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EXPERIENCES AND PROSPECTS

FINAL REPORT

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Premise

Transnational company agreements (TCAs) have emerged as an important development in the increasingly globalized economy. It is a means by which partners may respond jointly to key social and economic changes in the global market facing their firms.

Due to the absence of any systematic transnational legal regulation, transnational negotiations are left to the spontaneous rules developed by actors involved in such discussions. This complex reality requires a careful analysis of the challenges and drawbacks facing trade unions and management.

In order to address some of these issues, the project “European Action on TCAs” (EURACTA 2) has been promoted and coordinated by the Italian institute the Associazione Bruno Trentin (ABT) involving a high profile network of economic and social research institutes, trade unions and universities from seven different European countries.

The following report is the final outcome of this European project - EURACTA 2. The research and policy activity has been realized thanks to the financial support of the European Commission which lasted throughout the year 2014.

The general objectives of the project were:

- 1) To improve the understanding of TCAs through a systematic exchange of experiences and expertise among European social partners
- 2) To execute an in-depth, empirical study of TCAs, specifically in relation to their negotiation, emergent issues, and implementation and impact in the different local contexts and on national industrial relations in general.

On this occasion we wanted to investigate how the TCAs fared in practice: to understand in detail the negotiating procedures; to capture the trade unions’ approach to managing corporate-based processes in relation to TNCs; to understand the role of TCAs in internationalization of industrial relations; to identify the opportunities and also the problems from the viewpoints and evaluations of the different actors who were involved.

After choosing two sectors (the metal sector and finance and banking) and then selecting seven high profile TNCs with one or more TCAs, in depth fieldwork was executed by our international team.

In the following report we are going to present the outcomes and findings of our study. We will begin with a couple of introductory chapters focusing on the general scenario and debates in relation to transnational bargaining: the challenges of globalization, the role of international core labour standards, the different perspectives regarding the internationalization of the industrial relations, the nature of the new actors and procedures of the transnational collective bargaining, and the nature of the entity of such a new level of social dialogue.

After this first section, we present the empirical findings of the survey, with a horizontal comparison of the different findings and issues emerging from the fieldwork. In particular, we present a detailed discussion so that we can better understand, in practice and in terms of the content, how a TCA evolves throughout all its different phases. We therefore investigated who was the initiator of the TCA (in terms of motivations and aims), the nature of the negotiation procedure, the role of the signatory agents, the content of the agreements, the implementation process - in the home country of the TNC and in its subsidiaries- and the impact on the different national industrial relations systems.

After such an overview, we present the details and issues in each single case study. They concern seven different Transnational Corporations and are the outcome of our international collective work. Every single case study is - in fact - the sum of the work done: work which has been both jointly and separately by the members of the project team in their national and local contexts. The case studies are presented according to a common grid of the content so we can compare and learn from this body of work. They start with a profile of the companies either at the level of Transnational Corporate and, when relevant, at the level of its different national subsidiaries. Subsequently, the negotiation parties and processes, including the agreements' contents, are discussed in some detail. Moreover, they provide an overview of the implementation practices and their impact in terms of the different local environments. They normally include interesting quotations and developments collated from the interviews. Each case also consists of concluding remarks and general impressions.

Towards the end, we discuss the *added value* of these TCAs, taking in consideration the evaluations we gathered during our numerous interviews with the social partners of the seven countries concerned.

Lastly, in a third section of the report, we decided to include further contributions from colleagues and friends we had met during the international events – the two workshops (Madrid and Brussels) and the final conference (Rome) – which were organized as key points of reflection our one-year programme of research and exchanges. These contributions will focus in more theoretical terms on some of the key issues concerning the subject of TCAs. Some of these issues had already been part of our own initial questions and specific concerns, especially with the previous project EUROACTA which was realized in 2011-12 under the same co-ordinating team (at that time the now ABT was still IRES) and a similar network of partners. In this section we refer to the legal status of these agreements, the relationship between the European Trade Union Federations and European Works Councils, and the nature of the procedures for more and better TCAs in the future.

We will examine the manner and ways in which transnational texts are generally concluded and their concrete impact and effectiveness. In particular, we will highlight some crucial points related to the implementation process. The need to ensure the local actors' involvement, and thus avoiding that the TCAs are ignored or misunderstood at the local level, represents the main issue related to this aspect.

Through this analysis we will argue that even in absence of any systematic legal regulations, TCAs have become an increasing reality (albeit regulated by its own rules) which, even with evident and critical challenges and barriers to their development, are able to ensure a positive and effective relations and dialogue between social partners.

The observed effectiveness of numerous TCAs concluded does not mean that any EU legal framework is not necessary. Indeed, some greater regulation and intervention at the European level seems the best way for allowing TCAs to play the greater role that they potentially could play in the current economic context.

Finally, we hope that our study can offer a detailed qualitative assessment of TCAs concerning the initiating processes, the negotiating dynamics, the role of signatory parties and their interaction, the question of their contents, the manner of the implementation process, their eventual effectiveness and actual impact, and the way social partners evaluate their usefulness and added value.

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Globalisation and Labour Regulation: Towards Transnational Collective Agreements and Beyond

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1. Introduction

The changes taking place in recent years within labour and employment relations are complex and the direction they are taking is unclear. The mantra of a crisis of labour and employment relations has been common since the economic crises of the 1970s and the New Right politics of the 1980s. The manner in which terms and conditions of work have been set has been challenged as employers and managers seek greater flexibility and a reinforcement of managerial prerogative in the face of ever greater international economic challenges from the developing and transitional economies of the world. In addition, there has been a growing set of pressures within Multinational Corporations (TNCs) who have needed to develop more integrated and globally sensitive structures and strategies in order to sustain the quality and efficiencies of their output. Yet at the same time as we have seen this paradigm change we have also seen that there is a new space internationally within which questions of rights and fairness has begun to emerge.

This introductory chapter introduces some of these complex movements and the way Transnational Collective Agreements (TCAs) have become a potentially important outcome in the saga of global change.

2. The question of, and crisis in, regulation

The globalisation of national economic and political spaces has brought a range of challenges to the conduct and regulatory processes of labour and employment relations. This has been the subject of much writing amongst trade unionists and academics related to this area of

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study. What for some is an opportunity for economic development and greater social and political integration across nations is for others a challenge to the systems of rights and working conditions which have accumulated and developed over time. The question of globalisation takes a number of forms, and it is not simply a case of whether rights and regulations at work are undermined by this process of economic and political change.

On the one hand, there is the pessimistic thesis that argues that labour and employment relations has been forged through national systems of regulation and that the manner in which organised labour can extract concessions and favourable working conditions from employers has developed through the use of national spaces of organisation and action. In effect, the inability in the past of capital to be relatively mobile has allowed for the national regulatory space to be the arena in which social dialogue and contestation has emerged. In developed countries since the Second World War, and within the European Union especially, this has allowed for a system of labour and employment relations to emerge that is based on stable reciprocal actions and exchanges across time.

The optimists in relation to globalisation have argued that this has allowed uneven development to take place and for economic and social rights to be focused on specific privileged spaces. The argument here is that national systems of rights have in the main been premised on closed and inefficient economies and social relations (e.g. Friedman, 2005). Such optimistic sets of proposals are generally more concerned with economic rights than they are political and social rights, assuming that the former's development will allow eventually for the latter to emerge. The Chinese case is such an example where the imperative to foster a more advanced and progressive economy has the potential to forge the foundations for social rights to be more systematically enhanced at a later stage.

The globalisation debate is very wide. Yet there is a sense in which labour and employment relations are not easily developed within a world where the regulatory reach of the state and the organised labour movement are compromised. The crisis of regulation is one that leads to negative outcomes including a greater degree of capital mobility which can bypass hard won worker rights (see Klein, 2000). Hence, we see that concession bargaining by trade unions bidding for inward investment, or a greater emphasis on supply side initiatives by the state as a way of creating a pliable and 'skilled' workforce for capital, is seen as the basis of the 'new' economy (Stuart, 2007). Throughout Europe we have seen a steady questioning of

collective bargaining as employers place greater pressure on trade unions and worker representatives generally to accept changes in their terms and conditions of work: and in the current context of the *post-2008* economic crisis we have seen serious challenges to the extent and nature of collective bargaining itself (this crisis being a symptom of negative features of globalisation through the footloose nature of financial capital). The economic becomes predominant over the political as the onus of regulation shifts towards a defensive mode.

3. The emergence of the international labour relations arena

However, globalisation is not a fairy tale. There is no clear set of developments which mark the emergence of a new international order working for one set of constituencies or another. The notion that employment rights are very much at the centre of the national project but not the international one – due to the way economies have been shaped through variable national systems which place a different emphasis on such rights depending on how they emerge and are structured (Hall and Soskice, 2000) – needs to be understood in a more dynamic manner. Let us tackle the myth of globalisation as a challenge to labour and employment relations; and after that look at the new dynamics in labour representation and regulation internationally.

Firstly, capital is not completely mobile (Lillie and Martinez Lucio, 2012). That is to say that capital does not move its production processes lightly or by whim. This is a more complex and drawn out process requiring much risk evaluation and organisational contemplation. The movement of capital from Europe to South East Asia and onwards requires much planning. What is more, there are limits to how often capital can ‘escape’ and seek ever cheaper or more pliable sources of labour. The BRIC economies for example are not simply developing an inward investment based model but are creating their own systems of regulation and capital controls, albeit in different ways.

Secondly, the presence of TNCs within any national context has the effect of disturbing local relations and bringing forth state responses that attempt to use such experiences of changes for developing labour policies and strategies, no matter how limited these are. The local state may be cautious not to ‘upset’ TNCs but they are also alert to learning and building networks

around them with a view to then having some type of regulatory infrastructure as a legacy of such investment.

Thirdly, and more importantly, as stated earlier, the presence of TNCs disturbs what were previously closed spaces. While the construction of special enterprise zones and protected spaces for international firms are common in Bangladesh, China and Malaysia, this does not mean that a certain political or social ‘noise’ does not develop around TNCs and what they aim to achieve. We see workers and state officials beginning to look more broadly to how their work is organised within ever more complex supply chains and structures of international production. In effect, whilst TNCs think they are ‘escaping’ in some cases what they are actually doing is leaving a series of connections (or potential connections) in their trail.

Fourth, and when we see major incidents such as the tragedy of over 1000 textile workers dying due to a collapsed building in Bangladesh, where garments of western TNCs were being made (the Rana Plaza disaster in 2013), then suddenly the reality of international economic interdependence between employers, workers and consumers comes to the fore. The spectacle of globalisation becomes a series of human tragedies which bring to the fore fundamental questions of worker rights to the fore.

In effect, it is not a case of employers being mobile and workers not. The question is that more and more previously disconnected spaces are connected albeit in uneven ways within a global circuit of mobility. This means that labour and employment relations begins to steadily shift and experience less a crisis and more paradigmatic change in terms of form and content. The reference points of trade unions and workers shift as the movement of capital and the consequences of that movement are deliberated upon. Hence, what we are seeing is the emergence of new dynamics and questions – new international labour and employment relations processes – which allow us to understand how new agreements may be taking shape.

There are various factors which are constructing the new labour and employment relations.

Firstly, the very nature of international direct investment and capital movement creates a discussion – even if only a discussion – about the objectives and politics of TNCs. Trade unions have been pushed into a situation where they have to study and where possible anticipate changes within companies and their possible movements. For example, the

TRACE project of the European Trade Union Institute during the past ten years was focused on developing networks amongst European trade unions with the purpose of creating best practice cases and information sharing cultures about organisational and corporate change (Walker et al, 2007). There has therefore been considerable development of cognitive capacities within the labour movement internationally in this respect.

Secondly, the ongoing nature of operational and production changes, in the form of lean production for example, have created sources of interest amongst trade unions as to what they are doing at work and how work is changing. Issues of work routines, health and safety and related topics are to some extent discussed internationally amongst trade unionists. The subject matter of international trade union networking has been shifted to new issues and themes.

Thirdly, the very threat, or act, of movement by TNCs and the way they have sometimes played one group of workers against another – sometimes referred to as whipsawing (Mueller and Purcell, 1992) – has in fact led to new, curious outcomes. The tendency to refer to some places as more efficient and worthy of investment tends to create a greater degree of intrigue and discussion between national sets of trade unionists (Martinez Lucio and Weston, 1994 & 5) although the outcome of these may not always lead to new forms of solidarity (Whittall 2010). However, these acts of whipsawing can create new dialogues within organised labour across national boundaries.

Fourth, when combined with social media and new forms of communication we can see that such developments within and around TNCs can promote new forms of communication exchanges between trade unionists across countries (Knudsen et al EJIR). The use of email, blogs and similar allow for a swifter exchange of information and for data concerning TNCs to be circulated. Globalisation, social media and the use of the Internet have encouraged a range of possibilities and changes – and a new set of international trade union and worker activities. This allows cases of worker engagement and agreements to be debated in more direct and effective forms. That there are competing traditions and ways of using social media even within labour and employment relations (Martinez Lucio and Walker, 2005) does not undermine the fact that this constitutes an important dimension of labour activity.

Fifth, in relation to these developments there have been structural changes within the trade union movement internationally. We have seen in recent decades a greater degree of co-

ordination of a formal nature in a range of TNCs through European Works Councils (which we discuss later) and Global Works Councils: the presence in more ‘progressive’ TNCs of forums which involve worker representatives has brought forward new views regarding governance and change. The importance in Global Union Federations of creating new forms of dialogue at the transnational level has also meant that we are seeing an embryonic set of relations, which can serve as a new basis for social dialogue and engagement transnationally. The steady construction – albeit uneven – of new forms of dialogue and activity at the European and global level mean that we have to see the narrative of labour and employment relations decline as being unable to comprehend the multidimensional aspects of regulation. We are seeing new forms of governance and new dynamics which create the possibilities for a wider articulation of labour and employment relations issues. In this respect, TNCs and their social and employment environments will be at the heart of these developments as broader communities of dialogue emerge. That these may be tenuous and unstable at present is clear: however, these new set of spaces and relations demand further attention and development.

4. TNCs and Codes of Conducts as responses to the new international labour relations

The emergence of new labour and employment relations dynamics across borders and around TNCs have created a new set of pressures on TNCs in terms of their regimes of employment. They form part of a new set of dynamics that are pushing TNCs into having to create more systematic approaches to how people are employed and the way they are treated at work. This pressure to move towards an ethical dimension of employment does not mean that there has been an ethical dimension constructed in any cohesive or systematic manner. However, managements are under some pressure to at least be seen to construct a more cohesive and ‘fair’ approach to their employment practices.

These changes have emerged from the ongoing pressures from certain national governments which have pioneered the importance of a new approach to globalisation and sponsored international organisations to this effect (the Norwegian government is a good example). As seen above, it has also emerged from trade unions who have steadily been studying and responding to some of the behaviours of TNCs. In addition, there is an ever increasing role for non-government organisations related to questions of work and employment such as anti-

slavery movements, organisations focused on the rights of women in the informal economies of developing countries, and the bodies dealing with child labour and its role in the production processes of various economies (see Klein, 2000). There are also compositional changes within national and international labour markets and working communities (women and migrant groups) which lead to questions of equality at best or fair treatment at least being addressed – even if rhetorical terms – by various TNCs. These combinations of legal and non-legal pressures create a force for change within TNCs (see Martinez Lucio and MacKenzie, 2015).

This does not represent – necessarily – a Copernican revolution in the manner in which TNCs behave on such issues. According to Bowie and Duska (1990) TNCs are interested in codes of conduct and some sets of transnational rules within their organisation in order to limit the damage of bad publicity in relation to worker treatment, create some rules for comportment for managers and workers on sensitive issues such as minority groups, establish internal disciplinary mechanisms for dealing with unethical behaviour, and of managing and restraining ‘problematic’ internal demands. The emergence of CSR is as much about marketing and competition as it is about a sincere shift in corporate values. Codes of conduct are therefore engaged with due to external political pressures and economic/competitive realities. On the one hand there are codes of conduct based on some degree of negotiation with internal and external stakeholders which are relatively more open, whilst there are on the other hand those which are driven by a corporate elite with the aim of mimicking such developments in a minimal manner and deflecting criticism towards them. In this respect, the ethical dimension of TNCs is not directly linked in a positive sense to the emergence of a new regulatory challenge from trade unions but can be seen as a parallel development which seeks to limit the influence of the latter and lead to labour codes of conduct that do not increase labour costs for the firm. In this respect, the space of work concerned with transnational ethics may be one of contestation and less one of dialogue.

However, in the first instance developments that create some discursive or ideological possibilities - as firms feel compelled to develop some notion of ‘rights’ - can expose them to further criticism on their non or uneven application. Secondly, the long term effect of such developments means that over time the question of rights enters into the body of language and expectations of workers and their representatives. Thirdly, there are cases where firms –

in part due to their internal stakeholder environment or organisational cultures and values – do in fact generate more open forms of dialogue in the construction of codes of conduct which, in turn, can become a benchmark or reference point for other cases and actors. In effect, the ethical turn in capitalism even if it is partial and somewhat limited can be used to create new pressures and new platforms of solidarity over time.

To appreciate these possibilities and the manner in which new ideational spaces can emerge we must understand how trade unions and worker representatives have been developing apart from these dynamics but with a potential input into them – including through European Works Councils – and how a new set of agreements and negotiated codes have been established through dialogue and what appear to be more ‘traditional’ forms of labour and employment relations engagement – Transnational Collective Agreements.

5. The Debate on EWCs: optimists, pessimists and beyond - as a precursor debate

In September 2014 the European Trade Union Federation’s research and training centre, the European Trade Union Institute (ETUI), held a workshop to celebrate the 20th anniversary of the passing of the European Works Council Directive (EWCD). Entitled ‘The Value of European Works Councils’ the workshop brought together both practitioners and researchers to retrospectively assess this unique European institution. From being nothing more but a plain canvas in September 1994, researchers outlined how the EWCD has created a space for employee representatives to discuss, challenge and influence company strategy.

As can be observed in most of the literature on EWCs the workshop exemplified how the emergence of such a European space has had to contend with numerous obstacles, foremost of these the perceived ‘role’ of these European bodies. Here, EWC delegates respective industrial relations practices have made for interesting debates, no more so than over the function of trade unions within this European institution (2010, 2012) as well as whether the EWC should take on the mantle of negotiator. Such questions have ultimately required a painful reassessment of existing national employee representative practices, a reassessment that in many cases is far from complete. Certainly, existing EWC research confirms the pessimistic assumption that the subsidiarity character of the EWCD (Streeck, 1997), and the fact that the Directive’s respect for national practices has helped to aggravate rather than reduce conflict between employees already in competition over investment (Wills, 2000). In

this report the case of Unicredit demonstrates how German and Austrian EWC delegates, for example, have struggled to allay their Italian colleagues' fears that German/Austrian works councils are nothing less than an appendage of the personnel department. Contending with such prejudices is depicted at best as an unfortunate distraction that can create mistrust between EWC delegates.

On a more optimistic note there exists a group of writers that assume such obstacles can eventually be surpassed (Lecher et al, 2001; Whittall, 2000). That through interaction within this European space the likes of Unicredit EWC delegates have the potential to clarify any misunderstandings that have prevailed, an experience that can possibly contribute to the various factions comprehending the existence of common agenda. In short, such a process can lay the foundations for the development of a 'common identity' in which the EWC goes some way towards either replacing or complementing national employee relations structures. Certainly, the recent work of Kotthoff and Whittall (2014) would suggest this to be the case. This depicts, for example, how Unilever and Kraft Foods EWCs have developed to a point where the EWC, specifically this body's steering committee, has 1) been able to demonstrate how employment problems previously considered national issues are increasingly of a European concern and 2) that management views the EWC as an important negotiating body. Combined, these two factors are depicted as having helped develop a strong sense of solidarity amongst EWC delegates that has to be constantly reconfirmed through intense communication, transparency in the form of daily conference calls on the part of steering committee members, as well as two day monthly meeting of this same group.

However, as participants of the ETUI workshop were forced to concede existing EWC research also goes some way towards tempering such optimism. Certainly, the case of the GM EWC has forced researchers to include another aspect into EWC research, that of sustainability. Until recently EWC discussions were dominated by the GM EWC. As depicted in many articles and books on the GM EWC it had developed into a significant representative structure within the GM Group in Europe, a structure which could mobilize workers across Europe to oppose plant and negotiate plant closures. This was epitomised by three words, 'share the pain'. This motto emphasised how employees had a responsibility for each other within the European Group. Global recession, however, brought on by the financial crisis after 2008, illustrated the fragile nature of such solidarity. The planned closure of the

Antwerp plant in Germany and the Bochum site Germany has turned the clock back years – potentially confirming positions that have always viewed the EWC as a tool for promoting concession bargaining.

Undoubtedly, the GM case marks a new development for EWC researchers to consider, raising questions about the sustainability of EWCs and ultimately the old question of value. Considered retrospectively if nothing else legislators created a social space for employee representatives to meet. Furthermore, even when accepting that a coordinated European response on the part of employees to aggressive management policies may not always be sustainable, as demonstrated in the case of GM, the fact remains that many EWCs have left an important legacy in the form of framework agreements that remain valid for national actors to use irrespective of the atmosphere within the EWC. Ultimately, there might even be an argument to suggest that transnational company agreements, considering how a considerable number of EWCs have signed such agreements, represent a glass ceiling for EWCs.

6. Transnational Collective Agreements (TCAs) as the new space of engagement – possibilities and challenges

In the absence of international frameworks to regulate the social and environmental impact of TNCs, a plethora of voluntary forms of regulation have emerged since the 1980s, including unilateral, management-driven codes of conduct, initiatives based on collaborative work between TNCs and public international organisations such as the ILO, multi-stakeholder approaches as seen within the Ethical Trade Initiative, and negotiated labour-management agreements applicable across national boundaries with global union federations (GUFs) participating in negotiating and implementing international or global framework agreements (IFAs) (Papadakis, 2011; Leonardi, 2012; Schomann, 2012). Such agreements establish GUFs, EWCs, World Works Councils and similar regional and national labour organisations as actors within a more internationalised industrial relations environment, promote the application of company-level agreements within supply chains, and make explicit linkages between company-level agreements and core labour standards that make reference to ILO conventions and other multilateral instruments such as the UN Global Compact and the OECD Guidelines on TNCs (Hammer, 2005). The agreement between Danone and the

International Union of Foodworkers from 1988 is one of the earliest examples of such agreements, and IFAs have significantly increased in number since 2000 (Fichter and Helfen, 2011; Rojot, 2006). Transnational Company Agreements (TCAs) include both IFAs and European Framework Agreements; 215 TCAs are listed in the European Commission database, including 89 IFAs signed between management and GUFs in 87 TNCs (the remainder of these TCAs mainly concern agreements involving EWCs at the European level) (Dehnen and Pries, 2014).

The role of labour organisations within these agreements provides a greater legitimacy than in more unilateral codes of corporate conduct, and ‘characterise new and additional paths to workers’ participation in multinationals’ governance.’ (Schomann et al, 2008: 114)

Problems of implementation remain; IFAs may be weakly understood by national and local unions, who may not be affiliated to GUFs; the non-binding nature of IFAs and management reluctance to promote their content within their subsidiaries are further limitations (Niforou, 2011). Further weaknesses associated with international union activity are that it can be ‘piecemeal and mostly defensive...rarely strategic, tackling entire industries, companies, and sectors with a long-term offensive plan.’ (Bronfenbrenner, 2007: 217) Ostensibly strong IFAs within companies based in the European Union, which included commitments to freedom of association in line with the ILO’s core labour standards, have been undermined by the anti-union stance of management within subsidiaries in locations where protections for and acceptance of organised labour are weaker (e.g Fichter and Helfen, 2011; Ramsey, 2011; Stevis, 2011) Within the EU, constraints are noted within transnational agreements due to their lack of legal underpinnings, management hostility or indifference, lack of coordination between MNC headquarters and the management of subsidiaries, the capability of national and local unions to reference and utilise the contents of these agreements, and the strategic capacity of coordinating mechanisms at the international level, such as EWCs and European or global union federations, to bring together often diverse local and national strategies and union actors (Da Costa et al., 2012).

While acknowledging these limitations, examples of IFAs and transnational agreements where strategic coordination has been strong and the outcomes significant are apparent in firms in the motor industry and at the sectoral level in maritime shipping (Anner et al, 2006), as well as in firms in the hospitality sector where IFAs have been used to support union

organising within an otherwise hostile climate (Wills, 2002). Examples are also apparent of where IFAs have been used to support local organising campaigns in MNC subsidiaries in developing countries. (Anner et al, 2006; Gregoratti and Miller, 2011; Helfen and Fichter, 2013) The contents of IFAs may not always be well known at the level of local or national unions, and the complexity of subcontracting arrangements and supply chains also presents challenges to the effective implementation of such agreements. These problems arguably reinforce the importance of IFAs and strategic coordination among national and transnational labour organisations, and the need for IFAs to be used in ways that engage more closely with local union and employee priorities. (Williams et al, 2013) The forms of networking and international engagement associated with IFAs, rather than simply the content of agreements, are essential elements of developing and strengthening transnational coordination among labour organisations. While the problems of implementing such agreements and the nature of their content are important points, there has been significant development in the role of GUFs, cross-border links between national unions, and greater engagement with international forms of regulation and TNCs in recent years.

7. Returning to the Workplace: Building Internationalism from Below

What we have seen is the emergence of a new set of dynamics and roles at the transnational level, with new bargaining structures and agreements emerging. That these are embedded in certain types of firms, with certain cultures and structures, means that we cannot as yet generalise as to the effectiveness of this new dimension of labour relations. Yet one emerging issue is what do these developments mean – where they do exist in terms of firms and organisations generally – for workers on the ground? This is especially the case in terms of the context of multi-level governance (Marginson and Sisson, 2002).

Internationalism in terms of what we have discussed is not just a level of organisation or some discreet dimension. We are all living at some point or another within a range of international transactions as workers and consumers: many of which we do not control but are affected by. For those workers who have some overarching narrative or agreement which is supposed to frame their existence in their workplaces the question becomes: does all of this make a difference in terms of their terms and conditions of work? Does having a code of

conduct on equality for example or on the use of temporary contacted work actually influence the way they are managed and they work?

It is becoming clear that internationalism is not just about framing languages of solidarity through social dialogue or some other means but of effecting how work and employment processes develop. The irony is that the local workplace and the national or regional context is not just a space to be coordinated by such agreements but a space that can enhance those very agreements. In this respect, the issue of coordination – which Pulignano (2009) points to as being the key issue within a construction of internationalism – is both multi-dimensional and multi-directional. How the local builds into the active and new politics of the international is an emergent subject within international labour studies. There is always the risk that the transnational becomes disconnected and represents the local and workplace space as a dormant or passive dimension of activity. The construction of sophisticated but very limited international labour structures that face challenges including limited resources and limited imaginative scopes of action means that we need to think how the nodes of networks or the points of different international relationships contribute and interact.

The EURACTA project, of which we're here publishing the outcomes, aims to add the experience on the ground of trade unionists to the debate on TCAs and to see how these new developments can enhance worker rights and influence in terms of social dialogue. Central to this is the acknowledgement that transnational politics works through different local structures and cultures which shape their character and in turn create a need for more democratic, open forms of interactions if such new, complex and multidimensional forms of regulation are to be sustained (Martinez Lucio, 2010).

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Transnational Company Agreements: a map

Udo Rehfeldt⁴

Premise

Today (by the end of 2013) we have 267 transnational company agreements (TCAs) which have been signed by transnational companies (TNCs) in the most internationalized sectors (metal and chemical industry, telecommunication, banking etc.). They are quite equally divided between 140 *international* framework agreements (IFAs) and 127 *European* framework agreements (EFAs)⁵. Despite the wording “framework”, very few can be considered as true *framework* agreements which are implemented by specific agreements at national or local level. Sometimes the effectiveness of a TCA is secured just by the signing of an identical collective agreement at the national level, in order to give it a legally binding character for the different subsidiaries. In the absence of such a transposition, there are no legal sanctions for disregarding a TCA. The practical implementation of TCAs is therefore a matter of concern and can only be secured by the employee representatives at the local level. This problem of local implementation of TCAs is the main subject of the case studies in this report.

Table 1: IFAs and EFAs 1988-2013

	TCAs	IFAs	IFAs by European TNCs	Signed by EWC WWC SE WC	EFAs	Signed by EWC	Signed by EWC alone	Signed by EWC+ ETUF
1988-2011	226	115	95	13	111	81	54	17
2012-2013	41	25	23	4	16	11	8	2
1988-2013	267	140	118	17	127	92	62	19

Source: da Costa and Rehfeldt 2011, updated for 2012-2013.

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⁵ This chapter is an updating of previous work (Telljohann et al. 2009; da Costa and Rehfeldt 2011). Our main sources are the TCA Database of the European Commission and the websites of the GUFs. We exclude the more than 1300 agreements on the setting up of an EWC and, by analogy, the few agreements on the setting up of a world works council or a works council of a European Company (SE). We have also not taken into account TCAs for which we lack detailed information about the identity of the signatory parties.

1. International framework agreements

IFAs are TCAs which are signed by global trade unions federations (GUFs) and global in scope⁶. Some GUFs call them “global” framework agreements. They are documented by the GUFs on their respective websites, as well as on a common website.⁷ About 84 per cent of all IFAs (118 out of 140) have been negotiated and signed with transnational companies (TNCs) which have their headquarters in continental Europe. There is only one IFA signed by a British TNC. Nearly half of the agreements were signed with French and German TNCs (respectively 30 and 26 IFAs). 14 IFAs were signed by Swedish TNCs (see the case of SKF in this report). They were followed by TNCs from Norway (9), Spain (9) and Italy (7) the Netherlands (6). Some companies have signed more than one IFA or have signed revised versions. Danone alone signed 8 of the French IFAs. The 22 non-European IFAs were signed by 6 companies headquartered in Brazil, 4 in the United States, 3 in South Africa, 2 in Japan, 2 in Indonesia, and one each in Russia, New Zealand, Australia, Canada and Malaysia. Many of these IFAs have only a regional scope, limited to Latin America or Asia.

IFAs deal mainly with fundamental labour rights and corporate social responsibility. In 1998, the GUFs have decided to sign an IFA only under the condition that a TNC formally commits itself by the agreement to respect the five core labour standards of the 1998 Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (ILO): freedom of association, right to collective bargaining, proscription of forced labour and child labour, non-discrimination in employment. Other topics are sometimes added to an IFA, like working time, wages standards, health and safety or industrial relations. More recently, GUFs have signed IFAs on more specific topics with TNCs which have already signed an IFA on fundamental labour rights (the case of Volkswagen is treated in this report).

Because of the culture of industrial relations in the United States, American TNCs were generally unwilling to recognize GUFs as partners for transnational collective bargaining and did not wish to recognize the fundamental rights to unionization and collective bargaining. (Significantly, the USA have not ratified the ILO conventions related to these topics). Two

⁶ A few IFAs have only a regional scope. The scope of some IFAs has evolved over time. For example, all the five Danone agreements signed from 1989 to 1997 initially applied only to Europe, but were extended to the global level in 2006.

⁷ www.global-unions.org/+framework-agreements+.html

European subsidiaries of American TNCs have however signed EFAs which recognize the ILO core labour standards, but only for the European area: GM Europe in 2002 and Ford Europe in 2003. Since then Ford has signed in 2012 an IFA with unlimited global scope agreement, by which it also created a world works council (and was the first non-European TNC to do that).

2. European Framework agreements

EFAs are signed by European works councils (EWC) and/or European trade unions federations (ETUF) and are European in scope⁸. EFAs deal with a greater variety of issues, mainly restructuring, occupational health and safety, social dialogue procedures, human resource management, corporate social responsibility. Sometimes they also treat remuneration issues, for instance financial participation or variable remuneration of management staff. Issues like collectively agreed wages and working hours are generally not treated by EFAs.

The number of 127 EFAs must be considered as a minimal number, as there is no legal obligation to notify a TCA, although the TCA database set up by the European Commission makes great efforts to get information about all existing EFAs. It is also not easy to distinguish between formal agreements and the minutes of an EWC meeting signed by both parties. Many agreements negotiated by EWCs have an informal character and are not made public. A German study on the metal industry (Müller et al. 2013) estimates that one-third of the EFAs in this sector were informal and were not made public. During our project field work, we discovered that Santander, the only Spanish TNC which had signed an EFA, had actually signed 3 and not only one EFA as it was recorded in the TCA database. The missing two EFAs have since been added to it, on the basis of the information given to them (see the case study Santander in this report).

The preponderance of French companies is even stronger for EFAs than for IFAs. French companies have signed almost half of all EFAs (60 of 127), German companies have signed 17. The number of signatory companies was respectively 24 and 14. As for the IFAs, most of the French signatory companies of EFAs were formerly nationalized ones (Air France,

⁸ A few EFAs have a global scope.

Alstom, Areva, Axa, BNP Paribas, GDF, GDF-Suez, EADS, Safran, Thales, Total, Veolia, Vivendi.). This was also the case of Arcelor (later ArcelorMittal), which is presently headquartered in Luxembourg.

Subsidiaries of American companies have signed 21 EFAs, most of which by only two companies: 10 by GM Europe (now Opel) and 5 Ford Europe. As the European headquarters of these two companies are located in Germany and their European workforce concentrated in Germany, these EFAs can be assimilated to the “German” EFAs.

The number of EFAs may seem small when compared to the total number of TNCs in Europe. For the French and German TNCs, it becomes however more significant if it is compared with the number of TNCs that have an EWC. More than a quarter (29%) of the French TNCs with an EWC by 2005, and 9 % of the German ones, have signed at least one EFA by 2011 (da Costa and Rehfeldt 2011).

3. Signatory parties: the role of EWCs and ETUFs

Nearly all IFAs with European TNCs (except 10, including 8 with Spanish TNCs) were signed by TNCs which had already set up an EWC. 12 IFAs in the metal industry are co-signed by EWS or world works councils, 11 of them with German TNCs. In many IFAs, EWCs have a monitoring role. EWCs often also played an informal role in the preparation of the negotiations led by the GUFs.

The great majority of EFAs were signed by EWCs (92 of 127). Half (63) were signed by EWCs alone. 19 were co-signed by an EWC and an ETUF. In 2006 the European Metalworkers Federation (EMF), now part of IndustriAll Europe, has established an internal mandating procedure which gives the EMF the possibility to negotiate and sign EFAs in the name of its affiliates. Since its merger with the textile-clothing and energy-mining-chemical ETUFs in 2012, IndustriaAll Europe has adopted the same procedure. Other ETUFs have adopted a similar procedure (ETUF 2012).

Through this procedure, an ETUF obtains a mandate, by at least a two third majority in each country concerned, to start negotiations with a TNC. The negotiating mandate must not only define the issues to be negotiated, but also the procedures to be followed and the composition of the negotiating team. The draft agreement must then again be approved by a two third majority (but preferably unanimously) in each country. The procedure moreover entails an

obligation to include a non-regression clause in the agreement that guarantees compliance with national agreements.

Since 2006 there are divergent dynamics for EFAs. A growing number of EFAs are signed by ETUFs alone. They accounted for only 4 % of all EFAs signed before 2006, but for 16 % in 2006-11, and 19 % in 2012-13. Other ETUFs have adopted similar rules.

All together, there are now 16 EFAs which have signed by ETUFs alone, 15 of which by 7 French TNCs (or TNCs of French origin): Alstom (3), ArcelorMittal, Areva (3), Safran, Schneider Electric (2), Thales (2), Total (4). (For the Thales and Schneider Electric EFAs see the case studies in this report.) One Italian TNC (ENEL) has also signed an agreement on this basis. The management of these French companies supported the use of this procedure for several reasons. It was accustomed to negotiate with trade union organizations at the company level. Some managers were also interested to negotiate directly at the European level on issues on which they must, according to French law, negotiate a company agreement with the unions at the French group level. EMF procedure gave them the advantage to negotiate with a single negotiating partner and not with a multitude of trade unions as is normally the case in France. The French unions involved have agreed to play the game of European trade union coordination and to entrust the negotiation mandate to the EMF, because they shared these management preferences for negotiating with an ETUF preferable to negotiating with the EWC.

The French-German group EADS is a special case. It has negotiated and signed in 2010 a procedural EFA for negotiating future EFAs. The procedure negotiated does not exactly meet the internal rules of the EMF, but it meets the principle that unions should negotiate these agreements on the basis of a mandating procedure. This procedure agreement was negotiated and signed by union representatives appointed by their respective organizations in France, Germany, Spain and the United Kingdom. The procedure agreed is based on a "European negotiating group" composed of national delegations, in proportion to the number of employees represented and mandated by their unions (but in Germany by the group works council), and of the two employee co-chairs of the EWC. The agreement must be approved by at least two thirds of the members of the negotiating group. The EMF did not participate in the negotiation of the procedure agreement, which however stipulates that a representative of the EMF will participate in the negotiation of future EFAs in a "coordinator and advisor

role". For the EMF secretary general, who was also the trade union coordinator of the EADS EWC, the agreement was "a step into the right direction," although the EMF procedure was not fully implemented. EADS has negotiated signed two EFAs in 2011 and 2012 on the basis of this procedure.

