interview).

Second, the method was considered wrong because a significant European Trade Union Federation was missing (Bassi 2014: Interview; Petrucci 2014: Interview). Indeed, according to Petrucci the absence of the EMF has been crucial for the Italians to oppose the agreement. The trade unionist wrote: “We don’t negotiate without the European Trade Union representing us and which is bound to negotiate accordingly with the rules contained in the statute. Further, also the content of the final text would have been different since the ETUF is constantly sharing and discussing the versions with the affiliates” (Petrucci 2014: Interview, Translation by G.F.). This attitude is consistent with the Italian approach, indeed the Italians have been since the beginning positively strict about the correct application of the procedure (Samyn 2014: Interview).

Third, due to the fact that the trade unions did not have an active and meaningful role, the feeling of the Italian organizations was that what was going to be concluded was not a real agreement to be signed, but just a “company routine” (*prassi aziendale*) (Breda 2014: Interview).

Overall, the text was considered dangerous both practically and politically (Bassi 2014: Interview; Petrucci 2014: Interview).

On the 7<sup>th</sup> of April 2010, a joint letter was sent to the Human Resources Management of GDF Suez from the nine Italian trade unions involved in the company. Namely the federations of metalworkers, energy and “commerce” from the three confederations (FIM-CISL, FISASCAT-CISL, FLAEL-CISL, FIOM-CGIL, FILCAMS-CGIL, FILCTEM-CGIL, UILM-UIL, UILTUCS-UIL, UILCEM-UIL). In the letter it was acknowledged that the Italian companies belonging to the body seemed considering the application of the Health and Safety agreement in their plants. The trade unions underlined that, since the representative for the Italian organizations had not signed the agreement, the text was not enforceable in Italy. Therefore, the confederations and the interested federations warned the Italian managers not to apply any term and condition not agreed with the Italian organizations involved. Instead, the national legislation and the collective agreement in place should be applied (Letter to the human resource manager of GDF Suez, 7<sup>th</sup> April 2010.).

The management replied with a letter of the 17<sup>th</sup> of May. In brief the management argued that, even if the agreement at stake cannot be qualified as a national collective agreement in compliance with the Italian law, it is anyway enforceable in all European branches of GDF Suez and in all



the companies where GDF Suez has a dominant influence. This point was supported by a weak argument, based on the absence, in article 1.1 of the agreement (scope of application), of any reference to the fact that the agreement should be implemented only in those countries where the relative organizations have ratified it (Letter to FIM-CISL et al., 17th May 2010.). However, in practice, the company did not try to force the implementation of the agreement in the Italian plants (Breda 2014: Interview; Bassi 2014: Interview).

The FIOM representative commented on this letter in an e-mail addressed to EMF. She made clear that the agreement cannot, in any case, be implemented in Italy without an agreement with the national trade unions. Finally, the main concern is on a matter of principle: it cannot be accepted that an agreement not signed/agreed upon by the trade unions of a given state can be implemented within that state (E-mail to EMF, 18th May 2010).

On the very same day, the EMF reacted in support of the national trade unions facing pressure from the company. The EMF letter's main point was that the GDF Suez agreement on Health and Safety "cannot be said to be valid European-wide as the EMF did not sign" it. As a consequence, it is in complete discretion of national unions whether to endorse the text in the national agreements or not (Letter to GDF Suez management, 18th May 2010). Few days later, EMCEF Secretary General made a similar statement, adding that the non application of the EMCEF Mandate Procedures was the reason why the European trade union did not sign the agreement (Letter to GDF Suez management, 26th May 2010). We should bear in mind that, at the same time, the three European federations were clarifying the procedure to be applied in future negotiations.

For what concerns FIOM, the Italian federation is against a negotiating role of the EWCs. According to S.P. "trade unions are not enough represented in EWCs and there are no rules to guarantee representation, transparency, democracy and rights of the minorities. The negotiating role of the trade union cannot be replaced by a body not elected, under direct owner control" (Petrucci 2014: Interview, translation by G.F.), where the independency is not safeguarded. Moreover, the EWC is often influenced by the trade unions of the company's hometown (Ibid). As a consequence, the Italian trade unions do not consider as EFAs those agreements not signed by the ETUFs and that do not follow a mandate procedure (Ibid).

