

Trade Unions and social dialogue : a challenge for diversity management

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This communication's aim is to take stock of the aspect of the social concertation in the framework of policies of diversity management. It rests in particular on the work of a commission created by the AFMD, in partnership with ORSE. The commission has involved several large French companies. Meetings occurred between the representatives of the different employers' and workers' organisations. Another source is the numerous actions led by the labour unions in Belgium in the framework of the Consortium Diversité Wallonie, which exists since 2007. This communication aims to remind some objectives of social concertation in regards to policies of diversity management, to take stock of the legal constraints on concertation in regards to particular targets, to show the multiple conceptions of this notion of diversity management among social partners, to give an overview of the content of the agreements, and to present the steps of a social concertation sensible to diversity.

## **1 Literature review**

The International Labour Organisation (ILO) defines social dialogue as all types of negotiation, consultation and exchange of information between, or among, representatives of governments, employers and workers on issues of common interest [...]. It can be informal or institutionalised, and often is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional, sectoral or a combination of these. The main objective of the social dialogue as such is to encourage the formation of a consensus

between the different main actors of the world of employment as well as their democratic participation.<sup>1</sup>

Although employers and labour unions are important stakeholders in the fight against discrimination and policies of social inclusion, there are very few articles on diversity and social concertation.

Some French articles are analyses of diversity agreements (Beaujolin, 2009; Claisse, Daniel & Naboulet, 2011; H. Garner-Moyer, 2009; IMS, 2006; Malys, 2007) but some articles on employment equality between men and women (Laufer & Silvera, 2006; ORSE, 2009), on senior plans (Claisse et al., 2001; Marbot, 2011), and on the handicap (Medef, 2010). However, there are only a few articles that aim to present the position of social partners in regards to policies of diversity management. Policies of diversity management would be misperceived by labour unions due to their association to a managerial vision of differences, perceived and described as a factor of efficiency and profitability: “even through diversity management claims to be of an ethical dimension, it nevertheless remains founded on differentiation (of work conditions, forms of remuneration...) as a factor of efficiency and profitability” (Jacquemin et al. 2009). This principle of differentiation and valorisation of competences is perceived by some labour delegates as management modes that are against more equality: this principle of differentiation does nothing against social hierarchies and balance of power within a company. The fear of several labour activists is that diversity would replace discrimination and that respect of differences replaces equality (Alaluf, 2008; Noël, 2008). Fears also exist on the possibility that the objectives of efficiency and efficacy (*business case*) associated to diversity management might overshadow the objectives of social justice and equality. What could we do, for instance, when diversity does not support the economic objectives of the company, which could be the case for the employment of disabled people, or in the case of the recruitment of foreign labour force then faced to racist customers (Burnotte, 2007; Stringfellow, 2008)? Similar feelings of fear can be found in other European countries such as British labour unions (Greene, Kirton & Wrench, 2005). These authors show some distrust towards these policies, seen as being employers’ strategies aiming at establishing auto-regulation mechanisms in order to evade the law and imposed constraints, for instance on quotas’ obligation. Labour union’s fear is that these proactive approaches,

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<sup>1</sup> <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/social-dialogue/lang--en/index.htm>

based on the valorisation of individual competences, overshadow the fight against discrimination and a legal approach based on equality of rights and treatment. This criticism is connected to the one that is made against the concept of social responsibility (Lapointe, Champion, Gendron, 2003). For instance, during negotiations with Medef in 2006, the CFDT claims, “*diversity is a reality, but not an objective. (...) it cannot be confused with the fight against discrimination. What is essential is to guarantee to workers the equality of treatment towards employment, wage, qualified training, and career’s advancement without any distinction of supposed or real origins or membership to an ethnic group, a nation or a race and without any distinction regarding the name or the place of residence*”<sup>2</sup>. Bataille, in his book on racism, defends the idea that diversity management seems too focused on people and not enough on the systems that create inequalities (Bataille, 2007). For labour unions, the best guarantee of objectivity and limitation of the arbitrary remains to adopt clear and transparent procedures that apply uniformly to all, as suggested by the HRM objectives (Pichault & Nizet, 2000).

Although labour unions have concerns on policies of diversity management and the discourses surrounding them, several actions have been and are still led around specific themes and group-targets. Actions’ paths can be found on the theme of equality between men and women and on working conditions of migrant workers. More recently, they could also be found on job opportunities for people of foreign origin (second and third generation), on working conditions of youth and on their difficulties to access the job market, on the accessibility of the job market for the 45-and-older, and to a lesser extent, on the accessibility of the job market for disabled and homosexual workers. Many actions, in which labour unions are involved, are led on the theme of equality between men and women (Ardura & Silvera, 2001; Laufer & Silvera, 2006), but also, as much in France as in Belgium and in Canada, on equal pay<sup>3</sup>. It is also worth mentioning the endorsement by European labour unions of a charter that aims at more equality according to the principles of *gender mainstreaming*<sup>4</sup>. Concerning people of foreign origin, there must be differentiation among labour unions’ positions in regards to foreign workers and those concerning racism and discrimination towards second and third generations. In regards to foreign workers, the attitude of labour unions was at first very protectionist (Alaluf, 2007). Labour unions condemn early the

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<sup>2</sup> Charte syndicale pour l’égalité de traitement, la non-discrimination et la diversité: <http://www.cfdt.fr/actualite/presse/comm/comm489.htm>

<sup>3</sup> Les femmes à l’égalité salariale (EQUAL Pay Day) <http://www.pay-equity.org/day.html>