Despite these evolutions since 2006, the proportion of EFAs signed by EWCs alone is still important (before 2006: 58 %, 2006-11: 41 %, 2012-13: 50 %). Since 2006, 35 agreements were signed by EWCs alone, 11 of which by 6 French TNCs (including BNP Paribas, on which there is a case study in this report). 8 EFAs were signed by 7 German TNCs and 4 by the French-German company EADS (before it signed the procedure agreement of 2010 mentioned above). Although their headquarters are situated in a single-cannel environment, two Italian financial TNCs, Generali and Unicredit, have also EFAs with EWCs alone. The case study on the Unicredit EFAs in this report shows that the Italian union representatives involved were convinced that the Unicredit EWC had a "trade-union nature", because its Italian members were appointed by the unions.

4. From a conflict on the procedure towards coordination between EWCs and ETUFs

As there is no European legal framework for TCAs - differently from the EU Treaty dispositions on European collective agreements at the industry and inter-industry level -, there is no obligation to negotiate TCAs with representative unions at the European level (on the legal problems see the chapters by S. Leonardi, A. Gana, G. Frosecchi, W. Sanguineti and M. Cilento in this report). As we have seen, many French TNCs prefer to negotiate with union representatives, as this is the practice for negotiation at the national level in France, where unions have a legal monopoly for collective bargaining. The ETUFs claim such a trade union monopoly for the negotiations of EFAs. This claim is based on the political precedent of the Maastricht social protocol of 1992 by which the ETUFs got a monopoly for collective bargaining at the European sector and inter-sector level. It is also based on a technical need to secure the implementation of EFAs. They have to be consistent with the national bargaining systems where trade unions very often have a legal monopoly for collective bargaining. TCAs should not undermine the outcomes of national collective bargaining at the company or industry level. Therefore it is important for the unions that TCAs are signed under trade union supervision and that they do not lead to a regression of any national or local employee rights.

The European Trade Union Confederation (ETUC) and the ETUFs have asked for a legal framework which would secure the exclusive right of ETUFs to sign EFAs. In 2004, the European Commission announced its intention to provide an “optional” European legal framework for transnational company bargaining when it adopted its Social Agenda 2005-2010. Because no consensus was reached among the European social partners on the need for such a framework – ETUC was in favour and BusinessEurope against it – the Commission continued the discussion on best practice by resorting to expert reports and seminars. It is only under the pressure of the European Parliament that it launched a formal consultation procedure on the subject in 2014. In its response, ETUC reiterated its demand that the ETUFs should get the exclusive right to sign European company agreements, even if the ETUC admitted that unionized EWC members may take part in the negotiation process, as long as they are mandated by their respective national unions, and that EWC also may cosign the agreement that has been negotiated (ETUC 2014).

We have seen that, in the absence of a legal framework, the ETUFs have adopted internal mandating procedures on the model of the 2006 EMF rules, in order to ensure a binding character for EFAs. We have however also seen that the adoption of these procedures has not definitely resolved the conflict of legitimacy for the negotiation of EFAs, as the ETUFs have succeeded to apply their rules only to a small number of French TNCs (and to one Italian TNC). No other TNC, and in particular no German TNC has signed EFAs on this basis. This shows the difficulties for the ETUFs to impose a unique negotiation procedure to a variety of industrial relations systems in Europe, dominated by two divergent models: the single channel model and the German dual model (Rehfeldt 2013). The functioning of EWCs of German multinationals is still largely influenced by the German codetermination model which gives works councils the right to negotiate company agreements on a large range of subjects, leaving to the trade unions an exclusive bargaining right only for wages and working time, two subjects which up to now are largely excluded from the practice of TCAs. EWCs of German TNCs are generally chaired by German employee representatives who are at the same time chairs of the home country works council. For them, the EWC is the legitimate democratic representative of the workforce of the TNC, including for the negotiation of company agreements. Some German EWCs, like the Daimler EWC, accept that an EFA negotiated by them may be cosigned by an ETUF. There is even a case where an

EWC, after an intervention by the EMF and under the pressure of Spanish and French unions, finally refrained from signing an agreement already drafted. Other German EWCs prefer to keep their agreements, although they are fixed by writing, informal. They have even the backing of their German union federation for this practice of informality, so that formally the ETUF negotiation rules are not violated (R. Rüb et al. 2012). Some German trade unionist also fear that a too strict interpretation of the ETUF rules might stifle the dynamics of EFA negotiations and might result in a diminishing number of agreements.

In practice, the conflict of legitimacy between EWCs and ETUFs was often overcome by coordination between both. ETUF-EWC coordination has started soon after the adoption of the EWC directive, when the ETUFs have begun set up a system of « EWC coordinators ». These coordinators are mandated by the ETUF of the sector to which the EWC belongs. In general, the ETUF nominates as EWC coordinator a national trade union officer who represents the majority union within the TNC in the home country. In some EWCs, this coordinator participates also as an external expert in the meetings of the EWC or its select committee. He (or she) is supposed to represent the general European interest of the TNC's workforce, in particular in case of conflict of interest between the workforce of the home country and of the subsidiaries. In practice, such a mandate is not always easy to fulfil.

In 2004, the EMF has gone a step further and has for the first time established a “European trade union coordination group” for the purpose of the negotiating of an EFA on the restructuring of GM Europe. This group comprised members of the EMF secretariat, the EMF coordinator of EWC, officers of the national unions involved, as well as unionized members of the EWC. This constituted an important experience in the evolution of a European trade union strategy on transnational bargaining and has inspired the guidelines on “socially responsible restructuring” adopted by the EMF in June 2005 (EMF 2005). They install an “early warning system” in which national employee representatives must inform the EMF secretariat, the EWC coordinator and the EWC itself about any transnational restructuring plan of which they have knowledge. The EMF and its affiliates commit themselves, in the event of such a restructuring plan, to set up a European trade union coordination group and to explore the possibility to negotiate a TCA, prior to the start of any negotiations at national level.

5. EFAs on restructuring and anticipation of change

The topic most often treated or included in European TCAs is restructuring, considered in a larger sense which includes « anticipation of change », i.e. preventive measures to avoid compulsory redundancies and/or site closures, as well as accompanying measures in case of job reductions. Restructuring EFAs can be divided between procedural and substantive agreements.⁹ *Procedural* TCAs set general principles for potential future restructuring, like procedures of information and implication of worker representatives, and for measures such as training, outplacement assistance or intra-firm mobility, in order to anticipate or to accompany future restructuring processes. *Substantive* TCAs set substantive rules for the management of specific restructuring cases through concrete and binding clauses. They can define rules about job security, work organization, the choice of products and production sites, as well as collective and individual guarantees to mitigate the effects of restructuring plans. These guarantees can include commitments to exclude plant closures, guarantees for the employees transferred within or outside the TNC to conserve their employment conditions and rights (wages, seniority, pensions, etc.), as well as measures to avoid forced redundancies (early retirement, voluntary severance, etc.). Substantive EFAs on restructuring are generally, like national restructuring agreements, limited in time.

The preamble to the 1994 EWC Directive requires TNCs to inform and consult EWCs in the event of transnational restructuring. In reality however only a small number of cases EWC seem to be consulted (Waddington 2012). Restructuring is however the subject of 51 of the 127 EFAs we have mapped.¹⁰ 32 can be considered as procedural, 19 as substantive ones.

Table 2: EFAs on restructuring and anticipation of change

	Procedural	Substantive
1992-1998	1	0
1999-2001	4	6
2002-2004	5	3
2005-2007	8	3
2008-2010	7	6
2011-2013	7	1

Source: da Costa and Rehfeldt 2012, updated

⁹ This paragraph is an updating of da Costa and Rehfeldt 2012.

¹⁰ 14 IFAs also refer to restructuring, but not as the main topic.

21 of the 32 procedural restructuring EFAs were signed or co-signed by EWCs, 14 by EWCs alone, 15 were signed or co-signed by ETUFs, 7 by ETUFs alone. 20 of these agreements were agreements with French companies (or with companies of French origin like ArcelorMittal¹¹). All the 8 restructuring EFAs signed by ETUFs alone were with 5 French companies (Schneider, Thales, ArcelorMittal, Alstom, Total). The signatory ETUFs were the EMF and the EMCEF, as well as, after their merger, IndustriAll Europe. We have already mentioned that this French imprint is related to the specificities of the French industrial relations, in particular to the existence of a dialog-oriented HR management in former public companies and to the French legislation on the obligation to negotiate group-level agreements on forward looking HR management.

Of the 19 substantive restructuring EFAs, 16 were signed by only 3 TNCs in the automotive industry: two by European subsidiaries of US companies (Ford and GM) and one by a TNC that was German–US at the time (DaimlerChrysler). Three further were signed by French companies: Danone, Alstom and Schneider. All, except one, were signed by EWCs. Some of the GM and DaimlerChrysler agreements were co-signed by the EMF, the Danone EFA was co-signed by a GUF. The agreements with Alstom and Schneider were signed by an ETUF alone.

We consider substantial TCAs on restructuring as the most meaningful ones for the employees of the TNCs, because they are intended to save jobs and are directed against the danger of social dumping and competition between production plants. The experience of GM Europe was an exceptional one, combining Europe-wide mobilization (strikes and action days) and transnational negotiation. It was the result of a coordinated EWC-union strategy of transnational solidarity, based on three principles: no plant closures, no forced redundancies, systematic search for negotiated and socially responsible alternatives. The actors have managed to preserve international solidarity through very difficult times of the automobile crisis and despite emerging national strategies and the involvement of national governments, not particularly prone to finance jobs outside their borders. However, even in this exceptional case, no EFA was signed by GM Europe (now Opel) since 2010 to handle the ongoing restructuring problems. Because of the legal and timely limitations of the restructuring EFAs,

¹¹ The ArcelorMittal restructuring EFA of 2009 also contains some substantive elements.

three plant closures could not be prevented, and the final closure of the Bochum plant in 2014 was handled only on the basis of national and local agreements.

6. Conclusion: A slowdown of TCA dynamics?

TCAs are a relatively recent phenomenon. Only 5 IFAs existed until 1994, all signed by a single French company, BSN (later called Danone), the first of which in 1988. Danone was chaired at that time by Antoine Riboud, a member of the French Socialist Party with strong social catholic commitments towards employee participation. The 1988 Danone agreement was considered as a pioneer agreement for transnational employee representation. It was later transformed into a formal EWC agreement. At the same period, TCAs were signed with other French TNCs for the voluntary setting up of EWCs (or “European group committees”, as they were called at that time), the first of which in 1985 between the EMF and Thomson Grand Public. Until 1994, 17 voluntary EWC agreements were signed by French TNCs, nearly all of which were recently nationalized companies. These negotiations, which were initiated by the management of these companies, were backed by the French Socialist government. In July 1989, Prime Minister Michel Rocard sent a letter to the CEOs of the nationalized companies urging them to conduct an "exemplary" social dialogue and asking them to set up EWCs on a voluntary basis. One of the objectives of the management was to create, through the negotiation of these agreements, a European corporate identity, including among the employees and their union representatives. They were also considered as a tool for the homogenization of HR management and the creation of a common culture of industrial relations (Rehfeldt 1993).

The dynamics of TCAs changed after the adoption of the EWC directive in 1994 which led to the signing of 350 “voluntary” EWC agreements before the directive came into force in 1996. In the same year 1996, the first substantive EFA was negotiated and signed by the EWC of Générale des Eaux (later called Vivendi), one of those nationalized French Companies which had set up an EWC before 1994. In 1998 the first IFA by a non-French company, the Swedish IKEA, was signed. From 2001 to 2013 we find an average number of 9 EFAs and 9 IFAs by year.

There is however a slight slowdown of the signing of new EFAs since 2011. After a peak of 16 EFA in 2010, only 5 were signed in 2011, 10 in 2012 and 6 in 2013. 18 of the 21 EFAs in

these three years were signed by French TNCs, 3 by German ones. In 2013 all the EFAs registered were French. During this period, the signing of IFA continued with the same speed: 7 in 2011, 14 in 2012 and 11 in 2013. There is no slowdown for procedural EFAs on restructuring. In 2011-2013, 8 new procedural EFAs on restructuring were signed, all by French companies. On the other hand, there is a dramatic fall of substantive EFAs on restructuring. In 2011-2013 only one case, French again (Alstom), was registered. This seems paradoxical in period of crisis where the number restructuring cases is expanding.

It is too early to say what are the explanatory factors for this slowdown and if it is bound to continue. One explanation might be the renationalization of industrial relations which can be observed during the recent crisis. This renationalization is linked to a growing interventionism of the national governments. Especially in the automotive industry, some governments have financially supported their automobile industry in exchange for a commitment to renounce temporarily to collective redundancies in their countries (Pedersini 2010). Another explanation might be the flight into informality we have already observed for some German EWCs. Finally one cannot exclude a certain delusion amongst the employees and their representatives about the modesty of the results they obtained by the TCAs, as some of our case studies suggest. TCAs constitute however still the most dynamic element of the European system of industrial relations which has emerged in the last decades, during which we have seen less and less progress of transnational bargaining at the industry and the inter-industry levels.

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Transnational Company Agreements: the empirical findings of the EURACTA 2 project

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1. Introduction

The different happenings that in the last years have affected and in some cases disrupted several national systems of industrial relations, the key role instrumentally attributed to these systems by the new European economic governance just to undermine their weight at national level, lead to a double necessity, not only at an academic level but also at an operative and practical level. First of all, we all should improve and better analyze the knowledge of these systems. Secondly, and this is especially true on the labour side, we can't escape from strengthening and stepping up any instrument which can favor a better coordination of the different bargaining policies of trade unions at both European and international level. This supranational bargaining can take the aspect of the sectoral social dialogue or the transnational company bargaining, which can be either European or global. Both forms have been taking up a more advanced form in the EU context, thanks to its specific supranational regulation and social model, inclusive of a wide recognition of the social dialogue and collective bargaining at different levels and in different forms.

Our focus in the EURACTA 2 project, and in this report which is its final outcome, is specially revolving around this latter form: the transnational company bargaining and agreements.

The Transnational Company Agreements (TCAs) are increasingly considered an important and innovative tool of industrial relations at a transnational level. The relatively widespread dissemination of this kind of texts represent one of the few encouraging facts in the current crisis scenario, affected by an unprecedented regression of the social and trade unions rights.

In literature, they have been broadly welcomed and variously called in terms of new "social practice", new "bargaining fora", a "new star" appeared in the galaxy of collective sources,

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able to create new and unusual holes in supranational negotiations; one of the few "new ideas for an exit strategy to the crisis of transnational trade union rights and labor"¹³.

Starting with the European Social Agenda 2005-2010, the European Commission recommended increasing and improving TCAs, recognizing that together with other levels of representation TCAs can play a positive role in social dialogue. Since then, several expert groups and staff working documents have been delivered on this subject. Transnational company agreements are considered by the Commission as "one of the tools available to cope, at the level of companies, with social and economic effects of restructuring in a socially responsible way. (...) They play a positive role in identifying and implementing agreed solutions at company level to the challenges posed by a constantly changing business environment, in particular in the context of corporate restructuring". The Commission considers these agreements "as coherent with the principles and objectives underpinning the EU 2020 Strategy and flexicurity agenda". They are seen "as an emerging feature of EU social dialogue, TCAs deserve to be promoted in line with the competence given by the Treaty (artt. 152 and 153)¹⁴.

This growing interest in TCAs (Ales et al., 2006, van Hoek et al. 2010; Telljohann et al., 2009; Lo Faro, 2012, Sciarra, 2010; Papadakis et al., 2011; Schömann et al., 2012; Leonardi et al. 2012; Rodríguez et al., 2012; Rehfeldt, 2013; T. Müller et al., 2013; Rüb, Platzer, Müller, 2013; Sciarra et al., 2013; Sydow et al., 2014) is directly co-related to the occurrence of a series of political and economic conditions labelled as "globalisation". The de-concentration and de-massification of the work produced by the change in the socio-technical organizational paradigm, determine a process of de-territorialisation of the company and the production cycle that breaks every anchor the physical boundaries of the territory, city or national both.

The role of TCAs shadows the emergence of Transnational Corporations (TNCs) operating as key players in the global economy. Their number and influence is unprecedented, leading to a "governance gap" between the global economy and social regulation. The companies are more and more independent from any kind of external and political constrains.

¹³ For a review of the international literature on TCAs, see Jagodzinski (2012)

¹⁴ Draft elements for Commission's conclusions Expert Group, *Transnational company Agreements* - 31.1.2012.

In a recent book, David Harvey (2014) said that the capital is never called to respond of its systemic deficiencies because it is continuously displacing them geographically, becoming a mobile and quite unreachable target. Such a constant displacement, this sort of “escape of the capital” from the traditional ambits of interlocution with trade unions and local stakeholders, tend to assume two different and extreme forms: a) an upward escape, through the international Chinese boxes’ system of the property and stockholders, where it’s quite impossible to precisely identify the true center of the deliberative power, and b) a downward escape, through the different forms of subcontracting, atypical contracts and/or work organization, with the new socio-technical paradigms achieving forms of employees’ informal involvement where, again, collective and trade unions representation and negotiation at the workplace level are basically eluded and avoided (Leonardi, 2013).

In such a scenario, TCAs can somehow represent an attempt to bridge the governance gap between the increasingly global character of capital strategies and the substantially territorialized nature of the unions and workers. Transnational collective bargaining opens up new and interesting opportunities, a true stepping stone for the internationalization of the industrial relations (Leonardi et al, 2012). With this concept we usually refer to all those mechanisms of governance and those procedures at the supranational level that today tend to unfold in various fields and levels: multi-sectoral, sectoral, companies.

Trade unions are pushed to search for new levels and forms of solidarity, developing new international networks in order to discuss and to find common approaches and possible measure to anticipate the changes and to limit the eventual damages to the people they represent (Marginson, Sisson, 1998; Lecher, Platzer, 1998; Keune, Schmidt, 2009; Hoffman, 2011; Glassner, Pochet, 2011; Fichter, Helfen, Schiederig, 2011, Cilento, 2012). They absolutely need to cope with the freedom of movement of the TNCs and their economic and social consequences. Although its threat is not always so real and immediate as one could may be think, it’s out of question that off-shoring can be the dark side of globalisation, undermining structures and rights in employment relationship once guaranteed by the closed nature of local states.

The emergence of TCAs requires us to comprehensively think through the nature of collective bargaining as a fundamental right. The arrival of TCAs has come at a time of global and long recession, when collective bargaining is going through a period of crisis. On

the one hand, we can see reinforcement of the right to negotiate collectively in the judgments of courts in developed countries. On the other, we are witnessing the deep erosion of national collective bargaining systems in some EU countries (for instance through Troika decisions). Good agreements have been challenged, revealing a certain fragility and impotence to maintain their promises against painful restructuring, plant closures and worsening of the working conditions.

As it was stated into the introductory chapter to this report, TCAs can be used to support local organizing campaigns in TNCs subsidiaries, especially in developing countries. TCAs provide workers and their representatives the opportunity to develop spontaneously and from below transnational industrial relations, making possible new opportunities for union networking and coordination at a transnational level. They allow to establish common minimum standards in all the subsidiaries and suppliers of an MNC, preventing forms of social dumping and achieving socially responsible restructuring.

2. Transnational Company Agreements: what are they?

A Transnational Company Agreement (TCA) can be defined as *“an agreement comprising reciprocal commitments, the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers’ organizations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives”* (European Commission, 2010)”

Central to TCAs is the bilateral nature. These text differ significantly from unilateral codes of conduct often preferred by TNCs. Through the TCAs, in fact, the role of the workers and their organizations obtain a greater legitimation and involvement within the corporate governance.

TCAs take on two forms, they can be: a) *European* (European Framework Agreements, EFAs) when signed by European Work Councils (EWCs) and/or European Trade Unions Federations (ETUFs), and European in scope; b) *International* (International Framework Agreements, IFAs), when signed by Global Union Federations (GUFs), and global in scope. Factors covered by TCAs are wide-ranging, focusing on issues such as ILO’s core labour standards (anti-discrimination rights, freedom of associations and collective bargaining,

outlawing of child and forced labour), restructuring, equal opportunities, vocational training, health and safety, trade union rights and social dialogue.

TCAs can also be classified as: a) *Procedural* when TCAs set general procedure principles; b) *Substantive* when TCAs set specific rules for their implementation through concrete and binding clauses (da Costa and Rehfeldt, 2012) .

The most advanced or “strong” TCAs belong to the typology of the substantive TCAs and deal with restructuring issues. They can be called “best practices” and they specifically refers to concrete forms of «anticipation of change» i.e. measures to avoid compulsory redundancies and/or site closures through retraining, redeployment and other measures.

By the end of 2013 267 TCAs have been signed equally divided between IFAs (140) and EFAs (127). They cover more than 10 million employees worldwide. Most of the signatory TNCs have their headquarters in continental Europe (mainly in Germany and France), while it is still limited the number of IFAs concluded with non-European TNCs.

They come from the most internationalized sectors (metal and chemical industry, telecommunication, banking etc.). Some IFAs are co-signed by EWCs. In many IFAs, EWCs have a monitoring role.

Most of the EFAs have been signed by EWCs (92 of 127) and 63 by EWCs alone. In particular German TNCs tend to prefer to negotiate with EWCs. 16 EFAs are signed by ETUFs alone, almost exclusively by French TNCs. Their number has grown since 2006 to 2011. Since 2011, a relative slowdown of the EFA dynamics can be observed, in particular regarding substantive EFAs on restructuring. Ironically, just at a time when the number restructuring cases grew due to the financial crisis. This would seem to indicate that a renationalisation of industrial relations occurred during the crisis.

According to some authors, we shouldn't underestimate the role and the weight of the unreported agreements and informal arrangements stipulated between EWCs and management on specific issues, but not included in the existing lists and databases (Müller et al., 2013)

3. The unclear legal status of TCAs: a key issue

Transnational collective bargaining has developed without a specific legal framework. TCAs are based on voluntary and autonomous negotiations between social partners. They are non-statutory agreements, being self-initiated and self-implemented.

In the absence of specific international norms, TCAs see basically applied the highly complex and quite uncertain principles of international private law (van Hoek and A. Hendrickx, 2010; Sciarra et al., 2013). Such a lack has not been an obstacle up to now to the growing development of TCAs and also in the international legislation it is possible to find out norms and rights which legitimatize their existence. At a global level, for instance, the ILO Conventions 89 and 98 provide a potential legal basis to these agreements, particularly if their scope extends outside the EU, where they obtain a stronger recognition and legitimacy within the so-called *acquis communautaire*. Formally: “They are neither against law nor in line with it” (Jagodinski, 2012), but more indirectly the role and functions that the EU law recognizes to the social dialogue and industrial relations, including supranational collective bargaining, are quite large and significant. The art. 28 of Charter of Fundamental Rights, now part of the TFEU establishes “the right to negotiate and conclude collective agreements at the appropriate levels”. Furthermore, the Treaty provides that the European social dialogue can evolve into volunteer or *autonomous* agreements where the implementation is left to “procedures and practices specific to management and labour and the Member States”. The European Framework Agreements (EFAs) can be certainly considered as a sub-specie of these autonomous agreements, in alternative to the other and more typically EU tripartite model, inclusive of the intervention of the Commission in order to extend and make binding, with a Directive or a Decision, the outcomes of the social partners dialogue.

The major problem of such a volunteer and autonomous agreements concerns their effectiveness and homogeneous implementation in all the different subsidiaries spread across different countries (Ales et al. 2006; Papadakis et al, 2011; Leonardi et al. 2012; Schomann et al., 2012; Sciarra et al., 2013). A wide collective autonomy, free of any direct interventionism of the law and of the State, is quite well known in many different systems of industrial relations. Especially those where voluntarism and abstention of law are more pronounced, as in the Scandinavian and Anglophone countries or in Italy. But with a huge difference, which is that here, at supranational level, we don’t have neither an auxiliary legislation nor the

concrete possibility to act the industrial conflict, the most typical instrument of collective sanction to the employers' unfair behavior.

With no obligation to transpose it into binding decisions for local management, there's usually a mere obligation of influence for the parent undertaking to the related local plants. Then contents and real effects of a TCA risk to vary according to the will of the new local signatory parties. TCAs are in fact strongly embedded into the different institutional environments where they are first stipulated and then implemented. In particular they tend to reflect the models and practices of the countries where the parent group is based (the so-called "home country effect"): type of firms, collective bargaining structures, actors' cultures, traditional practices and attitudes.

The remarkable differences among European collective bargaining systems (binding or non-binding effects, extension of the effects, workers representation, etc.) imply that the transposition of these agreements at national/local level may differ significantly from one context to another. Furthermore, the often generic nature of the TCAs contents can make it difficult for national actors, and unions in particular, to claim and transpose the exact commitments adopted.

All this inevitably leads to relatively inhomogeneous results, uncertain if not random, and the nationalization of the effects on the other, which can affect the actual transnational nature of these agreements.

Important issues concern the legitimacy of the negotiating agents, the procedure, the implementation and follow-up at the national level. In particular, the role of the European Works Councils (EWCs) in negotiating TCAs (Müller et al., 2013). The issue of a multi-level and multi-dimensional coordination represent play a key role in the process of construction of a real internationalism. A transparent mandate, involving all the actors committed, represents at the same time a matter of democracy and effectiveness, since it allows the local and workplace delegates to be not just a passive executer of something which was decided above them, without them.

In order to avoid such a risk, the ETUC (2005; 2011; 2014) and ETUFs – starting with the European Metalworkers Federations (2006) and following the others (UNI-Europa, 2008; EPSU, 2009) – have established internal procedures for managing TNC-level negotiations. According to these guidelines, which oblige the ETUF-affiliated organizations, the right to

sign TCAs should reside exclusively with the European trade unions federations. Before that, a mandate should be expressly given by the most representative unions concerned: topics; viewpoints, policies, details of how the negotiation process have to take place. The agreements have to be compatible with existing national collective agreements practices and standards. According to such an approach, a procedure for the approval of the draft agreement must require at least a two-thirds majority in each country involved, while the signature of the agreement must be a prerogative of the ETUF on behalf of the national trade unions concerned. EWC has to be involved at all stages, according to the rules adopted by the ETUF.

In a Resolution adopted by its executive, early in 2014, the ETUC has shared the proposal suggest by an high-level team of European labour lawyers (Sciarra et al, 2013), towards a legal framework for TCAs. Social partners have to be always free to decide whether to enter into negotiations and sign agreements. On the labour side, they should be negotiated and concluded by the ETUFs while non regression clauses have to be inserted in all the texts. In order to combine the respect for the social partners autonomy and the need for more effective TCAs, the document propose an optional legal framework. In a nutshell, the option to adopt a legal framework is left to the negotiating agents A Council's Decision (art. 288.4, TFUE), based in the Treaty and auxiliary to the collective autonomy, would guarantee to such a kind of TCAs to be binding in their entirety. Social partners, in such a perspective, should express clearly their eventual willingness to benefit from the optional legal framework set up by the EU law.

Although subject to some criticism – like the predictable shortage of the corporate to opt for a binding text while they can now freely use and interpret the non binding form – this proposal has the merit to search for an advanced compromise between partners which express very different positions.

4. The EURACTA 2 project: study design and methodology

In order to address some of these issues, a “European action on TCA” (EURACTA 2) has been conducted by network of economic and social research institutes, trade unions and Universities from seven European countries. The project, promoted and coordinated by the Italian institute Associazione Bruno Trentin (ABT), involved the French ASTREES and

IRES, the Italian IRES Emilia Romagna and Sindnova, the Spanish Fundacion 1° de Mayo, the Polish Solidarnosc, the British University of Manchester, the German Technic University of Munich, the Bulgarian ISTUR at the CITUB. A broad international and interdisciplinary team of experienced organizations and academic scholars, experts and trade unions practitioners.

In 2012 a project on a similar issues – but with partially different aims, methodology and partnership – was promoted by the Italian IRES, whose ABT is the inheritor after a recent merger with other CGIL-related institutes of research and union education. Its name was in fact EUROACTA and its outcomes, a book (2012) and several related articles, are now a stable quotation in the international bibliographic references on the subject of transnational collective bargaining.

EURACTA 2, in 2013, has been a sort of follow-up with several slight but significant differences. Unlike the previous one, where the juridical profiles were by far the most prominent within the whole action, the following one had other purposes and aims. Its general objectives have basically involved: 1) improving the understanding, exchange of experience and expertise among European social partners with regard to the role of the TCAs; 2) realizing an in depth and empirical survey of TCAs, specifically their negotiations, issues, implementation and impact in the different local contexts and on national industrial relations. This time we wanted to investigate on how the TCAs fare in practice; to see in detail the negotiating procedures; to catch the trade unions' approach to managing corporate-based processes in TNCs, to understand their role of TCAs in the process of internationalization of industrial relations; to identify the opportunities and also the problems from the viewpoints and evaluations of the involved actors..

Beside two international workshops, in Madrid and in Brussels, and a final conference in Rome, where more than one hundred people – among practitioners, trade unionists, experts from several different countries take part – the action consisted of case study fieldwork,

In our study, companies with TCAs already signed were taken from two sectors, one manufacturing, the metal industry, and one from the service, the banking sector. The sample included four TNCs belongs the former – Volkswagen, Thales, Schneider Electric, SKF – three to the latter: Unicredit, Santander, BNP Paribas

Of these seven TNCs, three have their headquarter in France, two Germany, one each in Italy, Spain and Sweden. Their size, in terms of worldwide employees is on average around 160,000, with a max of 560,000 in Volkswagen and a minimum of 48,000 in SKF. They all have subsidiaries belonging to some of the seven countries of our network.

All seven TNCs have a EWC established; in two cases – SKF and VW – they also have a World Works Council (WWC).

In order to analyse the specific implementation of TCA in the different national/local contexts, the network undertook 14 case studies of TCAs in the parent companies and their subsidiaries in different countries. For instance, the case study on the TCAs at Volkswagen encloses the fieldwork conducted by the project team in the TNC home country (Germany) and in its subsidiaries in the UK (Bentley), in Spain (Seat), in Italy (Lamborghini). Same methodology in some other cases, like Thales, Santander, Unicredit, while for SKF, Schneider Electric and BNP Paribas the implementation process was limited to just on country.

After the selection of seven TNCs with one or more TCAs, an in depth explorative fieldwork was realized by our international team. Semi-structured interviews were conducted with more than 50 representatives of the social partners, either in the home country of the TNC and in some of the subsidiaries and production sites located in the seven Member States involved in the research.

Case studies – as you will see in the following chapters – are presented according to a common grid of contents. They start with a profile of the companies either at the level of Transnational Corporate and, when it is the case, at the level of its different national subsidiaries. Subsequently, the negotiation parties and processes, inclusive of the agreements' contents, are discussed in some detail. Moreover, they give an overview of the implementation practices and their impact into the different local environment. They normally include interesting quotations extrapolated by the interviews. Some concluding remarks are normally presented at the end.

At the end, we hope that our study can offer a wide qualitative assessment of the of TCAs with a number of results and findings under a variety of empirical factors, concerning the initiators and negotiating dynamics, signatory parties and their interaction, contents,

implementation process, effectiveness and real impact, social partners evaluations about the usefulness and added value.

Based upon the lessons learned by the different case studies, the action outcomes has included the publication of a toolkit comprehensive of a list of guidelines and recommendations for more and better TCAs, addressed to the social partners and to the unions in particular, in view of further negotiation of new effective agreements. The toolkit is now published and available in several hundred copies in the seven languages of the countries involved and it will be disseminated thanks to the cooperation of the project partners.

The already seen first chapter of this report, edited by some of the academic experts involved into our project, offers an introductory theoretical frame to the global scenario where our study and its key issues get their rationale. In the following sections of this report we will first present a general description and overview of the exemplary evidence from case studies. It is the content of this chapter. Then we will present the single case studies, inclusive of their implementation in the different institutional environments and local practices of industrial relations. Finally, in the last chapters, we will develop some argument on specific theoretical and problematic items concerning the TCAs, as their juridical status or the interaction of the organizations who act on behalf of the workers.

5. Empirical survey findings

5.1 The TCAs: number, scope, date and names

In the TNCs selected we recorded a total number of eighteen TCAs. Each one has signed an average of two texts, whereas VW only signed five different texts.

The texts were all signed between 2002 and 2014. It's worth noting that most of these texts were signed during the recent crisis, with a relative concentration of (six) in the years 2008-09 (two, respectively, in Unicredit, Santander, VW and Thales). The last ones, in 2014, concerned BNP Paribas while the new controversial Code at SKF, updating the IFA of 2003, was not subscribed by the unions when the case study was carried on.

The large majority of texts have just a European scope, so that they belong to the typology of the EFAs, with two exceptions, at VW and SKF, whose scope is global so that they are IFAs.

In the large majority of the cases TCAs are applied to the TNC direct employees only, but in some cases also to the chain of suppliers. This is the case of the 2002 VW and 2003 SKF IFAs. The Swedish TNC's Code of conduct is applied to all the company business partners: suppliers, sub-contractors and distributors.

The attempt to extend the bargaining scope and target from a European to a global level was failed in other cases, where the unions had also pressured the corporate in order to get such a result. Santander, a TNC very rooted out of Europe and especially in South America, is an example. The difficulties due to the reluctance by the company's side, which refuse to negotiate with the trade unions a minimal transnational ground on working conditions when there is no legal framework of support. Trade unions in countries like Brazil complain in fact the HR policy of local management in terms of working conditions and industrial relations. A global agreement here would have been particularly opportune and welcome among the workforce.

The word "agreement" only occurs in a certain number of texts, whereas in the majority of the cases terms such as *Joint Declarations*, *Charter* and *Code* are preferred. Quite peculiar the case of the IFA at the SKF. It is just a part of broader Code of conduct and concerns the typical ILOs core labour standards. On this chapter in particular the MNC opted for a negotiating process with the International and European sectoral federations, so that the 2003 document is at the same time a Code of conduct and an IFA.

TNCs	Head quarter	Employees	TCA's
Volkswagen	Germany	550.000	2002 Social Charter (ILO conventions) 2004 Health and safety 2006 Declaration on sustainability in supplier relations 2009 Labour Relations Charter 2012 temporary agency work <i>2012 Update of the Social Charter (extention to subcontracting)</i>
Thales	France		2009 Professional development and anticipation (IDEA) 2010 Developing professional knowledge (TALK)
Schneider Electric	France	>150.000	2007 – EFA on anticipation of change 2010
SKF	Sweden	48.401	2003 – Global Framework Agreement (GFA) /Code of conduct <i>2014 – Update 2003 GFA</i>
Santander	Spain	183.000	2008 Equal treatment of women and men 2009 Social Rights and Labour Relations 2011 Sustainable financial services
Unicredit	Italy	160.000	2008 – Joint declaration on training ,learning and professional development 2009 – Joint Declaration on equal opportunities and Non-discrimination
BNP Paribas	France	185.000	2012 – Employment Management Agreement 2014 – Workplace Equality Agreement

Schneider Electric – 2010: European Agreement on Social Commitments in the framework of the take-over of Areva T&D

5.2 Initiators of negotiations and signatories

As already stated in literature, the TCAs is always a multi-organizational practice requiring the interaction of several actors either in the home country of the TCA and in its different subsidiaries, both on the “capital” and on the “labour” side.

A very important issues is to understand who first takes the initiative. In four cases of our sample, the initiative to negotiate the TCA was taken by the management (Schneider Electric, Thales; SKF, BNP Paribas), in one case respectively by the EWC (Unicredit), by the national trade union (Santander), by the national works council, supported by the national industry federation (VW).

The signatory parties were, on the labour side, differently composed. In two cases only by the ETUF (Thales, Schneider Electric), with EWC just in charge of monitoring follow-up; in two other cases only by the EWC (Unicredit, Santander). EWC and ETUF signed the EFA at BNP Paribas. Whilst in the case of VW the IFAs were co-signed by GUFs, a different picture emerges concerning SKF where GUF and ETUFs signed the agreement, with the exclusion of the EWC in SKF (although the representative of the ETUF and GUF is EWC and WWC president also); with its inclusion in VW since 2009.

A key role is normally played by the home country institutional environment: its norms and practices, either at National sectoral and at company level.

Factors contributing to the emergence of TCAs have to do with the global management goals to harmonize some standards throughout the group, improving at the same time the company's reputation in respect to corporate social responsibility. Firms can be interested in limiting the damage of negative publicity coming from the way the treat their workers throughout their subsidiaries. In this respect the emergence of TCAs, like also of codes of conduct or other forms of CSR, is more about a matter of marketing than a real shift in corporate values. Among the factors which can induce managers to establish forms of transnational bargaining another one can be that they can also prefer to negotiate with the ETUF, and not with their own national unions which can be quite fragmented, as can often be the case in France. Negotiation at the European level can be easier than negotiation at the national level, because the ETUF procedures offer the possibility to negotiate with a unique organization, and not with many trade unions at the same time, like in France. Also single individual manager can be crucial in launching a process of transnational bargaining. At the

time when TCAs were negotiated, this was certainly the case in SKF, in Unicredit, with the former CEO Profumo, and in Thales. Managers from public or ex public companies, with their peculiar background and culture seem to play a very important role (Rehfeldt, 2013). Let's take the emblematic example of the Thales human resource director at the time when the TCAs were begun, Yves Barou. Before joining the Thales group, he had held various positions in another nationalized French multinational and was deputy chief of cabinet of the socialist Labour minister Martine Aubry in 1998-2000. In 2010, he has founded a "European HRD circle" whose members are HR directors from various European multinationals, mainly from France and Germany.

