

**LABORATOIRE SOCIAL D'ACTIONS D'INNOVATIONS DE REFLEXIONS ET D'ECHANGES**

**12th biennial of Lasaire**

***« Anticipation and Participatory Change Management in Companies during a Period of Crisis and Technological Change* *»***

**nokia alcatel lucent**

**(by Joël Maurice - 03/10/2016)**

The case examined is that of the acquisition of Alcatel Lucent by Nokia through an all-share transaction, announced on 15 April 2015 and in the process of implementation.

1. **Technological anc economic context**

These two companies belong to the ICT[[1]](#footnote-1) sector, in particular telecommunications, which has undergoing unremitting changes since the eve – and especially since the end – of World War II, and which is at the very heart of the new “industrial revolution.” This sector was also the locus of the “Internet bubble,” which, for the sake of the globalisation of trade and the abundance of liquidity provided by central banks, particularly the American Fed, ballooned rapidly as a result of expectations from “investors” and burst all of a sudden in March 2000. Many companies in the ICT sectors were shattered by this shockwave; some (such as Nortel) disappeared, while others had to cut back on their activities and restructure. This was the case of the American firm Lucent (which came into being from the breakup of ATT in 1984), which was acquired by Alcatel through an all-share transaction in 2006, to create Alcatel Lucent. The latter, under competitive pressure in particular from Cisco, Ericsson and above all, Chinese newcomers, the most powerful of whom is Huawei, did not manage to recover, in spite of successive restructuring plans. The most recent of these, known as the Shift Plan, implemented by Managing Director Michel Combes, cut 15% of the workforce in the period 2013-2015. For its part, Nokia, which had managed to dominate the world market of mobile devices, missed out on the smartphone revolution, and witnessed its accounts deteriorate rapidly. It was forced to refocus on equipment for telephony networks and to sell most of its other activities, so as to be able to invest particularly in 5G[[2]](#footnote-2). Furthermore, the world telecom sector suffered from the consequences of the world economic slowdown, especially due to the international financial crisis which burst out in 2008. It is against this set of circumstances that Alcatel Lucent and Nokia engaged in discussions to draw closer and converged on the solution of the acquisition of Alcatel Lucent by Nokia, by proceeding to a public share exchange offer (PSEO), which was announced on **15 April 2015.**

1. **Information and consultation of workers for the acquisition of alcatel lucent by nokia**

The two groups are described in Box 1 as they were on the eve of this PSEO.

* 1. **it is important to stress the significance of the applicable law from the outset**

Alcatel Lucent is a company incorporated under French law, and Nokia is a company incorporated under Finnish law. This difference has appreciable repercussions on change management, in particular as regards the involvement of workers.

French law, which is applicable in the event of an offer to buy a company incorporated under French law, has several effects.

* Thus, an “*Information note drawn up by Alcatel Lucent, in response to a public share exchange offer initiated by Nokia Corporation”* was filed (on 12 November 2015) with the French Financial Markets Authority, which “*endorsed and declared that public share exchange offer compliant.”* This Note is a source of considerable information on the reasons for and conditions of the acquisition.
* Furthermore, “*the opinion of the Group Committee (France) and the report of the Chartered Accountant are reproduced in this Note in response”* after a prior consultation required by law.[[3]](#footnote-3) This opinion runs as follows: *Other solutions were undoubtedly conceivable, but we are not against this plan to sell ALU to Nokia.” … “…But we wonder what guarantees are provided to secure and develop employment in France within the new group and the implementation of a vast jobs and skills management plan.”* In its Note in response, the management of Alcatel Lucent cites selectively the end of the first sentence of this conclusion.