<sup>4</sup> [http://www.etuc.org/a/3805?var\\_recherche=mainstreaming](http://www.etuc.org/a/3805?var_recherche=mainstreaming)

systematic recruitment of foreign workers in particular activity sectors. They fear a downward pressure on wages and the degradation of working conditions as well as harm on workers' solidarity. The use of a foreign working force is seen as an employers' strategy to destabilise and weaken labour unions. According to them, the priority must be given to the national working force. It is only after the Second World War that a progressive emergence of labour union's actions that aim at defending equality of rights between foreign workers and national workers can be witnessed. In addition, an interest for integration policies, linked to an evolution of migratory movements – such as familial regrouping, start to be seen among labour unions. In the 60s and 70s, new public policies appears with the aim of decreasing migratory movements from South to North and the increasing illegal immigration of people attracted by an economic well-being and illegal job opportunities. This increase of illegal work put labour unions in a difficult situation because this illegal work contributes to a deregulation of the job market. Jacquot states (2007), *“to facilitate chosen movements, to build guarantees around constraining movements, to play on the dimensions of movement (professional, sectorial, geographic), these are the issues at play”*. Concerning age management, the position of labour unions is very segmented depending on youth or senior workers. On the one hand, for youth workers, labour unions fought for greater integration in the job market but also for working conditions that are not systematically plagued by precarity (fixed-term contract, minimum wage, etc.). For senior workers, on the other hand, the message is much less clear. Indeed, in Belgium as in France, the system of pre-retirement is largely supported by labour unions that see in it a possibility to handle restructuration projects in good retirement conditions. The usual positions are slowly evolving as the objectives of Lisbon forecast an employment rate much higher for the 50 and higher. Actions are also led for the integration of disabled people, particularly with the plan of the European Trade Union Confederation to achieve mobilisation and visibility of trade unions' actions for disabled people<sup>5</sup>. It should however be noted that, on this particular theme, labour unions often hang back and do not appear very pro-active. Nevertheless, actions against harassing practices towards homosexual people (homophobia) are led in several countries.

One thing is clear: trade unions demand to be consulted and associated with any plan of diversity management. In most agreements and discussions, the crucial role of works council is reminded.

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<sup>5</sup> <http://www.etuc.org/a/1316>

The European Union has played a crucial role in the promotion of diversity and in the fight against discrimination<sup>6</sup>. An Observatoire Européen de la Diversité<sup>7</sup>, European platform, was created for companies, political and social decision-makers, but also for individuals that aim at knowing more on the state of diversity in Europe. In addition, there exist several guidebooks and repertoires on good practices of diversity management and on the fight against discrimination<sup>8</sup>. At the European level, the declaration of Florence, which was adopted by the European social partners on 21th October 1995, was a strong momentum to start the fight against discrimination, even though it is more focused on racism, xenophobia and prevention against racial discrimination. The year 1997 was established as European year against racism, in particular thanks to different actions led in partnership with labour unions. The inclusion of the Charter of Fundamental Rights in the Treaty and the directive 2000/78/CE, which forbids discrimination in employment, led to a new dynamic that aims at implementing this engagement within companies. Therefore, several programmes have been financed and put in place by the European Commission with the aim of supporting the initiatives of the stakeholders of this process. Labour unions have benefited of this framework of financing at the EU level so that they could participate in new activity sectors. The Commission has therefore given to labour unions an important place in the process. A European study, conducted in 2010, was dedicated to innovative and important practices of labour unions in their fight against discrimination and in the promotion of diversity. It shows that trade unions promote at every level in Europe initiatives for the promotion of equality and diversity<sup>9</sup>. At the European level, trade unions' federations have supported their participative organisations through the creation of new partnerships with different social actors, including employers and non-governmental organisations (NGOs). Therefore, the study counts 130 initiatives and presents fifteen case studies. These initiatives vary from one country to another, depending not only of the industrial, political, and historical context, but also of the trade unions' structure themselves (Commission européenne, 2010). The European trade unions' organisations, such as the *European Federation of Public Service Unions*<sup>10</sup>, are involved on the matter of wage equality through *Equal Pay Survey*. Public Services International (PSI), which gathers public services' workers, has produced works on gender,

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<sup>6</sup> More on the subject: Garner-Moyer, H. (2012) *Concept de la diversité : éclairer pour mieux agir*. Paris : AFMD

<sup>7</sup> <http://www.diversite-europe.eu/en>

<sup>8</sup> [http://ec.europa.eu/justice/discrimination/index\\_en.htm](http://ec.europa.eu/justice/discrimination/index_en.htm)

<sup>9</sup> [ec.europa.eu/social/BlobServlet?docId=6164&langId=fr](http://ec.europa.eu/social/BlobServlet?docId=6164&langId=fr)

<sup>10</sup> <http://www.epsu.org/>

wage equality, and workers' migrations in the health sector<sup>11</sup>. The European Trade Union Confederation (ETUC) has conducted several works on equality between men and women, on the handicap and on ethnic minorities<sup>12</sup>. It has identified the promotion of LGBT rights as one of its most important axes in regards to equality. On 4<sup>th</sup> December 2009, the executive committee of the ETUC adopted recommendations on measures and activities that promote equality of rights, and respect and dignity for all workers no matter their sexual orientation or gender identity. A four-year program was also launched through actions to raise awareness and fight prejudices that still exist within trade unions towards homosexuals, bisexuals and transsexuals.