Quite self-evident and already exposed the reasons why employees and their trade union organizations promote TCAs. Someone, in particular, have been very active towards this objective. Spanish trade unions, for instance, have always tried to promote a minimum common framework of labour and social rights for the whole Santander Group.

Generally speaking, and in a nut shell, we could say the unions aim is to harmonize minimum working condition and industrial relations standards. A point clearly made by the German workers' representatives interviewed for the VW case study.

In only a few cases did the ETUF take the initiative, this was due to the fact that these organizations – namely IndustriALL Europe – intend to fully respect the free will and choice of the national and local unions.

5.3 The negotiation process

A very important issue concerns the negotiation process: the actors legitimated (who negotiate?), the form (how negotiate?), the multi-organization and multi-level interaction among the different actors concerned.

The lack of procedural rules has paved the way to many TNCs to accept to entering in transnational negotiations. At the same time, it represents its major *vulnus* because of its corollary in terms shortage of a clear legitimacy of the signatories, uncertainty of their legal effects, unsatisfactory implementation in the different local contexts.

What emerges from our study is that the internal ETUFs procedures on TCAs were formally prominent in the metal sector, especially the French TNCs In Thales and in Schneider Electric, but also in Areva, that is some of the first companies to sign EFAs directly with the

EMF, HR managers agreed that the ECW, created for information and consultation, was not an appropriate partner for negotiation. This opinion was also shared by most of the French union representatives and by the Italian metal worker unions, according to which this is “the only guarantee of transparency and democracy”.

Quite different situation in the banking sector, where the key actor in the negotiation process was the EWC. At BNP Paribas an ad hoc committee was formed, while feedback from the EWC Select Committee was given between meetings. There was an advisory role for external members and the agreements were signed by all negotiators, as well as validated by EWCs, the ETUF and management. Nevertheless, trade unions have followed and adapted the guidelines and campaigns launched by UNI Global Union, as in the negotiation of the 2009 and 2011 agreements at Santander.

The risk can be that nothing guarantees a proper democratic process, as it remains a sum of national interests deprived of any genuine capacity of pan-European representation and opportune mediation of the different interests.

Mutual trust between group management and employee representatives is an essential driver force for the negotiation and conclusion of TCAs agreements. In addition, the cohesion between unions from different countries is clearly at stake when considering TCA negotiations. This is not always the case, with the risk of producing discontent and resentment for measures agreed at upper level and felt as a top-down imposition by the excluded actors concerned.

Mandate, transparency and communication channels were, in some “cases”, quite disappointing (see the Polish case study about the implementation of the Schneider Electric TCA). Some national and local unions complained about the lack of proper and exhaustive involvement during the negotiating process. This was certainly the case of the Bulgarian and Polish unions in respect of the bargaining at Santander and Schneider, while a similar exclusion of national unions was deplored at Unicredit in Italy and Germany, too. In some other cases, there was a lack of coordination within the EWC, as in Santander.

One of the most critical junctures concerns the role of EWCs, which do not formally hold a negotiating mandate, but which undoubtedly played a major role in signing many agreements. EWCs have legitimately concluded EFAs in the past years and they will likely continue to do so in the future. The EWCs, participatory rights and now the TCA are essential tools to

facilitate the socialization between union officials and delegates from across Europe (and in view of the world).

Our research has shown some serious problem of coordination within the EWC on the employee's side, as in the Santander case, which can be rooted in the problems in terms of the national dynamic of industrial relations.

However, if the aim is to set a framework for transnational negotiations with TNCs in predefined procedures (or even within an optional set of rules) the current experience demonstrates that EWCs can hardly be a reliable trade union structure for collective bargaining at cross-border level.

5.4 Bargaining issues

Most of the TCAs we have examined belong to the cluster of the procedural agreements. The majority of texts are joint declarations of common understanding, whereas just a few seem to be quite detailed and codify concrete measures of implementation. In a certain sense, we could consider the former examples of “weak” TCAs, and “strong” the latter (Sydow et al., 2014)

Fundamental social rights play a dominant role in IFAs. Examples of this approach are the Code of Conduct signed bilaterally at SKF in 2003, as well as the VW Social Charter of 2002, updated in 2012, which both clearly share the same aspiration: to ratify and implement the spirit and duties of the ILOs Conventions. Also one of the three Santander EFAs share such an inspiration.

The content of the different five IFAs, in the VW case, goes beyond the minimum standards of the International core labour standards. They include issues like health and safety at work (2004), the sustainability in supplier relations (2006), labour relations (2009), temporary agency work (2012).

EFAs contents are more diverse and cover a wide-range of issues. Restructuring and impact on workers are basically quoted indirectly, in co-relation – where this is the case – with the notion of anticipation of change and lifelong learning. Professional development, learning and training are the core of the two EFAs (2009, 2010), the second follow-up of the first, at Thales. The aim should be to prevent – through individual training plans – the negative effects of restructuring, avoiding collective redundancies. Same subject in the Unicredit joint

declaration of 2008, and – in its essential purpose – in the 2007 EFA of Schneider, on the anticipation of change. Summing up, we can say that 4 out of 18 texts analysed are focus on professional development and the anticipation of change.

Another issue which returns in more than one text concerns equal opportunities, diversity and non-discrimination. This is the case of three texts, in particular, in the banking sector: Santander's 2008 EFA on equal treatment between men and women, Unicredit's 2009 joint declaration and the recent BNP Paribas EFA (September 2014). BNP is to start negotiations on a new agreement on psychosocial risks soon.

Issues like "Social rights and labour relations" are dealt within a couple of TCAs, as in the case of Santander and VW. They were both signed in 2009. In the case of the Spanish bank, the contents refer to the international labour standards. In the case of the German automotive producer, they go much further by including enterprises and production sites belonging to the group (global level). The Charter on Labour Relations at Volkswagen is probably one of the best examples of this new generation of texts, with its Bill of Rights, including co-determination on a wide range of issues. with training for workers' representatives and the possibility for the local work councils – which have to be democratically elected – to use external experts.

None of the 18 TCAs examined set openly "hard issues", like H&S at work, working time or minimum standards of payment.

5.5 Implementation practices

Implementation of a TCA can be defined as "any practice that communicates, promotes, changes, transfers or at least stabilizes a certain (inter-) organizational practice that directly or indirectly improves or ensures minimum labour standards or collective labour relations agreed upon in the negotiations process of a (TCA)" (Sydow et al., 2014, 494).

All the TCA represent voluntary solutions. That implies that by norm they do not produce immediate and direct legal effects on all the production units they should cover. This is probably the main weakness of transnational collective bargaining. Their local implementation is based upon the multi-organizational interactions between the different levels of the management on one side, and workers representatives on the other.

Consequently, effectiveness and uniformity of their effects all over the subsidiaries of a Transnational Corporate are all but given for certain.

In order to become binding, TCAs normally require a new company level agreement. With the exception of Thales this often proved to be problematical because of the different industrial relations. Local legal systems and concrete practices cultures matter and somehow they have to be respected and this requires a sometime slow process of learning and adaptation.

Non regression clauses (the interdiction of worsening of existing National standards) are inserted into several texts, for instance VW or Unicredit. Also in the SKF text such a clause is explicitly mentioned, although Bulgarian unions underline as in at least one case, the minimum age for starting to work, the protections provided by the national legislation are better than in the Code/IFA.

Information and communication practices normally include the translation and sometimes the distribution of the TCAs to employees. In some cases, like Unicredit, TCAs were made public on the company intranet.

Most of the agreements include a comprehensive monitoring mechanism that sets up a monitoring process with the aim to evaluate the effective implementation and the harmonisation of management practices on all major elements of the agreement. The EWC is often the main actor in monitoring the implementation in the different national contexts. This in fact can be one of the items discussed during the ordinary meetings of the EWC. BNP Paribas, Schneider Electric and Thales are examples of this kind of monitoring process.

Rare the publication of evaluation report and criteria. The Thales TCA foresees monitoring through an Action Plan of three years in four steps which include detailed communication vis-à-vis management and each employee; the creation of the European Anticipation Commission; the monitoring by the National Anticipation Commissions, the organisation of a European Convention, nine months after signing the agreement, in order to collect new good practices and monitor implementation. In order to measure the quality and effectiveness of the actions and the monitoring process, a non limitative list of social indicators will be available at national and European level, so to verify the degree of implementation of the agreement. They will include: the number of employees attending an annual professional development discussion, the average hours of training per employee, per year, the total

number of employee trained per year, the number of employees who did not benefit from a meaningful training during three years.

Special country specific training practices are quite rare.

In regard to conflict resolution, dispute settlement bodies and procedures appear in some texts. In Unicredit there's an ombudsman in the subsidiary, who could collect all complaints concerning the implementation and he/she is responsible for addressing the complaints to the management, similar procedures exist in SKF and Thales.

5.6 Impact and value of the TCAs

The value of TCAs in the perception of their main beneficiaries, the workers and their organizations, is not always immediate and obvious, like the structures of the EWCs. Factors of success in negotiating TCAs rely very much on some requisites, like – first of all – a strong industrial relations within the home country, testified by a high unionisation rate as well as well established mechanisms for employee representation. Such a condition is strengthened by widespread personal trust relations with the workforce, within the EWC and with management. The management styles and willingness to follow a high road to competitiveness, as we have seen before, can be an ingredient which makes the difference.

Nevertheless, national and workplace unions and workers representatives cannot perceive, and they in fact often don't, any real added value to be gained from TCAs as they assume to already possess equal or major recognition in their national setting. The widespread opinion of a limited usefulness of some of the agreements and declaration, about equality of women and men or fundamental labour standards, are quite everywhere enshrined in the Constitution and legislation of all the EU Member States.

Another very serious criticism concerns the still too limited extension of TNCs interested by some kind of transnational bargaining. This is particularly disappointing since the current global crisis could have been a powerful stimulus for developing and expanding forms of transnational collective bargaining in restructuring management. Nevertheless, this was not the case. Actually it was quite the opposite, with a sort of inward trend towards a re-nationalization of the scope for social partners. This fact was critically underlined by a National responsible for European affairs of one of the three most representative Italian metalworkers union. *“The crisis offered a golden opportunity to work out within European*

venues international agreements that could have led to a broader collaboration in the management of the corporate restructurings that have taken place, but, alas, nothing whatsoever has happened. The crisis offered European trade unions, a test for the usefulness of EFAs. Yet the number of new agreements declined, and those already signed proved to be ineffectual.

In several cases, the influence of the TCAs on the local collective bargaining is not considered substantial, especially when exclusively focused on the respect of the international fundamental rights and standards, which are already fully guaranteed by the national labour law. This perception is particularly widespread in the cases concerning the unions of the home country, like in Germany and France, but not only. In the VW case study we can read: *“Ostensibly the Charters might appear to be of little value for German employees. Armed with a battery of co-determination rights both at plant and company levels (Works Constitution and Codetermination Acts) as well as having the IG Metall, certainly the world’s largest and arguably most powerful union at their disposal, Transnational Company Agreements could be conceived as a fundamental necessity only for the “rest”, i.e. non-German employees”*. For them, the real meaning of the TCAs signed in their national MNC mainly relies just in exporting some minimum standards to preserve the national standards through a non-regression clause. Their objective is in fact to contrast the risks of social dumping. *“To a certain extent, we are in competition with each other. The labour costs in Eastern Europe are lower, in India and China, too... But for this reason we [European and Global works councils] we are attempting to influence these processes [globalization]. (..). We said (German works councils), ‘okay, in response to the Volkswagen strategy, a strategy which is being implemented worldwide, we have to make sure that our colleagues are involved in such a process. Technically speaking, they (non-German employee representatives) require co-determination rights like we have in Germany. (German works council)”*

Some circumscribed criticism refers more or less explicitly to some fear of being somehow “colonised” by foreigner models. Emblematic, at such a regard, what was referred in an interview by a representative of the German unions at VW *“I can remember in the case of the Labour Relations Charter that a Polish delegate said “Could you not write down in the Charter that the German Works Constitution Act is applicable to Poland”*”.

Despite of such understandable concern, the acceptance of TCAs – when substantive and effective – is generally good, especially in the countries where, like in Bulgaria, local industrial relations are in average insufficiently developed.

We have also to notice some cases where TCAs seem to have positive effects also on the high-standard home countries. According to a trade unionist working at the British subsidiary of Santander, a TCA *“probably doesn't change anything that we do, but it's the opportunity to see how the company's operating on a global basis. Which we don't always get information on and so it's good to meet people from the different operating companies, and it's also good for us to share common areas of interest or concern with our other union colleagues in the different countries”*. The VW TCA on temporary agency work (TAW) was positively received in Germany, where its adoption represented an improvement, by limiting the widespread use of TAWs. The VW Charter on Labour Relations, which can be here seen as a true best practice, was well received in Britain (Bentley), Italy (Lamborghini), Spain (Seat) and even in Germany. As we can read in the following case study, TCAs are viewed as being part and parcel of a general internationalization trade unionism and offering trade unions even out of Germany – in the UK, in Spain, in Italy – not only access to information pertaining to Volkswagen's corporate strategy but moreover to actually influence managerial decisions. In the words of a Spanish trade unionist: *“We are developing in practical terms a dynamic of industrial relations very similar to the co-determination, although without this label, based on two principles: firstly, give detailed information of all labour issues to the works council; and secondly, promoting the consensus and the agreements with the most representative trade unions”*. In the case of Lamborghini VW TCAs supported the development of more cooperative industrial relations which was used by unions also in a political way insofar as this new model of industrial relations is proposed as an alternative to the conflictual industrial relations characteristic of the Fiat Chrysler Automobiles Group.

A pre-requisite of a successful and effective implementation is always a good, bottom-up and timely involvement of all the actors. In fact, the ETUC and ETUFs statutes and guidelines on TCAs recommend strongly and explicitly to their affiliated such a kind of pathway in the negotiating procedures. An Italian unionist from national metalworking federation go even beyond and suggests also to use a referendum for the TCA local validation. *“It is not just a matter of democracy (which would be already a positive fact in itself), but a manner to*

transmit a different idea of what Europe can be today, in time of great dissatisfaction. The referendum in fact –she said – is a way to shed light on what is happening in Europe and, more significantly, to tell workers that also good things, and not only bad things, can come from up there with their own direct involvement and participation from the bottom. We can once in a while show that Europe is not something far away from them, or – worst- hostile to them”.

It's out of question that information, communication and training about the TCA are crucial. One of the reasons for the broad and positive support for VW agreements, as well as at SKF in Bulgaria, depends – beside their specific contents and objectives – on the time and resources invested by the unions, especially in the case of VW, on the dissemination and training throughout the Group.

This is not, unfortunately, always the case. The cases of limited and uneven implementation are all but uncommon. An evidence we get from other empirical surveys (Sydow et al., 2014) as well as now from ours. Polish workers at Santander were not informed by the EWC, and were initially excluded. Local management was “surprised” by the existence of these texts, too. Hence, in such situations one should not be surprised to discover that implementation did not take place. It seems that the Schneider Electric anticipation agreement of 2007 has not met ambitious expectations and its real impact is unclear. The information acquired from IndustriAll Europe shows dissatisfaction of local trade unions. The transfer of production to China took place in the Czech Republic without any replacement by new activities whereas Spanish trade unions have an impression that ‘the anticipation’ lies in dismissing qualified workers by the company and hiring new cheaper ones. What's more, interviewed Polish trade unionists don't have accurate knowledge about content of TCA as such. Interestingly, the second agreement signed by Schneider Electric (on Social Commitments in the framework of the take-over of Areva T&D) has been definitely better received by workers' representatives, who indicate that it gave them an increased feeling of security during the acquisition period.

In sum, TCAs establish a fundamental benchmark or reference point for discussions and lead to a greater synchronisation of labour issues as part of an overall formal and informal process of international labour co-ordination. In BNP, the TCA represented a trigger for European social dialogue at the Group level, which led the creation of national IR bodies and the initiation of negotiations at the national level. As we can read in one of the case studies about

the impact of TCAs in a National/local context (the UK), “(They) are a crystallization of the new systems of representation which now occur at various levels within Europe and increasingly in the UK. (...) The interviews with the UK team did not suggest TCAs were a constant reference point in many of the cases researched but formed part of a broader tapestry of developments that facilitated Europeanisation and some aspects of social dialogue. Nevertheless, this does not undermine their value but forces us to understand them alongside as part of a more general process”.

When substantive and strong, either in their contents and implementation practices, with a good level of bottom-up multi-organizational involvement, TCAs can be viewed as an important contribution in securing the future of some plants, plus the fact that support a new and more sustained dialogue with management based on an empowered position. In order to obtain a uniform effectiveness in implementing TCAs in different industrial relations systems, a solid institutional environment (norms, practices) is needed. As it emerged also from other similar surveys (Müller et al, 2013; Rüb et al., 2013), trade union membership in the company concerned is certainly a crucial factor. It’s also important the presence of a well-functioning and ambitious EWC, made up mainly of trade union members, with a functioning EWC select committee. The support of the ETUFs or GUFs is a guarantee to achieve a certain degree of coordination among the unions of the various countries in which the corporate has own subsidiaries and suppliers. Behind that, as prescribed by the ETUF guidelines and statutes, it’s necessary a democratic mandate and participation of all the actors involved.

Trying to recapitulate what emerged from our case studies survey we can say that they are very different one from another. Some of them are proper collective agreements, with substantive contents which go beyond a mere enumeration of the core labour standards. Their scope is often extended to the suppliers and tackle relevant issues – on the area of the working conditions, industrial relations and restructuring processes – with quite detailed clauses also for what concern implementation monitoring and dispute resolution. On the other hand, other texts seem definitively to be weak and mostly symbolic under a number of variables: choice of the form (joint declaration; codes), scope (European only and excluding the suppliers), contents (general principles or procedures and vague soft issues), implementation procedures (without appropriate monitoring practices). Adopting the strong-

weak continuum suggested by other similar studies, we can point out the VW TCAs as example of strong TCAs, while Santander TCAs as example of weak TCAs.

6. Guidelines for the negotiation of TCAs

Drawing on lessons learned we have formulated a list of recommendations for future negotiation. An effective and positive implementation, as it has been correctly posed, “commence already during the initiation of negotiations” (Sydow et al., 2014; 500).

Inspired by other similar documents and by the very fruitful discussion we had within our team and during our international workshops, we finally selected and listed a certain number of guidelines for more and better TCAs to be negotiated in the future. Some of them correspond very closely with the Resolution, that we share indeed in its key elements, which was adopted by the ETUC executive early in 2014. This important document, which followed other similar previous texts, was this time based on an influential study conducted by a team of high level labour lawyers (Sciarra et al., 2013) arguing for an Optional Legal Framework. In such a proposal, an auxiliary but flexible legal support, through the technical tool of a Council’s Decision (art. 288 TFUE), is considered the suitable legal act in order to guarantee Member States ensure effectiveness and enforceability of TCAs.

The objective of ETUC/ETUFs on labour side, which we basically share, is to induce the affiliated organizations to increase the cooperation and coordination of negotiations in multinational companies. The presence of a multitude of actors should be rationalized, while the ETUFs should be the leading actors and the only entitled to sign EFAs, whereas the scope of such agreements should be extended to the hard core of the working conditions. Transparency is very important and it should probably reside within adequate democratic procedures. If the mandate is clear and easily traceable, the entire process will result more transparent and accountable.

Through EURACTA 2, its discussions and outcomes, we’ve achieved the dissemination of a list of negotiation procedures and implementation guidelines. As planned into the project’s activities, such a dissemination has assumed the form of a toolkit, a 15 pages brochure, edited and distributed in seven different languages (English, Italian, French, German, Spanish, Polish and Bulgarian). The toolkit is comprehensive of three sections: a) an essential

overview of the key issues concerning TCA definitions and typologies; b) a summary of the evidence from our case studies, c) a list of guidelines, which are the following ones:

a) Negotiation and signatory parties of the TCA

TCAs shall be negotiated and signed by representative European trade union federations. EWCs and national union representatives should be fully involved in the negotiations. The preference given to European trade union federations is motivated by the fact that they can ensure a democratic mandate from national trade unions and only they represent recognized national trade unions. On the employers' side, we suggest that the legal representative in the MNC's headquarter should sign the TCA in the name of all subsidiaries.

b) Disclosure of the mandate

Disclosure of the mandate on the workers' side is an essential element required to legitimize the collective character of the agreement as well to ensure that all collective interests are represented.

However, rules to operate the mandate – majority voting, cross-industry representation, homogeneity of the rules across all sectors; vetoing powers – should be left to unions' self-regulation.

c) Scope of application of the TCA and changes in the composition of the MNC

The TCA should clearly specify the scope of its application and determine whether the agreement covers suppliers. We recommend that the TCA contain an appendix with a nominative list subsidiaries and countries covered by the TCA. The TCA should also specify the applicable procedure in the case of a subsidiary leaving the MNC or whenever a new one enters into it.

d) Non-regression clause

It is advisable to include a non-regression clause. TCAs cannot impose pejorative changes or provoke an erosion of labour standards and working conditions agreed upon at national level, be it sector or company level.

e) Internal dispute settlement

The TCA should specify the signatory parties' common responsibility in its implementation. It should also indicate the internal complaint mechanisms for workers covered by the text. In cases where they cannot reach an agreement, the parties may decide to access external mediation procedures.

f) Date and place of the signature

The TCA should specify the date and venue of signature.

g) Expiry date and rules to promote renewal

The TCA should specify whether it is signed for a definite or indefinite period of time. The agreement should determine procedures to challenge the agreement from one of the signatory parties.

h) Notification

The European Commission should be informed of any signed agreement in order to place it in the Commission's database on TCAs.

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THE CASE STUDIES

Volkswagen Transnational Company Agreements.

The meaning of international corporate regulation at work

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1. Introduction

Employing world-wide just under 600,000 employees, many of which work at its 105 production sites, Volkswagen has become a global player in the last thirty years. Founded in 1937, the last three decades has seen it grow from a company that predominantly produced cars in Germany, the purchase of Seat in 1986 and Skoda in 1991 signaling its intent to expand, to a company that now has a portfolio boasting 280 models.

Although it can claim to have set up one of the first European Works Councils, signing an agreement two years before the European Works Council Directive was passed in 1994, and further acknowledging its role as a global employer by signing an agreement to set up a Global Works council in 1999, these early years were marked by a steep learning curve. Even though, 1992 and 1999 represent the company's institutional intent to offer its expanding workforce an insight and potential influence over the running of the company, like most transnational industrial relations bodies the Volkswagen and European and Global works councils remained symbolic in character in the initial years. Such a period usually marked by animosity between employee delegates over the nature employee representation, but also over the question of investment. Certainly, in the case of Volkswagen such tendencies were not alleviated by Volkswagens takeover and expansion strategy, a strategy which has constantly brought new employee delegates within the fold of these two institutions.

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The new millennium, however, witnessed a significant change in the character of both institutions. The signing of various transitional joint declarations and agreements, starting with the 2002 Social Charter, signaled management and employee representatives' intent to expand the transnational level. Symbolic of this change was the signing of the Charters on Labour Relations and Temporary Agency Work in 2009 and 2012 respectively – two agreements that represent the main focus of this study chapter.

Although the Charters' content is of much significance, catching the imagination of both industrial relations practitioners and academics alike, the agreement on Labour Relations promoting co-determination throughout the Volkswagen group whilst the temporary agency contract is progressive move to limit the use of such a practice, the narrative surrounding the development and application such Charters is in particular very informative. As exemplified in the proceeding pages, the negotiation questions surrounding legitimacy and implementation, but equally pedagogical considerations too, provide potential lessons in negotiating transnational company agreements that might be informative for European and Global works councils generally. In the Volkswagen case the ultimate challenge concerned creating a joint agreement that respected the idiosyncrasies of 29 different countries spanning four continents. Even though, this study has a particular European focus, the four case studies involving England, Germany, Italy and Spain, they are highly informative and offer possible lessons beyond these four countries²⁰. By highlighting the national context, the Bentley, Volkswagen/Audi, Lamborghini and Seat cases exemplifies an important quality to be found in the Volkswagen Charters, that of flexibility.

2. Volkswagen: a global giant engaged in corporate social responsibility

A symbol of post-war German prosperity Volkswagen is the second largest producer of motor vehicles in the world, surpassed only by general motors. With a profit margin of just under 22 billion Euros in 2012, the Wolfsburg based multinational has announced its intention to overtake General Motors no later than 2018. In terms of automotive production it has two divisions, passenger cars and commercial vehicles/power engineering. The passenger

²⁰ The research in England, Germany, Italy and Spain was conducted by Miguel Lucio Martinez/ Stephen Mustchin (Manchester University), Michael Whittall (Technische Universität München), Volker Telljohann and Fernando Rocha Sánchez (Economía Social) respectively. In each case the researchers conducted interviews with national representatives involved in the development and implementation of the Charters.

car division accounts for 9 brands, Volkswagen, Audi, Seat, Skoda, Bentley, Bugatti, Lamborghini, Porsche and Ducati, whilst the commercial section includes Volkswagen Commercial Vehicles, Scania and MAN. Combined these two divisions produce around 37,000 vehicles daily.

With operations in 153 countries, of which it has 96 production sites in 26 countries, 18 in Europe alone (Telljohann, 2012: 80), Volkswagen is not only a standard-bearer for German industry, but equally a symbol German corporatism. Often referred to as Rheinisch capitalism, the corporatist aspect of the Volkswagen success story as much as its success to sell cars has caught the imagination of many commentators. Until 1960 a state owned company, having been handed-over by the British occupying powers to the State of Lower Saxon in 1949, organized labor has played a key role in the running of the company since the end of World War Two. Even in a country where employee interests are underlined by state legislation, specifically the Works Constitution, Collective Bargaining, and Co-determination Acts, the role of works councils and trade unions, in the latter case specifically the IG Metall, remains unique at Volkswagen. Strongly supported by the State of Lower Saxony, the State retaining a 20 per cent stake in the company after its privatization in 1960, employee representatives possess a strong ally on the supervisory board, an ally committed to emphasizing the need to be socially responsible both in-side and outside of Germany.

As already indicated Volkswagen's interest in social partnership is not restricted to Germany, globally the voice of European and non-European employees can be heard in the European and Global works councils respectively.

The European Works Council (EWC) at the Volkswagen Group was set up in 1990, that means four years before the EWC directive was adopted. Eight years later, in 1998, the World Works Council (WWC) was set up. In 2014 the EWC consisted of about 70 delegates while the WWC consisted of about 100 delegates. In 2013 12 EU Member States were represented in the EWC. The EWC as well as the WWC meet at least once a year. In addition to EWC and WWC further six specific committees were set up. They deal with specific problems in certain sectors or regional areas. In particular, the committees are dedicated to

- Mechanical engineering,
- Production of trucks,
- Financial services and distribution,

- America,
- Cina,
- Audi Group.

These committees should allow for a more focused work in the respective fields of activity.

3. The Emergence of TCAs at Volkswagen

The emergence of TCAs within the Volkswagen Group can be traced back to the signing of the declaration on Social Rights and Industrial Relationships in 2002. Although 5 such agreements have been signed in total (See table 1), the 2009 and 2012 Charters dealing with the Labour Relations and Temporary Agency Workers are viewed as particularly pioneering. Endorsed by the Volkswagen board, the European and Global Works Councils as well as transnational union federations (International Metalworkers Federation and IndustrialAll), respondents consider the 2009 and 2012 Charters as groundbreaking agreements in the area of global employee representation. Discussing the charters, in particular the Labour Relations Charter, it was highlighted how the increasing nature of Volkswagen's business strategy, specifically a managerial emphasis on measures to improve efficiency and productivity globally, necessitated a transnational employee response:

We said (German works councils), 'okay, in response to the Volkswagen strategy, a strategy which is being implemented worldwide, we have to make sure that our colleagues are involved in such a process. Technically speaking, they (non-German employee representatives) require co-determination rights like we have in Germany. (German works council 1)

A number of factors led to the central works council in Wolfsburg developing and promoting the 2009 and 2012 Charters. First and foremost there prevailed an awareness that 'sites are compared' (German works council 2). In particular, that the high labour costs place German employees at a disadvantage. Hence, irrespective of the good relations between the European and World works council delegates, a degree of competition cannot be ignored:

To a certain extent, we are in competition with each other. The labour costs in Eastern Europe are lower, in India and China, too... But for this reason we [European and Global works councils] we are attempting to influence these processes [globalization]. (German works council 1)

Table 1: Volkswagen transnational declarations and agreements

Charter	Year	Signatory	Aims
Social Charter	2002	Volkswagen AG Group, Group Global Works Council, International Metalworkers Federation	Application of ILO conventions on social rights, i.e. freedom of association, minimum wage, limits to working time, no child labor. Application also in supply companies.
Health & safety	2004	Volkswagen AG Group, Group Global Works Council, International Metalworkers Federation	Preventing health risks
Sustainability & supplier relations	2006		expectations regarding the way business partners act in their corporate activities
Labour relations	2009	Volkswagen AG Group, Group Global Works Council, European Works Council, International Metalworkers Federation	A commitment to putting in place employee co-determining structures.
Review of social charter	2012		More specific regulation with regard to 'compensation'
Temporary agency work	2012	Volkswagen AG Group, Group Global Works Council, European Works Council, IndustriAll Global Union.	Commitment to offering salaried and temporary agency workers the same rights.

Therefore, one could argue that the emergence of TCAs, in particular the fact that German works councils' took the lead, had as much to do with the protection of jobs in Germany as it did the promotion of transnational employee solidarity. However, as respondents exemplify below, other countries welcomed these developments, discerning for quite different reasons that TCAs could advance their cause, too. In the case of the UK, for example, TCAs are

viewed as important but are seen very much as being part and parcel of 1) a general internationalization trade unionism and 2) offering trade unions in Bentley not only access to information pertaining to Volkswagen's corporate strategy but moreover to actually influence managerial decisions. In sum, these resources were viewed as an important contribution, but not one that was constantly referenced by local trade unionists; to securing the future of the Crewe plant, plus the fact that it supported a new and more sustained dialogue with management based on an empowered position. In the case of Spain, like their British colleagues Spanish employee representatives strongly emphasized the importance of internationalizing trade union relations, TCA agreements seen as instruments for promoting solidarity as a means of preventing downward competition within the group:

We value that the World Committee has the principle of international solidarity: not to transfer production by negotiation, in other words: the production of a plant will be not relocated to another plant with lower costs. (Spanish's work council)

The fact that TCA agenda was initiated by German works councils does not appear to have undermined a global commitment towards supporting TCAs, though. A number of factors prevailed which saw non-German European and Global works council delegates endorse such German initiatives. Firstly, there was a general acknowledgment that a strategy designed to raise labour standards had to be initiated and coordinated by German employee representatives. The following British respondent takes up this very point:

This German leadership brings its challenges but also its opportunities according to the UK union. 'So our first meeting was in Paris, and that's why it was there, and during the first meeting one of the German office staff came up to me and tapped me on the shoulder and went ... have you got your report? What report? They'd stitched me up. I was sitting there, I had to write a report in pencil quick. Thanks a lot for that. That's how it was. Going forward, the Germans would be on the phone at the meeting room because they knew what we were going to be talking about. There is that as well. But I think on the whole for us it's been a fantastic branch of our...it's extended our influence. Absolutely definitely. Because that's

how the Germans work. But as it's gone on, I think it's the German culture really, the longer I've been on it the more kudos you get.' (UNITE EWC Members)

Secondly, not only were German employee representatives in possession of the mandatory resources (personnel) required to draw up such agreements, but equally they had the necessary access to the Volkswagen board required to set negotiations in motion. This was something understood by various trade unionists outside Germany.

Such advantages, though, can also prove problematical, a double edged sword so to say. And a fact that did not go unnoticed in Germany and therefore something they were keen to address. The challenge here involves the fine line that needs to be trod between taking the lead but at the same time ensuring the international character of any eventual TCA, i.e. guarding against German domination of employment relations processes. Existing EWC research confirms that the domination of the “host country”, in this case Wolfsburg, poses a threat to transnational employee solidarity. Interviews with German works councils indicated an awareness, an awareness gleaned out of many years of activity in the European and Global works councils, of this dilemma. Hence, they therefore set about adhering to a strategy that would neutralize any impression that the TCAs were a German appendage to be transferred to non-German industrial relations systems.

As pointed out earlier the pivotal position of the German unions was not such a major challenge or area of concern for the UNITE branch in the Crewe factory. In many respects, the question was never really there as to the strength of the German trade unionists partly because of the nature of production systems and the product produced in Bentley which was of a high quality and which brought trade unions with a tradition of working in a more strategic manner (although whether British management in the past did was another matter). The German dimension was seen as a vital part of the learning process for UK trade unionists in VW although there were clear indications that in the case of the UK getting so close to management as in Germany was not advisable. From a Spanish perspective any problems, specifically addressing mistrust between employee representatives scattered around the world, was kept in-check through the dynamic of participation within at the European and Global committees:

[T]his dialogue and mutual trust encourages participation of unions of the affiliated centers, and favors the improvement of the texts agreed in the European and World committee"(Spanish representative at the EWC)

The involvement strategy involved developing discussion papers that were presented to the European and World Works councils:

We said we (German joint works council) would develop a proposal. We took this to our internal committees where it was then discussed. I can remember in the case of the Labour Relations Charter that a Polish delegate said "Could you not write down in the Charter that the German Works Constitution Act is applicable to Poland".

During discussions, for example, surrounding the Temporary Agency Charter, there occurred debates around the application of the term "time". In the original draft the notion of *Zeitarbeit* was applied, a term widely used in Germany to refer to temporary agency workers. However, this led to confusion as the application of time at some sites does not apply to temporary agency workers, but rather employees directly employed by Volkswagen on a temporary contract. Such deliberations over such questions of definition, however, helped contribute towards German and non-German sites identifying with the Charters. For example, the international agreements were used by trade unionists in the UK to counter the use of temporary agencies and subcontractors threatening to undermine worker standards:

'We've used that here. And I don't mean just parts suppliers, I mean agency labour and things like that. For instance, [one supplier] don't recognize trade unions in the UK. I don't know if that's international, but in the UK they're anti-union, if we can say that. I've used our social charter, because we said if you're working with a company like Adecco I want you, Bentley Motors, to put pressure on them to say you will let your members speak to the union. The company have agreed that our shop stewards can represent our people, who they work with anyway sometimes because they work on the track next to them, and if it's outside of our works time they can go and represent people, and Adecco let them be accompanied by... So

that's come as a direct consequence of the social charter. We've used that. Said to the company, look, you can't just have it all your own way.' (UNITE EWC REP)

Another key aspect designed to highlight the international character of the TCAs concerns the involvement of the international union Federations such as IndustriAll and the International Metalworkers Federation. Their presence, the fact that they functioned as co-signatories, not only helped legitimize such agreements but also added an important degree of kudos to TCAs.

A final aspect, possibly the most important feature of the Volkswagen strategy, entails the question of form. This involves the fact that the TCAs were designed in such a way so as to take into consideration specific national and site contexts. On reading the Charters their subsidiarity character is quite evident. The Charter on Labour Relations (2009: 4), for example, states 'employee representatives and management at the local level shall conclude "site specific" participation agreements.' As the following respondent notes, this means the TCAs set the framework, or rather specific minimum standards which allow much room for manoeuvre and possible interpretation:

I spoke with the MAN colleagues from Diesel Turbo. I know the agreement (Temporary Agency) which they have just negotiated with management. Their agreement differs from ours a little bit. They asked us whether we were OK with this and we said "We are totally OK with it because your business is different to ours"... We try to adapt to the demands of the business and the models in question. (German works council 2)

This important aspect has not gone unnoticed outside of Germany. Flexibility is perceived as necessary by both employers and employee representatives at the Spanish Navarra plant, particularly with regard to the implementation of the Charter of Labour Relations. As the following Spanish respondent notes:

The Chart of Labour Relations has been not fully implemented yet, it is too much ambitious, even more: it has been done and written in a German way; they have a level of co-

determination that it is impossible to achieve here for the time being”” (Spanish’s work council)

Concerning the agreements themselves, respondents suggest a certain logic exists in their timing, too. The implication here is that TCAs are generally of little relevance to employees not in possession of the necessary institutional framework to implement them. As a consequence the Charter of Labour Relations predated the Charter of Temporary Work by three years. The Preamble to Charter on Labour Relation’s clearly indicates that it is designed to encourage workplace democracy:

With this Charter, the parties thereto establish the in-house participation rights of democratically elected employee representatives for the countries and regions represented on the European Group Works Council and the Group Global Works Council. Thus, this Charter constitutes a supplementation to existing agreements and declarations. It additionally constitutes a further contribution to previously documented self-imposed commitments by the participating parties based on the concept of social responsibility. (Volkswagen Charter of Labour Relations, 2009)

Though the Charter on Labour Relations respects existing national industrial relations arrangements, an example of the Charters’ flexibility referred to above, it is designed to 1) put in place a system of industrial relations where this does not exist and 2) compliment current arrangements. For example, in countries where a single channel of representation exists, usually in the form of a trade union, the Charter offers actors the option of a works council. In cases where such an option is utilized the Charter provides employee representatives with participation rights in 8 key areas, on HR and social regulations, work organization, remuneration systems, information and communication, vocational and advanced training, occupational safety and healthcare, process controlling and social and ecological sustainability.