Moreover, it is noted that the EWC representatives lack the necessary expertise to negotiate at a such high level. That's why the national trade unions had to intervene through letters even if they did not participate in the negotiation directly (Breda 2014: Interview) and the support of European Federations, and their expertise, is necessary (Ibid; Textoris 2014: Interview). Last, Bassi underlines that the distance between the EWCs and the workers is really huge (Bassi 2014: Interview).

It is interesting that both Italian and French representatives agree on one point: the Health and Safety negotiation was crucial to understand how TCB should be carried out and that the involvement of EMF, together with a clear procedure, is necessary (Bassi 2014: Interview; Textoris 2014: Interview).

Indeed, even if the CGT signed the agreement, the French respondent talks about it as a "experimental negotiation" (Textoris 2014: Interview, Translation by G.F.), meaning that the negotiation on Health and Safety was useful to understand that the EWC needs a well framed procedure, well

known by the EWC and by the Management, and the active involvement of a ETUF. This is especially important since in each country there are different negotiating rules, so when negotiating at European level “we need to agree on a frame” (Ibid).

#### 5.6 Overall assessment.

The case of GDF Suez is notable for several reasons. First of all, as for most of the EFAs so far negotiated (Mueller et al. 2013), the initiative to conclude the Health and Safety agreement came from the management. What is striking is that this case disconfirm the conclusions reached by those scholars assessing the behaviour of French multinationals towards EFAs. GDF Suez, deeply rooted in the French industrial relations system, choose to negotiate with the EWC and proved to be quite reluctant to engage in negotiations with the EMF and ETUFs in general. Indeed, for the Health and Safety agreement, it did not consider any ETUF as negotiating partner, instead it proposed to initiate the negotiation to the EWC SNB.

However, the Special Negotiating Body (SNB), negotiating the agreements on behalf of the whole EWC, was not only unionized, but its members had also received a sort of mandate to negotiate EFAs by the respective national trade unions, after explicit request to do so by the management. Notwithstanding that, the SNB has failed both in leading the negotiation and conclude a homogeneously accepted agreement. The finding is consistent with Waddington (2011)’s suggestion that it is not enough, for a EWC to be well functioning, to be fully unionized.

For the EWC at stake two coordinators had been appointed, moreover, due to the complexity of the company, the role has been taken up by representatives of the two main ETUFs: EPSU and EMCEF. However, the quality of EPSU and EMCEF coordinators, in relation to the negotiation and conclusion of the Health and Safety agreement, has proved not be sufficient to strengthen the EWC during the negotiation process (see importance of quality of EWC coordinator in Waddington 2011). Indeed, the two coordinators did not engage at all in supporting the SNB’s requests to the management, as the demands to continue the negotiation and edit the text of the agreement in order to find a satisfying compromise.

To this it can be added that some of the respondents mentioned the lack of enough expertise of the EWC members and the consequent need to be supported by the respective national trade unions. This very likely reinforces the already existing tendency of national representatives to pursue national interests (Mueller et al. 2013) and does not allow the development of a transnational identity within the EWC (Waddington 2011). Furthermore, given that, the national trade unions have to put resources in the ETUF, through affiliation fees (see Chapter 2.2.1), it could be argued that it is too much of a burden to also devote resources to support EWC members during the negotiation, while the ETUF can provide that support.

The GDF Suez EWC members were quite able to communicate among themselves during the negotiation, as showed by the fact that they shared the respective experiences on Health and Safety agreements during the negotiation and that they managed to draft a joint letter addressed to the management, as to put clearly forward their requests. However, given the outcome of the negotiation and the different understandings of the agreement from the French and Italian trade unionists interviewed, it is likely that the level of communication has not been enough. Indeed, this is, according to Waddington (2011), one of the key features weakening a EWC.

Overall, the negotiation was lead by the management and, not surprisingly, the SNB members interviewed said that they were uncomfortable with the absence of clear and common rules, which did not facilitate the development of a strong negotiating role of the SNB, which was composed by trade unionists used to very different collective bargaining traditions. Indeed, the deep rooted diversities among different industrial relation cultures is one of the main reasons why the EWC often decides not to engage at all in a transnational negotiation (Mueller et al. 2013).