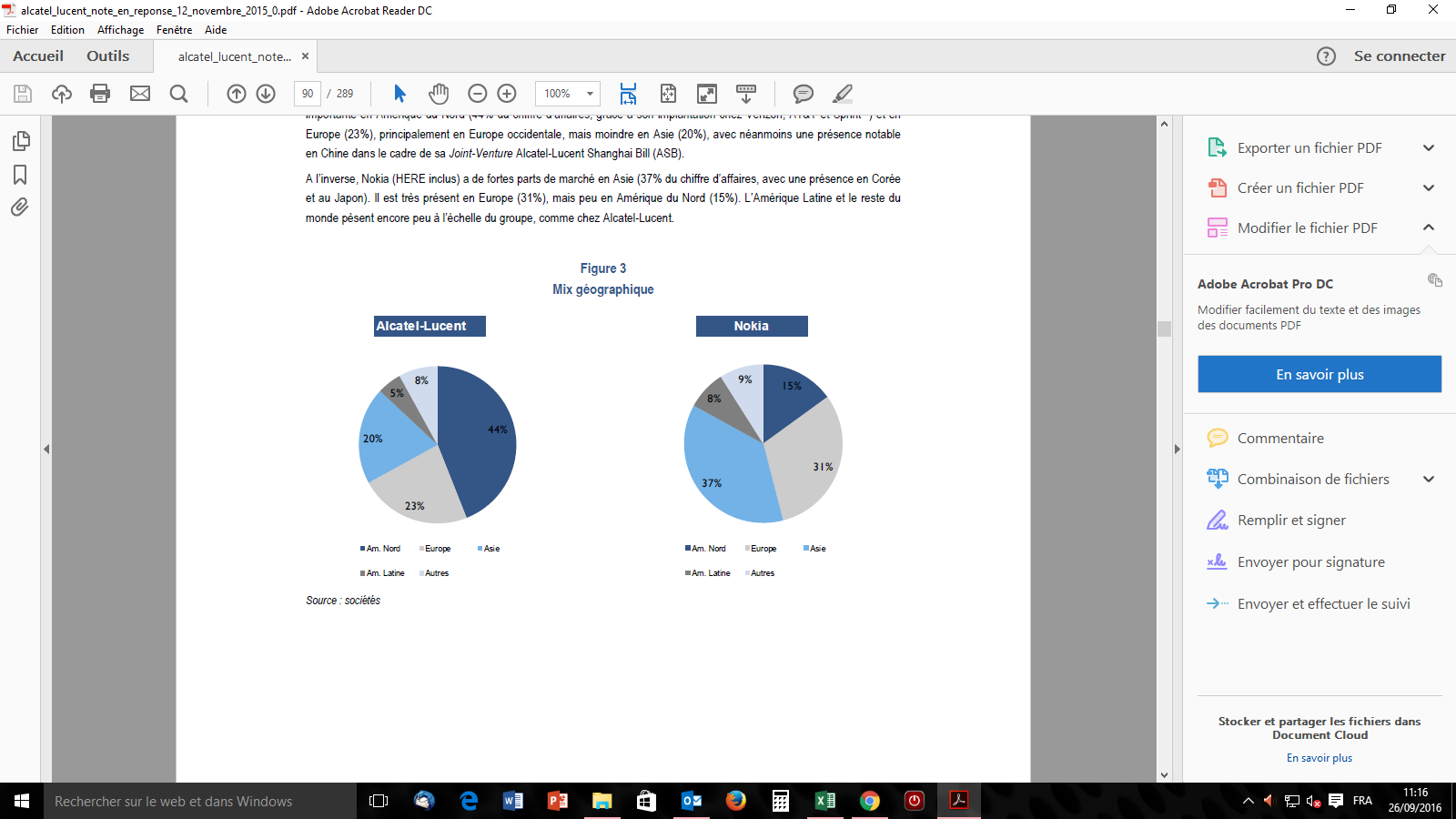
**Box 1**

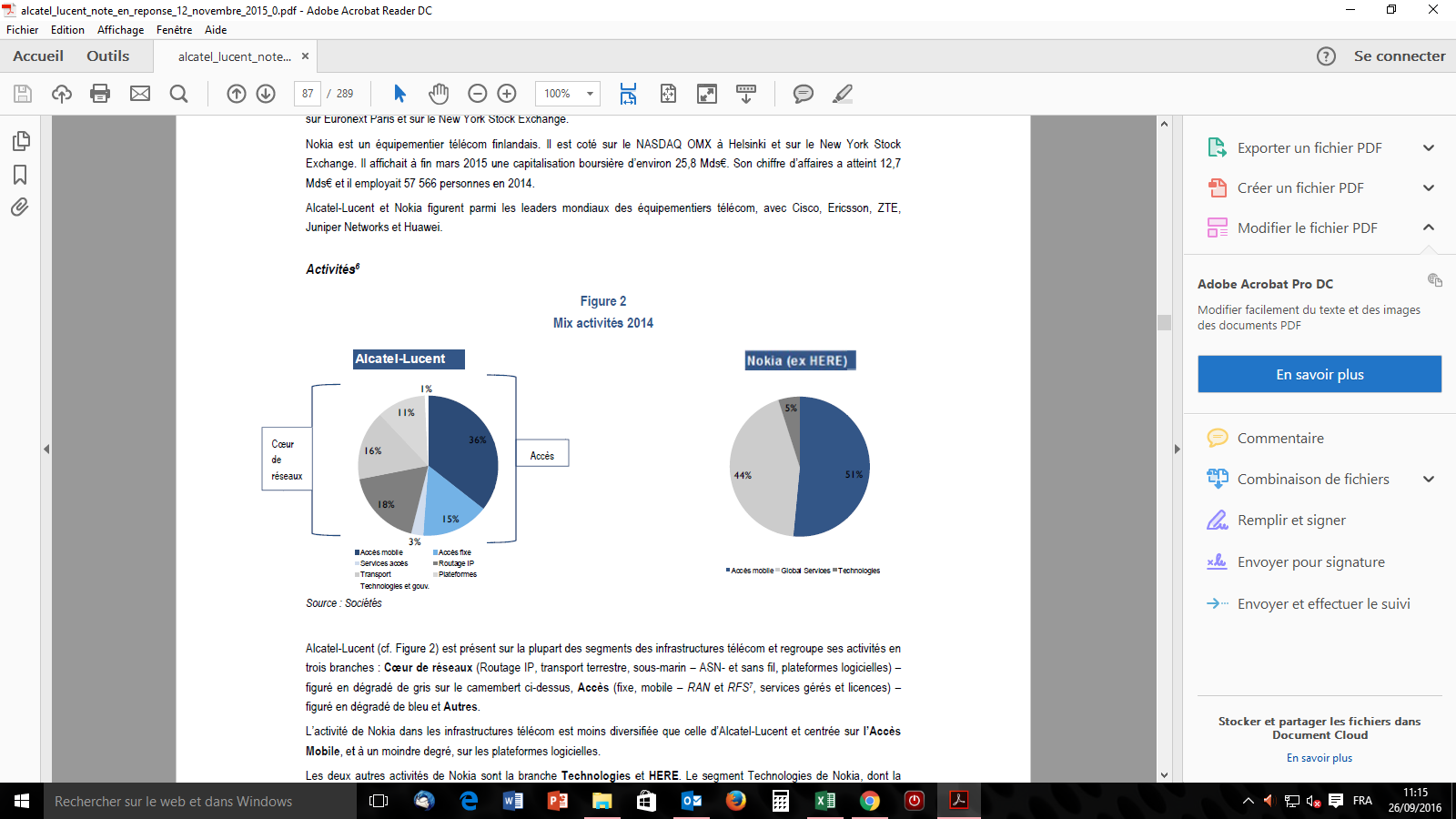
***Succint presentation of the two companies before the public share Exchange offer (PSEO)***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Applicable law | Turnover  € billion  2014 | Workforce  2014 | | Capitalisation boursière  Mds€  End of March 2015 |
|  | World | Of wich  in Europe |
| Alcatel Lucent | French | 13,2 | 52 600 | 14 100 | 9,3 |
| Nokia | Finland | 12,7 | 57 600[[4]](#footnote-4) | 20 300 | 25,83 |