As will be outlined in greater detail below the value of the Charters in the UK was very much linked to the process of international networking and participation. They did not in themselves become core or constant reference points apart for some cases and incidents

where they were referred to. They were primarily meant to be a part of a process which facilitated a greater circulation of information between trade unionists across borders. They were part of the ‘business’ of working across borders with other colleagues in the labour movement.

In case of Spain, the *site-specific participation agreement* has still to be formalized, although the company is hopeful it will be signed by the end of the year²¹. Nevertheless, the principles of the Charter aimed at strengthening the culture of participation and performance, and many of its specific provisions related to labour rights, education, health and safety and so on, have steadily been implemented through collective agreements in recent years, at least with regard to the development of information and consultation rights.

In possession of an industrial relations system employees now have the means of implementing the more recent charter, the Charter on Temporary Work. In essence the 2012 Charter has three specific aims. Firstly, to put a cap on the number of temporary agency workers employed - the so-called 5% quota. Secondly, to harmonize employment conditions between temporary and non-temporary workers, equal pay. Finally, the Charter not only limits the length of time a temporary worker can be employed but offers agency workers the possible option of a permanent contract for within the Volkswagen Group once this period has been surpassed. Once again the Charter has the character of a framework agreement, setting specific standards but allowing actors’ room to customize the Charter in such a way as to take into consideration the specific needs of their locality –again the issue of flexibility. For example, as indicated in the following section of the Charter, the 5% quota represents a mere “benchmark” that employee representative and management can agree to increase or decrease:

As a benchmark for this, temporary external personnel make up 5% of the workforce per plant. Company and employee representation can amicably agree on a different portion at each plant. Should the figure exceed 5% per plant the company and workers representatives pledge to begin discussion in the context of the consultation mechanism, which is defined in the Charter on Labour Relations, whether a reduction in the level of temporary external

²¹ Source: interview with a representative of the Labour Relations Department of the company.

employees is necessary and to bring about an amicable solution. (Volkswagen Charter on Temporary work, 2012: 2)

Such flexibility can also be observed in connection to the length of time an individual can be employed as a temporary agency worker. Although the agreement stipulates that the period should not exceed 36 months, a timeframe set down in the agreement signed for Wolfsburg, it does not exclude local agreements setting a lower cut-off point. The agreement states:

As long as national laws and contractual standards permit it, company and employee representation at every site can amicably agree on a deviating minimum assignment length and agreement duration.

In sum, Volkswagen employee representatives have collectively acknowledged the importance of developing TCAs as a means of influencing the company's business strategy at a transnational level. Such an acknowledgment also involves an awareness that the development of such TCAs has to take into consideration two key interrelated factors: the question of ownership and national/setting. In terms of the ownership question, TCAs have to be a construct developed by all affected parties, i.e. countries and product models. Next, TCAs have to account for idiosyncratic factors specific to particular sites, i.e. flexibility.

Whether the TCAs were fully adhered to in terms of the specific figures and numbers agreed is a matter for debate. Certainly, in Germany this does not appear to have been a major problem. As noted above, however, the TCAs have not been fully implemented at the Navarra plant. Whilst in the UK it did allow a more open discussion so that should management not always adhere with the specifics of such agreements and the numerical reference points on the proportion of workers from temporary agencies it would nevertheless be possible to sustain a more transparent argument and engagement – and allow targets to be set. Whether there was deviation from agreed percentages or references is not so much the issue: the extent of those deviations are the important aspects. In addition, having a reference point around which transparent negotiations can take place is importance of such agreements as they create a clearer space for negotiations to occur and comparisons to be made.

4. The negotiation of transnational agreements

As indicated above the question of access to the management board ensured the employee representative structures in Wolfsburg, specifically the well-resourced joint and company works councils, bodies underpinned by strong co-determination rights, played a leading role in negotiations of the existing three TCAs. A number of important factors need to be considered here. These include, the close working relationship with management, the fact that German employee representatives are conscious of which channels need to be taken when approaching management, i.e. knowledge of in-house procedures. Furthermore, in possession of the necessary personnel, individuals well versed in the particular issue under scrutiny, employee representatives are aware of the need to be proactive as opposed to reactive in negotiations with management. As the following respondent suggests, such a method is designed to improve the quality TCAs:

We have learnt that it is always better to approach management with a first draft - a draft in which high social standards are embedded. This is a good basis for negotiations. (German works council 1)

Although at first sight German employee representatives appear to represent what Kotthoff (2006) terms the Diaspora's advocate, i.e. local sites dependence on the host country's employee representatives, transnational structures (European and Global works councils) proved important platforms to ensure the inclusion of employee representatives outside of Germany. The UK dimension confirmed this as there appeared to be a sense of sensitivity within the German context in terms of bringing others on board. There was no sense of being marginalized and pushed to one side - quite the contrary. On their part UK unionists made a systematic effort to remain informed of developments and to ensure that they were kept in the loop by the drivers of the agreement.

Such an approach appears imperative when in negotiations with management as it highlights that the employee negotiators have the backing of the whole concern. Discussing EWC meetings a respondent noted:

The employee representatives have learnt that they can have influence. On the last day of the EWC meeting the whole board is present... The employee representatives have the opportunity to raise problems. (German works council 2)

As indicated earlier, however, developing a joint position amongst the employee side requires a degree of internal discussion and negotiation. Ultimately, this involves managing diversity amongst the employee side, a diversity embedded in the differing industrial relations practices of European and Global works council delegates. This challenge became most obvious during discussions amongst the employee side surrounding the Charter for Labour Relations. Non-German delegates raised concerns that the Charter was ultimately an attempt to export the dual system of German industrial relations throughout the concern. Moreover, that the promotion of site level representation in the form a work council structure could ultimately undermine the power trade unions' within their country:

We are always hearing „You and your charters, you just want to transfer the German way of doing things“ ... And then the IG Metall colleagues play an important role as they say „here in Germany we are a very strong union even though we have the dual system“.

Once again we can also observe the important role and presence of trade union officers in the negotiation process, specifically officers from the IG Metall and International Metalworkers' Federation. Their role, in particular the fact that International Metalworkers' Federation was a co-signatory of the agreement, went some way to mitigating fears that works councils are nothing more than a managerial tool to fight trade unions. As the following respondent outlines, the shadowing of the Charters on the part trade unions can be essential in addressing the problem of diversity amongst employee representatives:

Therefore, as we were in Italy a few years ago, the time we held the first workshops, we took an Italian colleague with us, an IG Metall shop steward. He said with his IG Metall hat on, „hey, as a trade unionist we have 2000 shop stewards in Wolfsburg“.

In addition, German respondents noted that they were in constant contact with the IG Metall headquarters in Frankfurt. Such contact served to promote the Charters but also represent a means of accessing the union's expertise in the areas of employment relations and temporary agency work:

We have exchanged ideas with the IG Metall. We have sent out proposals to Frankfurt... to the legal department in Frankfurt. We have asked whether anything similar in the world exists, because we would like to learn from others. But concerning the Charter for Labour Relations and the Charter for Temporary Work a worldwide agreement does not exist. We do ask such questions.

In sum, German employee representatives, because of their superior resources and access to the board were predestined to lead the negotiations with management concerning the Charters. Nevertheless, experience garnered from their years of European works council work highlighted to the German joint works council the delicate nature of such a process, that of including non-German employee representatives within the development of TCAs. A considerable amount of effort would appear to have been invested in the pedagogical factors which could positively influence the negotiation process and ultimately ensure a common position prevailed on the employees' side. Here, too, the presence and involvement of trade unions proves essential in alleviating the fears of non-German employee representatives as well as ensuring such charters possess an international character. In other countries similar pedagogical concerns prevailed, too. In the UK context, for example, there was much discussion of developing a learning strategy through the trade unionists entrusted with union and worker learning that would involve speakers and sessions on Europeanisation. There was much discussion about bringing European trade unionists and EWC strategists into the British plant. The implementation of agreements is seen to rest on increasing awareness and not becoming overtly concerned with the way the agreement was established itself. British interviews did not reveal any residual tensions but a desire to build on what had been agreed irrespective of the motives and processes at the early stages. Hence we can see the manner in which the learning process of trade unions as organization can indeed create greater sensitivity and realism about how agreements are forged and led.

5. National Cases

Germany - Volkswagen

Discussing the history and current role of Volkswagen as an employee in Germany has to begin with the country's darkest hour, the rise of National Socialism in the 1930s. In short, Volkswagen and its close association with the city Wolfsburg, until today the home of Volkswagen, owes its very existence to National Socialism. The automobile producer was initially founded to achieve the National Socialist vision of a car for the people, Volks (people) – Wagen (car). However, the outbreak of war and the need to produce military vehicles meant that the production of a mass car was somewhat delayed. Only in the late 1940s, and ironically at the behest of the British military, was the dream of a mass produced peoples' car realized. It is here that the Beetle became synonymous with Volkswagen's rise to prominence. Within ten years the Wolfsburg plant went from producing a modest 2000 cars in 1945, a car which was considered not to meet the necessary technical standards according to British engineers, to 1 million Beetles by 1955.

Although Wolfsburg remains the heart and soul of Volkswagen in Germany, until today employing over 53,000 employees, it possess another 26 production sites across Germany, these employing just under 166,000 employees. The Volkswagen brand alone has 5 production sites outside of Wolfsburg, these include Hannover, Kassel, Braunschweig, Salzgitter and Emden. Together these 5 sites have a combined workforce of something in the region 44,000. In recent years the Volkswagen mosaic in Germany has been altered quite radically. This began with the integration of the Porsche Group into Volkswagen in 2009, a process that took place three years of often bitter rivalry between Volkswagen and Porsche. Expansion within Germany also involved the takeover of MAN in 2011. Together with Audi these developments not only resulted in a consolidation of vehicle production in Germany, but not to be underestimated the strengthening of employee representation. In 2012, the joint and concern works council responded to the demands of the new structure by appointing general secretaries to function as interfaces between Wolfsburg and its German subsidiaries. As always the IG Metall has closely shadowed and supported these developments, the union's former general secretary – Bernd Hüber remains vice chair of the supervisory board,

whilst Frank Patta moved from the IG Metall to become general secretary of the European and Global Works Councils in 2012. Until this day Volkswagen remains an important powerbase for the IG Metall.

The implementation process

In Germany, the institutional landscape that prevails, in particular the existence of joint and company works councils; mean that these two institutions play a key function in the implementation and monitoring of the Charters. As the respondent below outlines, once the Charters were signed these two bodies had the task of considering what aspects of the Charters would be of benefit to their particular situation:

So, once the Charter or Charters were signed discussions took place, like in our international committees, in the joint and company works councils. At such meetings observations and problems were raised. And here sit the main VW and Audi production sites.

These meetings were used as a platform for developing implementation papers relating to the Charters – guidelines. This involved studying the Charters and discerning how specific points needed to be regulated. The following extract offers an insight into the character and aims of such implementation papers:

For example, let us take the right to information about how many temporary agency workers are currently employed and so on. Here we have clearly written down how this this should work. In our case (Wolfsburg) this occurs via our works council. Namely, how can we ensure the right to information takes place? (German works council 1)

It is important to recognize here, though, that as in the case of the Charters such ‘implementation papers’ are marked by a high degree of flexibility. They possess a framework character whereby representatives can pick and choose facets from the charters and policy papers which meet the specific needs of their situation. In addition, considerable effort was committed to encouraging dialogue with representatives at the local level over the implementation of the Charters. One respondent indicated that any success was dependent on including local actors in discussions surrounding the implementation papers, specifically

flagging up the Charters' aims and why particular implementation measures were deemed necessary. Although such a process can be very time consuming it is considered an essential element required to successfully implement the Charters:

The fact that one (Wolfsburg and local sites) jointly enters into discussions, answers questions, also critical question and attempts to explain that these rules are part of a number of options that employee representatives can take advantage of, options that surpass what is legally allowed... [W]hen this is jointly achieved then there is a good chance to attain a high acceptance rate. You then experience at the local level how employee representatives are really keen to implement such Charters. (German works council 2)

The actual framework character of the Charters as well as discussions surrounding the process of implementation led to some differences between sites sitting on the company works council. This is most obvious in relation to the Charter on Temporary Work. For example, Audi negotiated with management on a number of issues which surpass the minimum standards set down in the Charter. As the following respondent notes, the Audi joint works council was able to persuade management to agree to a number of concessions relating to the quota, areas to be covered the agreement as well as the length of period a temporary agency worker can be employed.

Our agreement differs in a number of ways to that of VW [Wolfsburg]. We have a 2 per cent quota instead of the 5% in the charter. Plus, the agreement only applies to production workers. Next, it limits the number of months a temporary agency worker can be employed to 24 instead of the 36 set out in the Charter. (German Works council 3)

The quote is quite informative in that indicates how the flexibility built into the Charters, deemed necessary to take into the idiosyncrasies of national contexts, proved invaluable when implementing such agreements in Germany, too. Not only does it take into consideration that the company works council is made up various subsidiaries, Audi, Porsche and MAN, each faced by potentially different challenges, it also acknowledges the decentralized trait of German industrial relations, the fact that works councils at site level have strong rights to mold such charters.

The value of TCAs

Ostensibly the Charters might appear to be of little value for German employees. Armed with a battery of co-determination rights both at plant and company levels (Works Constitution and Codetermination Acts) as well as having the IG Metall, certainly the world's largest and arguably most powerful union at their disposal, Transnational Company Agreements could be conceived as a fundamental necessity only for the "rest", i.e. non-German employees. Of course, using such charters to construct a level playing field throughout Volkswagen PLC, exporting German labour standards to the rest of Europe and the rest of the world has a positive spin-off for workers in Germany. As noted above, such agreements are deemed essential in opposing social dumping.

However, a closer look at the charters uncovers their direct as opposed to their indirect value, namely that they are deemed as having a positive impact on employment conditions in Germany, too. Of the two Charters that we focus on here, the Charters for labour Relations and Temporary Work, the latter, would appear to be the agreement of most relevance for German employee representatives. Agency work and certainly its proliferation has dominated labour relations in the last decade, the IG Metall has fought vigorously for equal pay as well as putting a time-cap on temporary agency work. According to the IG Metall these represent two factors that should be legally regulated. Although only applicable to Volkswagen Plc, the Charter on Temporary Work represents a major breakthrough, addressing the very two issues the IG Metall has long deemed essential in ensuring the equitable use of such employment methods. For example, as a consequence of the time-cap placed on the use of temporary workers and the fact that the Charter is committed to employing such individuals on a permanent basis once this timeframe has been surpassed, around 5000 temporary agency workers benefited from these arrangements in 2013 alone.

In addition, an important quality of the Charter on Agency Work, a point taken up by the next respondent, concerns codetermination:

Generally we have the codetermination right in the case of individual employees and recruitment of temporary workers... Therefore when the quota is to be surpassed [above

5%]... they need to get our approval... Without our approval no temporary worker is coming in here [Volkswagen factory] (German works council 1)

Remarkably, even given the importance placed on regulating temporary agency work German respondents were eager to point out the importance of the Charter on Labour Relations for Germany. This is quite astonishing considering how German industrial relations is held in such high esteem, as well as the fact that Volkswagen is often considered to surpass the high-standards set down in German labour law. Although interviewees confirmed such assumptions, they were equally keen to highlight how labour relations within Volkswagen were far from ideal – conflict viewed as much a part of Volkswagen’s labor relations culture as social partnership is. Furthermore, it was noted, Volkswagen Germany consists of 100 enterprises, many of them small to medium size firms in which the codetermination culture is not as developed as in either Wolfsburg or Ingolstadt (Audi).

It is not the case that the Works Constitution is practiced in our 100 German enterprises as it is at Volkswagen or Audi... This is because we naturally have small enterprises where the works councils have a much more difficult time. (German works council 2)

It was mentioned, for example, that Skoda has a sales office employing around 350 people in Frankfurt. In accordance with the Works Constitution Act the number of employees in Frankfurt, 350, limited the number of fulltime works council officers to one. As the respondents point out a single fulltime officer is very unlikely to be able to properly represent the workforce’s interests. It is here that the Charter on Labour Relations can be used to flank national law, the Charter clearly indicating that the implementation and the continual application of the agreement on Labour Relations can only be achieved if the necessary personnel are made available.

Besides small to medium size enterprises the Charter on Labour Relations also benefitted members of the company works council which possess a strong codetermination culture. Audi, for example, was able to use the Charter to implement the plant level Symposium (*Standortsymposium*) structure long in place in Wolfsburg. As outline in the next extract such symposiums represent an annual meeting of top management, employee representatives and the workforce to discuss questions directly related to their plant:

We have the opportunity here to say “here we have a problem and we need urgently to find a solution”. We naturally inform our plant management in advance. We tell them that we will raise an issue. But we have the chance to really address problems - to discuss problems directly with the board and with our plant management. Of course, plant management has the chance to raise and directly push through issues here at the plant, too. (German works council 1)

Finally, from a German perspective the Charter on Labour Relations has a symbolic importance – one that should not be underestimated. Respondents were keen to bring the researcher’s attention to the fact that the Charter represents, irrespective of the legislation underpinning German industrial relations, management’s commitment to co-determination at Volkswagen. In a period when employer associations sporadically question the value, or rather the cost, of co-determination legislation, an agreement which reconfirms the company’s support of workers’ rights is seen as positive signal.

Italy - Lamborghini

Lamborghini is an Italian brand and manufacturer of luxury sports cars which is owned by the Volkswagen Group through its subsidiary Audi. The other Italian subsidiaries of the Audi Group are Ducati, Italdesign Giugiaro and the sales organization Volkswagen Group Italy. Lamborghini's production facility and headquarters are located in the province of Bologna in Italy. In 2013, Lamborghini's 1,029 employees produced 2,121 vehicles.

Ferruccio Lamborghini founded Automobili Ferruccio Lamborghini S.p.A. in 1963 to compete with established brands such as Ferrari. Lamborghini grew rapidly during its first decade, but sales plunged in the wake of the 1973 worldwide downturn and the oil crisis. The firm's ownership changed three times after 1973, including a bankruptcy in 1978. In 1998, Mycom Setdco and V'Power sold Lamborghini to the Volkswagen Group where it was placed under the control of the Audi Group.

New products and model lines were introduced to the brand's portfolio and brought to the market and saw an increased productivity for the brand Lamborghini. In the late 2000s, during the worldwide financial crisis and the subsequent economic crisis, Lamborghini's sales

saw a drop of nearly 50 %. In 2013, however, sales turned to the level of 2006. In the long run there is, however, a clear trend towards increased sales numbers. Between 1963 and 2002 the average sales numbers amounted to 250 cars per year. Between 2003 and 2011 the average sales numbers increased to 1,800 cars per year. Finally, in 2012 and 2013 around 2,100 cars per year were sold.

In 2013 the workforce was composed as follows:

Industrial area:	45.9 %
R&D:	24.9 %
Staff:	10.4 %
Quality:	8.2 %
Commercial operation:	7.7 %
Purchasing:	2.8 %

The unionisation rate is about 40 %. Trade unions are mainly represented among production workers. The leftwing Fiom-Cgil is the most representative union at Lamborghini. The christian trade union Fim-Cisl has only few members among the workforce. At the election to the RSU, the company-level body of interest representation, Fiom-Cgil obtained 96 % of the vote and 17 seats in the RSU while Fim-Cisl obtained 4 % of the vote and 1 seat in the RSU. There is a strong tradition of company-level collective bargaining and industrial relations have traditionally been of a cooperative nature. Even before the acquisition by Volkswagen industrial relations were known to be constructive.

In 2009 the RSU at Lamborghini, Volkswagen Group Italy and ItalSCANIA set up a coordination structure at national level. Italdesign Giugiaro joined the coordination body in 2010 and Ducati in 2012. This body meets three times a year and is aimed at coordinating interest representation strategies among the different subsidiaries.

The implementation process

In Italy four TCAs have had a major impact on company-level industrial relations at Lamborghini:

- the ‘Charter on Labour Relations within the Volkswagen Group’ signed in 2009 and

- the ‘Charter on Temporary Work for the Volkswagen Group’ signed in 2012;
- the ‘Declaration on Social Rights and Industrial Relationships at Volkswagen’ signed in 2002 and updated in 2012;
- the ‘Volkswagen Group requirements regarding sustainability in its relationships with business partners’ signed in 2006.

Due to the different nature of the TCAs also the implementation processes differed one from the other. The TCAs themselves include, in fact, different indications with regard to their application.

The ‘Charter on Labour Relations within the Volkswagen Group’ is a typical procedural agreement. It is probably the most important TCA signed at Volkswagen as it is aimed at setting the basic industrial relations standards across all its production sites. Among all the TCAs signed at Volkswagen it is the only real framework agreement as it envisages an implementation through company-level agreements that take into account the country-specific industrial relations context. The charter is, in fact, considered a binding framework within which to further develop existing labour relations. For this reason the Charter on Labour Relations is the TCA with the most precise indications regarding the implementation procedures. In particular, local actors are expected to implement the TCA by negotiating a so-called site-specific participation agreement. According to the Charter the negotiation procedure should include four steps:

- the assessment of the current situation;
- the selection of participation rights;
- the scheduling of implementation phases and training measures;
- the provision of information to the workforce.

In the case of the ‘Charter on Temporary Work for the Volkswagen Group’ that is aimed at providing uniform rules regarding the use of the temporary employment across all its production sites the agreement includes a modification clause that provides for the possibility to amicably adjust the agreement, when both sides wish to do so. The TCA also clearly states the country-specific trade union traditions and different legal and wage agreement regulations have to be taken into consideration and that the provisions of the Charter must be compatible with the local conditions.

The 'Declaration on Social Rights and Industrial Relationships at Volkswagen' was signed in order to underline that for Volkswagen the observance of internationally recognized human rights forms the basis of all business relations. With regard to the concrete implementation, the Declaration provides unions or elected employee representatives with the right to inform the workforce about the provisions of the TCA.

Inviting its business partners to take the declaration into account in their own respective corporate policy the Volkswagen Group also contributes to improving workers' conditions across the supply chain. Extending the application of the TCA to supply companies implies, however, an important challenge with regard to the strategies of implementation. If, on the one hand, the extension of the application of the TCA has to be considered an important step forward towards a more effective representation of workers' interests in supply companies, on the other hand, the TCA does not include any provision guaranteeing that employees in supply companies will be informed about the rights included in the declaration. This shortcoming implies that an effective implementation and application of the TCA in supply companies is probably not guaranteed. This problem has not even been solved by the Volkswagen Group requirements regarding sustainability in its relationships with business partners. It includes possible legal consequences for business partners in the case of violation of the requirements but it does not provide for procedures aimed at informing business partners' employees.

In the case of Lamborghini it can be observed that the concrete implementation of the respective TCAs corresponds to a certain extent to the different indications included in the single TCAs.

The Implementation of the Charter on Labour Relations

Starting from 2010, several locations belonging to the Volkswagen Group began to flesh out the Charter with declarations of intent and outline implementation arrangements agreed between management and employee representatives. In Italy, the sales organisation Volkswagen Group Italy headquartered in Verona and Lamborghini headquartered in Bologna were the first locations that started to implement the Charter on Labour Relations. That meant that metalworking trade union organisations as well as trade unions for commerce were involved in the implementation of the Charter.

At Lamborghini the process started with an in-depth analysis of the Charter. On the employee side company-level structures of interest representation as well as external trade union organisations were involved in this process of analysis. Coming from a more conflictual tradition of industrial relations an initial concern regarded the commitment to accept shared responsibility. More in general trade unions were concerned that the Labour Relations Charter might represent an attempt to implement the German codetermination model within the Italian context which is characterized by a one-tier system of interest representation and a strong role of external trade union organisations at company level. That means they were concerned about the possibility that trade unions might lose influence at company level in favour of a growing importance of company-level bodies of interest representation. In this context they also saw the risk the role of collective bargaining might be undermined for the benefit of codetermination practices.

However, at the end of the process of analysis and internal discussion trade unions and employee representatives decided to sign a first agreement with management on the intention to implement the Labour Relations Charter. In the agreement that was signed at Lamborghini on February 2, 2011, it was agreed to further improve the existing model of industrial relations. It was also agreed that the future development should be oriented at the principles laid down in the Charter. At the same time it was underlined that the new industrial relations would have to be compatible with the national collective agreement applied at Lamborghini and that collective bargaining represents the main device in company-level industrial relations. That means that the fostering of codetermination practices has to be achieved in the context of company-level collective agreements. In this way the agreement of February 2011 explicitly recognizes the country-specific trade union traditions.

After the signing of the agreement it was agreed to organise training measures for all employee representatives of the Volkswagen Group in Italy. During the training measures that took place at the beginning of 2011 German representatives of the Group's World Works Council explained in detail the contents and the spirit of the Labour Relations Charter.

In the case of Lamborghini it was decided to include an extension of participation rights in the company-level collective agreement for the period 2012-2014. In a first step trade unions and employee representatives discussed which participation rights should be asked for in the process of collective bargaining. In this case they agreed on a stepwise implementation of the

information, consultation and codetermination rights contained in the Charter. It was decided to extend participation rights in the fields of

- work organization and working methods,
- job classification and training,
- ergonomics and health and safety and
- result-related bonuses.

In these cases so-called bilateral technical commissions were introduced. There is a clear division of labour between the commissions and the company-level structures of interest representation, the RSU. The results and proposals of the bilateral commissions represent the basis for negotiation processes between management and the company-level structures of interest representation. It has also to be noted that the members of the commission have a right to training and to make use of external experts. The costs for the training measures and the external experts have to be borne by the company. These rights were introduced for the first time and they clearly go beyond the rights that usually in the context of Italian industrial relations are achieved. The company-level agreement was signed in July 2012.

At Lamborghini the interviewees confirmed that the Labour Relations Charter contributed to strengthening the position of employee representatives at local level. This was also due to the role of the employee representatives in the context of the bilateral technical commissions characterized by parity composition. In practice these commissions analyzed in depth specific problems and developed proposals for overcoming these problems. Having a look at the topics with regard to which the Labour Relations Charter provides for participation rights one can note that the bilateral technical commissions dealt with almost all of these topics. In particular, they dealt with

- human resources and social regulations,
- work organisation,
- remuneration systems,
- information and communication,
- vocational and advanced training,
- occupational safety and healthcare and
- social and ecological sustainability.

In order to be able to contribute to the solving of problems in the field of work organization or ergonomics employee representatives made use of training measures, external experts as well as expert workers. The involvement of the latter represented an innovative approach to combine forms of direct and representative participation.

The possibility to resort to the competencies of the workers had various advantages for the company-level representation bodies. The involvement of the workers has contributed to reducing the gap with regard to the competencies so that the company-level structures of interest representation are enabled to deal with new issues. At the same time a division of labour is fostered that contributes to the reduction of the workload of the structures of interest representation. Another advantage consists in the fact that through the involvement of the workers the structures of interest representation manage to improve their own legitimization vis-à-vis the workforce.

Another factor that contributed to the strengthening of the position of the employee representatives consisted in the important support they received from the German employee representatives. The support did not only regard the provision of training measures and expertise but also the active involvement in the resolution of local conflicts. One example was the problem of the RSU to obtain adequate equipment and facilities for its work as company-level body of interest representation.

Despite these problems, in the case of Lamborghini it has also become clear that when it comes to an increasing involvement in company-level change processes there is a growing need for capacities to learn and to develop transversal competences such as critical thinking, problem-solving, creativity, teamwork, intercultural and communication skills as well as innovation skills. However, the extension of participation rights requires not only higher skills levels, but also a new, trust-based relationship between all the company-level actors. The implementation of the Labour Relations Charter has certainly contributed to such a development. At the end of 2014 when the new company-level agreement will be negotiated it is planned to go still more in depth with regard to the implementation of information, consultation and codetermination rights provided for by the Labour Relations Charter.

There have been similar results at other Italian subsidiaries of the Volkswagen Group. With regard to the sales organisations it was the company-level collective agreement for the period 2011-2013 that contributed to implementing the Labour Relations Charter and to extending

the participation rights. In 2013 also at Italdesign Giugiaro a company-level agreement providing for the implementation of the Labour Relations Charter was signed.

The implementation of the Charter on Temporary Work

In 2012 Lamborghini signed a company-level agreement regulating the use of temporary agency workers. According to the deal, temporary agency workers can only be used under clearly defined conditions, such as the launch of a new model, and for the maximum period of 18 months. At the event of recruitment, the company is obliged to hire workers out of the pool of current or past temporary workers, and the selection is to take place on the basis of a clearly defined ranking order depending on qualification, seniority and professional development. In addition, pay and working conditions of temporary workers have to be equal to those of the firm's permanent employees.

Trade unions at Lamborghini have also been in charge of representing the company's temporary workers. This proved more efficient than temporary work agency-based employee interest representation given that the employee interest representation structures at Lamborghini are closer to the temporary workers and their daily problems. Furthermore, the temporary workers' rights and employment conditions were negotiated by Lamborghini's employee representatives; it was thus a logical choice to continue representing their interests. From the temporary workers' point of view, such approach is also advantageous given that worker representation at Lamborghini is much more influential and more assertive vis-à-vis the management than agency-based structures. At Lamborghini, there also exists a bilateral technical commission dealing with the implementation of the provisions in the field of temporary agency work. It monitors the application of the rules laid down in the company-level collective agreement and develops concrete solutions to overcome problems linked to the use of temporary workers. For instance, the body was instrumental in introducing specific training measures for temporary workers that were necessary to guarantee product quality standards. Thanks to local employee representatives' pressure, in the period from 2012 to 2014 it was also possible to transform 300 temporary jobs at Lamborghini in question into open-ended employee contracts.

Beyond the issue of temporary employment, the Italian metalworking union Fiom-Cgil used the 'Charter on Temporary Work' to improve pay and working conditions at a logistic

company providing services to Lamborghini and located on the premises of the latter. The strong position of at the 'core' enterprise made it easier to organize the logistic firm; the same trade union officer was subsequently put in charge of collective bargaining at Lamborghini and the logistics company. The union managed to secure the application of the metalworking sector collective agreements instead of the transport or commercial sector agreements that are usually applied to logistics companies. From the employees' point of view, this was an important success because the metalworking sector collective agreement is providing for higher standards in the field of pay and working conditions.

The implementation of the Declaration on Social Rights and Industrial Relationships and the Requirements Regarding Sustainability in its Relationships with Business Partners

Recently, workers representatives have also made use of TCAs signed by the Volkswagen Group in order to ensure decent working conditions at the examined logistics company, which tried to save costs by turning off the heating at the firm premises. The trade union at the logistics company appealed to the Lamborghini management, arguing that their employer's failure to guarantee decent working conditions represented a breach of the 'Declaration on Social Rights and Industrial Relationships at Volkswagen' and 'The Requirements Regarding Sustainability in its Relationships with Business Partners', which stipulated that Volkswagen's business partners have to assure certain standards in the field of social rights and working conditions. At the same time, the logistics company's trade union managed to gain the support of employee representatives at Lamborghini as well as the territorial trade union organization, who assisted it in organizing a protest against the unacceptable working conditions. All employee representatives of Lamborghini participated in the strike, demonstrating their solidarity with the logistic company workers and encouraging the latter to participate in the protest. The strike at the business partner had a negative impact on the production levels at Lamborghini, inducing the management of the latter to intervene and tackle the problems regarding the critical working conditions at the supplier firm. In the end, the conflict was successfully resolved, and the working conditions improved. Furthermore, the German-based central management of the logistics company decided to change the local management of its Italian subsidiary, which brought about a shift from conflict-oriented to more cooperative industrial relations at the plant.

Given the vicinity to Lamborghini, the metalworking union at the logistics company strove to ensure that their standards related to the employment of atypical workers similar to those negotiated at the former site. In regard to temporary agency work, for instance, a company-level agreement signed at the logistics company provides for equal treatment of temporary workers, sets out clear criteria concerning the share in overall employment and specified the maximum duration of their engagement. In addition, it states that the logistics company is not allowed to use any other form of atypical employment than temporary work. In 2014 the logistics company employed forty workers with open-ended employment contracts, twenty-six temporary agency workers and six workers with fixed-term contracts. This meant that the company exceeded the allowed share of temporary workers and thus it had to transform a part of the contracts into open-ended ones. As a result, the employment contracts of the six workers with fixed-term contracts and of two temporary agency workers were turned into open-ended employment contracts.

In line with TCAs signed by the Volkswagen Group, its business partners are encouraged to make sure that their own suppliers adhere to basic social and environmental standards. There are clear signs that trade unions have already started using this provision to push for better employment conditions at the level of second-tier suppliers. In 2014, for instance, the management of the examined logistics company tried to subcontract elements of the production process to cooperatives bound by the collective agreement guaranteeing a lower level of pay and working conditions than those applicable at the logistics company. The union opposed to the management strategy arguing that it would imply risks with regard to service quality; it also refused to accept that workers working at the same plant and doing exactly the same work were treated unequally. In this case it was again possible to convince the management of Lamborghini to intervene with the management of the logistics company. As the latter was keen on upholding high quality standards, the logistics company eventually refrained from subcontracting production to the cooperatives.

The added value of TCAs

The fact that four of the five TCAs signed with the Volkswagen Group were applied in the case of Lamborghini and that the Labour Relations Charter was implemented also at Italdesign Giugiaro and Volkswagen Group Italy suggests that there is a growing importance of TCAs for the development of industrial relations at company level.

The case of Lamborghini also shows that TCAs can represent an added value in specific fields of industrial relations. The significant impact of the Labour Relations Charter is not a surprising result as Italian industrial relations have always been characterized by the absence of institutionalized participation rights. Thus, it is comprehensible that the recently acquired participation rights go beyond the national standards in the field of information, consultation and codetermination.

Furthermore, it seems to be coherent that a company such as Lamborghini strives to improve the involvement of employees and their representatives. As Lamborghini produces top-quality cars the company depends on a high commitment of its employees. Cooperative industrial relations combined with advanced experiences of employee participation correspond, in fact, most closely to these requirements.

Another important theme in industrial relations regards the growing challenges in the field of precarious work. Here the Charter on Temporary Work provides for an important input with regard to the extension of rights of temporary workers. At the same time it represents an efficient tool against dumping practices.

Finally, TCAs were used to respond the effects of decomposition of sectors and companies through outsourcing and subcontracting. Here trade unions are faced with the fact that these processes have exerted downward pressure on wage levels and working conditions along the automotive value chain, and, as a consequence, they have also weakened employee interest representation. The innovative union approaches in the case of Lamborghini and its suppliers have sought to minimize social dumping risks related to outsourcing and to prevent the disintegration of industrial relations in the sector by combining local actions with transnational tools. The Declaration on Social Rights and Industrial Relationships and the Requirements Regarding Sustainability in its Relationships with Business Partners have played a particularly important role in this regard, insofar as they have ensured the application of core labour standards at supplier companies and promoted new forms of

employee cooperation reaching beyond company, sectoral and national boundaries. That means that TCAs which can be applied also along the supply chain can contribute to partially overcome the fragmentation of interest representation.

It is also worth mentioning that in the case of Lamborghini there has not only been the implementation and application of different TCAs in parallel but there have also been experiences of a combined application of different TCAs. This was the case in the field of temporary agency work. Apart from the application of the Charter on Temporary Work also the Labour Relations Charter was of importance as it allowed for the setting-up of a bilateral technical commission that deals with the implementation of the provisions in the field of temporary agency work. Furthermore, the Social Charter and the agreements on temporary work and sustainable supplier relations represent a basis for guaranteeing minimum rights also for employees of business partners. These examples show that due to the broad range of topics covered the TCAs provide the opportunity to develop an integrated system of rights and standards in the plants belonging to the Volkswagen Group.

The case also study suggests, that what matters is the active involvement of the various actors at the different levels. On the one hand, the signatories to the agreement play of course an important role, but, on the other hand, the effective implementation of the agreement also requires the commitment of the local management and employee representatives. In this context, it is also important to underline that the cooperation and coordination between different actors at different levels should not be limited to the phase of negotiation and the initial phase of implementation but should continue also in the following phase of application.

All in all, the TCAs contributed to strengthening the position of company-level bodies of interest representation and trade union organisations because the latter are entitled through the signature of central management to negotiate and deal with certain topics at local level. In the case of Lamborghini and also the other subsidiaries of the Volkswagen Group in Italy TCAs supported the development of more cooperative industrial relations. This model of constructive relationships between employers and employee-side actors is used by unions also in a political way insofar as this new model of industrial relations is proposed as an alternative to the conflictual industrial relations characteristic of the Fiat Chrysler Automobiles Group.