Several initiatives were born following European invitations such as Equal and European Social Fund, with different national and international stakeholders. One of the French labour unions' representative mentioned that it is often easier to mobilise actors around this theme at the national level, which is linked to the main theme of access to employment. French labour unions (CGT, CFDT, CFTC, Unsa) signed in 2005 a charter "Pour l'égalité de traitement, la non-discrimination et la diversité" (*"For treatment equality, non-discrimination and diversity"*). In October 2006, all the French employers' and workers' organisations, except for the CGC, approved the interprofessional agreement in regards to diversity (Malys, 2007). The 2006 agreement in France aims *"to guarantee to workers, in the area of employment, non-discrimination and equality of treatment in regards to recruitment, affectation, wage, training, and career's advancement, no matter the origin, real or supposed, or membership, real or supposed, to an ethnic group, a nation or a race, and no matter the name, physical characteristics, or place of residence"*. The accent is stressed on raising awareness of stakeholders to question stereotypes and prejudices. Particular attention is then paid on the recruitment process – with a demand of an experimentation of an anonymous CV – before career and formation's advices follow. French labour unions were also associated to the diversity label.

In Belgium, labour unions, with the financial aid of the three regions, have formed diversity consultants who guide employers in the creation of diversity plans, in the formation and awareness of workers, and in the welcoming and integration of new workers.<sup>13</sup> Trade unions

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<sup>11</sup> Public Services International : <http://www.world-psi.org/>

<sup>12</sup> <http://www.workingagainstracism.org/rapport> RITU - Plan d'action en matière de politique de migration, d'intégration, de lutte contre les discriminations ainsi que contre le racisme et la xénophobie – 2003.

<sup>13</sup> [www.vakbondenvoordiversiteit.be](http://www.vakbondenvoordiversiteit.be)

have been very active actors in the promotion of diversity management from the start (Burnotte, 2007). Such move is certainly linked to the public policies of each region (Brussels, Flanders, Wallonia), which have been financing diversity experts among trade unions for several years (Cornet & Warland, 2011 (2<sup>nd</sup> ed.); Cornet & Zanoni, 2009). Collective conventions also exist to encourage actions that promote diversity and against all forms of discriminations<sup>14</sup>. Along with their French colleagues, Wallonia labour unions' organisations have always had a critical rhetoric on the notion of "diversity management" (Burnotte, 2007), seen as a neoliberal policy to get around, even recover demands of equality (Jacquemin and al., 2009). In Québec (Canada), trade unions use specialised experts on particular themes such as employment equality between men and women<sup>15</sup>. Numerous works have been produced on the integration of cultural minorities (Soussi & Icart, 2010) around an interesting question, which is the one on the possible conditions of a "transfer" of trade union's culture (in terms of "mission and values") towards workers from different cultural communities. Labour unions have also been associated to discussions on reasonable accommodations (Bouchard & Taylor, 2008) on the theme of awareness of religious practices on work places but also on the compatibility of some cultures' values with the principles of equality between men and women. Numerous actions have been led on homophobia, in particular through an active group of homosexuals within the Syndicat Canadian de la Fonction Publique (SCFP): the Pink Triangle Committee of SCFP<sup>16</sup>. British trade unions, on the other hand, show some suspicion, even some hostility, towards diversity management. Policies of diversity management are seen as contradictory with trade union's commitment based on collective action through a tradition of equality based on the group and not the individual. In addition, they fear that such action leads to unilateral steps from the management, which would favour the "*business case*" approach over social justice. Some authors do not hesitate to speak of management opportunism (Greene and al., 2005). Finally, in Denmark, Greene claims that approbation and enthusiasm around the concept of diversity management have been witnessed, which could be explained by the fact that Danish labour

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<sup>14</sup> CCT n°95: 2007-2008 inter-professional agreement (AIP) concluded between social speakers in the National Council of Work with particular focus on diversity and non-discrimination. This convention imposes respect of equality of treatment during the whole relation of work. Several collective work conventions have been concluded within some joint commissions and include either codes of conduct on non-discrimination or clauses of non-discrimination that promote the fight against discrimination – such as the collective convention of work on 7<sup>th</sup> May 1996 concluded in the joint Commission for interim work regarding the code of conduct on the prevention of racial discrimination.

<sup>15</sup> See the work of the Commission des partenaires du marché du travail (CPMT) and of the Centrale des syndicats du Québec (CSQ) – <http://www.cpmt.gouv.qc.ca/>

<sup>16</sup> <http://www.scfp.qc.ca/>

unions are historically engaged in consensual policies in cooperation with companies (Greene and al., 2005). Moreover, the use of economic arguments would be seen by Danish trade unions as means to sell ethnic diversity to employers and not as a threat towards moral justifications of equality (Stringfellow, 2008).

Furthermore, labour unions are also considered employers and organisations and voices were raised on the need of more diversity within the organisations (Colgan & Ledwith, 2002). Several works have paid particular attention to the position of women within labour unions (Greene & Kirton, 2006).

## **2 Methodology**

This communication rests on the work of a commission put in place by AFMD in partnership with ORSE. The commission has involved several large French companies. In the framework of this project, several interviews (around ten) have been realised with social partners (representatives of the main French labour unions and of employers' organisations; and three meetings of focus group with different companies that are members of AFMD). Another source was the data collected through a project of action research that associates our research centre with two large Belgian trade unions, and that aims to develop and support policies of diversity management. This project has existed since 2007 and involved many meetings with trade unions' representatives on projects led by their diversity experts.

Our research questions were:

- What roles do trade unions play in policies of diversity management?
- Is there a social concertation on these policies?
- What are the actions supported by trade unions?
- What is the position of social partners concerning diversity management?

