Challenges for worker representatives from activist investors and takeovers
Moderator: Andreas Botsch; Rapporteur: Pierre Habbard
Panel: Helmut Gahleitner, Robbert van het Kaar, Andrew Pendleton

Helmut Gahleitner gave an overview of the private equity (PE) and hedge fund (HF) sectors. The distinct features of PE and HF include: an excessive leveraging, the use of offshore financial centres and the involvement of institutional investors – including pension funds. PE and HF differ in the way investments are made: PE invest in and take control of non-listed companies while HF (those that specialise in shareholder activism) take minority positions in listed companies. They also have different time horizons. The 'life' of PE fund can reach up to 10 years, while in the case of HF it rarely goes beyond 2 years. The holding period of the funds' investments also differ: 3 years for PE, 6 months for HF. Gahleitner noted that increasingly private funds shift from one to another investment strategy. Accordingly the dividing line between 'pure' PE and HF would not necessarily be relevant anymore.

For Andrew Pendleton the social performance of PE shows a mixed picture – after all there are some good cases in the PE. The social impact of HF however was always negative, he argued. Pendleton gave the example of Cadburry. In 2005, a HF entered the shareownership structure of Cadburry. Following intensive private and public engagement with the management in 2007-2008, the HF was successful in forcing a spin-off of the confectionary branch activity of the group, making the remaining of the group "ripe" to become a takeover target. And indeed end-2009 Kraft (of which the above mentioned HF was also a shareholder) made a hostile bid on Cadburry. In less than 30 days the shareownership of HFs in Cadburry rose from 5 to 31%. The takeover was accepted by the board in January 2010. The main UK production plant of the group was closed a couple of months after the takeover. The case of Cadburry at least has had some positive effect on the UK debate on M&As because it has boosted the position of proponents of tougher takeover regulation.

The case study presented by Robbert van Het Kaar involved a Dutch subsidiary of a US company. Having severe financial troubles, the US parent company needed fresh cash and wanted the Dutch subsidiary to transfer €5-6m. The operation would have resulted in a downgrading of the balancing sheet of the Dutch company including a substantial increase of the company's indebtedness. The works council opposed the deal successfully (thanks to the activation of its right to appeal before a Dutch court). It forced the US parent company to accept a sale of the Dutch company with specific restrictions with regard to the leverage level. In the competitive bid that followed, the works council managed to impose its conditions to to all the bidders. The group was eventually bought by an Indian company.

In the discussion and Q&A session the following came up:

- It is difficult for unions to anticipate on shareholder activism because much of it happens through "private engagement" (between activist HF and top management of the company) which takes place in full opacity.

- Trade union capacities need to be raised substantially in most of the cases; more resource is desirable to help unions and works councils monitor shareholder activism.

- In terms of regulatory reforms, unions would be better off if works councils were granted enhanced rights (on the model of Dutch works council) rather than seeking strengthened regulation of HF & PE exclusively.

- We should keep in mind the broader context in which PE and HF operate, including the "economics" of M&As, problems of succession of SMEs across Europe and the rise of other forms of investors such as sovereign wealth funds.