The United Kingdom - Bentley

The Bentley plant in Crewe has a long history in the space of British car manufacturing. Founded by Walter Owen Bentley it formed part of the early wave of high quality manufacturers in the United Kingdom. It was bought by Rolls Royce in 1931 and became a part of a core manufacturing tradition which was highly if not completely unionized and consisted of a range of highly skilled workers. Initially the production centre was in north London and was then moved by Rolls Royce to Derby with Crewe being the basis for Rolls Royce production. After various changes production of the Bentley settled in the north Midlands – in Crewe after the war when the plant was used to produce engines for war planes. The plant has a mythical status within the manufacturing traditions having been used for producing various high quality and strategic goods. In the 1970s and 1980s what was a firm which combined various aerospace divisions was steadily disaggregated and in 1998 Bentley was sold to VW. This shift in ownership of the UK manufacturing system in terms of Rolls Royce, the Mini Cooper Plant and then Bentley which saw a range of German manufacturing firms acquire key UK firms in the motoring sector meant that a new culture and strategic long term orientation emerged. This led to production increasing as new markets were exploited in the Middle East and China: in 2013 there were over 4000 employees worldwide and over 10,000 luxury vehicles produced. The trade union membership is well above 90% which is over four times the level for private sector manufacturing in the UK. Unite the union is the main union being an amalgam of different manufacturing unions and craft traditions. Since the 1980s we have seen the main manufacturing unions in the car manufacturing sector merge to form a more coordinated approach. The sector does not suffer from the sectionalist and segmented approach to labour representation which was based on skill hierarchies and complex internal labour markets. This has allowed for a greater degree of coordination in terms of labour voice to emerge within firms and in the sector. Unite has developed a more cohesive and policy facing approach to questions of manufacturing and employment in the UK having led a range of campaigns for investment and long term planning. This tends to fit to some extent some of the cultural changes in VW Bentley in terms of planning and operational strategies.

Implementation process

The TCA cannot be isolated from the general process of Europeanisation. The interviews in the UK were supportive of the agreements and charters but these figured within our detailed discussions as part of the generic development of greater integration in labour relations terms. In this respect TCAs are best understood in a more integrated manner. Other research conducted by the UK team in other similar TNCS found this to be the case generally. The increasing information and legitimacy gained from the EWCs by the UK trade unions within VW were an outcome of various factors that envelop TCAs.

The first is the way the structure of management and its changing nature brought a different more integrated approach:

When we were first taken over, I'll tell you what they do, Volkswagen, they took us over and the first casualty was a key director, who was actually a good guy... they put theirguy in straight away, and that was the only German appointment at that time for years. ... And now there's more. There was a bit of a flood. We've got a German HR Manager... We've got a German chief executive at the moment. ... We've got German engineering. We've got German finance. There's guys creeping in at lower levels. Not just board, I mean, lower levels He's a manufacturing expert.... Then we get Germans ... because they love it. In fact, this back room office, we use it on a Tuesday, it's used for German speakers to learn some English. Because we've got Germans at all levels. We've got office staff, we've got workers coming over for some experience, apprentices.' (UNITE EWC REP)

The changes were important in the process of integration but also in terms of the move away from the previous regime of management which was seen to be more hierarchical and conflictive yet also more inclusive in some ways:

'The nature of management. It's difficult because you would highlight some things and some things were good and some things were bad. The management structure, if you like, a long time ago was quite simple, it was probably the best person for the job, or invariably the manager always worked his way up from the shop floor, there was no degree-educated people or had been to university and things like that – although there was...a hierarchy of

poshness, aristocracy, whatever you like to call it – within the hierarchy of the management, but most managers worked their way up from the shop floor; and that had its appeal because everybody saw an opportunity. ‘ (UNITE Representative)

The latter comments indicate one of the downsides of the changes. However, it appears to be representative of overall developments in UK management career structures towards a professionalization of management. Yet the increasing changes in management were seen to bring a more systematic approach and a more strategic set of considerations. This is important for any discussion of the TCAs because they exist in a more formalized context which facilitates their integration.

I remember a pretty tricky period where obviously there was a change...I think the changes within management it would bring different management styles, doesn't it; whereas I think obviously that was in the past. Since Volkswagen have taken over we've sort of got this stability because they're very highly recognized [in their approach] ... with Europe and within the European works council, it's very good with collective bargaining; it's pro-union, if you like, isn't it, whereas before it was a case of, I'm not saying they were anti union but depending on which way the wind blew you had to be careful. I mean I remember tales where one of the old [union] convenors – obviously prior to Steve [our current one] – had to wait outside an office just to get an audience with the personnel director, and that's not very good, is it, really.

With regards to the specific aspects there has been a certain degree interaction with the negotiation processes of agreement from the UK perspective:

'We signed up to the agency charter last year. It was debated, developed through the World Works Council. We added some additions into it. We were asked for feedback on it, our various locations, and it came out we signed up to it. Volkswagen put quite a tight deadline on it. They built into the charter you must start discussions by then and an agreement by then. But Bentley Motors is still the only location in Europe that actually signed. We've got a

Bentley version of this thing, and we signed it. We're the first to do it, conclude. Because everybody else has got bogged down with the numbers.' (UNITE EWC REP)

The TCA helps frame agreements and developments locally whenever there is a key issue covered within its content. The ability to frame also depends on the ability to localize and follow up with local variations and agreements inspired from the European level. This may depend on the specific context but the interplay of the transnational and the local through an active and strategic union branch is important. Implementation on most aspects of the agreement have been relatively unproblematic given the nature of discussions in Bentley and the ability to link various levels of activity within an ongoing dialogue. It is also contingent on a highly strategic and organized branch within the union that can lead and has the ability lead and engage on a range of issues. The ability to contextualize the agreements and to manage a multi-layered *conversation* proved essential.

The value of TCAs

The value of TCAs has been outlined above in terms of how it frames the development of social dialogue as in the case of the UK but this must be seen alongside other factors: the nature of management and the nature of the union. However, TCAs are a crystallization of the new systems of representation which now occur at various levels within Europe and increasingly in the UK. Their value is not always immediate and obvious like the structures of the European Works Councils. The interviews with the UK team did not suggest they were a constant reference point in many of the cases researched but formed part of a broader tapestry of developments that facilitated Europeanisation and some aspects of social dialogue. Nevertheless, this does not undermine their value but forces us to understand them alongside as part of a more general process.

However, their value comes in terms of the experience of negotiation which may have certain national interests driving them but which nevertheless do require some form of cross national union dialogue. The value has been in that core issues and specific agreements have had to necessitate some type of interaction and demands from various host contexts. Hence, the experience of engagement forces a dialogue on worker rights and management practices.

How that then impacts depends on the local context but in the UK context it was positive due to the highly organized nature of the union branch.

The TCA and its institutional environment also creates a clear and transparent body of rules even when they may be challenged by management as it become clear things are being challenged. The question is not just the absolute extent of implementation but the manner in which it frames debates. Certain aspects become more open and enter the mainstream of dialogue at key times as in the case of agency workers. There are targets set which allow for discussions to evolve and not be hidden.

The TCA is part of that process of talking about Europe, corporate strategy and the broader context. Within the UK this is important, especially in VW where the workforce was very much part of a 'British affair' that seemed locked in the processes of discussions around industrial decline, the Americanization of a decaying management system, and a vision of organized labour as being 'historic'. The trade union movement is propelled into a new dynamic and this is not inevitable in terms of globalization but is due to a series of emergent discussions that parallel the entrance of VW. There are higher level reference points in discussions and also an increasing knowledge of car production and related organizational processes. What is more the UNITE branch were asked to participate in and visit the Tennessee plant of VW in the USA and assist in the campaign for trade union recognition. The trade unionists in the UK have a broad experience of dealing with anti-union campaigns and share with their counterparts in the USA a commitment to organizing campaigns. This shows how the international activity of trade unionism was able to move between building social dialogue through the use of agreements, structures and activism. It also shows how the TCA can act as a reference point for trade unionists in building social rights campaigns locally and internationally.

Furthermore, within this process it allows it allows for a new understanding of the corporation. Previous research by the UK team showed how in this case labour was able to use its position within the European Works Councils to gain knowledge assets which re-adjusted its relation with national management.

Exactly, I don't think so, I think you're right; because I mean when [our EWEC Rep] goes over to Europe, I mean at some of the conferences he goes over with our member of the

board ..., or sometimes he might got with the HR manager – I think it's generally the board – but there's nothing that comes from that side, there's no information, there's no links that come from there. Obviously they've got their links anyway, they have to work together and things like that; but I think there's nothing beats close links, when you can have a friendship and you get on with people, it's not just work related, is it, you can discuss things more privately and personally; whereas I would tend to say that it wouldn't happen on the other side. Because things don't get cascaded, we never have a briefing about what happens in Europe, we have briefings within the firm, we get briefed to death sometimes, I've got to say, the communication is sometimes overkill, and not the correct type of information; but nothing gets brought from Europe from the company, it's all from EWC Representative. (UNITE Representative)

Undoubtedly, the European dimension becomes a counterpoint and with this the value of these processes is very clear to see. Yet for this value to be enhanced it needs a further investment in trade union capacity and support. The value is contingent on how much time and investment the trade union gets locally. There were concerns with the way the the UK representatives were not always strategically integrated or supported locally as they were seen to be in Germany:

In Germany those people (trade union leaders in the plant) wouldn't be the lowest paid people on site, they'd be a ... Level 5 manager, wouldn't he, a Level 6 manager, or very high up in the structure as a convenor; because they don't – whether they're at fault for this – but the guys on the shop floor, they're elected, they're not necessarily on the shop floor ever again, they're up in the ivory towers... And that's the way they do things, and it's acceptable, they get a company car, they get this, they get that; they get a PA, for example. Whereas you look around here and [our union convenor] is [different] ...maybe we haven't moved on, when you look around us. (UNITE REP).

This indicated that there was a need to develop the resources of the host context and in the UK. This was an important feature an demand for the British trade unions who argued that their resources for representing the workforce did not always match up to those of their

German counterpart. There remained still an absence of local investment in the union on a scale with that perceived to be the case in Germany. However, the union in the UK plant made it clear that co-management was not an objective and that any expansion of resources for the union was to aid it as an independent voice within the company able to resolve issues and represent members.

Spain - Volkswagen Navarra

Volkswagen Navarra S.A (VW Navarra) is a production plant of the Volkswagen Group, located in Spain, and currently the main leading factory of the new model *Polo* better known as Polo "A05" (the 5th generation Polo). After being incorporated into the company at the end of 1993, the *Navarra* plant commenced operations on 1 January 1994. In December 1997, Volkswagen Navarra was transferred to SEAT SA Company, making SEAT its sole shareholder.

In addition to producing the Polo, 1,400 cars per day, the plant manufactures components, parts and accessories. Furthermore, since May 2003, VW Navarra produces interior parts and components for VW subsidiaries in China, South Africa, India and Argentina. The plant employs around 4,491 workers, of which 76% were direct employees and 24% indirect. Also, it is worth noting that 4,118 were permanent workers and 373 temporary contracts.

Employee representation at the workplace in Spain has a clear legal framework, provided in the main by the 1980 Workers Statute and the 1985 Law on Trade Union Freedom. The law provides for elected representatives of the whole workforce in all but the smallest companies. Thus, there are two types of unitary bodies of employee representation: employee delegates, elected in companies from 11 to 49 employees; and works councils, elected in companies with 50 or more employees. There are also separate union delegates in bigger companies. VW Navarra is a plant with a high degree of unionization, with a membership rate of around 80% and a participation in union elections of 90%. Legal employee representation at the VW Navarra plant has been historically characterized by the trade union pluralism. The legal unitary body of employee representation at the plant is the works council, which after the last election held in 2011 is currently composed of 29 members: 12 representatives of the UGT; 7 of CCOO; 5 from LAB; 4 from CGT; and 1 from CGC. ELA has no member in this legal body of employee representation. As for the transnational bodies of employee representation,

there are members of two trade unions –UGT and CCOO that sit on the Volkswagen Group’s European and Global Works Council.

Industrial relations in this plant have evolved through various stages along the years. Taking into consideration the last decade, the most relevant feature is the transition from a situation of continuous labour disputes and conflicts, towards a more stable situation since 2006. This coincided with a change in the heads of the management, the new management favouring social dialogue with the two most representative trade unions, the UGT and CCOO.

The implementation of the TCAs

Broadly speaking, the process of implementation of the VW transnational agreements at the Navarra plant is as follows: once the agreement is reached at the European or Global works council, the Spanish representatives on these two bodies inform to the works council. Then the agreement is ratified, usually only by the union “hegemonic bloc” of the UGT, CCOO and CGC). A move which is usually opposed by the LAB and CGT unions. This is followed by a process of negotiations between the Human Resources Department and the trade unions, in order to incorporate the provisions of the TCAs into the company-level collective agreements. Should the negotiations face difficulties there exists a specific committee for the settlement of the disputes, composed of the signatories of the agreements (excluding therefore the other trade unions).The last two last collective agreements (seventh and eighth) were signed only by UGT, CCOO and CGC unions.

Against this background, one of the most important TCAs reached within the Volkswagen group is the Charter on Labour Relations, signed on 2009. As noted above, this Charter establishes that “employee representatives and management at the local level shall conclude site-specific participation agreements”. In this regard, the 16th Additional Provision of the seventh collective company-level agreement (2010-2012) regulates that the signatory parties will develop the “implementation of the Charter on Labour relations of Volkswagen group at Volkswagen Navarra, SA”. The same commitment was included in the 12th Additional Provision of the eighth collective company-level agreement (2013-2017). This site-specific participation agreement has still to be still formalized at VW Navarra. However, respondents were hopeful that the agreement will be signed before the end of 2014.

Both employers and employees' representatives interviewed agree that this delay is rooted in the controversy about the implementation of the principle of the "right to co-determination", defined in the Charter as "the right of on-site employee representative to consent, control and initiative in connection with any shared active decision-making or responsibility. Prior consent must be solicited before any measure can be implemented". Nevertheless, in spite of the lack of an agreement, social partners suggest that the spirit of the Charter ("participation and performance") and much of its content thereof has been developed steadily in recent years through collective agreements, and characterize the current model of industrial relations at Volkswagen Navarra, at least with regard to the information and consultation rights as positive.

Thus, the seventh collective agreement (2010-2012) includes among its commitments a good part of the "subjects matter of regulation" that sets the Charter on Labour Relations within the Volkswagen Group, such as supply and services staff (chapters IV and V of the agreement), regulation of day (Articles 4 to 11), performance evaluation and compensation systems (chapters VI and VII), social benefits (chapter IX), learning and training (Articles 65 -67), occupational safety and health protection (chapter XI) and union rights (chapter X).

All these provisions are also included in the eighth collective company-level agreement (2013-2017). Likewise, it is worth noting that the 12th Additional Provision of this agreement established the commitment to develop various points through specific agreements (included, as above mentioned, the implementation of the site-specific participation agreement). Up to September 2014, the following agreements have been reached between the Management of the company and the trade unions: Voluntary reduction of working hours (January 2014); Exemption from night shift (February 2014); Improving the economic conditions of purchase of used cars by employees (April 2014); Professional accreditation (May 2014); Aggregation of reduced workdays (June 2014); and Voluntary individual redundancy scheme (August 2014).

The value of TCAs

According to the social partners interviewed, the Transnational Company Agreements reached at the VW group –in particular, the Charter on Labour Relations– have contributed to stimulate and consolidate the dynamic of industrial relations existing at the Navarra plant since the “turning point” in 2006. In sum the positive changes involved three main aspects. Firstly, the strengthening of the informal relations between the Human Resources Department and the employee representatives of the two trade unions with majority in the works council (UGT and CCOO). In practical terms this has meant a deepening of the information and consultation rights of the workers representatives, although only for those who are members of the above mentioned trade unions. As noted by a representative of the HR Department:

[P]ractically, we devote six hours a day to discuss with UGT and CCOO all matters concerning the company, in the short, medium and long run.

Also, it is worth noting that the 7th Additional provision of the collective agreement in force establishes that “once a year, the board of directors of the company will meet with the signatories of the agreement. The meeting will focus on the economic performance of the company, the situation of production and sales, production schedules and concerns affecting the workforce and employment”.

Secondly, this deepening of the information and consultation process has been translated to the collective bargaining level. The main outcomes have been two company-level collective agreements (seventh and eighth), which addressed the topics defined in the Charter on Labour relations. Also, as noted above noted, various specific agreements exist aimed at developing some particular issues.

The third issue involves a higher level of coordination with the European works council. Thus, according to the Spanish unionist:

Nowadays, there is a direct relationship through email and phone with the direction of the European Works Council (the person responsible for “Spanish speakers” factories. Even, in some hard negotiation of collective agreements agreement, the EWC was used to unblock the bargaining process.

There has been, however, some controversial aspects related to the implementation of the TCAs. Particularly, the delay in the signature of the site-specific participation agreement following the provision established in the Charter on Labour Relations. This involves controversy surrounding the principle of co-determination and the fact that this is not regulated by Spanish Labour Law. Management considers that the existing dynamic of industrial relations makes the need to reach a specific agreement on this matter superfluous. Thus, as respondent notes:

We are developing in practical terms a dynamic of industrial relations very similar to the co-determination, although without this label, based on two principles: firstly, give detailed information of all labour issues to the works council; and secondly, promoting the consensus and the agreements with the most representative trade unions. In this regard, we don't impose and will not impose unilateral decisions on working conditions, in spite that we are legally entitled to do. We are looking for the agreement with the legal employee representation, especially after the signature of the Charter on Labour Relation at the VW group. (Spanish T.U.)

As an example of this statement, it is noted the 12th Additional Provision in force with the eighth collective agreement, establishes that:

[T]he company shall not use the provisions of the law on wage lift, derogation of the working conditions established in the collective agreement, or modification of working conditions, without an agreement with most of the social representation.

As for the trade unions, it is worth noting certain initial precautions with regard to the issue of the co-determination. It is noted that the Charter of Labour relations is:

...done and written in a German way: they enjoy a very high level of co-determination, which it is not the custom in Spain. (Spanish T.U.)

It should be considered here that employers' culture in Spain exists which has traditionally been very reluctant to extend the workers' participation rights beyond the limits regulated by law. In particular, with regard to some issues such as work organization, considered a topic of exclusive competence of the employers. On the other hand, collective bargaining has usually focused on the classic labour topics, and has failed to take into account other issues more related to the management of the company (work organization, investments, innovation...).

This ultimately lead to a situation of misunderstanding and even refusal of some of the initiatives launched by the company, who even consider them as a way to legitimize the decisions taken by the Management. As a consequence:

...workers are very reluctant to accept this culture of co-determination, until they don't see the agreements we reach.

Against this background it is noted by most of the representative trade unions that in spite of the signature of a specific agreement, the best way to address this matter is developing the Charter of Labour Relations through collective bargaining; and then promoting the implementation of the principles of co-determination "little by little", in order to "change the culture of participation of the workers".

In sum, local Management and the most representative trade unions generally demonstrate a positive view of the Transnational Company Agreements reached at the VW Group. More specifically, it is noted that these TCAs –in particular, the Charter of Labour Relations– have contributed to encourage and consolidate the existing dynamic of participative industrial relations developed at the VW Navarra since 2006.

The main outcomes of this process have been the signature of various collective agreements, as well as the deepening of the culture of "performance and participation". Some of the provisions addressed in these agreements are remarkable, for instance: the commitment of not applying one of the most controversial provisions regulated by the 2012 legal reform of the labour law, aimed at encouraging the unilateral powers of the employers in the modification and derogation of agreed working conditions.

Nevertheless, it is also worth noting two blind spots. On the one hand, the difficulties in extending workers participation rights, from information and consultation towards the co-determination. This issue has prevented the signature of the site-specific agreement, up to September 2014, although the social partners estimate that there has been a great deal of improving with regard to the implementation of the Charter of Labour Relations through collective bargaining.

The other blind spot is that the dynamic that has taken place in the last years has been conducted by the two of the most representative trade unions. In this regard, a change in the correlation of the composition of the works council in future elections – for example, due to the worsening of the situation of crisis – could lead to a change towards a more conflictive model of industrial relations. This then raises question of about the sustainability of such TCAs as well as a participative culture. However VW in Spain has not supported the national reforms of the Conservative government and has not use any new legislation to undermine local traditions of labour and employment relations: yet the composition of representation within the VW local works council could be changed in future bringing new dynamics.

Conclusion: What is the value of TCAs and how are they used?

TCAs are an important feature of the new terrain of international employment relations within the Volkswagen Group. It is too early to judge what their impact will be but it is clear they raise some interesting questions about the shaping role they will play in relation to the development of labour and employment relations. Is it a matter of extending the strongest features of the German system of labour and employment relations in terms of co-management and strong joint regulation? Is this the test of the TCA? Well in the first instance such an assumption ignores the fact that something like co-determination is not shared by all trade unionists given the different national systems of labour and employment relations that exist. The Spanish and British trade unionists interviewed as part of this and other research were clear that for all the positive features of the TCA they were not keen on getting too close to management and were sometimes uncertain of not having a form of joint working and collaboration that allowed them to maintain a critical distance from the organization. This was clear in the materials and the interviews. That did not mean they did not want their influence and presence to be extended as such and that the management inform them as soon

as possible but whether this would be bound up in more complex systems is another matter. Hence we need to be in the first instance very cautious of judging TCAs in terms of an unrealistic criteria as whether the aspects of the strongest model of labour and employment relations within the system is transferred across it. This is clearly at this stage not an issue. So what do TCAs contribute?

In the first instance what we learn is that whilst the German trade union bureaucratic apparatus led and oversaw the process due to the strategic presence and substantive resources in relation to other national trade unions in the VW universe, this did not appear to create serious problems internally in the European Works Council and parallel structures. This may be due to the fact that the German unions are more committed to social dialogue and more committed to views of trade union influence that are largely shared by others in the VW labour and employment relations context. However it is clearly also due to the fact that many years now of working alongside and with other trade unions and national bodies means that the manner of negotiation even if led by one part of the labour movement has sensitized itself to the need for consensus generation. How this sustains itself is another matter yet we are seeing the TCA and negotiations around related agreements and developments becoming more systematic and linking into the maturing process of European Works Councils. In this respect the TCA represents the outcome of established hierarchical processes but also changes in the reflective capacity of those processes.

Whether TCAs then establish a fundamental benchmark or reference point for discussions and lead to greater synchronization of labour matters is another matter. The TCAs and related agreements have in this set substantive frameworks for core labour rights much of which the VW senior management do not seem to question at this stage (although the issue of VW Tennessee raises some problems for future reference in terms of the absence of clear trade union recognition). More importantly it does allow the discussion locally and nationally to share concrete reference points on questions such as the proportion of temporary workers that can be employed. Whether this is systematically adhered to is another matter but the manner in which labour relations is conducted changes. It creates a series of important dialogues that link together. The TCA in this respect has a synchronizing effect. What is more, at times of national conflict these agreements become important and referenced by the trade unions to ensure modifications in management behavior.

There is the issue that national trade union representatives viewed the TCAs in different ways in terms of its role: for the UK representatives it was very much one part of an overall formal and informal process of international labour co-ordination yet for the Spanish there seemed a more focused scrutiny partly due to the nature of its own agreement making process and the way VW had a longer presence within the operations locally. The Spanish and British approaches and referencing of TCAs therefor varied but this is to be expected given the different traditions of regulation in each context. However there was a growing awareness and use of the agreement and it framed discussions not least in relation to how VW should behave in other parts of the world. The TCA was evoked in discussions on the problems of unionizing in the US Tennessee plant as were various other protocols by national trade unionists from these contexts involved in assisting their American counterparts.

One suspects that resourcing of trade unions and worker representatives more generally may be a future issue as their international work on such issues accelerates further. The question of training is something which has emerged from the project as greater training on international union work and activities needs to be developed. The raising of awareness for their members by trade union branches and trade union national structures is also important as otherwise such agreements may not become the political and ethical focus point it is meant to be. The question of training management was also important in this respect as awareness of these principles need to be developed outwards in a broader set of actors. Having said this TCAs are a crystallizing of the process of internationalizing of labour relations and representation and to that extent require ongoing research.

The Thales agreements on anticipation and professional development: How to transform managerial prerogatives into a subject of social dialogue

Udo Rehfeldt²² and Salvo Leonardi²³

1. Introduction

The European framework agreements on professional development and annual activity discussions, signed by Thales in 2009 and 2010, are interesting from at least two points of view. They are two of the few examples of EFAs negotiated and signed not by a European works council, but by a European Trade Union Federation. It was interesting to analyse what were the motivations of the management and the union side to adopt this procedure and how it worked in practice. The second singularity of the Thales agreement was that it treated topics which normally belong to the management sphere: the professional development discussion and the annual activity discussion. More interesting still was that these negotiations took place on a management initiative motivated by the wish to Europeanize of HR management practices within the group. We will see to what degree the union side has succeeded to integrate these practices into a transparent collective frame and to obtain new individual rights for training as well as guarantees for long-term employment security in a context of fast technological and economic change²⁴.

2. Profile of the Thales group

2.1 – At European and international level

The Thales Group is a French electronics multinational. The headquarters are in Neuilly-sur-Seine, a suburb of Paris. The company's name has become the current one in December 2000,

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²⁴ The research was conducted in France by Udo Rehfeldt and in Italy by Salvo Leonardi. In each case the researchers conducted several interviews with national representatives involved in the development and implementation of the TCAs.

when it abandoned the name Thomson-CSF. The name Thales is derived from that of the Greek astronomer Thales but also refers to the initials of Thomson, Alcatel and Sextant, three companies which were at the origin of the present company. Today it has five divisions: aerospace, space, defence, security and ground transportation. Half of its total sales are military sales.

Thomson-CSF had originated from the Compagnie Française Thomson-Houston (CFTH), founded in 1893. It was established as such in 1968 when Thomson-Brandt (the new name for CFTH) merged its military electronics activities with the Compagnie Générale de Télégraphie Sans Fil (CSF). Like Thomson-Brandt, Thomson-CSF was nationalised by the French government in 1982. It was partly privatized in 1998, when it merged, on a basis of a cooperation agreement, with the military electronic division of the aviation company Dassault and created a common aerospace subsidiary, called Alcatel Space, together with Alcatel, Dassault and Aérospatiale. As a result of these operations, Dassault and Alcatel became shareholders of Thomson-CSF and the shares of the French State climbed down from 58 % to 40 %. Today the State is however still the main shareholder, with 27 % of the shares (voting rights: 37 %), followed by Dassault Aviation (25 %, voting rights: 29%). The rest of the shares are in free float, 2 % are in the hands of the employees. The government has still an important say on important decisions like the nomination of the CEO, but only in concertation with Dassault, on the basis of a shareholder agreement between them. Five of the 16 members of the board of directors are nominated by the government, four by Dassault Aviation. Two are elected employee representatives, both from the French CFDT union, and one (non-union) representative of the employee shareholders.

In 1989 Thomson acquired the military division of Philips and in the French company Sextant Avionique. After the acquisition of Racal Electronics, a British defence group, it became Thales in 2000. In 2002 it created a joint venture, called Armaris, together with the French ship building company DCN of which Thales bought 25 % in 2005 (raised to 35 % in 2011). After a new cooperation agreement, Thales acquired Alcatel's space activities: 67% of Alcatel Alenia Space, now called Thales Alenia Space, and 33% of Telespazio, as well as Alcatel's Rail Signalling Solutions division. This raised Alcatel's ownership of Thales to 22 %. Later, in 2009, Dassault Aviation bought Alcatel's stake in Thales.

At the end of 2013, Thales had 54.255 employees in Europe, of which 36.600 in France. The most numerous employees outside France can be found in the United Kingdom (6.796), in Germany (3.039), in Italy (2.746), and in the Netherlands (1.888). There are minor subsidiaries in Austria, Belgium, Denmark, Spain, Greece, Hungary, Latvia, Norway, Poland, Portugal, the Czech Republic, Rumania, Sweden and Switzerland. Outside Europe, Thales has important subsidiaries in Australia, the USA and South Korea.

Thales now offers technology solutions in the markets of air traffic management, with expertise in landing systems, navigation and surveillance; the defence sector, with expertise in military communications and electronic warfare; transport, with expertise in railway signalling; and safety, with expertise in the protection and surveillance of critical infrastructure. The Thales group aims at constant improvements of its procedures and internal control measures. Its strong commitment to innovation is fed by numerous co-operations with universities and research centres in Europe. Around 20 % of its activities are research and development. This strategic commitment to innovation and lifelong learning helps us to understand some of the reasons why the management of this group has signed a couple of transnational agreements on these issues.

The Thales group has edited a Code of Ethics which formulates high ethical standards and transparency in the relationships with customers, suppliers, shareholders, financial markets and employees, as well as civil society and the environment. Thales joined the United Nations Global Compact in 2003 and adopted its ten principles, based on the Universal Declaration of Human Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. As a result of its performance and progress in corporate social responsibility, Thales reached in 2012 the Global Compact level "Advanced", a level only reached by 386 of the 7.000 companies which have joined the Global Compact. It publishes annual reports on corporate responsibility and an annual Social Report with indicators drawn from the Global Reporting Initiative and negotiated with the social partners at national and European level.

2.2. Thales France

The Thales group in France has 29 subsidiaries under the umbrella of Thales SA. The most important ones are Thales Communication & Security (7.179 employees), Thales Avionics (4.604 employees), Thales Alenia Space France (4.532 employees), and Thales Systèmes Aeroportés (3.323 employees). There are 70 production sites. The main ones are Meudon-la-forêt/Vélizy, Gennevilliers, Élancourt (all in the Paris region) Toulouse, Bordeaux and Cannes.

More than 70 % of its employees are professional and managerial staff (“cadres” in the French terminology), namely engineers.

The employment figures of Thales France are highly dependent on the variation of military sales contracts. In 2009 and 2010 its balance sheet was showing a deficit for the first time since 2001, a consequence of budget restrictions all over Europe and particularly in France - which was the last European country to make severe cuts into its military budget. In 2011 and again in 2013 a reduction of employment occurred which was managed essentially through voluntary departures.

2.2 Thales Italy

Thales Italia is one hundred percent subsidiary of the Thales Group and covers three areas of the Group: security, defence and aerospace. There are three historical steps in the development of the Italian company. The first one was the merger in 2004 of pre-existing companies (Thales ATM, Thales Avionics, Thales Communications, Thales Components, Thales Optronique) into Thales Italia. The second was the acquisition by Thales, in April 2006, of the space activities of Alcatel and by that 67% of Alcatel Alenia Space (now Thales Alenia Space).²⁵ The third was the integration in 2009 of Thales e-Transactions and Thales Security Solutions & Services. With these integrations, Thales has strengthened its position in Italy in the field of security and transport. Thales Italia is now unified as a single legal entity with 2.746 employees.

The main activities of Thales activities are in the field of airspace which are run by Thales Alenia Space Italia (TASI), in which Finmeccanica has a minority participation of 33%.

²⁵ Thales acquired also 33 % of Telespazio, 67% of which are hold by Finmeccanica. As this is only a minority participation, it is not represented in the Thales EWC and is not concerned by the Thales EFAs.

TASI holds a central position in the area of satellite technologies, both the civil and the defence sector. It has 2.219 employees across six production sites. The four main ones are Rome, l'Aquila, Turin and Milan.

Like the whole Thales group, TASI is strongly committed to innovation and constant improvement of its internal resources. According to a survey published by a business newspaper, TASI would be the most attractive employer, with 72% of respondents' preferences. For Elisio Prette, president and CEO of TASI:

"this award recognizes the perseverance and attention that as a company we want to give our most important asset, i.e. the skills and the know-how of our human resources, which are the neuralgic centre of our company. (...) TASI is aware that its strength lies in enhancing its talents and the investment into innovation, having as leitmotiv the quality and content of the work, training and the retention of staff."

TASI, as other companies of the productive segment in which it operates, has been relatively spared by the crisis in recent years. Strongly linked to public procurement, companies such as TASI often played an anti-cyclical role. When the crisis began, around 2008, TASI had already received important public orders. This allowed it to cross the years immediately following the collapse of demand. On the other hand, it did not get new orders, because of the budgeted restrictions which did not spare the defence sector and infrastructure projects. From this, it follows that the most critical phase may open right now.

In 2014, because of the crisis, 350 TASI engineers have been risking redundancy payment. A strong mobilization was following. In July, after a negotiation, the enterprise signed an agreement revoking the use of the redundancy funds, at least until 2015, with the engagement of new investments.

3. Employee representation and industrial relations in the company at national and European level

3.1. France

With more than 30% of the votes for of the workplace elections at group level, CFDT is the main union, followed by the CGC (with more than 25%), the CGT (around 15%) and the CFTC (with just over 10%). During the workplace elections cycle 2009-2012, FO stayed under the legal threshold of 10%. It is therefore no longer considered as representative at the group level and has no longer the right to participate in group-level collective bargaining. FO, which is the majority union in the production sites of Toulouse and Cannes, can however continue to negotiate in sites where it represents more than 10% of the workforce.

Social dialogue, both at the group level and at the level of the subsidiaries, is intense. At the group level agreements have been reached on subjects as trade union rights, the quality of life at work, employment over 50, the group works council, gender equality, working hours, employees with disabilities, collective retirement savings scheme, employee profit sharing, supplementary pension scheme rates etc. Other important agreements are signed at the level of the subsidiaries.

By the group agreement on trade union rights and social dialogue, signed in 2006, the Thales management committed itself to sign only majority agreements, i.e. agreements signed by unions which represent together the majority of the workforce on the basis of the previous workplace elections. The only legal obligation at that time was that, in order to be legally binding, an agreement should not be opposed by unions which represent together the majority of the workforce. Since a 2008 law, there is a supplementary condition that signatory unions must represent at least 30 % of the workforce. An additional group agreement of 2010 grants means to unions which have obtained less than 10% at the elections and are no longer considered as representative at the company level according to the 2008 law.

By a series of group agreements signed since 1999, Thales also grants means to the “Inter-centres”, which initially were informal group-level union co-ordinations. The secretary of each inter-centres of a representative union at Thales is now the equivalent of a group-level union delegate and has full time-off. The inter-centres thus became an important official institution for social dialogue at group level. There is a common representation of all

representative unions, called “group-level concertation and negotiation body”, with 4 representatives per union. This is the level where the group agreements are negotiated

For information and consultation, there are central works councils at the level of each subsidiary and works councils at site level, as well as a common group works council. The inter-centres receive the same company documents as the group works council and the European works council.

The French law of 18 January 2005 requires large companies to negotiate every three years a procedure agreement on information and consultation about the company’s forward looking management of jobs and skills as well as on accompanying measures like training, skill assessment, and occupational and geographical mobility. It is supplemented by a law of 21 December 2006, which provides that the identification of jobs threatened by economic and technological developments should be included in this negotiation and voluntary departures should be encouraged by the agreements.

In application of the 2005 law, the Thales has signed in November 2006 a group agreement on the “anticipation of the employment evolution, professional development and training”. On the union side, it was signed by the four major unions at Thales: CFDT, CGC, CGT and CFTC, but not by FO. By this voluminous agreement (43 dense pages), the management commits its self to adapt the skills of the employees to the economic and technological change, in order to ensure the conservation of the competitiveness and employment. It also aims at offering clear perspectives for the careers and skill evolution of the employees, on the basis of an “equilibrium” between the economic logic of the company and the individual aspirations of the employees. In order to achieve this goal, the agreement considers that a permanent social dialogue with the unions on the economic and technological change and its impact on employment is necessary. The unions are to be completely and permanently informed about all aspect of this evolution. The employment and skill management defined in the agreements have two time dimensions: short and medium term. At short term, the agreement offers possibilities for accelerated access to retirement for employees with long careers. At medium terms, it defines measures to anticipate employment problems in order to avoid compulsory lay-offs. A bi-partite “Central Commission on Anticipation and Training” is created, which meets three times per year in order to observe the evolution of the job families in the group, the training plans for each subsidiary and the training courses offered

by Thales University. Every year the management establishes a synthetic document about the jobs and skill evolution and the company strategy to cope with the technological change, identifying both skill needs and threats on certain professional groups or production sites. On this basis, annual action plans are elaborated and discussed with the union representatives. Every employee will have access to the information on skill evolutions in order to be able to construct his career. Every five years or in the event of “important changes” than can be foreseen for his job or his professional family, each employee has the right to a professional development discussion with the management and a career orientation at Thales University. From 2008 onwards, yearly professional development discussions with each employee are generalized. Voluntary professional mobility, both internal and external, will be encouraged. Senior employees will guide others as tutors during their professional conversion. Every employee has the right to 20 hours training per year. In case of non-anticipated economic difficulties in certain subsidiaries, an “active employment management” will be implemented in dialogue with the union representatives and the works council, which will develop all possible alternative measure to avoid compulsory lay-offs.

As we will see, some elements of the professional skill management defined in this agreement have later been Europeanized by the Thales European framework agreements of 2009 and 2010. French legislation on collective bargaining thus appears as an important factor to explain the role played by the large French groups within transnational bargaining.

3.2. Italy

Thales’ Italian branch can rely on a tradition of solid trade union relations. While trade union density at TASI is approximately 30%, it is significantly lower at Thales Italia, where it is around half. Italian group plants rely historically on company-level bargaining.

Whereas the relations with the Italian metal sector trade unions were increasingly confrontational over the past years, they have been somewhat smoother concerning the European level, with positive trickling down effects on Thales. The three metal unions FIOM-CGIL, FIM-CISL and UILM-UIL have negotiated unitary agreements for the elections of the Italian EWC members and have shown considerable cohesion in the management of international affairs, including EFAs where they substantially comply with the guidelines set down by the EMF.

The joint ventures set up with Thales appear to have produced further benefits on the local and national system of industrial relations. They were completed during the negotiation of the first European Thales agreement.

In the assessments of the Italian trade unionists interviewed, it was important that Finmeccanica and Thales were predominantly public companies. The public origin in particular of the French management, revealed an approach in the field of industrial relations different from that in most of the private industry. The relationships with French trade unions have been very positive, contributing to widening the international scope of the Italian trade union activities.

4. The EWC

At the transnational level of workers representation, information and consultation takes place within the European works council. Thales has an EWC at group level, but also EWCs for its major divisions: aerospace, defence and security, and transport.