## **3 Results**

### **3.1 A regulated approach on public-targets**



Social concertation is being built around an approach by public-targets, oriented in priority towards legal plans that require a consultation, sometimes even a negotiation. It is first and foremost to defend the rights of workers currently in place, even more so than to defend the interests of the public present on the job market and job seekers. The Accord National Interprofessionnel (ANI), signed on 11<sup>th</sup> October 2006, aims to guarantee to workers no discrimination and equality of treatment concerning recruitment, affectation, wage, qualified training and career's advancement, no matter the origin, real or supposed, no matter the membership, real or supposed, to an ethnic group, a nation or a race, and no matter the name, physical characteristics or place of residence (article 1<sup>st</sup>). However, it is not compulsory for companies to sign a social agreement on diversity. There is nevertheless in France, but not in Belgium, obligations on social concertation in regards to some public-targets. The legal obligations of concertation relate to employment equality between men and women, insertion and security of employment for disabled workers, access and security of employment for senior workers, alternation, and the career of trade unions' workers. In France, it is the legal plan on employment equality between men and women that is the most constraining. According to the article L.2223-57 of the Labour code, in companies of 300 employees or more<sup>17</sup>, the employer must establish each year a report on the compared situation between men and women and submit it, for notice, to the company's committee or, when no available, to the representatives of the employees. This report must also be transferred to the representatives of labour unions and becomes the basis of the compulsory negotiation on employment equality. According to article L.2242-5 of the Labour code, each year, the employer must bind to negotiations with representatives of labour unions on the objectives of employment equality between men and women. It must cover the conditions of access to employment, qualified training, work conditions, in particular those of part-time workers, the balance between work life and private life, and wage equality. Negotiations on employment equality and on wages may be conducted at different times. It is nevertheless possible to conduct both at the same time. For a more researched analysis of these agreements, the work of Laufer and Silvera (Laufer & Silvera, 2006), of Beaujolin (Beaujolin, 2009) and the ORSE website (ORSE, 2006, 2009) are available. In Belgium, laws exist on employment equality between men and women, but without any legal obligation of social concertation, except for the obligation to return the differentiated statistics on gender in the annual report and the social report that must be presented to the company's council once a year.

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<sup>17</sup> See article L2323-58 for companies of less than 300 employees

Besides, the French legislator encourages companies to negotiate on the insertion and security of employment for disabled workers. Such obligation of concertation does not exist in Belgium. In France, article L.5212-8 of the Labour code provides to the employers of at least twenty employees an opt-out to the obligation of employment of disabled workers on the condition of an agreement of group, company or place on the creation of an annual or multiannual programme in favour of disabled people. According to articles L.2242-13 and L.2242-14 of the Labour code, the employer must each year invite representatives of labour unions to a round of negotiation on measures related to work insertion and the security of employment for disabled workers. This round of negotiation, based on a report produced by the employer on the respect of the obligation of employment of disabled workers, must cover the conditions of access to employment, qualified training and promotion, and working conditions.

Several legal plans<sup>18</sup> provide (Jolivet, Lamotte & Massit, 2008) concertation on conditions of access and plans on employment security for seniors, with the threat of a 1% tax on the payroll if not respected. The Collective Convention 104 (CC104) imposes on Belgian companies to file an employment plan as well as an employment security plan for seniors to the company's council. The analysis of these agreements on seniors has been conducted by Marbot (Marbot, 2011) and Claisse, Daniel and Naboulet (Claisse et al., 2011). Besides, the generation contract does not only encourage the social dialogue on the employment of seniors but also on youth employment. The transfer of support to companies is subject to the condition of the creation of a plan and on a social concertation. The commitments taken must be associated to objectives, to a forecast implementation calendar, to plans of evaluation of this implementation (...).

According to article L.2242-20 of the Labour code, in companies of more than 300 employees, the triennial negotiation on the forecast management of jobs and competences also covers the career's advancement of trade unions' workers.

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<sup>18</sup> ANI (Accord National Intersectoriel on 20<sup>th</sup> September 2003, law of 4<sup>th</sup> May 2004, agreement of 13<sup>th</sup> October 2005 "related to senior employment in order to promote their presence and return in employment", national action plan for senior employment presented in June 2006, law of 18<sup>th</sup> January 2005, law of financing of social security of 27<sup>th</sup> November 2008

### 3.2 The obligation of concertation for the acquisition of the diversity label and the signature of the Diversity Charter

The second most cited objective in the analysis of agreements conducted by Garner (2009) is the acquisition of the diversity label. The tender specifications of the French diversity label provide that to obtain it, the direction of the company must send its intentions to define and implement a policy of diversity to the representatives of the employees and to the labour unions, when they exist. More importantly, the direction must suggest to the representatives of the employees and to the labour unions to be associated to the implementation of this policy. In other words, as soon as they exist inside the company and that they wish to do so, labour unions can use the labelling measure to open negotiation on an agreement in this field. The particularity of this labelling process rests in the composition of the labelling commission in which sit representatives of the State, representatives of employers' union and labour unions, as well as representatives of the ANDRH. The presence of social partners in this instance can explain the attention drawn on the quality of the social dialogue on diversity.

The importance of the social dialogue is even more influential in the tender specifications of the label *Egalité Professionnelle*. The principles of employment equality between men and women need to be understood and accepted by the employers, the employees and their representatives before they can obtain this label. The signature of an agreement on employment equality in the company is required before the label can be attributed. Besides, the tender specifications of this label provide that the company has to have led actions of sensitisation and communication on employment equality among its employers, employees and representatives. The increasing interest of companies for diversity certifications can therefore be an important motivation for the development of the social dialogue, or even for the negotiation and signature of collective agreements on this theme with labour unions.