Source : Associé Finances, independent expert assesment appended to teh AMF file

1. **Breakdown by technological field**



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1. **Breakdown by geographic area**
   1. **Point fo wiew of European provisions relating to employee involvement (Directive 2009/38/CE[[5]](#footnote-5))**

* There is a European Works Council (EWC) in each group, known as *European Committee for Information and Dialogue* (ECID) at Alcatel Lucent and *EuroForum* at Nokia. They moreover have a right to information, but not to consultation, on either side, but the rules and practices are not the same. Labour relations are generally of considerably different nature. The trade unions seem to play a more active role in Alcatel Lucent than in Nokia. Incidentally, a certain dissymmetry ensues for this Lasaire study, as the information elements come mainly from Alcatel Lucent.
* The two EWCs converged very soon on the PSEO, at the initiative of the ECID.
* On 11 September 2015, a coordination meeting was held under the aegis of IndustriAll-Europe, which issued a press release and sent a letter to the respective management of the two companies.
* On 8 October 2015, the members of the two EWCs present at a training session organised by ETUI, decided to write to the management of the new Nokia Group (as soon as it was in place) to ask it to “*enter into negotiations to establish an EWC and an information and consultation procedure”* as provided under article 5 of the Directive 2009/38/EC.
* On **14 January 2016, the two groups were merged into one,** as the progress on the PSEO enabled the Nokia Group to acquire more than 50% of the shares and voting rights of the Alcatel Lucent Group.
* On 26 January 2016, the two EWCs sent their aforementioned joint letter.
* On 25 February 2016, the central management of the new Nokia Group refused to open the negotiations, and complied, as provided in this case by the Directive, with the **Subsidiary Requirements** set out in Annex 1 of said Directive, summarised in Box 2 infra.
* On 3 March 2016, the two EWCs acknowledged receipt of this refusal. Taking note of their upcoming disappearance (six months after their letter of 26 January 2016, i.e. on 27 July 2016), they consequently asked to initiate rapidly the procedure to set up the new EWC that was to succeed them.
* On 4-5-6 April 2016, central management organised a *plenary forum* in Helsinki. The members of the two EWCs held a preliminary meeting during which they discussed the issue of establishing an EWC of the new Nokia Group under the Subsidiary Requirements and, by majority vote, opted to comply with this solution. The central management then provided information on its strategic directions. The HR department then presented the restructuring operations it considered necessary in the 28 European countries concerned, which comprises cutting 4,367 unequally distributed jobs out of a total of 34,400 (i.e. -12.7%).
* The stage of setting up a new EWC was then set. According to the Subsidiary Requirements, its members are elected or appointed according to the number of workers employed in each member state by the company, by allocating one seat per portion of employees employed in that Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together. This would lead to the joint composition in the Annex. This new EWC will meet for the first time on **27 October 2016**. We will soon know more about its actual role, scope and limits.

**Box 2**

***Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees***

**Annex 1: Subsidiary Requirements**

**Summary**

These requirements provided in particular that: a European Works Council is to be established; its members are to be elected or appointed according to the number of workers employed in each member state by the company, by allocating one seat per portion of employees employed in that Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together; at most 5 members are to be elected within its ranks to see to the coordination; the works council has the right to meet central management once a year; in the event of closures of establishment or collective redundancies, the select committee, extended to include the members of the works council of the member states directly concerned, shall be entitled to meet with the central management.

***Note: Update on the continuation of the acquisition procedure***

On 17 June 2016, Nokia announced that it holds 95.33% of the capital and 95.26% of the voting rights of Alcatel Lucent and that it plans to arrive at 100% by the end of October 2016, by exercising a right of compulsory withdrawal in cash.

1. **Negotiations**

The main observation is that the local negotiations relating to job cuts, based on basic indications announced at the aforementioned *plenary forum,* are broached separately in each Member State, without any organised coordination.

Furthermore, in each Member State, these negotiations precede the merger of previous entities of NOK and ALU. What is more, in a country like Spain, for example, the planned job cuts actually spare the low cost components comprising 400 employees, which actually concentrates the 320 job cuts on a workforce of 1070 employees, bringing the job cut rate to 30% in the two high-cost subsidiaries.