At group level, the agreement establishing the EWC dates back to 16 November 1993 and concerned the company which was then called Thomson CSF. In 2002, following the merger processes that led to the birth of Thales, the original agreement was amended for the first time, and then again a second in December 2007 after the acquisition of Alcatel-Lucent. The 1993 agreement was negotiated by the five French metalworkers' unions: CFDT, CGT, FO, CFTC and CGC. The 2007 agreement was renegotiated and signed by the same ones (except the CFTC) and also signed, after consultation of the non-French EWC members, by a CFDT officer in the name of the European Metalworkers' Federation (EMF) and by a CGC officer in the name of the European Federation of Managers in the Metal Industry (FEDEM) affiliated to the European Confederation of Managers CEC.

Today the Thales group EWC has 35 members. There are 17 French representatives, 5 British, 3 German, two respectively from Italy and Spain, and one respectively from Austria, Belgium, Norway, the Netherlands, Portugal and Switzerland. They are nominated according to the national rules and customs. The agreement stipulates however that they have to be members of a trade union organisation affiliated to the signatory ETUFs. (This is however not the case for the Dutch representative.) The French members are works council members nominated by the union in proportion to the election results. Of the 17 French representatives,

7 are from the CFDT, 5 CGC and 3 CGT. Of the two Italian representatives, one is from the FIOM-CGIL and the other one in rotation from the FIM-CISL and UIL-UILM. In addition there are also two ETUF representatives without voting rights, one from the EMF (now IndustriAll Europe) and one from the FEDEM.

There is a select committee of 12 members. 6 of which are French (3 CFDT, 2 CGC, 1 CGT), 2 British and one respectively from Germany, Italy, Spain and the Netherlands. According to the EWC agreement, 3 of the 6 French members union delegates directly nominated by the representative signatory unions, presently the CFDT, the CGC and the CGT. Like for the plenary session, two ETUF representatives are permanently invited to the meetings. Since the creation of the EWC, its secretary is a CFDT member. The present one is at the same time secretary of the central works council of Thales Avionics and secretary of the works council of the Avionics plant in Châtellerault. According to the French model, both the EWC and the select committee are chaired by the group CEO.

The EWC meets twice a year. Twice a year there are also information meetings in each of the divisions of the group. The select committee meets every two months

Initially limited to information in the 1993 agreement, the EWC now has also consultation rights. There is an annual report by the CEO leading to a vote at the end of the meeting. Information and discussions in the CAE tend to focus around the financial situation of the Group, the employment perspectives and the industrial strategy of the group and its repercussion on the various production sites. In case of exceptional circumstances the CEO has to convene an extraordinary meeting of the EWC within two weeks. Exceptional circumstances are defined as plant closure or sales, collective redundancies of more than 150 employees in at least two countries or a change of shareholders or central management,

5. The transnational company agreements

5.1 – Negotiating process, signatories and motivations

Thales has signed two European framework agreements (EFAs), respectively in 2009 and 2010, one on the development of professional skills and anticipation of change, the other on annual activity discussions. They are called respectively IDEA (“Improving professional Development through Effective Anticipation”) and TALK (“A Transparent annual Activity

discussion for mutual Listening and developing professional Knowledge”). The IDEA agreement is the cornerstone of the shared project, whereas the second — TALK - is a sort of follow-up. The two agreements were signed by the group management and the European Metalworkers' Federation. Its scope of application corresponds to that of the group EWC.

The IDEA agreement of 2009 was negotiated during the crisis, after similar European agreements, focusing on the aim of anticipation of change, had already been signed by a few French multinationals at European level, as well as by Thales itself at the French national level. Their "noble inspiration”, as it has been called by a Italian trade union leader, was to prevent and to avoid negative social effects of industrial restructuring, in particular, to avoid the use of layoffs.

As in the other similar transnational agreements mentioned, initiative came from the French top management of the group. In the case of Thales, from the group human resource director, Yves Barou. Before joining the Thales group, the latter had hold various position in another nationalized French multinational and was deputy chief of cabinet of the socialist Labour minister Martine Aubry in 1998-2000. In 2010, he has founded a “European HRD circle” whose members are HR directors from various European multinationals, mainly from France and Germany.

When Barou arrived at Thales in 2000, he introduced two innovations. The first was “People 1st”, an annual cycle of individual activity and professional development discussions, in order to evaluate employee skills and to detect need for training. The professional development procedure was integrated into the 2006 French group agreement on anticipation (see part 3.1 above).

The second innovation was the homogenization of HR management within the group, both at the French and European level. Now that Thales has become truly multinational after the integration of Racal in 2000, this was a difficult endeavour. To this purpose, Barou created a working group of HR directors of the different Thales national and foreign subsidiaries. Once this was achieved, he intended to make a step further. Up to then, the trade unions were involved in these management initiatives only through information procedures. Now Barou wanted to negotiate a European agreement on personnel development in order to extend and homogenize management practices at the European level.

Negotiation at the European level seemed easier than negotiation at the national level, because the new EMF procedures adopted in 2006 offered the possibility to negotiate with a unique organization, and not with five trade unions like in France. Barou had some discussions with HR managers of Schneider Electric and Areva, who were the first two companies to sign European company agreements directly with the EMF in 2006 and 2007. All agreed that the ECW, which was created for information and consultation, was not an appropriate partner for negotiation. This opinion was also shared by most of the French union representatives.

"The company - remembers the Italian delegate who participated in the negotiations - wanted a European agreement on the management of human resources, to be concluded with the EMF, based primarily on the use of horizontal mobility and lifelong learning."

The proposal immediately met the interest of the trade unions affiliated to the EMF and the EMF deputy general secretary. There was a strategic convergence between the French group management and the EMF. For the former, there was an interest for a direct dialogue with the EMF, in order to avoid to be confronted with fragmented galaxy of union representation in France. For the latter, by negotiating and signing a transnational agreement it got a legitimacy of its genuine trade union role, by implementing the principles and negotiation procedures established by the EMF in 2006. These principles included the request of a mandate by the national unions concerned, which were subsequently either directly involved in the negotiating process or regularly consulted until the a final draft agreement was reached, which was then subject to a two-thirds majority scrutiny of all national unions involved.

The negotiation took four meetings in 2008-2009 and was conducted by a negotiation body composed of 9 representatives of the company and 12 representatives of the different national trade unions and the EMF. The meetings took place in different European cities. The negotiation language used was English, which is already a common language, alongside with French, within the Thales group. The binding version of the final agreement is also the English one.

The company delegation within the negotiation body was led by the group RH director Yves Barou and composed of legal experts as well as HR managers from six European countries:

France, Germany, Italy, Spain, the Netherlands and the UK. The union delegation was led by the EMF deputy general secretary Bart Samyn and composed of another EMF officer, the EMF EWC coordinator (a French union officer) and union representatives from the Thales subsidiaries in the same countries as the HR managers. The three union representatives from Thales France were the main CFDT, CGC and CGT union delegates. It is interesting to note that the national workers representatives, although mandated for the negotiation by their national union organisations, were also members of the select committee of the Thales EWC (except for the Dutch and the Italian representatives). So they shared a common European company experience. Yves Barou noted however that at the first meeting of the negotiation body, the national union representatives were seated with their national HR managers, and when they said “we”, they generally referred to their national experiences.

At the first meeting, the expectations of the employee representatives were quite differentiated. French unionists complained that they did not receive beforehand a draft agreement by the management, as it is the custom for such negotiations in France. Others were quite happy with this open beginning. Finally Yves Barou proposed that the agreement should generalize the best national practices in HR management and that the negotiations should be preceded by the collection of practices in the different subsidiaries. This collection of best practices was done in the following two months and had an important impact on the final agreement in which they are quoted as examples of the measures to be generalized and implemented in all countries.

After a final scrutiny of all national unions involved and the consultation of the EWC, the agreement was signed by the EMF deputy general secretary, on behalf of the affiliated unions, and by Yves Barou, in the name of the Thales group. The French CGC, which was not affiliated to the EMF at that time, asked to be co-signatory of the agreement. As this was refused, it led to a demand of affiliation to the EMF by the CGC metal federation, which was granted in 2012. The final signature of the IDEA agreement took place in Paris in June 2009, in presence of the Thales CEO and the former EU Commission president Jacques Delors.

5.2 – The IDEA agreement and its contents

The agreement is composed by ten chapters. In the first chapter, “anticipation” is assumed as a “fundamental right” for each employee and as an element of the social responsibility of Thales. The parties agree that the concept of professional development is a “key for the success of each individual and the development of Thales”.

“Anticipation” relies on a “collective joint capability to identify, well in advance, key changes or breakthroughs and build collective action plans to address them; to provide training and development opportunities and support to each employee (..); to encourage staff to take up training opportunities”. In such a perspective: “each employee has the right to know what the Company anticipates for his job family “. These objectives require supporting better professional career paths, which is one of the key concepts of the agreement. It wants to define, at the European level, common principles, “based on the collection, analysis and expansion of existing good practices”

The agreement “does not address short term strategic or industrial issues involving a quantitative employment effect which has to be treated, if the situation occurs, within the usual legal framework and social dialogue at the country level”. In other words, restructuring measures which should require jobs cuts and dismissals will be tackled and solved according to the different labour law legislations and industrial relations practices. On the other hand, the aim of the agreement is “by appropriate anticipation, to avoid, as much as possible, those situations”.

Anticipating refer to mid-terms trends by job families. The analysis of these trends will be object of information and discussion with the relevant employee representative bodies at local level (usually the works councils). In addition, there will be yearly information of the EWC. Information about jobs, knowledge and professional future is considered “a fundamental right for each employee”. Following the collectively shared analysis and information, individual professional development discussions between each employee and his superior manager will be organised every year. These are different from the annual activity discussions and concern exclusively the career orientation. The Thales University will propose and organize a career orientation session of two days for every employee with a minimum of 5 years of seniority (thus generalizing an individual right fixed in the French 2006 anticipation agreement). In case of disagreement between the direct manager and the employee, a HR generalist can be

involved to find a solution. If the employee wishes so, a colleague or an employee representative can participate in this discussion.

Collective training plans will be organized in each country, taking in consideration the technological trends, job evolution and individual needs. Access to training has to be guaranteed by the company to everyone, and this is another pillar of the IDEA agreement. Every employee has an individual right to “meaningful training” every three years. Meaningful training is defined as “constant with the career direction”.

The company has to be a learning environment, attracting skilled newcomers, experiencing forms of apprenticeship schemes, offering graduate development programmes, establishing partnership with the universities.

Another item of the IDEA agreement consists in ensuring equality between men and women in the field of professional development, recruitment and career. Linked to this objective there is a paragraph concerning provisions for parenthood.

At the end of the agreement, the “annual anticipation process” summarized. It starts with the elaboration of a mid-term vision on trends and skills required by job families. This will be done by the HR group management together with experts. Every year in spring, it will be presented to a European Anticipation Commission, which has the same composition as the European negotiation group of the agreement. At the national level, it will be presented to the national work council if it exists (Italy it would be the group coordination of all the plant works councils) or to a National Anticipation Commission which should be built up (in France this will be the “central commission on anticipation and training” set up after the 2006 group agreement). At the unit level it is presented to the local work councils. This is followed by the professional development discussions in summer. In autumn, the annual Thales University training priorities are presented to the European Anticipation Commission. On this basis, annual training plans by company are elaborated and discussed by the local works councils. At the end of the year, an annual report will be presented and discussed with the EWC.

The following chapter of the agreement is dedicated to the monitoring process of the agreement. Although the agreement is not limited in time, it insists on the monitoring of an Action Plan for next 3 years in 4 steps, which foresee:

1. detailed communication vis-à-vis management and each employee,

2. the creation of the European Anticipation Commission mentioned before,
3. the monitoring by the National Anticipation Commissions,
4. the organisation of a European Convention, nine months after signing the agreement, in order to collect new good practices and monitor implementation.

In order to measure the quality and effectiveness of the actions and the monitoring process, a non limitative list of social indicators will be available at national and European level, so to verify the degree of implementation of the agreement. They will include:

- the number of employees attending an annual professional development discussion,
- the average hours of training per employee, per year,
- the total number of employee trained per year,
- the number of employees who did not benefit from a meaningful training during three years.

Other indicators will concern the number of learning advisors, apprentices, internal mobility, tutors (“buddies”) to facilitate the integration of newcomers, equality of treatment etc.

A last chapter concerns the implementing of the agreement which will start immediately after the signing of the agreement “in respect of local regulations”. It contains an explicit non-regression clause saying that the provisions of the agreement “cannot supersede local laws, statutory provisions, agreements or practices in force (...) which are more favourable for employees”.

In case of disagreement over the interpretation or implementation of the agreement, the EMF and the Thales group management “shall attempt to reach an amicable resolution (...) within a reasonable period of time and in a spirit of cooperation”.

5.3 The TALK agreement

On 14 April 2010, almost a year after the first transnational agreement, a second one is signed that takes up and develops some of the premises of the IDEA agreement. The agreement is called the "TALK", acronym for "A Transparent annual Activity discussion for mutual Listening and developing professional Knowledge”. It defines the principles to guarantee that the annual activity discussion is realised in a “socially responsible atmosphere of respect and mutual listening”. The annual activity discussion is a more delicate subject than the professional development discussion treated by the IDEA agreement. Annual activity

discussions generally lead to an evaluation of the employee which can have an impact on the amount of his variable remuneration. Like the IDEA agreement, the TALK agreement turns a managerial topic into a subject for social dialog. Differently from IDEA agreement, the subject of the TALK agreement had not been treated previously by any collective agreement within Thales.

The goal of the agreement is to increase the contribution of each employee to the working team and of each team to Thales. The annual activity discussion (AAD) is a complement to the professional development discussion in order to review accomplishments during the year. An annual cycle is organised which begins with the establishment of the annual collective objectives of the team. On this basis individual objectives are then set. The individual and collective approaches “are of equal importance”. Every employee has the right to be trained in order to prepare the AAD. The Thales management commits itself to the “largest possible transparency” in evaluating the individual training actions.

The TALK agreement repeats twice (on page 2 and page 8) the non-regression clause of the IDEA agreement saying that the provisions cannot supersede laws, agreements or practices which more favourable for employees and even adds that “collective wage systems will be respected” and “nationally existing collective agreements, specifically collective increases (...) will not be impacted by this agreement”. But it is silent about a possible impact on the systems of variable wage components.

In case of disagreements on the AAD, an “appeal procedure” is set up. If the parties of the AAD cannot solve the disagreement it can be transmitted by the employee to the HR generalist. In case of “significant drifts from the framework”, an “alarm process” will be implemented with the national social partners, if such procedure does not yet exist at the local or national level. If needed, the National Anticipation Commission, set up on the basis of the previous IDEA agreement, may decide an audit on the AAD process. Every year, a report will be presented to the National Anticipation Commissions to measure the improvements of the AAD process. It will notably report the number of AADs and trainings per year and the number of appeal procedures.

In the end, the agreement repeats the formulas of the IDEA agreement about need of efficient implementation and the role of the EMF and the Thales group management for finding a resolution of any disagreement over its interpretation or implementation.

6. The implementation of the EFAs at the European, national and local levels

6.1. The monitoring process at the European level

Information about the progress of the implementation of the IDEA agreement took place annually in one of the plenary meetings of the EWC. Within the EWC, a commission to check the state of implementation of the two EFAs was formed with the participation of national trade union organizations.

No controversy or disagreement emerged regarding the successive phase of the two EFAs, except for a case in the UK, where a mediation procedure, foreseen in the IDEA agreement, was initiated.

The European Anticipation Commission did not meet in 2010 – contrary to what was foreseen in the agreement. It met later, but only once, in 2011, in the context of European Convention which was organised in order to verify the state of the implementation of IDEA in the different countries and sites.

The probable reason for the non-functioning of the European Anticipation Commission was that the two monitoring procedures at European level in the agreement were partially redundant. The composition of this body was close to the EWC select committee, except for the participation of the two EMF officers. Those were perhaps not sufficiently familiar with of the practical problems treated in the EFA. Their priority, probably due also to a heavy work load, lay apparently more in the negotiation of the agreement, in the coordination and unification of union positions, than in the monitoring once the agreement was signed.

The European Convention of 2012 was organised with the financial support of the European Commission. It was chaired by new group HR director Loic Mahé, and Bart Samyn, deputy general secretary of the EMF, and gathered roughly 60 attendees from 10 European countries of Thales, half employee representatives and half HR representatives, The aim of the Convention was to analyse the state of implementation of the IDEA and TALK agreements; to share new good practices and continue to learn from each other; to maintain and fuel the European Social network of Thales; to share the main trends by job families at the European level. Similar Conventions were organized during three years.

In order to create more interactions in the pooling of good practices on professional development, round tables gathering several countries have been organised on the following items: career corners, anticipation, apprenticeship, buddies, gender equality. The key points in implementation were:

- good practices concerning apprentices,
- flexible, temporary and mobile career corners in Germany and Belgium,
- the creation of a permanent career corner in the UK,
- regular Job family events (UK),
- a thematic workshop on key technical competencies, e-learning etc. (Belgium).

For what concerns the gender equality, the key points in implementation listed were:

- an equality plan signed with the works council (Spain),
- communication in schools to promote scientific and engineering careers for women (France)
- promotion of women's career development with a dedicated 0,1 % annual budget put in place to compensate unjustified compensation gap between men and woman (France),
- work-life balance and flexi-time (Spain),
- development of inter-company childcare facilities (France).

The key points concerning in implementation in Italy were the “BuddItaly Program” which is deployed all year long. Tutors (“Buddies”) were recruited thanks to periodical campaigns launched by the HR department and well supported by a communication team and trained by HR department.

As a result of the IDEA agreement, the Professional Development Discussion was extended to all employees in the European countries covered by the agreement. According to the Thales Social Report 2013, 91 % of the employees in France and 78 % in Italy (one of the lowest figures in Europe) have attended a PPD. Professional development guides explain how to prepare for PPD and how to conduct the discussion, how to construct a development plan are available on the Intranet. In 2012, a pilot website open to HR personnel was set up to help familiarise managers and employees with the HR tools available.

Training was increased in most of the countries. According to the figures published in the Social Report 2013, in France every Thales employee received in 2013 an average number of 20 training hours, a relative low figure compared to the average of 32 hours in Italy.

The EWC envisaged organizing a seminar on the TALK agreement to be held at Thales University, outside Paris, but it never materialized. When, towards the end of its mandate – following a somewhat conflicting phase in the EWC and in France – the management offered to revive the initiative, the EWC rejected the proposal, which it considered as merely instrumental besides being long overdue.

6.2 The implementation in France

In all the countries, the Thales EFAs had to be applied through specific implementation agreements. In France, the IDEA EFA was implemented a week after its signature by an identical group agreement, on 17 June 2009, signed by the five representative unions at Thales. An additional agreement to the 2006 group agreement on anticipation was also signed the same day, which entrusted the tasks of the National Anticipation Commission foreseen in the IDEA EFA to the Central Commission on Anticipation and Training created on the basis of the 2006 agreement. In 2013 this agreement was replaced by a new group agreement “to foster professional development and employment through anticipation practices”, which installed a similar “Central Anticipation Commission”.

The IDEA implementation agreement was essentially a formal act. The content of the IDEA EFA was already practice in the French part of the Thales group and contained no new rights, except the individual right for meaningful training every three years.

The metal federation of the CGT, which received the draft agreement for scrutiny in May 2009, complained that time left for the national union organisations to organize a democratic discussion on the agreement was too short. It however adopted it, considering that it was mainly a general political agreement and that it was important to consolidate the utility of the EMF as an “effective tool for social construction”.

The TALK EFA of 14 April 2010 was implemented according to the same procedure by an identical French group agreement on 20 April 2010. This time however, the implementation agreement was signed only by two unions, the CFDT and the CGC. The CGT metal federation considered that the agreement was too close to the management view and too far away from its own objectives in this negotiation which it had transmitted in a document to the negotiation group before the negotiation started. This negative position was also motivated by a critical attitude towards the practice of AAD and individual evaluation within the “People

1st system. The CGT Federation again criticised the short delay for the adoption of the agreement which was drafted in its final version 12 March to be adopted until 26 March. The CGT was not the only national union which refused to adopt the European draft agreement. The Christian CFTC union did the same, with similar arguments, complaining that it had not been invited to participate in the negotiation of the EFA and had not even been informed about the result. Despite the non-signature by the CGT and the CFTC, the transposition agreement of TALK is legally valid, because CFT and CGC represent together more than half of the workforce in Thales France. The CGT counts only for around 15 % of the votes in Thales France, the CFTC for around 10 %, and FO has lost its representativeness with just under 10 %.

The internal EMF procedure for the negotiation of EFAs stipulates that the draft agreement must be adopted at least by a two third majority in each country. The deputy secretary of the EMF stated that he was legitimate to sign the agreement in the name of the affiliates, considering that, at the moment of the signature of the EFA, FO was “not present” at Thales and that the CGC, was in a “pre-membership phase” toward affiliation to EMF, which therefore, by anticipation, could also sign in its name. Even if one might agree that this argumentation is arithmetically just, one must admit that outcome of the European negotiation was close to failure because of an insufficient coordination between the national and the European level and that a positive result has only been obtained because of a certain vagueness of the internal negotiation rules of the EMF which left room for a large range of possible interpretation.

In our opinion, several lessons can be learnt from this experience. The difficulties with the TALK EFA in France show that internal divisions between unions at the national level cannot simply be overcome by negotiating at the European level. They also illustrate the problems that can occur with negotiations that take place at the initiative of management. They also show how difficult it is to negotiate on such a problematic subject as the AADs and that a profound knowledge of workplace practices is needed in order to negotiate on very technical topics. These problems might however be the opportunity for a renewed strategic reflexion about how minority positions can be better integrated into the elaboration a common trade union platform before the start of the negotiation, instead of just excluding them by a majority vote

6.3. The implementation in Italy

The implementation agreement of IDEA EFA, was signed in Florence the very next day following the signing of the EFA in Paris. The local management outlined the agreement's guidelines before the national trade unions and a number of local authorities. The agreement to implement the European agreement, at that point, was a mere formality, for the text is merely a "straightforward translation" into Italian.

Workers' at the Italian sites were informed about the deal in the course of several workplace assemblies. As expected, the agreement was well received, also because the workers in this group are in average highly educated, with some 60% holding a university degree. They view positively that significant focus is given to permanent education and to career management on an individual basis. This specific agreement was not however not ratified by a workers' referendum, in contrast to the implementation procedure for other EFAs (GDF, Schneider, Alstom). In Thales Italia, referendums were held on the latest company-level agreements, but not on the European agreement. This caused a degree of disappointment on the part of FIOM-CGIL's European office. FIOM, in fact, had insisted strongly on the value of the referendum, for this would have allowed workers to express themselves, to be part of a process that would have otherwise seen them play an insignificant role. Without a referendum – FIOM insisted – the agreement would simply have been something granted from above, like just about everything else that comes from Europe.

"The referendum – a national FIOM officer said – is a way to shed light on what is happening in Europe and, more significantly, to tell workers that good things too can come from up there."

Out of the two EFAs signed at Thales, IDEA is no doubt the most innovative, drawing wide interest within the group and its local entities. TALK it was supposed to serve as merely a tool for the implementation of IDEA.

The moment they were signed at a European level, the ratification of these agreements was not thwarted by any major difficulties at a local level. The real issue concerns their "substantial implementation", their effectiveness, which appear to the experts within Italian

trade unions as being unsatisfactory. The bargaining which took place after the IDEA and TALK agreements only involved informal talks, namely on training and retraining, activities which are deeply engrained in the company's make-up.

While not explicitly mentioned, IDEA ushered a series of developments principally in the area of education and innovation, areas TASI has always shown concern about it. Although unconnected with the developments arising from IDEA, a committee dealing with education is operational in the Italian branch. In fact, a key lever for the company is the issue of career management with a strong emphasis on educational projects. The "Together Project" – and before that the "People First Project" – developed nationwide the contents defined in the two European agreements. Targets, assessment, training schemes – in specific periods of the year – are discussed in face-to-face sessions involving the worker and HRM. In this light, as mentioned earlier, there is at TASI an education committee operating across the Italian operation that bears no relation with IDEA.

As for the monitoring of the EFA, the task has been somewhat neglected and substantially left in the hands of the EWC, whose potential, according to Italian delegates, has not been maximized. After each EWC meetings, the three Italian delegates are requested to draft a report that is then sent to the trade union structures operating in the four Italian plants and shared with the works councils (RSU) coordination unit, while an executive summary is sent to the central trade union organisation concerned. Minutes are also supposed to be drafted by the EWC secretariat, which, however, "always sends out its report too late," as Italian delegates lament.

The EWC has turned out as a useful venue to give a measure to what occurs in the other Group plants. The weak impact of the two accords may be ascribed on the one hand to the different levels of attention given to certain aspects by different parties involved, namely the French and national management, and on the other hand to the financial capacities of the various group entities. An Italian EWC delegate explains:

"As things progressed at the EWC, we soon realised that the projects contained in that were being implemented and developed at a different pace across the Group's footprint. Here, in Italy, the level of implementation of the IDEA agreement can be considered as being medium.

Not at the level achieved in Germany or France, but better than in Belgium or Spain or other countries.”

According to a FIOM EWC delegate, the start was promising: *“Interest was widespread in the beginning and had given new life in the relationship between the RSU and local management. Meetings were organised with a view to consolidating and disseminating the contents and objectives of the EFA. Then the interest level declined and IDEA was gradually forgotten. TALK came when IDEA had yet to be implemented so that even less is known about this second deal.”*

Another Italian EWC delegates shares this opinion: *“Hardly anyone ever spoke of it. It had been scrapped from all meeting agendas. It was as if, once signed, that EFA had lost the symbolic value – the propagandistic value – the corporate centre had given to it.”*

And the reason? A delegate believes that IDEA should be considered as part of the group’s drive to boost its industrial relations.

“A kind of industrial relations renaissance that however needed to be followed up by everyone concerned. Other investments were needed, at least in Italy. But also greater commitment in terms of corporate culture so as to maximise some of the potentials the agreement contained.”

According to the Italian trade union officer who negotiated the European deal, trade unions, too, have their share of the blame. *“Trade unions had to face a number of non-deferrable issues, namely voluntary exits and other mobility programs involving senior workers that simply shifted the focus away from IDEA, which was simply set aside.”* In his view, a lot depended on the corporate centre, where the CEOs who successively took office had differing opinions about the strategic importance of the IDEA EFA.

The predominant feeling emerging from the interviews carried out with trade union representatives is that the two EFAs have had little or no impact on Thales group companies in Italy. Several criticalities have in fact emerged from the interviews that have been carried out in Italy which go beyond the two Thales EFAs. Prominent among these shortcomings is no doubt represented by the fact that many EFAs, including those discussed here, are the

outcome of a unilateral initiative on the part of the management. While instances of corporate initiatives of this kind continue to be absent in Italy, they are not infrequent in French multinationals. The reasons behind this indifference or sometimes downright rejection of EFAs by Italian management may be ascribed to the refusal on the part of Italian enterprises to set up a third level of collective bargaining, in addition to the two-tier bargaining process (industry-wide and company level) that is already in place. As an interviewee pointed out: *“This is why there is no Italian enterprise willing to be a trailblazer and demand a EFA – and this is something Italian enterprises will keep reminding you.”*

It is an attitude that highlights a key issue concerning the articulation between the various contractual levels. There are too many of them. It is a fact that needs to be addressed seriously by both national and international trade union organizations, as Italian trade unions have demanded, seeking a greater focus on this issue at a European level. While the European trade union federation in this sector is well aware of the problem, it has gone to some lengths to justify the lack of initiatives aimed at defining EFAs. Against the backdrop of an unchanged contractual structure, EFAs could, in fact, weaken sector level bargaining in favour of a stronger corporate decentralisation in the collective bargaining process.

Italian metal sector trade unions bear closely in mind the policies and guidelines set out by the EMF (and now IndustriALL Europe) in the area of EFAs. They believe that agreements that comply with these criteria continue to be too few. The FIOM-CGIL, in particular, appears to be intransigent in rejecting the legitimacy of agreements that have been brokered exclusively by the EWC without a clear mandate or precise procedural indications. The head of the European department believes the EWC doesn't offer sufficient guarantees for two main reasons: a) because it isn't a genuine trade union organism considering that its components often include employers' representatives, b) the lack the required technical knowledge, and c) because, last but not least, EWCs express a strongly corporative outlook.

The position held is that only the European trade union, thanks to its specific traits, is capable of overcoming the subjective and objective limitations of the EWC and emerge as a potential negotiating agent. Only when the rules of the game are fully accepted will differences involving negotiating levels and partners be overcome. The example that is often cited is that of ABB, where the multinational signed an agreement with the EWC that successively

became the foundation for a widespread job cutting drive. It is a line of action that Italian trade unions have firmly rejected: *“It is something we simply couldn't accept.”*

The issue concerning full implementation is considered crucial. Italian trade unions have asked IndustriALL Europe to assess the performance of EFAs in terms of implementation. A lot has been said about this but little is actually known of how these EFAs are being implemented and the effects they have produced. *“This is something that sadly hasn't happened and we've had to exchange with the single companies or at a broader level.”*

The already quoted officer in charge of European affairs at FIOM has been given the task to monitor operations at some hundred EWCs and the EFAs that have been signed.

“The crisis offered a golden opportunity to work out within European venues international agreements that could have led to a broader collaboration in the management of the corporate restructurings that have taken place, but, alas, nothing whatsoever has happened. The crisis offered European trade unions, a test for the usefulness of EFAs. Yet the number of new agreements declined, and those already signed proved to be ineffectual. Local agreements ended up re-nationalizing the transnational ones, enfeebling their originality and strength. The group's management has pointed to just this to shrug its responsibility for the failure to implement the EFAs laying the blame on the local management, which, it should be observed, has little autonomy, if any at all. The consequence has been that restructuring has taken place, with significant redundancies. With the exception possibly of Opel, everyone – including trade unions – concentrated on saving their sites at the expense of the others, in Italy as well as elsewhere”.

She carries one: *“When the FIOM took part in European negotiations, often very complex ones, they ended up in a bubble in the Italian sites. The Alstom and Schneider EFAs are examples where relations have soured up terribly as a consequence. Alstom raised issues regarding its relations with FIOM; Schneider has announced redundancies without consulting trade unions. As a conclusion we can rue that if the aim of these EFAs was to anticipate change, then the balance in over these past years has been extremely poor. We must sadly admit that it has been a tremendous failure for trade unions”.*

What can be done? For Italian trade unions, the hope is in fact to develop transnational bargaining. The situation with regards rights and powers is very different today with respect

to the past. *“Personally – one EWC Delegate said – I’m very pro-Europe and am ideally in favour of a European bargaining that could bring about relatively standard uniforms for all.”*

According to another FIOM official, *“transnational bargaining is today a compulsory passage that cannot be avoided. Electrolux is, in this light, a case in point. The issue here is not about salaries; it is not permissible in terms treaties and it wouldn’t even be possible due to current fiscal systems and social contribution systems that impact gross retribution. The EWCs, though, can play a different and more significant role. European trade unions should favour an enhanced coordination of national bargaining policies. But whatever may be the case what we really need is an EU with heavier political clout.”*

New trade union laws and rights are required. No effective legislation exists in the area of industrial action or European level bargaining, they are at best governed by guiding principles.

7. Conclusion

The experience of the Thales EFAs in France and Italy is ambiguous. In both countries, efforts for effective implementation of these agreements were rather weak. Often there is not even a widespread knowledge about their existence within the company. In France this can be attributed to the fact that the topics of the two agreements were already in practice during a significant period. They have also been treated and continue to be treated by specific collective agreements - except for the annual activity discussions which was been an exclusive management initiative in France before the TALK agreement. In Italy, the weak implementation effort by the unions (and perhaps also by the management) seems to be linked to the urgency of other problems, in particular the short-term threats on employment. In such a context, it was difficult to implement anticipation procedures in a consensual manner.

On the other hand, anticipation practises are in progress in the Thales subsidiaries of both countries, as the indicators of professional development discussions, training and mobility show. But can this be attributed to the effectiveness of the EFAs or is it simply the result of local management efforts and employee involvement? Probably these factors cannot be separated, and one can finally conclude that there a growing awareness everywhere of the

need for anticipation. This is certainly a success for the group HR management in its efforts to homogenize practice in the different subsidiaries. From this point of view, the EFAs have participated in the process of creation of a common corporate culture. If this will also lead to a common industrial relations culture within the company remains to be seen.

Schneider Electric: illusory implementation of innovative EFA?

Sławomir Adamczyk²⁶, Barbara Surdykowska²⁷

1. Premise

The case of EFA negotiations in Schneider Electric is interesting for several reasons. The European representation of employees have been functioning there for over 20 years. It has cooperated closely with the ETUF representing the metal sector, namely EMF²⁸. This cooperation resulted in negotiating two EFA under the “umbrella” of EMF on the employees’ side. The first one was very ambitious. It was to lead to the involvement of the representatives of employees in processes relating to the socially responsible restructuring, which was part of the new global strategy of Schneider Electric. The purpose of the second agreement was to provide short-term employment security to a group of employees in the course of one of the many takeovers which this transnational corporation carried out. This last action was successful (one does not know for how long). In the case of EFA on anticipation of change which is still presented as an example of “good practice”, everything indicates that it serves primarily as the addition to corporation’s strategic plans, which would have been implemented anyway. In addition, it turns out that even with IndustriAll support, EWC is not able to assess the actual impact of this agreement.

2. A few words about Schneider Electric

The history of the present corporation began in 1836 when Schneider brothers became the owners of iron ore mines, forges and foundries in Creusot in Burgundy. In this way, the industrial center of steel production for civilian purposes began to develop, but also, increasingly, for military purposes. In the second half of the nineteenth century Schneider has become one of Europe’s leading manufacturers of weapons. After World War II the company

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²⁸ European Metalworkers’ Federation, since 2012 – IndustriAll Europe.

had to adapt to a peacetime economy. Military production was gradually reduced in favor of civilian needs. Schneider has invested in a number of business segments: from the construction and steel through electricity and shipbuilding to nuclear power. One could say that the company has become a classic conglomerate based on heavy industry. This led to serious problems in the 70s when Western Europe began to experience the crisis in the steel sector. It seemed that nothing could save the company from bankruptcy.

In these circumstances, total reorientation of development strategies was introduced. Non-strategic or unprofitable businesses were divested. The company decided to focus primarily on electro-technical industry. To emphasize this fact it changed its name to Schneider Electric in 1999. The transformation of the company was based primarily on an ambitious strategy of taking over the significant players on the market. In the year 1988 Telemecanique was taken over, three years later Square D; Merlin Gerin in 1992, and Lixel in 1999. In this way, Schneider Electric has become a world-class manufacturer of electro-technical equipment, and the main expert in automation and energy management. The strategy of growth through acquisitions is continuing to this day. The spectacular acquisition of one of the main competitors - Invensys group that was taken over in 2014 may be the example of it.

Presently Schneider Electric employs over 152,000 workers in 240 factories around the world and generates 23,6 bln € of consolidated revenue²⁹. The company is highly globalized in terms of activity. 42 700 employees and 28% of revenue come from Western Europe, 45 200 employees and 27% of revenue -from Asia-Pacific region, 29 900 employees and 25% of revenue come from North America. Also, the ownership structure is largely characterized by internationalization with strong position of institutional capital from North America (32%), followed by French (14%) and UK (13%). Individuals and employees own 11% of shares.

The beginning of labour relations in the company were tough and very interesting. At the end of nineteenth century Schneiders tried to develop protective but also paternalistic approach towards welfare of their employees, however they did not escape social upheavals. Following the strikes in the Schneider factories in Le Creusot in 1899, management was forced to satisfy union demands and set up an authority to represent personnel, namely workers' representatives, who would be allowed to resolve conflicts and present demands to management. But surprisingly final success was on the employer's side. The new institution

²⁹ Schneider Electric, *Financial and Sustainable Development*. Annual Report 2013.

actually was hijacked by management and rapidly diverted from its objective, leading to the suffocation of unionization at birth³⁰. By 1936, Le Creusot was the only French industrial site not to have experienced any work stoppages. For many years the prevention of collective bargaining have become a key characteristic of the authority created by the Schneider businesses.

Times change. Now Schneider Electric cares about creating the image of a socially responsible company. The Group joined the UN Global Compact initiative and, since 2005 conducts The Planet & Society Barometer based on 10 principles which include the recognition of the right to organize and bargain collectively. The indicative analysis is conducted every year in order to assess the progress of the implementation of these principles. In 2014, Schneider Electric was on the 10th place in the ranking of the 100 most sustainable global companies published yearly by Corporate Knights³¹.

3. European dimension of workers representation in Schneider Electric

The origins of the European workers' representation can be dated back to 1993, when the agreement about the formation of the Workers Council in Schneider group was signed. It was to cover the subsidiaries operating in the European Community and the EFTA States. It is characteristic, however, that only the French trade unions participated in the negotiations of the agreement³². This agreement was renewed in 1998. At this time the references to Directive 94/45/EC and the French law were introduced - "The signatory parties indicate hereby their willingness to respect the spirit and the fundamental principles of the European Directive 94/45/EC and the French law of November 12, 1996 which resulted from the directive"³³. This time, negotiations had more of a cross-border character, as workers' representatives from 14 European countries took part in it. The agreement was systematically modified and supplemented in subsequent years (2000, 2005, 2011). It was also adapted to the requirements of the new directive 2009/38/EC. In 2011, after the representatives from the new Member States became involved, EWC represented more than 48.000 employees from

³⁰ M. Floquet, P. Laroche, The Impossible Transition from —Absolute Monarchy toward Industrial Democracy in France: The Experience of Workers' Representatives at Schneider, 1899–1936, *Business and Economic History online*, 2012, 10, www.thebhc.org/sites/default/files/floquetandlaroche.pdf.