Launched at the end of 2004 by Claude Bébéar (Bebear, 2004) and Yazid Sabeg (Sabeg, 2004), the Diversity Charter is a text of engagement open to the signature of any company, no matter its size, which condemn discrimination in the field of employment and support the promotion of diversity. Article 5 of the Diversity Charter explicitly promotes the social dialogue: "The planning and implementation of the policy on diversity is a subject of dialogue with the employees' representatives". It is worth noting that the first versions of the Charter were discussed between around twenty managers of large companies within the

Association Française des Entreprises Privées (AFEP). The labour unions and the associative structures were not allowed to participate (Van de Walle, Mordret, 2008).

The non-discrimination is also taken into account in different repositories on the RSE (ISO 26000, the GRI – Global Reporting Initiative, the Global Compact, SA8000) and in ethic charters and codes of conduct.

### 3.3 Cautious involvement of social partner in diversity management policies

Social concertation involves two partners: employers' representatives and employees' representatives. The latter leans on organisations that defend their interests: the Medef, CGPME (Confédération Générale du Patronat des Petites et Moyennes Entreprises), and labour unions.

The role of the private sector and particularly of think-tanks linked to employers has been crucial for the promotion of diversity, through the contributions of the Institut Montaigne, which asked the question of economic and social integration of the “excluded of the Republic” (Van de Walle & Mordret, 2008). The launch of the Diversity Charter follows this logic. Several regional offices of the Medef have signed the Diversity Charter and participate to the development of courses of action linked to diversity management. It is however only in 2011 that the Medef formalised its commitment by creating an ad hoc committee dedicated to diversity and a “Diversity Pact”<sup>19</sup>. The objective is to allow companies of every size and every sector to engage in matter of diversity, according to modalities adapted to their mode of functioning, their organisation, their territorial question, and their development strategy. This pact identifies three phases: the diagnostic phase, the construction of project phase and the formalisation of commitment phase (Medef, 2011). Many local offices of the CGPME (Confédération Générale du Patronat des Petites et Moyennes Entreprises) have led actions around this theme<sup>20</sup>, especially with the FACE foundation (Fondation Agir contre l'Exclusion) and the CJD (Centre des Jeunes Dirigeants d'Entreprise). Most of the actions are structured around public-targets such as employment equality between men and women (Medef, 2012), which include questions of conciliation of private-professional life, policies in favour of disabled workers (Medef, 2010), and youth employment. Although employers' organisations show some support to some policies of

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<sup>19</sup> <http://publications.medef.com/MEDEF-rh/FicheDiversite-Promotion-diversite-entreprendre-autrement-2011.pdf>

<sup>20</sup> <http://www.egaliteeniledefrance.fr/cgpme-6-ans-promotion-diversite-pme>

diversity management, they have also shown some reticence towards these policies, especially with the fear of seeing new constraints for companies being introduced, such as quotas. A break can be seen between the reality of large companies, most of them having diversity management plans more or less formalised, and SME, less concerned by legal obligations that apply to bigger companies. Few SME develop initiatives around the theme of diversity and they remain largely unknown and poorly documented (Banon, 2013).

Trade unions have led several actions on the fight against discrimination, expanded to the notion of fight against injustices and inequalities. The document “The values of syndicalism”, realised by the regional committee Rhône-Alpes, explains this will to fight in priority against discrimination: “The CGT acts against discrimination of every kind, racism, xenophobia, and exclusion, it demands the right to vote for everyone at least concerning local elections, and the eligibility of foreigners to the industrial tribunal elections. It focuses on the fight against discrimination and especially racial and sexist discrimination at work” (<sup>21</sup>p.2).

In almost every trade union’s document, the notion of diversity is systematically associated to the words discrimination and inequalities. Therefore, when taking into consideration the programme of action of the ETUC (European Trade Union Confederation) the CFTC, the CGT and the NUATU have signed<sup>22</sup> in January 2005, a “trade union charter for the equality of treatment, non-discrimination and diversity”. In the charter, the participative trade unions require the opening of national negotiation “for the equality of treatment, non-discrimination and diversity”, and invite private and public companies to negotiate agreements for the efficient implementation of rights “for the equality of treatment, non-discrimination, and diversity”.

The appropriation of the notion of diversity remains however more hesitant, which probably reflects the discomfort in front of these policies seen as non-constraining and closer of a commitment of principle such as the RSE. In March 2007, the CFDT launched a campaign to deploy in companies the national inter-professional agreement on diversity, whose name is “1000 agreements for equality”. “The objective is to sign, eventually, a thousand agreements in companies, offices, territories and in public services, even if the latter are not part of the national agreement”.

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<sup>21</sup> [http://www.cgtra.org/IMG/pdf/Les\\_valeurs\\_du\\_syndicalisme.pdf](http://www.cgtra.org/IMG/pdf/Les_valeurs_du_syndicalisme.pdf)

<sup>22</sup> The programme was adopted during the national seminar of 27-28 April 2004.