In more general terms, it appears that the announced job cuts are concentrated in Member States with “relatively high salaries” (Finland, Germany, Austria, France, Spain, Italy), and it turns out that what has been qualified as “job cuts” in these countries frequently consists of redundancies, in fact. Conversely, job cuts announced for Member States with “relatively low salaries” (Greece, Central and Eastern European countries) represent clearly lower proportions. This gives the impression that with the restructuring in progress, the central management of the new Nokia Group is actually pursuing a relocation strategy to the lowest social bidders.

It is worth adding that the procedures differ widely from one country to another. To these differences in national negotiating procedures is added the trend among employee representatives to “limit the damage” in their backyard first. This fragmentation increases the coordination difficulties of employee representatives in the various Member States and widens the margin of manoeuvre of central management.

Partial and provisional outcome:

* In Finland, negotiations were rapid: an agreement seems to have been reached as of May 2016 to limit job cuts to 1000 jobs,[[6]](#footnote-6) essentially in end-of-cycle products.
* In Spain, the negotiations were hard, but they led to lower job cuts than those wanted by management: 90 instead of 119 for ALU and 32 instead of 78 for NOK;[[7]](#footnote-7)  a restructuring support plan 2016-2017 should be signed on this basis.
* In France, the legal procedure in case of restructuring comprises consultation of the Central Works Council (CWC). After this consultation, on 6 September 2016 the CEC issued the “*CWC opinion on the redundancies of the Nokia Plan”* which concluded as follows: “*The elected representatives regret that their economic expert did not have all the information to inform them. Nevertheless, based on the submitted report, the elected representatives are unanimous in their negative opinion of this job cutting plan.”* This opinion is based in particular on the following arguments: “*The economic arguments of management are barely supported;” “most of the 356 job cuts are linked to the relocation of activities to low cost countries”* (Poland in particular); “*French employees are asking a lot of questions that can be summarised in two points: 1) what activities are they going to work on? 2) What will be France’s place in the new organisation?” “The government’s commitments on saving jobs are still at the promise phase.”* Nevertheless, negotiations in ALU International managed to save 17 jobs, to get other jobs for 70 employees who will thus not be made redundant, and to promote voluntary departures. The trade unions have signed support measures accordingly. In Nokia France (on a much more restricted range of activities), negotiations managed to save 25% of the jobs initially slated to be cut.

1. **Several lessons can evidently already be drawn from the case under review**

When, as in the present cases, an acquisition entails change in the applicable law for the acquiring company, with very substantial consequences for it and its employees, it requires an in-depth analysis that can supplement the expert assessment on which the works council can rely under French law.

The “Subsidiary Requirements” lead to a very high over-representation, in the CEC, of Member States where the new group has a small number of workers and where, in all likelihood, the trade unions are less experienced and less active. These European rules should therefore be changed to remedy these inconveniences.

The workers have shown in all their reactions that they are aware of the challenge the company is facing in this period of very keen international competition and extremely rapid changes in telecommunications and digital technologies. To that end, however, all employees must know their respective role, the contribution each can make, and that there are good reasons to be motivated. This in turn presupposes a considerable effort for organisation, training, and attention to the social climate, aptly underscored by the demand of the two EWCs of NOK and ALU to be apprised of and to understand the strategic directions of the group and to implement a vast *jobs and skills management plan.* It therefore appears highly desirable to go as rapidly as possible beyond the stage of setting up new bodies for the social dialogue and to give to the latter real concrete content on the objectives in the group’s different fields of activity as well as to chart the approach and methods to get there.

The preceding question exceeds the scope of Europe. The new group is a worldwide concern. Europe accounts for 34,000 out of 104,000 jobs. There is no indication as to the link between the large geographic areas. The employees have no vision of the coherence of their role in the group’s strategy and future.