In the end, the SNB members (reflecting the respective national trade unions' viewpoint) did not manage to come to a homogeneous judgment of the final text proposed by the company. The final result was that the majority of the SNB concluded the agreement, while the member representing the 9 Italian trade unions concerned refused to sign it. The fact that the majority of the SNB concluded the agreement, notwithstanding a lack of common consent on the workers' side, may be linked with a general will to gain legitimacy *vis-à-vis* the management, an attitude that Mueller et al. (2013) have proved to be very common among EWCs. It is worth to notice that the Italian trade unions were the only one demanding for the application of EMF procedure, although that procedure was approved by all the EMF affiliates and included in the Statute. This can show a lack of common understanding about the role of the trade unions as EMF affiliates.

The reasons why the Italian representative did not sign were linked with both the content and the method. The Italian trade unions, especially the metalworkers' federations, wanted the EMF to be involved in the negotiation, since the EMF mandate procedure would have assured that the trade union role would have been respected and the main goals would have been agreed upon by all the affiliates concerned (see EMF mandate procedure in this WP). Last, further action was necessary to make sure that the Italian companies of the group would have not tried to implement the agreement.

The EMF supported the Italian trade unions position mainly through letters and it pushed for being involved in the future transnational negotiations at GDF Suez. The management accepted to negotiate with the ETUFs only once the EMF made clear that the agreements concluded without the EMF signature were not enforceable for the metalworkers in Europe, since the European Federation was the only institution that could be fully mandated at European level to represent metalworkers in TCB. The change of mind of the management was also, very likely, due to the fact that major European MNCs had already negotiated with the EMF procedure. The agreement surely represented a turning point in the relationship between the workforce representatives and GDF Suez management.

In conclusion, the agreement was never implemented in Italy and further research would be needed to understand whether it was implemented in other countries, but France. What is striking is that the company did not try to reopen the discussion with the Italian trade unionists, as suggested by EMF deputy general, in order to find a compromise that would have allowed the implementation of the Health and Safety agreement also in that country. Therefore, it is legitimate to wonder to what extent the agreement was meaningful for the company.

## **6. Conclusions.**

The negotiation of the Health and Safety agreement is characterized by some interesting, and rather peculiar, aspects. First, GDF Suez is one of the few companies where the workforce was represented by three (now two) European Trade Union Federations. Although EPSU represented

the highest number of employees, also the other federations (now merged in IndustriAll-Europe) were relevant in the company. Second, the Special Negotiating Body was not only fully unionized, but it was also mandated by the national trade unions, upon express request of the management. This is in itself a peculiar feature, but it becomes even more interesting in as much as, notwithstanding the acknowledgment and support of the trade unions, the EWC was still in a weak position in relation to the negotiation.

The case study has proved useful to investigate the problems that a EWC can encounter if it engages in transnational negotiations at company level on its own. Obviously, the research question cannot be answered in absolute and definitive terms by carrying out a single case study. The research rather aims at adding empirical findings to the wide political and academic debate about which is the best bargaining agent and for what reasons.

Let us now assess which problems came out from the case study and how the European Trade Union Federations could, potentially, solve these problems.

The first problem the EWC could face is the lack of enough expertise of the EWC members in negotiating EFAs. As far as a unionized EWC is concerned, it could be argued that national trade unions may provide a remedy by specifically training the respective members sitting in the EWC. However, as argued by Waddington (2011) a strong reliance over national trade unions does not help in developing a truly European identity within the EWC and therefore overcoming the tendency of the EWC members to pursue national interests (see Mueller et al. 2013). In brief, both the lack of expertise and a different understanding over the EWC functions within the same EWC (reflecting different national industrial relations systems) can weaken the role of the EWC as negotiator. In order to solve this problem, the EMF procedure wants the affiliates to approve the negotiating team, that has to be always composed by at least one EMF representative. The compulsory presence of the EMF representative is likely to empower the workers' side and avoid weaknesses due to lack of sufficient competences.

Second, the case study showed that in a negotiation started by the management and conducted with the EWC, the management is very likely to end up leading the negotiation and it can be highly complex for the workers' side to impose its conditions. This may be also due to the lack of enough expertise and independence of the EWC members, which, on the one hand have to rely on national trade unions for any kind of support (Waddington 2013) and, on the other hand, tend to follow the lead of the company, since they are not able to propose a concrete alternative, perhaps also due to the lack of enough internal communication (Waddington 2011). The proposal of the European Metalworkers' Federation overcomes this problem by imposing a clear procedure to both the EWC and the management. It is worthwhile to underline that, before starting the negotiation the EMF representative, as a consolidated practice, explains the procedure to both the above mentioned actors and he clarifies that if the parties do not accept the procedure the EMF do not engage at all in the negotiation.