ATECCOD<sup>23</sup> (Agir sur les Territoires pour l’Egalité des Chances et Contre les Discriminations) is a European programme Equal, which was born in 2004. It is a partnership between three structures: the Union régionale CFDT Ile-de-France, the Medef (Medef Est Parisien and Medef Essonne) and the Espace Solidarité de la Fondation Abbé Pierre. ATECCOD aims, in Ile-de-France, at preventing and fighting against discrimination linked to employment, training and the right to housing. The project is piloted by the Union régionale CFDT Ile-de-France. Besides the national partners, the project also associates some foreign partners. In the Lorraine region, the CFDT and the association InterCE Forces are part of a project of fight against discrimination at work, called Talent (Territoires en Action Lorrains pour l’Egalité Nouvelle au Travail), and that associates diverse partners such as the Agence pour la Cohésion Sociale et l’Egalité des Chances (the ACSE), the Union Professionnelle des Artisans (UPA), the regional assembly of jobs, the Agence Régionale pour l’Amélioration des Conditions de Travail (ARACT), the CFDT, the Conseil Economique et Social de Lorraine (CES) developed between 2005 and end-2008. This project has especially led to the creation of a tool for the elects of the CE and trade unions – guide “Build a company agreement on diversity and against discrimination”. Created by representatives of employees, this document aims at helping trade unions or the CE to implement a concertation in order to sign a company agreement on diversity and against discrimination. The discrimination sector of the NUATU is connected to the Deputy Secretary-General and not to the Sectoral National Secretaries. Following the importance that the organisation has given to the subject, there is a will that this question should be treated in a transversal manner. The NUATU works with five pilot regions pioneer on the subject (Rhônes-Alpes, Nord-Pas-de-Calais, Ile-de-France, Champagne Ardenne, Pays de Loire). In 2011, they try to create a network of referents (one referent for each region and activity sector, Public Services included). Eventually, the NUATU wants to associate more regions.

The employers’ organisations, as well as the trade unions, remain largely oriented towards actions targeting public-targets (employment equality between men and women, disabled people, etc.).

#### **4 The steps of negotiation**

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<sup>23</sup> Source: [www.cfdt.fr](http://www.cfdt.fr)

The different meetings with the social partners allowed identifying different steps, identified as factors of success of negotiation.

- Planning of the negotiation;
- Production of a common diagnostic;
- Formalisation of the agreement and ensuring consistency with existing texts;
- Signature of the agreement;
- Translation and implementation of the agreement with the identification of existing norms;
- Follow-up of the agreement;
- Revision or denunciation of the agreement.

#### 4.1 The planning of the negotiation

The launch of negotiation on diversity seems to require that social partners agree on several subjects:

- The targeted public by the agreement, would it be the whole of partners of the company or a specific public (women, men, disabled people, etc.), with operational definitions. For instance, for the notion of senior, it is necessary to specify the age threshold from which a person is seen as being a “senior”;
- The definition of concepts and notions used in the agreement such as: diversity, discrimination, equality of chances and treatment, quotas, equality of rights, positive discrimination, direct and indirect discrimination, discriminant injunction, discrimination by association, etc.;
- The dimensions of the management of Human Resources related to the agreement (recruitment, training, management of careers, management of work time, planning of working conditions, etc.);
- The extent of the agreement (for instance, agreement applicable to the parent company and/or to its subsidiaries, agreement of institutions, etc.);
- The period of validity of the agreement (for instance, fixed-term agreement or indefinite agreement). The definition of the period of validity of an agreement on diversity is not always left open to the liking of social partners. The law most of the time requires, for fields concerning compulsory negotiation, a predefined period;
- The conditions of revision and of denunciation of the agreement;

- The languages in which the agreements will be translated.

This step seems essential to most companies that were met. The quality of work produced during this step plays an important role on the quality of the agreement itself. This work of definition and sharing of notions greatly influences the formalisation of the agreement. It facilitates the efforts of comprehension and of translation, which will then “give life” to the agreement. It could be interesting to study some of the processes of negotiation specifically with the theory of the network-actor and conventions (Akrich, Callon & Latour, 2006) to analyse how emerge a consensus on the notions often polysemous. The definition of mobilised notions is however not the only part at stake in this preparatory phase. Negotiating on diversity involves to work on stereotypes and prejudices, to become aware of them and to dismantle them. However, social partners are not shielded from these stereotypes and prejudices, and can even transmit them. For instance, it is the case when an agreement provides the implementation of measures in favour of conciliation between family life and professional life of women. This choice actually corresponds to a stereotyped vision of the sexualised roles within families. It is also interesting to see that “the Court of Appeal has censured the dispositions of collective conventions that allowed to women only the benefit of birth or nursery premiums, or days off for dependent child (...)” (Radé, 2011).

Social partners also need to identify the legal, conventional and more largely normative, national, and international framework in which happens their dialogue. This work is not simple as it will facilitates, if the negotiation is successful, the insurance of the consistency of the agreement with (pre)existing norms. Finally, partners can, during the preparatory phase, discuss reasons that justify the entry of diversity or one of its components to the agenda of the social dialogue: the consequences of social responsibility in regards to the environment in which evolves the company, the improvement of its efficacy (greater proximity with customers and users, better services), the improvement of its efficiency (better use of resources available in the company and its environment), the consequences of the position compared to the competition and in front of new demands of tender specifications, of agencies of notation, of stock-exchange actors, etc.