³¹ www.corporateknights.com/reports/global-100/2014-global-100-results.

³² H. Krieger, P. Bonneton, Analysis of existing voluntary agreements on information and consultation in European multinationals, *Transfer*, 1995, 1(2), pp 188-206.

³³ Agreement Protocol on the Schneider European Council, 1998.

32 countries. It is significant that the agreement guarantees the possibility of the participation of the representative of the European Federation of Metalworkers³⁴ as an expert on the workers' side during all meetings of the EWC.

A new phase began along with the preparations for the transformation of Schneider Electric into the European Company (SE). In June 2014, after three months of negotiations, the SE participation agreement required in case of such transformations was signed. The EWC will be replaced by the SE Works Council. The main principles previously applicable to the prerogatives of the EWC have been maintained: "The SE Works Council shall be consulted in circumstances affecting 10 %, or more than 150 employees, in any country. It can establish its own working groups on specific topics. A time-off work allowance has been defined; select committee members for example, receive 100 hours per year in addition to time-off for meetings. Each representative has a right to five days training per term of office and can even visit all the sites in his/her country once per year. All running costs (interpreters, travel expenses, experts etc.) are borne by central management. In addition, the SE works council has its own annual budget of around 30,000 € for financing additional experts or training"³⁵. There is also added value of this process. Six SE works council representatives will be included on the SE's Board of Directors with a consultative voice.

It is worth noting that although the EWC in Schneider Electric was not fully composed of trade unionists (according to the Secretary of the EWC 20% of the members were not representatives of trade unions³⁶), in its activities it was guided by the principle of close cooperation with EMF. In particular, this was the case when negotiations with the management of the corporation on subjects beyond the competence of the EWC were initiated. Thanks to this approach, which is not common in other EWCs, it was possible for EMF to take a leading role in the negotiation of EFA. The fact that the corporation wishes to portray themselves as socially responsible was helpful. As it was mentioned before Schneider Electric has been implementing the principles of the UN Global Compact since 2003 and

³⁴ currently – IndustriAll Europe.

³⁵ Fast outcome to negotiations for French electrical engineering group, *EWC News 2/2014*, <http://www.ewc-news.com/en022014.htm#6>.

³⁶ T. Jacquet, *Presentation for the Conference Voluntary Way*, Lisbon, November 11th 2011, <http://voluntaryway.sima.org.pt/docs/Thierry%20Jacquet%20-%20Schneider.pdf>.

stresses that it supports the right of association and collective bargaining by informing the EWC on the development of situation in subsidiaries and subcontractors³⁷.

4. What is behind the EFAs in Schneider Electric?

Schneider Electric is a party to two EFAs. Both have been signed with the European Metalworkers Federation (of which IndustriAll Europe is the legal successor). Both agreements, however, have different nature so one should highlight briefly the reason for negotiation each of them.

The underlying reasons for the negotiations of EFA on anticipation of changes were the strategic corporate objectives related to the implementation of the 2005 plan called the NEW2 (New Electric World Two). Its goal was to strengthen the position of Schneider Electric as a global leader in innovative solutions in the electrical industry. It was a continuation of the earlier program initiated in 2002 (NEW), which identified the main priorities of the corporation's development. Admittedly, the increased commitment to the employees was among these priorities, but also was the pursuit of becoming a "more global" corporation³⁸, which meant, in other words, the desire to create new production sites outside Europe. And that meant an inevitable reduction in employment and production capacity in Europe.

It would be hard to expect the passive acceptance of such plans by the national and local unions. Therefore, the management of Schneider Electric decided to ensure the "social peace" by starting an initiative to negotiate a special agreement to manage this change. The aim was probably to anticipate any protests by showing openness and willingness to involve the representatives of employees in the process. Originally the proposal was addressed to the EWC, which decided to consult it with EMF, asking it at the same time to assume the role of representation of employees in case of transnational negotiations. The latter did not respond immediately, because it feared that a simple restructuring of employment was hidden behind the management's proposal. Eventually, EMF has decided to enter the negotiations. The

³⁷ Schneider Electric, *Communication On Progress 2010*, www.pactemondial.org/tl_files/pactemondial/adherents/Schneider%20Electric%20coP%202010.pdf.

³⁸ *Schneider Electric, 170 years of history*, www2.schneider-electric.com/documents/presentation/en/local/2006/12/se_history_brands_march2005.pdf.

desire to test in practice the internal coordination rules adopted by that organization at that time was probably one of the reasons for this decision.

The negotiations lasted briefly. They began in February 2007 and were finished with the adoption of the agreement in July 2007, after three rounds of negotiations. On the employee's side the negotiations were led by mixed team 2 EMF officers and 2 EWC members, according to the proposals prepared by coordination group composed mainly of unions' members of EWC select committee. The employees side was able to introduce the subject of training in the content of the EFA and to replace the term "restructuring" by "change". However, it failed to achieve a clear declaration of security of employment on the part of the management. It was changed into a guarantee of the "employability".

The signing of the agreement and, in particular, the inclusion the issue of improvement of the qualifications of workers met with positive reactions of researchers of industrial relations. It was mentioned that "the significance of this agreement goes beyond the emphasis placed on promoting social dialogue"³⁹. EFA has been referred to as "a milestone for Europe-wide employment agreements"⁴⁰. The report for the Commission pointed out that agreement at Schneider presented an innovative dimension in two aspects: first, it was specifically addressing "forward planning of job and skill requirements" and "anticipation of change"; second, the social dialogue aspect of anticipating change was particularly improved⁴¹.

The management of Schneider Electric was undoubtedly happy, too. The Chief of HR talked about the "pedagogical value" of the agreement that was supposed to allow to work "more calmly and efficiently" on challenges related to change management⁴². Response of trade unions was more toned down but the ETUC recognized in its resolution of 2012 that: "at transnational company level, the EMF-Schneider Electric framework agreement providing for

³⁹ M. Whittall, *Schneider Electric and European Metalworkers' Federation sign agreement on anticipating change*, 2007, eurofound.europa.eu/observatories/eurwork/articles/schneider-electric-and-european-metalworkers-federation-sign-agreement-on-anticipating-change.

⁴⁰ W. Altmayer, Cross-Border workers representation, in: T. Blanke, E. Rose, H. Voogsgeerd, W. Zondag (eds.), *Recasting Worker Involvement? Recent trends in information, consultation and co-determination of worker representatives in a Europeanized arena*, Groningen 2009: Wolters Kluwer, p. 185.

⁴¹ M. Schmitt, *Restructuring and anticipation dimension of existing transnational agreements. Analysis and overview table*, May 2008, Report done for the European Commission.

⁴² J-F Pilliard, An agreement concluded in Schneider Electric, in: *Transnational collective bargaining: the current situation, the problems, the perspectives?*, Les Cahiers de la Fondation no 69-70, October 2007-September 2008, Europe et Societe, p. 71.

skills anticipation and training for individual workers certainly offers a good practice example”⁴³.

Agreement on anticipation of change concluded between Schneider Electric Management and European Metalworkers Federation - 2007

The agreement has a dual structure: a first part on forward looking personnel management, including an individual career path review at least every three years and the development of a proactive training policy based on annual training plans which establish local skills needs, and a second part on social dialogue for the “management of change”. In this part, information a consultation rights of the EWC and the local employee representation bodies are defined.

The aim of the agreement is:

- Safeguarding the competitive level of the companies concerned and promote the sustainable development of its existing production activities.
- Preserving and develop the employability of its employees.
- Developing the necessary competence and skills of its employees so as to enable them to adapt to the new economic and strategic challenges.

The aim is to ensure equal treatment for all employees concerned with the objective of securing their career paths.

The agreement stipulates that each new corporate programme, when launched, will first be presented to the European Works Council. Information on the programme will then be provided to the national representation bodies.

The agreement determines that it lays down the minimum joint principles that may be used as the framework to which all European units should refer for the purpose of managing changes in its general environment and any impact they may have on the situation of Schneider Electric’s employees.

The scope of the agreement

1. Anticipating management of employment and competences evolution
 - with an active policy of anticipation and training.
2. Promoting an upstream social dialogue in all local entities:

⁴³www.etuc.org/documents/resolution-anticipating-change-and-restructuring-etuc-calls-eu-action#.VL61hvmG9PB.

- with information concerning the strategy of the company,
- with consultation about procedures for implementing the strategy.

3. Transnational organizational changes that have consequences in terms of employment.

In the first area it is important to underline key issues:

- Developing an active training policy that is accessible to all professional categories;
- Identification and anticipation of competence and skill requirements for each area of activities and in all entities, relying on the vocational skill reference system defined by Schneider Electric at global level;
- Undertaking Individual Competence Reviews with each employee at least once every three years, in order to identify development actions (training, mobility on a voluntary basis, etc.).

The parties point out that training remains the preferred means for anticipating changes in vocational skills. The parties agree that an active training policy involves:

- The preparation of an annual training plan based on the objectives identified in local discussions on anticipatory management of employment and competence;
- Access to training for all professional categories;
- Validation of competence and qualifications;
- Information, support and advice.

In the second area it is important to highlight that the parties agree that anticipating company change presupposes that the definition of the group's priorities and major plans must be explained to employee representatives as far upstream as possible.

Each local management team must in turn arrange for information to be provided to its employee representatives regarding Schneider Electric's strategy and its possible major and foreseeable consequences for the local company concerned.

In the third area the parties consider that, given its situation at a strategic and European level, the Schneider Electric European Committee is the ideal forum for establishing an anticipatory social dialogue that will make it possible to launch an information-consultation process prior to the implementation of transnational action plans so as to be able to deal with any changes constructively and limit any possible negative impact they may have.

The agreement is concluded for an open-ended period. The signatories may jointly propose the revision of any part of this agreement, or of the entire agreement. The proposed revisions

shall replace the previous text as soon as they are agreed by Management and the EMF. The agreement may also be terminated by the General Management or by the EMF. The agreement shall cease to apply after a three-month notice period when revoked either by the General Management or the EMF.

In the agreement there is a statement that it is agreed that all of the provisions of this agreement must be implemented in the year after it comes into force. The social partners of each country represented within the European Committee shall sign this agreement at the relevant level with a view to ensuring its effective application at local level.

The agreement will be the subject of a presentation to local Management and the various units and to all employees in order to promote its appropriation by the European entities.

The parties agree that monitoring commission will be established. This commission will meet once a year, in connection with a European Committee Bureau meeting, to review the implementation of the agreement within the group's various entities.

The base for the second EFA signed by Schneider Electric was completely different. The circumstances were more dramatic. In 2009 the French group Areva announced its decision to sell their units of Transport and Distribution (T&D) respectively to Alstom and Schneider Electric. This has led to unrest in the trade unions and EWC Areva. The proposed operation was supposed to affect more than 30,000 employees around the world, including 10,000 in Europe. As a result of workers' protests EWC Areva obtained from the boards of Alstom and Schneider the promise to guarantee employment and salaries and keep an European factories open for a period of 3 years "unless economic conditions deteriorate significantly." However, representatives of employees wanted to confirm this formally through the EFA. Since EWC Areva did not considered itself to be the body that can negotiate on behalf of the workers, it turned to the EMF, which after consultation with the national trade unions finally decided to negotiate on behalf of the workers of the three enterprises involved. This entire process was supported by the French Government which recognized that social commitment of the companies taking over parts of the Areva must be the essential part of this global deal. The negotiations were short but fruitful. EFA has confirmed the preliminary arrangements for the preservation of the existing privileges by employees of the acquired units. What is more, it

was written that these rules would also apply to current employees of Alstom and Schneider Electric transferred to these units.

This agreement has definitely an innovative character since three EWCs were involved in the working it out: Areva, Schneider Electric and Alstom. The process of its negotiation showed that in such complex cases the leading role of one transnational entity representing the interests of workers of all involved corporations (therefore EMF) is crucial in order to achieve the positive outcome. Since this agreement has an episodic nature and after achieving its purpose it de facto has expired, we will not refer to it in the section on implementation – except for a short presentation of the opinion of the Polish trade unionists from the acquired Areva's subsidiaries.

European Agreement on Social Commitments in the framework of the take-over of Areva T&D concluded between Alstom Management, Schneider Management and European Metalworkers' Federation -2009

Background of Agreement

Alstom and Schneider Electric have been selected for the acquisition of the Transmission and Distribution activity of the Areva group. On this occasion, Alstom and Schneider Electric have stated that this acquisition is part of their development strategies. This acquisition does not hamper the financial solidity of the two groups and does not negatively impact their development capacities. The two groups therefore intend to maintain aggressive policies of investment and Research and Development.

The agreement is applicable :

- for Alstom, within the scope of its European Works Forum;
- for Schneider Electric, within the scope of its European Committee;
- and in the following European countries, if they are not included within the scope of the European Committees of Alstom and Schneider Electric: members of EU, Switzerland, Turkey and Norway.

In the area of follow up - The signing parties agreed to meet once a year to ensure that this Agreement was followed up at European level.

The agreement could not be used in lieu of more favorable national legislations and/or conventions agreed at company level, at local, national or regional level.

Content of Agreement

All employees included in the headcount of Areva Transmission and Distribution at the date of acquisition of this activity by the Alstom-Schneider Electric consortium will benefit from an equivalent position in the same employment area - this means either the same location, or located less than one hour's or approximately 10 kilometers' distance from the previous location.

As a rule:

- no site coming from Areva T&D will be closed in Europe until 24 March 2013;
- no plan concerning collective departures - other than voluntary - will be implemented in Europe until 24 March 2013, unless economic conditions significantly deteriorate.

Alstom and Schneider Electric commit to implement specific measures for the Areva T&D employees, in order to facilitate their rapid integration. The implementation, country by country, will be conducted in accordance with local regulations and agreements.

In the area of social dialogue the signatory parties agree that Alstom and Schneider Electric commit to maintain high-level social dialog with the trade union and employee representatives in each of the European countries, in accordance with existing collective agreements and national legislations. The parties agree to rapidly address, during the meetings of their European Works Councils, the issue of the procedure to integrate the Transmission activity within Alstom and the Distribution activity within Schneider Electric, within the scope of their respective European instances, with the objective to finalize this integration by the end of 2010. Alstom and Schneider Electric both commit to assess the Areva agreements which exist at group level, within one year following the integration of the Areva T&D employees.

5. What about implementation?

The first information about the process of the implementation of EFA on anticipation of change have been already presented a year after it was signed at the Conference in Lyon by Danielle Nguyen, Vice President for the group and Domenico Pirola, then Secretary of the EWC. According to them: "the process of implementing and making known a European-level agreement in a group as large and complex as Schneider Electric has not been without significant difficulties. Its content is innovative and explaining it has required more than

simple information for national and local management and workers' representatives. In some group entities, the agreement has been seen as limiting local autonomy through central diktat, rather than as an opportunity. Differing national cultures also exist in relation to social dialogue, which can hinder a common understanding of the agreement. In an attempt to address these difficulties, meetings have been held involving European, national and local trade unions and employee representatives and human resources managers⁴⁴. The speakers were cautiously optimistic emphasizing that the implementation would imply a debate between social partners during its transposition process into local practices and generally would change the local social dialogue.

As it was mentioned before, the anticipatory agreement has been widely recognized by researchers as an innovative approach to restructuring in transnational dimension. First impressions could confirm it. Konstantin Papadakis wrote about positive examples of opening of communication channels between management and trade unions which have been reported in Spain (2008) and in Greece (2009)⁴⁵. In his assessment the agreement was perceived as bringing added value in such countries as Hungary or Czech Republic where workers do not have sufficient legal guarantees associated with the restructuring of enterprises.

A study carried out by us in 2014, however, shows an ambiguous, even disturbing picture. Firstly, this applies to the European level, where in 6 years after the signing of the agreement there was not possible to assess its practical effects. Secretary of the EWC said simply:

We don't have general assessment of the implementation. But we try to build a network between trade unionist in each country, to have a strong exchange concerning all information in the country⁴⁶.

In accordance with the provisions of the agreement (point 5.4) annual review meetings are held involving: IndustriAll, the EWC secretariat and the central management. At a meeting held in December 2013 the management showed the presentation which suggests that social dialogue around the anticipation of change develops. An example of this development is the

⁴⁴ M. Carley, Report of the French EU Presidency conference "Transnational company agreements. Dialogue, rights, anticipating corporate restructuring, actors: A new perspective", Lyon, 13-14 November 2008, <https://www.uclouvain.be/cps/ucl/doc/trav/documents/ATNE-actesEN.pdf>.

⁴⁵ K. Papadakis has Restructuring Tools Web site, enterprises through social dialogue: Socially responsible practices in times of crisis, ILO Working Paper no 19, 2010.

⁴⁶ Interview of T. Jacquet, 05.09.2014

agreement to set up a Works Council for the entire group of establishments in Germany, although - as it was clearly highlighted - the corporation did not have such legal obligation. Also measures aimed at maintaining employment in the establishment in Barentin in France were presented as an example of successful cooperation with employees' representatives⁴⁷. The case of a branch in Bulgaria was also presented. The management admitted that there is no representation of the workers there, but special *Engagements committees* were created and volunteers from production units could attend them and be informed of planned changes. It is characteristic that the management did not present explanation on planned closing of the plant in Rieti, Italy although Italian trade unions regarded this decision as breach of the rules of the anticipation agreement and the situation in this plant was very tense⁴⁸.

The remarks of trade unionists presented at this meeting and collected by IndustriAll are very interesting⁴⁹. Among others it follows from them that in Spain “*Anticipation does not seem to function well*” and that “*the impression is that the company is dismissing qualified workers and hiring new ones with less costs*”. In Czech Republic “*the chairman of the OS KOVO Schneider Company TU Organization pointed out that they were faced with a trend characterized by continuous production transfers (relocations) from Europe to China. Old production is downsized and not replaced by new activities*”.

The general image of the situation is than quite chaotic. One may be under the impression that in spite of the existence of the anticipatory agreement it is not possible on the European level to work out the coherent strategy in regards to domestic problems generated by strategic plans of the corporation. That is why the agreement is not considered to be a point of reference for local conflict resolution such as in Rieti.

Our main area of interest was an attempt to assess the impact of the agreement in Polish subsidiaries of Schneider Electric. The corporation appeared in Poland in 1998, building the electric switches factory in Bukowno. At present after the expansion it is the biggest production unit of Electric Schneider in Poland employing circa 450 employees. In 1999 an

⁴⁷ ultimately, this branch was in 2014 acquired by Lucibel.

⁴⁸ It was confirmed by further course of events. In January 2014, workers took strike action, and to the agreement that marked the end of de facto production but also compensation for workers has occurred only in April 2014 (F. Prisco, Schneider, ipotesi d'accordo per la cigs aspettando la reindustrializzazione di Rieti,, <http://www.ilsole24ore.com/art/impresa-e-territori/2014-04-18/schneider-ipotesi-d-accordo-la-cigs-aspettando-reindustrializzazione-rieti-102923.shtml?uuid=ABGtlBCB>). It seems the anticipation agreement was not especially helpful in this case.

⁴⁹ IndustriAll, Conclusions of the follow-up meeting on the “Anticipation of change” agreement, information provided by T. Jacquet.

Elda Eltra unit in Szczecinek producing accessories for electric installations of buildings was taken over. It is employing circa 320 employees. In 2010 two factories were taken over from Areva, one in Swiebodzice (electrical power engineering automation) and one in Mikołów (production of transformers). They are employing circa 200 persons each. About 300 persons are working for the corporation in two centres of shared services which were created in 2009: financial and HR. They are supporting almost all European locations of the corporation. Trade unions are present only in three locations that existed earlier: Szczecinek, Swiebodzice, Mikołów. The level of membership is respectively 60%, 22% and 12%.

Research have been carried out in three establishments mentioned above. There were four trade union leaders among workers' representatives who took part in the interviews (including one retired), one member of EWC, one member of the team negotiating the transformation of Schneider Electric in European Company. None of the local HR representatives reacted to our requests for interviewing.

The general image which emerged from the interviews was surprising. None of trade union leaders had specific knowledge about the existence of this agreement. What's more, according to their information also local human resources departments did not have such knowledge. It is especially puzzling in the case of Elda Eltra Szczecinek which was a part of the company when European negotiations were being carried on. It worth to quote some answers.

"When I learned from you about the existence of this agreement I spoke with HR representative at national level. He told me that such an agreement has been concluded once and local managers were supposed to implement it. But our HR does not know anything about this "(trade unions' chairman, Szczecinek). One should remind that the point 5.2 of the agreement indicated that it will be presented to workers and local managements. In Poland, apparently there was a problem with that.

Also in establishments acquired by Schneider Electric in 2011 the knowledge of the existence of the agreement among the representatives of the employees is negligible.

I've learned of the existence of such an agreement for the first time, but maybe it's because I'm newly elected chairman of the union organization. I asked our HR but they too do not know anything about this (trade unions' chairman, Mikołów). *"When we were taken over by*

Schneider no one informed us that there was some sort of an agreement at European level" (former trade unions' chairman, Mikołów).

"I do not recall that after the take over by Schneider Electric anyone informed me of the existence of such an agreement. We have a representative in the EWC, and there are discussions about the anticipation of changes there but we didn't know that it was due to the previously signed agreement"(trade unions' chairman, Swiebodzice).

After reviewing the contents of the agreement, trade union leaders were evaluated it as positive, but not carrying the added value to labour relations in their companies. In case of Szczecinek this was the resulted of the absence of any impulses from the management and directed at trade unions.

"I do not recall any attempt to start a dialogue on issues of broadening skills and competences" (trade unions' chairman, Szczecinek).

Another situation occurs in plants taken over from Areva. There, in turn, trade union leaders pointed out the existence of previously developed patterns of cooperation with management concerning the assessment of employees.

"In practice things that we do between the management and trade comply with the provisions of the agreement, but it's hard to say whether it results from it or from prior arrangements. As I have already mentioned the agreement itself was not presented to us." (trade unions' chairman, Swiebodzice).

The impact of the agreement on the Polish subsidiaries of Schneider Electric is difficult to assess for several reasons. First of all, it is noticeable that the content of the agreement is little known among the trade union leaders (the same in case of the current Member of the EWC and the Member of the team that negotiated the agreement on the transformation of the company into a SE). The avoidance of the discussion about the agreement by local HR suggests that they also do not have much knowledge of the agreement. This indicated the existence of serious problems in the functioning of the communication channels within the company but also on the EWC/European Federation - local unions platform.

Secondly, the Union leaders indicate the existence of a national procedures relating to consultation with the trade unions. They are guaranteed by law and considered to be more important. Provisions of the agreement are not bringing much added value, because they

make only reference to the national law in the case of the need for consultation of the implementation of the international plans of action.

As we have previously mentioned two of the Polish subsidiaries were part of Areva before 2011 therefore, it was possible to examine the opinion of the representatives of the employees on the effects of the agreement from 2009.

The complicated process of takeover of part of Areva operation by Schneider Electric was closely observed in Polish subsidiaries in Mikołów and Swiebodzice. Polish workers' representatives have not participated in the very negotiations, but they were informed about them on a regular basis by the local HR. All employees were informed of the fact of signing the agreement. According to the trade unions it had mainly psychological effect resulting from the awareness that at the European level job security was ensured for all employees of taken over subsidiaries. There was not, however, the need for the use of the provisions of the agreement in practice.

"We have a very good collective agreement that guarantees consultation procedures to trade unions in all situations. We also use the system of good practices adopted in times of Areva and Alstom. All this has been preserved under the new owners. But the very existence of such an agreement diminishes concern about some sudden unexpected changes" (trade unions' chairman, Swiebodzice).

In the opinion of trade union leaders and a the member EWC, the process of ownership changes in the subsidiaries went without major perturbations with regard to the situation of workers. However, they are under the impression that the decision-making process in the new structure is much more centralized.

"We conduct wage negotiations every year. It is evident now that the instructions regarding wage increases come from head office and it is from the European level, too."(trade unions' chairman, Mikołów).

6. Final remarks

Schneider Electric is undoubtedly an example of transnational corporation with ambitious targets for both sustainability and quality of the development of human resources. The corporation is globally perceived as an attractive employer⁵⁰. Such an environment is advantageous for trade unions, yet presents specific challenges connected with the necessity to define independently the needs and objectives of the representation of the workers. Both analyzed EFAs fit into the strategy of Schneider Electric, which could present the image of socially committed corporation thanks to the signing of these documents.

EFA on anticipation of change, regardless of the motivation of the management, is actually an interesting and innovative document. It contains very specific and individualized workers' rights (the right to evaluate the professional competence once in 3 years), as well as references to the need for the development of social dialogue at different levels of the corporate structure. It was an opportunity for trade unions to strengthen their coordinated impact on corporate strategy. However, this did not happen. The feelings expressed by some local trade unions seven years after the agreement was signed prove this. The corporation obviously invests in the development of human capital and assessment of competences (although as the interview with the Secretary of the EWC shows, is not true in regards to production workers) but this is done "next to" the agreement. It does not seem that workers feel that it is done because of the EFA. The main problem is the implementation. Studies show insufficient communication between EWC and the employees' representatives (in particular taking into account the rapidly changing corporate structure). The lack of knowledge of Polish trade union leaders about the contents of the agreement may be the proof of it (also the avoidance of interviews by local HR, can attest to a similar situation on the other side). The situation was different in relation to the second EFA -concerning acquisition of Areva parts, probably because it was aimed to resolve issues that were short-term, but vital to the stability of employment of 10 thousand. workers.

Our analysis points to one conclusion. In order to be able to define areas and topics for negotiations with the central management as well as to control the implementation of the

⁵⁰Universum *World's Most Attractive Employers* - *Engineering student, 2014*, <http://universumglobal.com/rankings/world/student/2014/engineering/>

concluded agreement, the workers' side must co-operate more closely⁵¹. It may only develop if it combines a bottom-up approach (outgoing impulses from each location) with the top-down one (from the EWC working in collaboration with ETUF- to lower levels). Lack of open communication channels on the side of labour will cause, that even the most innovative EFA will only be the element of "social peace" for corporate strategy on development of HR policies.

This slightly bitter assessment of the implementation of the EFA in Schneider Electric brings us to the key questions for trade unions: is it possible to develop transnational agreements that will continuously influence the unification of labour standards and the development of regulations among locations of transnational corporations or do "effective" EFA appear only where it is necessary to act in emergency situations. European and national trade unions should give some serious thought to this issue.

⁵¹ T. Jacquet mentioned the need for stronger networking and necessity to improve the exchange of information among trade unions from all locations.

The TCAs at the SKF: Implementation and impact on the Bulgarian subsidiary

Tatyana Mihailova, Ekaterina Ribarova, Snejana Dimitrova⁵²

1. Introduction

The company SKF, whose headquarter is established in Sweden, has been a leading global technology provider since more than a century. On March 2002 SKF has acquired the bearing business of VMZ (Vazovski Mashinostritelni Zavodi), from the Bulgarian State as a result of privatisation procedure. In 2003 in SKF also a Code of Conduct was accepted, which part concerning employees was as international framework agreement also signed by the representatives of the International and European Metalworkers Federations (EMF).

The case-study is based on the information, obtained by the interviews with the human resource manager of the SKF Bearings Bulgaria AD and with the chairman (trade union leader) of the local trade union organisation, affiliated to the Trade Union Federation “Metalicity” at the CITUB, being also member of the EWC and WWC of the SKF since 2009.

2. Profile of the Group at International and National level

2.1. Profile of the Group at International level

SKF has been existed since 1907. Its five technology platforms are Bearings and Units, Seals, Mechatronics, Services and Lubrication Systems. The SKF business is organized into three business areas: Industrial Market, Strategic Industries; Industrial Market, Regional Sales and

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Service; and Automotive. Each business is as serves a global market, focusing on its specific customer segments. There are seven staff units: Group Finance and Corporate Development; Group People and Business Excellence; Group Communication; Group Legal and Sustainability; Group Purchasing; Group Technology Development and Group Business Transformation.

The SKF products are used in over 40 industries. Working in so many different industries enables SKF to develop specific products and services for each industry and also to take knowledge from one industry and apply it to another. The company is represented in more than 130 countries and has around 15,000 distributors' locations worldwide. The average annual number of employees for 2013 was 48,401. The percentages of employees in full-time employment was 98 % in 2013, while the retention rate of employees was 92 % at the end of 2013. At the same time, 22 % of the BD and 15 % of SKF's Group management positions were held by women. Locally, 76 % of SKF units have at least one woman in local management. The total number of female managers in local management throughout SKF was 18%.

Annual sales in 2013 were 63,597 million Swedish Crowns.

SKF's management body is a Board of Directors (BD). It consists of 15 persons; four of them are nominated by the trade union, according to the Swedish legislation. The president of the EWC and World Works Council is also a member of BD.

As a participating company in above mention international documents, SKF not only commits to the defined principles in them but also to communicate its progress accountably and transparently via annual report. SKF endorses both the Global Compact and the Universal Declaration of Human Rights to realize the vision of having a more sustainable and inclusive global economy. The company has participated in the Global Compact since September 2006. Furthermore, SKF adheres to ILO's Declaration considering multinational companies, and works to adhere to the OECD Guidelines for Multinational enterprises.

The focus of SKF's technology development today is to reduce the environmental impact of an asset during its lifecycle, both in SKF own and its customers' operations. Environmental performance reporting started more than 15 years ago. It also very early in adopting the Sustainability Reporting Guidelines, issued by the Global Reporting Initiatives (GRI) in 2000, the same year the Guidelines were launched. The social and economic performance

was also included for the first time in the Environmental Report in 2001, which then became Sustainability Report. Since 2002, the company has integrated the Sustainability Report into the Annual Report, to emphasize that sustainability issues are embedded in its operations. In the Annual report for 2013 SKF reported on: Environment care (Environment: Global ISO 14001 certification); Employees care; and Community care.

The SKF's leadership position concerning the employee care has been established over many years through the commitment, knowledge and passion of the Group's employees around the world. SKF is powered by people and the company's ability to attract, retain and develop its employees is therefore absolutely critical for maintaining this leadership.

SKF cares for the people, and the people care for SKF. This is the essence of employee care. In terms of corporate values, the main stakeholder is declared to be the employees. There are some examples, which prove the leading position of the company in this area SKF launched the Zero Accidents target in 2000 with the commitment to strive for eliminating all workplace accidents at SKF. 122 out of 233 SKF units worldwide achieved no recorded accidents at the end of 2013. The 2013's accident rate was 0.99 (1.06), significantly lower in comparison to 13.78 in 1994 when SKF started monitoring it; regular hazard and risk assessments of working environments are a mandatory part of OHSAS 18001 certification. At the end of 2013, the certificate covered 114 sites in 32 countries.

Upholding and protecting human rights principles and labour standards are of the utmost importance to SKF. Formulating business ethics into official documents enables systematic compliance assessment and risk identification. Consequently, SKF published the SKF Code of Conduct in 2002, covering its responsibilities towards its stakeholders, and the policy is applicable to all operations worldwide.

2.2 The SKF Bearings Bulgaria

The Bulgarian subsidiary of the SKF operated in the country since 2002, but the group of plants (former VMZ) has been existing for long time, as the first weapon plant started in 1936. VMZ manufactures wide range of different types of ball bearings and components for the automotive industry. Today, in Bulgaria, the SKF subsidiary VMZ includes factories in three locations. Factories are equipped with updated technology, and the company has approximately 1500 employees. VMZ is one of Central Europe's leading bearing brands, and

the company's exports are mainly to markets in Central and Eastern Europe as well as in Africa and America.

Some of the VMZ production units were privatised in late 1990-s and early 2000-s, some are still mainly public owned. Through this acquisition, SKF substantially strengthens its position in the Central and East European markets, where growth and development are taking place at a rapid rate. The new company is named SBB (SKF Bearings Bulgaria EOOD) and it is part of the SKF Automotive division. In 2002 the revenue of the SBB were about BGN 7 million (3,5 million euro) and now are 60 million euro. Since 2002 SKF has invested BGN 150 million, 84 million of them have invested in tangible fixed assets.

In the pick of the crisis (2009-2010) the SKF transferred assets and the related business from Western Europe to Bulgarian subsidiary SBB. This restructuring has resulted in a doubling of production and sales in 2010. For the period 2010 – 2012 the Bulgarian factories have held leading positions in the relevant business units of the Group. The profit revenues for 2013 were about 60 million EUR with a favourable prognosis for increase in 2014.

All three Bulgarian plants are certificated under standards ISO 9001-2000, ISO 14001 & OHSAS 18001, ISO/TS 16949-2002 and ISO 14001-2004. SBB has been awarded by Zero Accident Platinum Award for health and safety policy.

During the crisis have not been made layoffs, even a small staff increase has observed. All employees are with temporary contracts but in recent years have been hired workers by Temporary agencies work.

3. Trade union representation and industrial relations

3.1 Industrial relations and workers' representation at international level

To work closely with the union representatives and to build industrial relations on trust and mutual respect is part of the history of SKF. Also beyond the Swedish borders, at global level. Expression of such a policy are the World Works Council (WWC) and the European Works Council (EWC). They are both well-functioning forums either for information and for union networking. SKF established a WWC in 1974 and it is one of the first in the world. When a European Works Council (EWC) became a requirement it was logical for SKF to

build on the experiences of the WWC. The EWC is a forum for information and consultation on matters relating to the whole of SKF. It is considered as a quite a well-functioning forum for information and union networking. It has a role in building an SKF industrial relations climate of cooperation and participation. The EWC in SKF is like most EWCs in Sweden, a union-only forum, which is a prerequisite for possible transfer of elements of Swedish industrial relations culture in other countries, where the company has its' subsidiaries. The management is not formally represented in the council and takes part only to provide information and answer questions.

The EWC covers all SKF activities in EU countries, EEA countries and in EU-associated countries where SKF has manufacturing activities. Members of the SKF EWC must be employees of SKF - all delegates are union-nominated. The procedure for electing members to the EWC is regulated in each country in line with local rules and traditions. The term of office is decided nationally but is generally three to four years. As the SKF WWC was based on unions affiliated to the Global IndustriALL (former International Metal Workers Federation), those unions also got a strong position in the SKF EWC. The SKF management has undertaken to provide information to the EWC regarding the performance and development of the company. The information should be included all the matters, required by the EU directives, as well as such matters as: transfer of production; fusions, downsizing and closing of production. Information and consultation within the EWC must be provided in a way that allows the WWC to work out a standpoint that can be taken into account in management decisions.

The EWC also has the right to nominate outside experts. An official from IndustriALL regularly takes part in the EWC meeting and forms the select committee together with the chairperson and deputy chairperson.

Normally the two councils (WWC and EWC) meet at the same time, but there have been extra meetings for the SKF EWC when the WWC did not meet.

Reporting and information take up the major part of EWC meetings. There are country reports from the delegates and there is a comprehensive report given by the corporate management. This reporting is an important complement to the information that the union representatives get at national level. They learn a lot at the EWC meetings and they can mobilise moral and actual support.

Issues relating to significant changes at SKF, such as acquiring or divesting operations, are always discussed and resolved in an open and constructive atmosphere with union leaders locally and at the SKF World Union Council. Since then structural changes have been limited. In assessing the importance of the EWC one cannot ignore the fact that the chair of the EWC is also a board member of SKF and the leading union spokesperson at company headquarters.

The Bulgarian participation in the WWC and EWC supports the trade unions to build the SKF industrial relations climate of cooperation and partnership. That enables the Bulgarian unions in the SKF subsidiary to get information on the company performance and development and exchange of good practices on industrial relations and trade union activities.

3.2 Industrial relations at the Bulgarian SKF

In the SKF-s subsidiaries and branches local legislation on industrial relations is respected, as well the trade union and other workplace rights are recognised.

In the SKF Bulgarian subsidiary (SBB) there are represented two trade union organisations. One of them is a member of Federation 'Metalicy' (CITUB affiliates) with 650 members. The other one is a member of Trade Union Federation of Metal Workers (Trade Union Federation of Machinebuilders and Metalworkers PODKREPA). It has 100 members. Both trade union federations are members of European IndustriAll and Global IndustriAll.

The trade union density in SBB is 50 %. It is higher than the country average - about 20 %.

In SBB there is a new collective agreement (CA) signed at the beginning of 2014 signed by the trade union organisations mentioned above.

According to Bulgarian legislation (Labour Code) the collective agreement covers only trade union members, but the Labour Code (LC) provides for non-trade-union workers to join it under certain conditions. The SBB non-trade-union employees have joined to the collective agreement. Thus the coverage by the collective agreement is almost 100% (at the end of 2013, 84% of SKF Group's employees have been covered by trade union agreements).

The main collective bargaining issues are as the following: payment, employment and job security; training; health and safety working conditions; compensation for night work, overtime and hazardous working conditions; paid annual leaves; and supplementary pension and health insurance; bonuses for leaves and Christmas; procedures for information and

consultation. The collective agreement contains a general provision for equality and non-discrimination at work. The agreed parameters are significant higher than those achieved at sectoral⁵³ collective agreement as well as country average.