Third, It can be difficult for the EWC to find a compromise and agree upon common goals. This fact becomes even more relevant since the EWC, as normally not bound by any procedure, can sign the agreement even if a member representing a relevant percentage of the total workforce is opposing the agreement for protecting his members' rights. These two interlinked dangers can be due to the lack of enough communication (Waddington 2011) and/or the tendency to pursue

national interests (Mueller et al. 2013), and/or it can be caused by a will to please the management (Ibid). First of all, the EMF procedure tries to overcome the lack of communication, among the various players concerned, and the conflicts between national identities by setting up a preliminary meeting where national trade unions, the EMF coordinator, the EWC select committee and even the whole EWC, if feasible, gather together. At this occasion the actors have the opportunity, first, to discuss and share their opinions, second, to agree on two core aspects: the composition of the team that should negotiate and the positions to be taken during the negotiation. Also the draft agreement has to be approved by the involved affiliates. In order to avoid the signature of an agreement not widely accepted, if unanimity cannot be reached, the procedure states that the text can be concluded only upon approval of the national trade unions representing a strong majority of the European workforce concerned. Indeed, a country can block the signature only if it represents more than 5% of the total European workforce.

A lack of unanimous decision over the signature of an agreement can happen mainly because of the substantial differences among industrial relations systems, however the final objective should be to overcome the diversities and reach a wide consent. A case where an agreement is signed by the whole negotiating body, but the representative of the workforce of an entire country (also representing a high percentage of the total workforce) has to be avoided. A situation as such gives, to the management, signals of deep divisions within the workers' side. For that reason the EMF procedure aims at avoiding the inhomogeneous signature of EFAs and does not envisage the inclusion of opt-out clauses. As a result, the agreements signed by EMF (and now IndustriAll-Europe) demonstrate the ability of the European labour movement to agree on common goals. Furthermore, these texts can be broadly applied at European level (Rueb et al. 2013). As a consequence, disputes over the companies and countries in which the agreement can be implemented, as it was the case for GDF Suez Health and Safety agreement, are avoided.

Overall, the negotiation of the Health and Safety agreement at GDF Suez has shown how complex the relationships and interactions among the players concerned with European collective bargaining can be. This case study illustrates that EWC, national trade unions and ETUFs share the common tendency to undervalue the need to build solid forms of cooperation among themselves, as well as they underestimate the necessity to increase the amount and quality of the communication.

In conclusion, the case study adds empirical evidences to the argument that transnational collective bargaining at European level should be led by the ETUFs. However, the research proves that the presence of the ETUF in the negotiation needs to come together with the proactive application of the ETUFs' policy on the matter, that is a clear mandate procedure, as the one of developed by EMF. As stressed by Rueb et al. (2013), the faithful application of the procedure is of key importance. At the same time, the national affiliates should be the first ones supporting the application of the above mentioned procedure.

As a final remark, it should be kept in mind that the problems here highlighted are problems that could only potentially arise if a EWC decides to negotiate without applying a ETUF procedure. Indeed, as a result of the analysis of the GDF Suez Health and Safety agreement, it is not argued that if the EWC engages independently in a negotiation with the management it will surely encounter the above summarized difficulties. It would be interesting to carry out further case studies applying the same research question, in order to observe how often and to what extent the EWC negotiating EFAs ends up having the same kind of problems.

The analytical frameworks applied to the case study turned out to be useful to answer the first part of the research question. Especially, it was interesting to see how Waddington (2011)'s conclusions about the general problems faced by the EWCs, in exercising the rights provided for in the European directive, are also encountered in the context of a transnational negotiation. As to the second part of the research question, the EMF mandate procedure proved to be able to find a solution to the difficulties the EWC can encounter.

Besides the option to analyse other cases of EFAs negotiated by EWCs, by applying the same research question, there is also room to further assess this case, by looking at other viewpoints over the negotiation and at the implementation-related aspects. Indeed, it would be interesting to investigate where the agreement has been implemented and to what extent, in order to understand whether the management wanted to negotiate the agreement because of the relevance of its content, or just as a social showcase.

Furthermore, it would be interesting to assess the negotiation of the following agreement on equal opportunity. This EFA has involved the three ETUFs and it has been negotiated with a joint procedure. Therefore, it allows to practically see if and which improvements the new procedure has brought.

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