#### 4.2 The production of a common diagnostic



The production of a diagnostic is an inevitable step and needed for a negotiation on diversity to be successful, because each office, company, and negotiation is particular and specific. It enables to adapt the directory principles and action plans to cope with the situations met in the field. It is also a complex and difficult step. The available information needs to be inventoried. The indicators and modalities of the calculation have to be agreed upon. The data needs to be collected and treated according to rigorous methods, respectful of the legal framework<sup>24</sup> and statistically/scientifically valid. The data also needs to be understood, which largely exceeds the simple reading of a crossed table. The diagnostic seems built especially around the representation of the different public-targets in the organisation and the profile of the beneficiaries of the policies of HRM (Zannad, Cornet, & Stone, 2013). The social balance sheet and the data, which needs to be produced in the framework of legal tools such as the report of compared situation, suggest data for employment equality between men and women, the management of ages, and disabilities. For other publics, such as people of foreign origin, it is often far more complex even through most actors agree on the need to have data that would enable to have a clearer view of the professional situation of this public. One of these steps is to collect and transmit these data; another is to understand these data. It is not always simple to come to a consensus on the way to read and interpret these data and to clear paths of action. The existence or not of discrimination, would it be direct or indirect, is a modality of diagnostic more rarely negotiated in the social concertation. Trade unions exchange information on discrimination perceived by employees, but most of the time, it seems to be treated as isolated situations without any real analyse of eventual systemic causes. On equality between men and women, several subjects often come back in the diagnostic: the horizontal segregation of jobs and offices with trade union's demands for more diversity in some jobs, the vertical segregation through an under-representation of women in hierarchic positions, wages' inequalities, and demands on the conciliation of private life and professional life.

With the help of eleven large companies, Equity Lab and the AFMD have created a referential of 85 indicators to promote social and ethnic diversity. These indicators are a start but remain inadequate in regards to the stakes of reporting linked to policies of diversity management (Zannad & Stone, 2009b).

The part devoted to employment equality between men and women is always the most developed in these agreements: it appears sometimes in first position, sometimes in second

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<sup>24</sup> See in particular the modified law 78-17 of 6<sup>th</sup> January 1978, also called law "Informatics and Liberties"

position in the list of components treated in the agreement. In this case, measures related to the implementation of the enounced principles are more specific and detailed. It is also in these agreements that are found diagnostics and the definition of indicators and objectives.

### 1.1. Negotiation and formalisation of an agreement

The diagnostic should allow social partners identifying problems for which they can intervene (would it be recurrent and/or important problems). It should enable the definition of director principles as well as actions that should be implemented. The paths of actions should aim individuals (trainings, sensitisation to stereotypes and prejudices, input of new competences, etc.), the organisation and its processes and/or the company.

On the 31 agreements analysed by Garner (Garner-Moyer, 2009), ten are structured around some Human Resources processes: the recruitment, the professional mobility, the promotion and training, the wages and remuneration.

- The remuneration in general concerns only the equality between men and women thanks to objectives of catching up wages' gaps (wage equality).
- For disabled workers, it sometimes concerns recruitment, but also the maintenance in employment of workers with disabilities and already working in the organisation, with a particular attention on disabled workers that are the results of professional activity.
- For senior workers, what is particularly put in front is the professional maintenance in the second part of the career, the planning of time and working conditions to facilitates the last part of the professional life, and sometimes, the analyse of the hardness of tasks linked to the age and seniority. It also concerns the conditions of retirement, in particular early retirement in case of restructuration.
- When the agreement integrates the youth, in particular in actions with local communities on the theme of social inclusion, the planned actions principally revolve around the recruitment through internships in alternation.
- Ethnic diversity is rarely formulated as path of action, except the will to revise some processes of recruitment to increase the equality of chances (anonymous CV, recruitment via simulation versus diversification of external channels and partners).

In these agreements, partners are presented with intermediaries such as Pôle Emploi, local missions, and associations such as the Agefiph, the AFIP<sup>25</sup> or the FACE.

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<sup>25</sup> Association pour Favoriser l'Insertion Professionnelle

It could be said that the definition of objectives that social partners aim to achieve is a crucial step. Indeed, it seems important that social partners can think about the results that they wish to obtain out of the negotiation. The degree of ambition of these objectives may vary. Some objectives are based on:

- Information on the current and previous situation of the company (percentage of employees of a particular category that have not had a promotion for a fixed number of years, average remuneration of employees, rates of feminisation/masculinisation by type of jobs or professional category, etc.);
- Information related to the sectoral situation or to different jobs of the company (for instance, rate of feminisation/masculinisation of such job or training, rate of beneficiaries of employment obligation in such sector, etc.);
- Information related to employment discrimination (for instance, data published by the Defender of Rights, results of tests, etc.).

There is little information in the agreement on the (human, financial, etc.) means mobilised to lead these actions.

Many best-practice guides (Cornet & Warland, 2011 (2e ed.)), repertoires (ORSE, 2006), negotiation guides, and websites<sup>26</sup> are today available. They form good sources of inspiration and report on different principles and actions negotiated by social partners. The ORSE has produced in 2011 a guide “Prévention des discriminations et promotion de la diversité dans les entreprises”<sup>27</sup>. This guide is the result of more than a year of exchange among a working group implemented by the ORSE, and which has reunited experts, specialised networks, and member companies of the ORSE. It explains, in a pedagogic way and in the form of eighteen cards, the innovative practices of prevention of discrimination and of promotion of diversity in companies in France, as well as monitoring and evaluating tools needed for their implementation. This guide has benefited of the support of the MEDEF and of five trade union’s confederations (CFE-CGC, CFDT, CGT-FO, CFTC, CGT).

## 1.2. Conclusion of the agreement

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<sup>26</sup> <http://www.charte-diversite.com> / <http://halde.defenseurdesdroits.fr>

<sup>27</sup> <http://www.orse.org/> / <http://www.diverste-europe.eu> / <http://www.observatoiredesdiscriminations.fr>

The implementation of a policy of diversity management involves the mobilisation of human, financial and material means. In some cases, the negotiators proceed to a financial evaluation to determine the cost of the implementation of the agreement for the company compared to the potential profits that it may gain (for instance, reduction of risks of condemnation for discrimination, therefore risks of reputation, reduction of justice fees, improvement of the employer's image, loyalty of employees, etc.).