In more general terms, we can only be struck by the imbalance in the treatment of this acquisition of Alcatel Lucent by Nokia, between the information of the shareholders of the two companies and that concerning the workers (including their number!); as if they were not “stakeholders,” who are nonetheless concerned as much and even more, if the quasi vital consequences of the restructuring operations for them are considered for a single instant. The European provisions should therefore be reviewed to require that the restructuring files provide more satisfactory information and assessments (including from independent quarters[[8]](#footnote-8)) on the workers: number, men/women, qualifications, status, representatives, etc… The same could apply on information on other stakeholders, such as subcontractors.

**\* \* \* \* \* \* \* \* \* \* \* \***

**Annex 2 :** **Composition of the new European Works Council, 27 July 2016**

**Possible seats**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Europe | | **Nokia** |  | NOK |  | ALU |
| **EWC seats** |  | **EF seats** |  | **ECID seats** |
| Austria |  | 1 |  | 1 |  | 1 |
| Belgium |  | 1 |  | 1 |  | 3 |
| Bulgaria |  | 1 |  | 1 |  | 0 |
| Croatia |  | 1 |  | 1 |  | 0 |
| Czech Republic |  | 1 |  | 1 |  | 0 |
| Denmark |  | 1 |  | 1 |  | 0 |
| Estonia |  | 1 |  | 0 |  | 0 |
| Finland |  | 2 |  | 6 |  | 0 |
| France |  | 2 |  | 1 |  | 8 |
| Germany |  | 2 |  | 3 |  | 3 |
| Greece |  | 1 |  | 1 |  | 0 |
| Hungary |  | 1 |  | 2 |  | 0 |
| Ireland |  | 1 |  | 0 |  | 0 |
| Italy |  | 1 |  | 1 |  | 3 |
| Latvia |  | 1 |  | 0 |  | 0 |
| Lithuania |  | 1 |  | 0 |  | 0 |
| Luxembourg |  | 1 |  | 0 |  | 0 |
| Malta |  | 1 |  | 0 |  | 0 |
| Netherlands |  | 1 |  | 1 |  | 2 |
| Norway |  | 1 |  | 1 |  | 0 |
| Poland |  | 1 |  | 3 |  | 2 |
| Portugal |  | 1 |  | 1 |  | 0 |
| Romania |  | 1 |  | 1 |  | 3 |
| Russia |  | - |  | - |  | 0 |
| Slovakia |  | 1 |  | 0 |  | 1 |
| Slovenia |  | 1 |  | 0 |  | 0 |
| Spain |  | 1 |  | 1 |  | 2 |
| Sweden |  | 1 |  | 1 |  | 0 |
| Switzerland |  | 1 |  | 0 |  | 0 |
| UK |  | 1 |  | 1 |  | 2 |
| TOTAL | | 32 |  | 30 |  | 30 |

Malta and Luxembourg have no workforce, and therefore no members.

The total will probably be 30 memb

1. Information and Communication Technologies. [↑](#footnote-ref-1)
2. 5th generation mobile telephony. [↑](#footnote-ref-2)
3. Act of 29 March 2014 “to reconquer the real economy.” [↑](#footnote-ref-3)
4. Antes de la cesión (en agosto del 2015) de su actividad HERE de geo localización. Se estiman los efectivos de HERE a unos 6.000 trabajadores. [↑](#footnote-ref-4)
5. Directive 2009/38/CE (refonte de la directive94/45/CE) concernant l’institution d’un comité d’entreprise européen ou d’une procédure dans les entreprises de dimension communautaire et les groupes d’entreprises de dimension communautaire en vue d’informer et de consulter les travailleurs [↑](#footnote-ref-5)
6. Source: Le Monde, 23 May 2016. [↑](#footnote-ref-6)
7. In the end, 122 jobs in all were cut, compared with the 192 planned by management, a figure which is itself down from the 320 initially announced (cf. §25 infra). [↑](#footnote-ref-7)
8. In the same vein as, for instance, the “independent assessment by Associés en Finance” relating to the financial stakes, which is appended to the aforementioned Note in response by Alcatel Lucent to the AMF. [↑](#footnote-ref-8)