Apart from the financial aspects, the conclusion of the agreement by the different actors (trade union's confederations, directors of business units, directors of offices, etc.) remains a crucial step and a factor of success. The negotiators agree on a consensus between the different comments and opinions (in favour or against) of these actors after having explained the practical details of its implementation (precise description of new rules of management, actions, definitions of the qualitative and quantitative objectives to reach, definitions of the actors involved in the realisation of the action, definitions of the means available, definitions of the deadlines, etc.)<sup>28</sup>. This consultation, more or less formalised, is the occasion to proceed to arbitrages.

The social partners determine the period of validity of the agreement and, sometimes, the monitoring details. In the agreements analysed by H el ene Garner-Moyer, the period of validity of the signed agreements is either three years (in thirteen agreements) or undetermined. Nevertheless, an annual monitoring is most of the time included (Garner-Moyer, 2009; 2012).

### 1.3. Implementation of the agreement

It is not enough to reach an agreement; it must also be implemented. According to our speakers, it involves that people are clearly designated to implement the negotiated actions, to apply the rules of revised management and/or to control the achievement of set objectives as well as the realisation of the implementation of the action plan.

The agreement can provide the attribution of new missions and objectives to people holding different positions in the company (for instance, application of new norms of management by the Human Resources, quota of working time of their partners by the managers taken into account during the definition of the objectives, information and council of managers and partners on non-discrimination by a network of diversity referents, etc.).

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<sup>28</sup> See, for instance, annex 1 of the agreement on employment equality between men and women of La Poste on 11<sup>th</sup> April 2011

Some companies decide to create positions or structures dedicated to diversity management (for instance, creation of a pilot committee, of an ad hoc direction, of a diversity accountant position, etc.).

Within some companies, communities of practices aiming at letting know and sharing interesting initiatives are created in order to encourage the others to do the same. These communities aim at formalising these exchanges so that it becomes a real strategy of diffusion of practices in the whole of the organisation, as much in the trade unions' side as in the employers' side. Companies can favour the sharing and emergence of such practices in the form of periodic meetings or by the organisation of trophies.

The implementation of a joint monitoring committee, gathering representatives of the employees and the employers, appears necessary to the viability of a diversity agreement.

#### 1.4. Information – Diffusion

Communication vectors can be multiple: intranet website of the company, internal newspapers, blogs, displays, briefings, meetings of presentation in Comex, on websites, on trade union intranet websites, trade union press, sectoral and national press, etc. Several people show the necessity to translate and synthesise the agreement to make it more accessible. The form, background and channels of communication need to be adapted depending of the targeted publics. The hierarchic line and the trade unions' representatives are the principal actors urged to transmit these messages to the field. The intermediary management and its trade unions' delegates should ideally explain the agreement and promote its implementation. The question on the translation of the agreement in different languages is often problematic in some large international groups. The mobilised terms and concepts do not always have the same signification and can be interpreted differently depending on contexts. Moreover, the normative framework and the juridical definition of some terms vary depending the country. The communication can concern the content of the agreements, but it is also useful to communicate on actions and practices implemented in the whole of the company.

#### 1.5. Monitoring and evaluation

The monitoring and evaluation of a collective agreement seem important steps of the social dialogue. It enables to control whether the engagements taken by the social partners have

been effectively implemented, to evaluate the achievement of the set objectives and to consider complementary and/or correctional actions. Nevertheless, the delicate question on evaluation methods of the agreement needs to be asked. Evaluation can often take the form of a description of the actions, a census of the evolution of the number of complaints on discrimination and numerous other indicators, such as the degree of achievement of set objectives (for instance, percentage of women holding a responsible position, rate of disabled people present among the employees, etc.), and more rarely the analysis of the impact of the actions. The analysis of the agreements on diversity shows that they include in general little monitoring indicators. On thirty-one agreements analysed by H el ene Garner-Moyer, the monitoring of these agreements is most of the time conducted by a commission dedicated to this agreement (diversity commission, diversity observatory, ethic committee...) or sometimes company committee. Therefore, several companies (PSA Peugeot Citro en, Eau de Paris, Axa, Casino, Total) have created groups/commissions/observatories in charge of the monitoring of the agreements and diversity policies. In three agreements, no monitoring is planned (Garner-Moyer, 2009; 2012). The AFMD has edited two documents on the measure of diversity and discrimination in a company. “*Mesurer la discrimination et la diversit . El ements de r ponses*”, written by H edia Zannad and Pete Stone, covers the way through which companies measure diversity and non-discrimination (Zannad & Stone, 2009). The other report “*Rapport Annuel Diversit s – Mesurer, Partager, Progresser*”, conducted by the AFMD and Equity Lab, is a referential of indicators built with companies’ members of this association.

## **5 Conclusion**

The analysis of the group agreements related to diversity and equality of chances produced by Gadrat (2010) leads the researcher to talk of a “deception”: the engagements would be nothing more than the respect of the legal principle of non-discrimination.

The insertion of diversity management in the social concertation remains a real challenge. There is still a lot to achieve and the few agreements signed on this theme show the caution of the affected actors. It is true that specific constraints linked to some targeted publics do not favour the signature of more global agreements, which would have a more integrated approach to diversity.

The social partners are key actors in the implementation of policies of diversity management. They can play several roles:

- Transmit diversity policy to the employees and stakeholders (contractors, customers and users, etc.);
- Suggest actions to implement;
- Control the implementation of the agreements;
- Process the complaints on discrimination.

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