Labour Code does not provide for Workers Councils in the enterprises. The main channel for employee representation at the workplace is the trade union organisation which is the only representation structure, having also collective bargaining power and right to strike. In SBB employee representation at the workplace through other channels is realised by two other types of employee representatives - employee representatives for information and consultation and Health and Safety Committee.

The employee representatives for information and consultation (under Council Directive 14/2002 EC) have been elected by the Assembly of workers' delegates for each unit. They are authorised for three years. Every three months the employer meets with them to inform about: the state and development of the enterprise; technological renewal and investments; work conditions and health and safety. In these meeting participate trade unions as well.

However, according to the trade union leader of the CITUB organisation there are only information procedures but not consultation. Though the employer has not held consultation with the workers representatives as the Labour Code stipulates - concerning hiring workers from Temporary agencies works (TAW), although this is required by the Bulgarian Labour Code

The bipartite Health and Safety Committee consist from the representatives of the employer and of the workers. A lot of the workers representatives are trade union members.

There is also a Committee for Social Assistance set up on bipartite principle. It takes decisions to assist workers in the case of serious disease or pecuniary difficulties.

⁵³ There are two sectoral collective agreements which could be compared with the enterprise level collective agreement in SKF Bearings Bulgaria EOOD. One of them is the main collective agreement for the machine building and similar industries, the other one is mainly for the manufacturing of basic metals (metallurgy) and other metal products. The reason is that the larger trade union organisation in the subsidiary belongs to the CITUB affiliates "Metalicy", which involves mainly workers and employees from metallurgy and smaller group of workers and employees from machine building and allied industries. However the level of labour standards in the SKF Bearings Bulgaria, approached also via collective bargaining are higher than the standards in both of the sectoral collective agreements.

Since 2009 the trade union leader of CITUB has been a member of the World Council and EWC. The Bulgarian trade unions in the SKF subsidiary have a right to nominate one more person to participate in World Works Council and EWC. The process is under way.

According to the statutes the EWC shall not deal with questions regarding wages and conditions in SKF. It is true that these issues are not brought up at the meetings where management takes part. During the union-only part of the meetings there is an exchange of information about wages and conditions. It can be characterised as a kind of benchmarking where all union representatives find out more about other parts of the organisation and use this information in collective bargaining situations at home.

3.3 Local Management style and approaches to the social dialogue

The Management tradition at SKF is to work closely with the union representative and to build industrial relations on trust and mutual respect. The SKF management (style and culture) works closely to the union representatives in order to build industrial relations rooted on trust and mutual respect. Such a policy is followed also by the Bulgarian management. Every 18 months SKF carries out an employee survey called the Working Climate Analysis (WCA) globally, with the aim of constantly improving the working environment. The WCA collects employees' feedback on the working climate, both locally and globally, in relation to the company's values and drivers. Follow up dialogues are held by managers with their teams, with the purpose of identifying and implementing improvement plans. In 2013 100 % of the SBB employees were covered by WCA. According to the human resource manager, the last (2013) WCA shows very good results for Bulgaria, even higher than average per the company.

According to the information we've got from our interviews, industrial relations at SBB are now pretty similar to the better European norms and standards, characterised by partnership and cooperation between representatives of labour and capital. On one hand, this is due to the investor (SKF Group), with long-term interest in Bulgaria and who continues to invest significant resources in the environment and new technologies, to improve the working conditions, and to development of the settlements and communities. The representative of that investor (employer) has recognised trade union organisations as an equal in rights social

partner. On other hand, the trade union organisations are factor with which employer should be take into consideration.

4. SKF Code of Conduct and IFA

4.1. The TCA

The SKF Code of Conduct covers the responsibility towards employee and achieves to promote a healthy and productive relationship between SKF and the unions. This part of the Code, which was signed by the international trade unions organizations, can be considered as a proper TCA.

The SKF TCA belongs to the typology of the international framework agreements (IFAs), It was signed in 2003 between SKF management and, jointly, by the International and European trade unions and consists in a shared Code of Conduct.

The SKF Code is one of the first agreements of its kind and it has been used as reference to establish other similar documents also for suppliers, sub-contractors and for distributors, demanding similar high levels of commitment from business partners.

SKF will not accept any deviations from the Code of Conduct. All are obliged to follow the Code of Conduct and none has the mandate to make exceptions or to opt out. SKF Group Management shall supervise the observance of the Code of Conduct and will investigate and take appropriate measures in case of misconduct.

In January 2014 the Code of Conduct was updated and some new commitments were signed, also in the part which covers the responsibility towards employees, the IFA properly said. The new version enlarge its reference to international standards and guidelines such as the United Nation's Global Compact's Ten Principles, the ILO Declaration on Fundamental Principles and Rights at Work, the OECD Guidelines for Multinational Companies and the International Chamber of Commerce Charter.

While we've been writing this case study, the new Code of Conduct, had not been signed yet by trade unions.

The 2014 recast Code of Conduct doesn't mention the clause on mutual responsibility in the monitoring process, which seems to be a management responsibility only. Another

controversial issue concerns the assumption of the fundamental freedom of association. In the Code of Conduct is note down: *'We respect the rights of an employee not to join a trade union'*.

4.2. Actors and procedures

In the negotiation process there was a quite close cooperation among the International metalworkers' federation (IMF), the European Metalworkers' Federation (now IndustryAll Europe), the SKF EWC and WWC. At the end, in 2003, the IFA was signed by Bengt Olof Hansson (Senior Vice President Chairman of the HRM) on behalf of the corporate, and by Kennet Carlsson, on behalf either of the EMF and of the IMF. Since Carlsson is at the same time the WWC and EWC President, we can say that somehow the EWC was represented into the negotiating process. Although the social partners of the Bulgarian subsidiary didn't attend the negotiations, they were quite well informed about the Code and it was implemented since 2003.

4.3 Content

The 2003 SKF Code of Conduct defines how the company behaves and the way in which it runs the business. In the Code there are four areas of responsibility: responsibility towards customers, distributors and suppliers; responsibility towards employees; responsibility towards society; responsibility towards shareholders. However, only the chapter concerning the responsibility towards the employees can be considered a proper IFA since, unlike the other chapters, this was signed by the trade unions organizations.

It basically refers to the ILOs core labour standards: freedom of association and establishment of trade unions, non-discrimination, equal treatment. The text include also guidelines for its implementation at the local level, monitoring, publishing, training, grievance procedures.

As spelled out in the agreement, monitoring is management and the WWC Presidium's primary responsibility. A Code of Conduct audit system was established in 2004 with the aim of ensuring that SKF units globally have sound monitoring systems in place for complying with this policy. Audits are performed annually on a sample of units throughout the Group.

In 2014 a new recast version of the Code of Conduct was adopted by the SKF, with a chapter titled “*Responsibility towards employees*” The new commitments achieve to support SKF’s continual success in the global marketplace; not tolerate any forms of sexual or other kinds of harassments, threats or intimidation. There are new obligations for the corporate management to find ways to promote employee well-being at work and to give employees good opportunities to train for job enrichment and wider responsibility. Employees are entitled to regular performance review and competency management review as expressed in the Individual Development Plan. The new text establishes how all employees are entitled to a fair chance to compete for job opportunities.

SKF’s salary scheme is based on a fair and equal calculation according to SKF compensation principles which are based on SKF’s IFA conduct: to ensure that salaries set follow the principles, meaning that equal salaries for equal work at equal locations are set, along with preventing other structural errors.

The SKF responsibilities in regards to the workplace rights could be listed as follows:

- safe and healthy workplaces for all employees at all times, and for contractors and visitors while on SKF premises;
- all employees be treated equally, fairly and with respect regardless of race, gender, age, national origin or nationality, disability, caste, religion, sexual orientation, union membership or political affiliation.
- not engage in, and actively work against, the use of forced labour.
- not engage in, and actively work against, the use of child labour.
- ensure that wages and other related benefits meet at least the legal or industry minimum standard in the country in question; wages and benefits are rendered in full compliance with laws and collective agreements.
- comply with applicable laws and industry standards on working hours in each country where the company operates.

Concerning trade union rights, the SKF responsibilities are as follows:

- respect the right of all employees to form and join trade unions of their choice and to bargain collectively and individually;
- strive to facilitate these rights when freedom of association and collective bargaining is restricted;

- ensure that official representatives of such trade unions are not subject to discrimination and that such representatives have access to the union members and their workplace;
- respect the rights of an employee not to join a trade union’.

The last sentence is a new one and shows the corporate intention to fully apply the ILO Convention on the freedom of association. Such a clause was not mentioned, in these terms, into the 2003 Code/IFA. According to the trade unions and the employee representatives (and we agree with them), this is just another, subtle way to discourage union membership and neglect trade unions rights

5. The impact of the IFA on the Bulgarian local industrial relations

In Bulgaria the collective bargaining carries out just at the company level. The SBB was privatized in 2002, at the same time as the CC and almost when the IFA was signed. This has contributed to preserve the trade union structures in the new company since the freedom of association and the right to collective bargaining are respected. Also the other Codes’ provisions are fully observed by the local corporate management. Clauses on health and safety, non-discrimination at workplace, workers qualification, have been renegotiated in the company level collective agreement. The implementation of the IFA provides the improvement of the working conditions and well-being of the employees. On principle, the IFA orders go beyond the Bulgarian legislation but some clauses are more favorable in the Bulgarian Labour Code. For instance about protection of child labour: in the CC the child must not be less than 15 years whereas in the Bulgarian Labour Code the threshold is fixed at 16 years old.

The effective implementation and monitoring of the Code of Conduct, since its signature, is a shared responsibility of the SBB social partners. It didn’t encounter particular problems.

In all the three units of the company, they were exhaustively informed about the provisions of Code of Conduct, which was soon translated into Bulgarian. Both the management and employees have passed practical training for the implementation of Code. The content and implementation training is funding by the SKF. There is also free Internet access to the guidelines for implementation, but they still are not translated in Bulgarian.

Monitoring is a responsibility of managers and the unions. The Code helps to solve conflicts because it requires written procedures, translated into Bulgarian. In the Guide for the

implementation of the Code procedures for the conflict resolution are settled. However, they have never been used because until now it wasn't required. No infringes upon trade union, human or labour rights have been complained.

Summing up, we can talk of a sustainable industrial relations development. Every two years the collective bargaining is carrying out and a collective agreement subscribed. During the negotiating process between social partners takes place in a climate of substantial partnership and cooperation, with pro-active and participatory approaches to the crisis and restructuring aiming at so-called "anticipation of change".

6. Evaluations and perspectives

The implementation of the IFA and the other parts of the CC in SKF, and in particular in its' Bulgarian subsidiary, is of big use for improvement of the employees' rights and social dialogue, for implementing good contacts between the national trade union at the subsidiary and at the sectoral level, European and global federation and EWC/WWC. Some labour issues like standards for qualification and vocational training and for the health and safety are better than the average for Bulgaria and this is usually implemented in the collective bargaining process.

The local HR manager we've interviewed stress the importance of the improvement of the organizational culture. According to the manager we've interviewed (HRM), any information requested by the unions has never been neglected. This was not always the truth for the trade union /employee representative we heard; in some cases the information was not provided on time. For example the hiring employees from Temporary agencies work. This is all but unusual in Bulgaria where the HR managers rather prefer to not share information concerning all the hiring issues. Nevertheless, in cases of hiring workers via TAW the information and consultations are required by the law.

In spite of a certain degree of mutual appreciation, trade unions do not seem to overestimate the importance of the SKF IFA. From our interviews emerge that they do think it is necessary document, which can enhance collective bargaining and the industrial relations as a whole, but what they say is that it cannot replace the traditional collective bargaining matters and procedures. After the Code has been implemented no substantial changes are registered in the system of workers' representation. The main channel of representation still is the trade

unions, but also the other channels are used. The representation via EWC is also of importance, but like the Code, it is not overestimated by the side of trade unions.

In our view there are still several obstacles to the effective implementation of the code and its' influence on the industrial relations:

- The content of the Code/IFA is rather general; it doesn't focus only on the employees issues and it seems that in the process of implementation the managers pay attention also on many other issues;
- Although the labour and industrial relations are a substantial part of the Code/IFA, the links between them and the corporate strategy and policies are not as much clearly defined;
- The influence of the Code/IFA on the collective bargaining process in Bulgaria is not substantial, as the employee issues are exclusively focused on the respect of the international fundamental rights and standards, which are already fully guaranteed by the Bulgarian labour law. Actually there are also cases where the protections provided by the National legislation are better than in the Code (the minimum age for starting to work);
- According to the last update version of 2014, trade unions and EWC/WWC are officially excluded from the control on the implementation of the code, which could induce local managers not to disclose information on the degree of respect and effectiveness of the Code/IFA

TCA's are still new practices for Bulgarian social partners. They appear "terra incognita". At the national inter-sectoral level, trade unions are involved in some seminars and projects (including the projects of the ISTUR at the CITUB and some seminars of the CITUB with the trade unions representatives from MNC-s) or in preparing opinions concerning the ETUC positions. However, much more efforts for dissemination of information and of clarification of the contents of the TCA and of their importance are still necessary.

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The Transnational Company Agreements at Santander Group: anything else than a symbolic value?

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1. Introduction

The *Santander Group* is a Spanish banking group centered on *Banco Santander*, which after a quick process of growth and expansion has become the largest bank in the Eurozone, and one of the largest in the world in terms of market capitalization.

Between 2008 and 2011, three European Transnational Company Agreements (TCAs) were signed by the management of the company and the workers' representatives. More specifically, the agreements were negotiated by the unitary representation of employees of the parent company, and then ratified by the European Works Council (EWC). The three agreements address different issues: Equal treatment of women and men (2008 Agreement); Social rights and labour relations (2009 Agreement); and Provision of sustainable financial services (2011 Agreement).

In terms of negotiation process, these agreements are rooted in the strategy launched by the trade unions of the parent company, aimed to promote a minimum common framework of labour and social rights for the whole Santander Group. However, this goal has been reached only at European level until now, due to the rejection of negotiations over global agreements by the company's side.

As for their content, in spite of the different topics addressed the three agreements can be considered as "procedural agreements", following the terminology coined by the specialized literature⁶⁰.

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This chapter summarizes the main findings of three cases studies on the reach and implementation of three TCAs signed at the Santander Group, with the analysis focused on the interplay of the main actors and processes at the parent company in Spain, and in the subsidiaries located in the United Kingdom (UK) and Poland.

The study shows some positive aspects with regard to the launching of a process of transnational negotiation within the Santander group, which has led to the signature of the three above mentioned TCAs. Nevertheless it is also worth noting some relevant weaknesses, particularly in a twofold dimension: on the one hand, the limited influence of the TCAs on the improvement of working conditions and industrial relations in the UK and Poland; and on the other hand, the lack of coordination on the employee's side.

The content of the chapter is structured as follows: the text begins with a short profile of the Group, including some key statistical data at a global and national level (section 2). This is followed by an overview of the European dimension of labour relations within the group (section 3).

Against this background, there is an analysis of the three TCAs both in terms of negotiation process and substance (section 4). Section 5 is focused in the examination of the implementation of these agreements and their impact on the local industrial relations in UK and Poland. Finally, the chapter ends with some final remarks (section 8).

The findings of this case study are based mostly in the analysis of the information provided by key informants from the company and the employee side⁶¹. This has been supplemented with secondary sources, which will be quoted in the text.

⁶⁰ Following the classification established by da Costa and Relfeldt, who divide the Transnational Restructuring Agreements in two types: "procedural", which set the rules for future restructuring; and "substantive", which address specific cases of announced restructuring through concrete and binding clauses. See Da Costa, I., and Relfeldt, U.(2012): "Transnational Company Agreements on Restructuring at EU level", in Leonardi, S. (Ed.) (2012): *Transnational Company Agreements. A stepping stone towards a real internationalization of industrial relations?* Ediesse (pp 85-104).

⁶¹ In Spain there have been conducted three in-deep interviews with representatives of the European Works Council, the Spanish Works Council and the Labour Department of Santander Group-. In the UK., four interviews were conducted with: national representatives from both the main unions in Santander UK, (who were also members of the EWC), a union representative from Santander's ISBAN subsidiary, and a senior HR manager. In Poland 4 interviews were conducted with: the Solidarnosc trade union leader in Santander Consumer Bank (SCB), the Solidarnosc trade union leader in BZ WBK, the OPZZ trade union leader in BZ WBK, and a representative of the HR Department of SCB

2. The Santander Group: a brief profile

Founded in 1857 in the Spanish town of Santander by 76 businessmen linked to regional economy and to the Spanish colonial trade with the Americas, *Banco Santander* climbed all the rungs in the financial ladder throughout the 20th century until in the 21st century it became a leading world bank, with a solid presence in ten countries in two continents, Europe and America, and businesses in more than forty markets.

Santander is the main financial group in Spain, and in Latin America, a continent where its main markets are Brazil, Mexico, Chile, and Argentina. It also holds a significant position in the United Kingdom, Germany, Portugal, Poland, and the north-east of the United States. In addition to these main markets, it also offers consumer finance services in Scandinavia, the Netherlands, Austria, Italy, and Belgium.

Based on a business model that focuses on retail banking products and services for private customers, SMEs, and companies, in 2013 Santander currently served more than 100 million customers through a global network of near 14.000 branches, the largest in the international banking sector. It had 1.240 billion euros in managed funds in all customer segments, and around 3.3 million shareholders⁶².

In this regard, and according to the information provided by the company, *Santander* is currently the largest bank in the eurozone and one of the thirteen leading banks in the world in terms of market capitalisation (73,7 billion euros in 2013)⁶³.

As for the workforce, the Santander Group had in 2013 almost 183 thousand employees, 62 thousand of whom worked in Continental Europe, 25 thousand in the United Kingdom, 96 thousand in Latin America and the rest elsewhere.

Women represent 55% of the total and men 45%. 52% are university graduates (table 1).

⁶² Source: *Santander Annual Report 2013* (p.5).

⁶³ Source: *Santander Annual Report 2013* (p.5).

Table 1. Employees in Santander Group, by subsidiary, sex and graduates (2013)

Subsidiary	Employees		Men (%)	Woman (%)	Graduates (%)
	Nº	%			
Santander Spain	26.417	14,4	59	41	65
Santander Totta, Portugal	5.460	3,0	54	46	43
Santander UK	19.368	10,6	42	58	9
Zachodni Group, Poland	12.318	6,7	27	73	67
SCF Germany	3.889	2,1	48	52	25
SCF Italy	570	0,3	56	44	46
SCF Poland	2.736	1,5	28	72	66
Grupo Santander Brasil	47.999	26,2	41	59	65
Grupo Santander Mexico	14.214	7,8	49	51	73
Grupo Santander Chile	11.727	6,4	45	55	40
Santander Argentina	6.674	3,6	53	47	17
Santander Puerto Rico	1.462	0,8	35	65	39
Santander US	9.110	5,0	35	65	32
Other entities	21.004	11,5	52	48	54
Total	182.948	100,0	45	55	52

Source: *Santander Sustainability Report 2013*

2.1. The Santander Group at Poland

The current structure of the Polish banking system is not the effect of spontaneous market processes but is the result of privatization policy pursued after 1990. It was directed to attract credible foreign strategic investors. As a result, the Polish banking sector was dominated by foreign capital to an extent unparalleled in other major European economies. About 70% of banks are dependent on foreign banking groups, 10% on Polish private investors, and only 20% on the state. This entails such effects as: interference in the performance of functions of financial intermediation by the banking sector; the risk of reduced funding opportunities for strategic sectors as a result of political decisions made by external forces rather than Poland; difficulties for stable financing of public debt; restricted possibility of the use of macro-prudential policy.

The Santander Group, the largest banking group in the euro zone, entered Poland by the "back door." In 2002, Santander Consumer Finance acquired the Polish subsidiary of Bank of America. Only after subsequent acquisitions, in 2006, the name was changed to Santander Consumer Bank (SCB). In 2010 it becomes a majority owner of AIG Bank Poland which a year later was absorbed into SCB's own structure. In 2012 Żagiel SA, one of the leading companies on the Polish market of financial brokerage was taken over. It was part of a broader group's strategy of buying up Polish assets of Belgian bank KBC.

In 2011 Santander group took over 70% shares of the third largest bank in Poland - Bank Zachodni WBK - from troubled Irish bank AIB. Then it bought more shares on the stock market, reaching the threshold of 95%. In 2013, Bank Zachodni WBK took over Kredyt Bank from the Belgian KBC incorporating it into its own structure. In 2014 the complicated operation of buyout of 60% shares of Santander Consumer Bank from the parent company was carried out by Bank Zachodni WBK, which allows for unification operational structure of the group's activities in Poland. It is estimated that the combined assets will amount to approx. 126 billion PLN. Everything indicates that there will also be rebranding of the bank which will operate under the name of Santander starting from 2015.

Tab. - The largest Polish banks by market capitalization and number of employees

	Name	The dominant investor	Own assets, bln PLN (2013)	Employment, First quarter. 2014
1	PKO Bank Polski	Polish	199.2	24.5
2	Bank Pekao	Italian	158.5	18.8
3	BZ WBK	Spanish	106.1	12.3
4	mBank	German	104.3	4.7
5	ING Bank Slaski	Dutch	86.8	8.1
6	Getin Noble Bank	Polish	63.3	5.9
7	Millenium	Portuguese	57.0	5.9
8	Raiffeisen Polbank	Austrian	57.0	5.6
9	Citi Handlowy	USA	45.0	4.4
10	BGK	Polish	43.9	5.5
18	<i>Santander Consumer Bank</i>	<i>Spanish</i>	<i>13.0</i>	<i>2.6</i>

2.2. The Santander Group in the UK

Santander UK plc, the UK subsidiary of the Banco Santander group, employs nearly 20,000 people across 1010 branches and 50 corporate business centres, with 2.7 million customers using retail banking services and 71,000 commercial clients. Pre-tax profits in 2012-13 were £1.139 million.⁶⁴ Annual revenue as of 2013 was £7.621 million, and the bank is the 6th

⁶⁴ *Santander UK plc Strategic Report 2013*, pp.3-12.

largest in the UK by revenue (after Lloyds, HSBC, Barclays, RBS and Nationwide).⁶⁵ Through a series of acquisitions, the bank has become a major competitor in the UK since its establishment in 2004. The merger process is important to acknowledge as the financial institutions acquired by Santander over the last 10 years had distinctive and diverse systems of employee representation and union recognition, which impact on the current industrial relations situation within the company.

In 2004, Banco Santander, Spain's largest financial group, acquired the Abbey National building society, which was founded in 1944 following the merger of two building societies; National Freehold Land and Building Society (established 1849) and The Abbey Road and St John's Wood Permanent Benefit Building Society (established 1874). Santander's acquisition was followed by the divestiture of their life insurance business in 2006. Acquisitions that followed included short-lived investment in ABN Amro in 2007, and more significantly in 2008 the company acquired the Alliance and Leicester building society, and the savings and branch network of the Bradford and Bingley bank.⁶⁶ Alliance and Leicester and Bradford and Bingley both faced serious difficulties around the onset of the 2008 financial crisis, with Santander moving in to acquire the more stable parts of these businesses and divesting some of the predecessor organizations' more volatile mortgage portfolios; the acquisitions also led to a major expansion through taking over the branch networks of the banks and building societies in question. Santander has been expanding in terms of organizational size and market share in this period marked by financial crisis and recession. This organizational history is important, as the predecessor organizations acquired by Santander had markedly different traditions in terms of union representation, the role of staff associations and by extension the nature of collective representation.

3. The European/international level of industrial relations: the EWC

According to the trade union representatives, the management of the Santander Group is very reluctant to promote industrial relations at transnational level, particularly if there is no legal framework supporting –and enforcing– this process. Spanish trade unions, by their part, have

⁶⁵ *Santander UK plc – Strategic SWOT Analysis Review*, Global Company Intelligence

⁶⁶ *Ibid.*

always tried to promote a minimum common framework of labour and social rights for the whole Santander Group.

In this regard, and taking into account the European Directive 94/45, Spanish trade unions launched the initiative to create the Group Santander European Works Council, which was finally constituted on March 2005.

The initial EWC was integrated by eleven members: 4 members for Spain; 3 for United Kingdom; and 1 for Portugal, Germany, Italy and the rest of the countries (in rotation, for Czech Republic and Poland). Nowadays, the Santander EWC is composed of thirteen members: 4 members for Spain and United Kingdom; 2 for Poland; and 1 for Portugal, Germany and Italy⁶⁷.

As for its content, among other aspects the Constitution Agreement regulates the competences of the EWC, which in general terms are related to the situation and prospects of the group. Also, the agreement clearly establishes that the EWC will not have competences, not even will deal with issues submitted to national legislation or national collective agreements, or related with some working conditions or individual and collective rights (box 1). In this regard, for the management of the company EWC should be strictly a body for information and consultation, and never for negotiation.

Box 1. Competences of the Santander EWC

Notwithstanding other issues exceptionally may arise, at the annual general meeting will cover *those of general interest affecting all companies comprising the Santander Group represented at the meeting and are related to aspects such as company structure, its economic and financial situation, the probable development activities, production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organization, introduction of new working methods, transfers of production, mergers, downsizing or closure of businesses, workplaces, and collective redundancies.*

The Committee shall be informed in good time of those exceptional circumstances significantly affecting the interests of workers, especially in cases of relocations, closures workplaces or companies or collective redundancies.

⁶⁷ Information provided by Spanish union members of the EWC.

The Committee shall have no jurisdiction or deal local or national issues or subject to national legislation, nor the rights of works councils or trade union representatives, collective agreements on co-management, remuneration, working hours, wages or other benefits, or any other matter concerning individual employees, all issues that must be addressed within the structures, procedures and regulations applicable in each Group Company.

Source: *Agreement for establishment of Santander Group EWC* (own translation)

Until now, trade unions have not been able to promote similar agreements at a global level, because of the refusal of the company –as noted above– to promote such agreements if there is no legal framework for supporting and enforcing them.

Nevertheless, it is worth noting that the company unilaterally adopted a *General Code of Conduct*, which is applicable to members of the Board and to all employees of *Banco Santander, S.A.* and of the *Grupo Santander companies*. Among other aspects, the Code includes specific provisions on some issues related to working conditions and collective rights, which were added after the signature of the 2009 agreement with the trade unions⁶⁸.

According to the trade union representatives this is a relevant feature because the General Code, in spite of its voluntary character, has a global scope affecting therefore to all the employees of the Santander Group (unlike the TCAs signed by the company which have a European scope).

4. The TCAs

Since the establishment of the EWC, Spanish trade unions – and particularly the most representative, CCOO – have tried to transform the dynamic of industrial relations within this unitary body of representation: from the information and consultation level, to the negotiation of European wide agreements.

⁶⁸ The *General Code of Conduct* is available, in different languages, in the corporate web (<http://www.santander.com/>).

To do this, they launched a strategy that can be summarized in these points: firstly, the agreements were negotiated by the Spanish trade unions –although with an active role of other countries, particularly in the second one– and then ratified by the EWC. This is a key point for the company, because the management refuses to consider the EWC as a space for negotiation.

Secondly, trade unions posed in the first instance the negotiation of an issue not excessively controversial for the management of the company: equal treatment between woman and men. Once the agreement was reached in 2008, it was easier to address the second agreement on social rights and labour relations.

Thirdly, trade unions have followed and adapted the guidelines and campaigns launched by UNI Global Union, especially in the negotiation of the 2009 and 2011 agreements. Finally, Spanish trade unions are trying to extend this dynamic at a global level, taking as a reference the General Code of Conduct, which is applied to all the board members and employees of the Santander Group. Nevertheless, they are aware of the difficulties of the process because “*although the management of the company has relations with UNI-Finance⁶⁹, if there is no legal framework enforcing to a global agreement, the company is not going to sign it*”⁷⁰.

The outcome of this process has been the signature of three Declarations, respectively regarding to: Equal treatment of women and men (2008); Social rights and labour relations (2009); and Provision of sustainable financial services (2011)⁷¹.

4.1. Declaration on Equal Treatment of Women and Men (2008)

As noted above, the first negotiation of a European wide agreement focused on the issue of equal treatment of women and men in the workplace. The reason is that this topic was not controversial, on the contrary: it was a subject of consensus between the company and workers representatives. Also, trade unions took advantage of the fact that, by that time, there was in Spain a special public and political consideration for the gender equality issues, as a result of the recent approval of the *Equality Act* by the Spanish Government⁷².

⁶⁹ The Global Union for all finance and insurance workers.

⁷⁰ Interview with the Spanish coordinator of the EWC.

⁷¹ All paragraphs in italics included in this section are literal quotes from the Declarations.

⁷² *Law 3/2007 on Effective Equality between Women and Men*. One of the provisions of this law is the establishment of “Equality plans” by the companies.

Nevertheless, the company only accepted to negotiate a “minimum agreement”, based substantially on the Spanish law. This can be explained because the company had certain precautions regarding the scope that a common agreement in the whole of Europe might have. In this sense, the management did not admit any input regarding the concerns expressed by the unions of other countries on equality, including aspects other than gender⁷³.

The agreement was finally approved, and ratified by the EWC in a meeting on 21 May 2008⁷⁴. The final text is a brief Joint Declaration, which can be considered as a procedural agreement, aimed to “*creating a more favourable framework for the full effectiveness and implementation of the equal treatment of women and men principle*”.

As for its content, the parties consider the encouragement of coherent dialogue between social partners on the subject of rights, legislation and national practices to be

“an appropriate way to promote the effective implementation and application of Community and National Regulations concerning equal treatment in the workplace in the different companies belonging to Grupo Santander in the EU” (Spanish T.U.)

4.2. Declaration on Social Rights and Labour Relations (2009)

This Declaration, also an original initiative by the trade union side, is rooted in the UNI campaign aimed to reach global agreements in the most relevant Multinational companies. The Spanish trade unions tried at first to achieve this goal, but the Management refused to extend this kind of agreement for their subsidiaries in Latin America, so the negotiation focused on the European level.

Another controversial point was that the management of the group refused to negotiate with the EWC, so it could not have the status of a formal bargaining commission at European level. Instead of that, the negotiation process followed this sequence: firstly, the Union members of the EWC agreed a draft text, which was later given to the Management⁷⁵. Then the Santander Group negotiated this draft with the Spanish trade unions, which also coordinate the EWC. Lastly, the final text agreed was ratified on 29 September 2009 by all

⁷³ For example, British trade unions also highlighted the importance of aspects of equality related to ethnicity or religion.

⁷⁴ In fact, the exact title of the text is: *Joint Declaration to be signed in the meeting on 21.5.2008 between the European Works Council and the representatives designated by Grupo Santander’s Senior Management.*

⁷⁵ According to the interviewed, particularly there was an active implication of the British members of the EWC.

the different Union representatives of the EWC, as “*Declaration on Social Rights and Labour Relations in Santander Group*”.

With regard to its content, the introduction of the text remarks that “*in this Declaration, Santander wishes to elucidate the basic social principles and rights set out in the Group in the field of the EU. The social principles and rights included in the declaration are based on the Universal Declaration of Human Rights and the provisions and Conventions of the International Labour Organisation. In order to comply with these social rights and principles, Santander abides by the legal frameworks of the pertinent centres and countries and also their special individual characteristics*”.

In this sense, the Declaration addresses eight basic social principles and rights: (1) Right of Association and Union Freedom; (2) Social Dialogue; (3) Equal Opportunities and non-discrimination; (4) Free choice of employment and rejection of child labour; (5) Training and skills; (6) Working day and remuneration; (7) Security of employment; and (8) Protecting health and well-being in the workplace.

This Declaration is considered by the Spanish trade unions as the most important TCA affecting the Group, in terms of process of negotiation and content. But also, because the *General Code of Conduct* added a specific chapter (section 2), which includes some of the commitments of this Declaration. Trade unions remarked on the importance of this section of the *General Code* because its content is supposed to be compulsory for the whole Group, in spite of the unilateral character of the Code.

4.3. Declaration on the framework of relations for the provision of financial services (2011)

This Declaration is also rooted in a campaign launched by UNI, which culminated in a “*Model Charter on Responsible Sales of Financial Products*” (2010) adopted by the UNI Finance Steering Group on 9 June 2010⁷⁶.

This Charter defines a set of principles on responsible sales of financial products, aimed to reach the following goals: (a) To ensure internal business culture and operating procedures conducive to responsible sales of products; (b) To ensure staff are empowered with a high

⁷⁶ This Charter must be understood in the context of the Crisis of 2008, which was rooted in the “bad practices” developed in the financial sector.

level of professional competence and have a good work environment; (c) To ensure financial products are of a high quality, suitable for the customer and are sold in a transparent manner; and (d) To ensure a continuous dialogue on sales and advice issues between the company, its employees and the trade union representing them as well as other stakeholders.

The translation of this Charter into a specific agreement for the Santander Group was rather difficult, due to the reticence of the Management of reaching agreements on this topic, even if generic. Also, by that time there was a strong confrontation between the Human Resources and Commercial area, which added more difficulties to the negotiation. Finally, there was an agreement in the form of “*Joint Declaration by the European Works Council (EWC) and the Central Management of Santander Group on the framework of relations for the provision of financial services*”. According to the trade unions representatives this is a “minimum agreement”, although it reflected the spirit and many of the provisions included in the UNI charter above mentioned.

5. The implementation process

The only mentions of implementation of the agreements included in the Declarations refers to information and dissemination issues. Nevertheless, the trade unions representatives recognize that:

“European wide agreements have not a good dissemination, at least in Spain where the European awareness between workers is not very high”⁷⁷. In this sense, in 2010 there was an attempt to create an information protocol by the EWC, but without success “due the lack of interest”

The Declarations affect all European workplaces without need of a specific transposition at national level. Also, as noted above, the *General Code of Conduct* is compulsory for all the *Santander Group* in spite of its unilateral character.

The Management of the parent company considers that the follow up of the Declarations and the Code is responsibility of the Human Resources Department of each subsidiary. In this

⁷⁷ Source: interview with the Spanish coordinator of the EWC.

regard, there is no centralized coordination or evaluation of the implementation of the different agreements by the headquarters side.

Spanish trade unions also explained that the follow up by the employee side is a responsibility of the national trade unions in each subsidiary, and these processes would then be reviewed and assessed at annual meetings of the EWC. Nevertheless, according to the interviewed, *“these issues usually do not take much time in the meetings”*.

5.1. The implementation process of TCAs at Poland

5.1.1. Representation of workers in the Polish subsidiaries of Santander Group

There is only one trade union active in Santander Consumer Bank –NSZZ “Solidarnosc” with membership ca 2% of the whole workforce. There are four trade union organizations in the Bank Zachodni WBK: NSZZ “Solidarnosc” and 3 separate organizations affiliated on the higher levels to branch federations of OPZZ (this division is a remnant of previously existing, separate banks: WBK, Kredyt Bank, Bank Zachodni). The biggest union is OPZZ organization of employees of former WBK (16%), next - OPZZ organization of employees of former Kredyt Bank (12%). NSZZ Solidarnosc is an uniform organization but represents only 2% of workforce the same as the third OPZZ organization.

Workplace organizations of NSZZ “Solidarnosc” are part of the national section of bank employees, which is affiliated with the European industry federation UNI Europa. OPZZ organizations are affiliated directly to the confederation through its regional structures.

Works’ Council is present only in SCB. There are no collective agreements in either bank. The collective agreement existing in WBK in the past has been terminated by management after merger with Bank Zachodni in 2001. Since then trade unions attempts to negotiate new ones haven’t produced any effects.

It should be noted that the Polish employees of Santander Group still do not have a representative in the EWC. Until 2011, it could be justified by a small size of the only Polish subsidiary (approximately 2.500). This has changed since 2011 and now the number of employees in the group in Poland is about 15 000. According to the Santander Group financial report for the year 2012 the number of European workers amounted to a total of 60 476. This would mean that a quarter of workers are de facto denied the access to cross-border

information and consultation procedures. This situation is amazing and difficult to explain since there are 2 places in EWC reserved for Polish representatives.

5.1.2. Implementation of the declaration signed by the EWC with the management of the Santander Group in the Polish subsidiaries

On the basis of interviews conducted with representatives of trade unions in both banks and HR representative in the SCB, it transpired that there has been no direct actions in Poland to implement the three declarations signed by the EWC and the central management of Santander Group. In the case of Bank Zachodni WBK this may be the result of the fact that it became a part of the Santander Group in 2011. However, after three years of this acquisition, neither local unions nor representatives of HR in the bank have had any knowledge of the existence of the declarations.

In the case of Santander Consumer Bank, the trade unions have knowledge of the declarations. They did receive them, however, neither from the EWC nor from the local management which was also not informed by the central management of the ongoing negotiations. The chairman of the trade union organization found the texts of the declarations on the Internet and then released them among employees in electronic form. In his opinion, the local management was surprised by the existence of these texts. This was confirmed by the HR representative. According to the information obtained from trade union leaders there were no attempts from the EWC's part to contact in order to evaluate the implementation of the three declarations in the past years. A representative of the local management of SCB also does not recall any action by the central management that would indicate the promotion of content of three declarations. It should be noted that the declarations of 2009 and 2011 include the paragraph where the signatories undertake obligation to inform all employees about the contents of these documents. In the case of Polish subsidiaries apparently that point has not been realized.

In view of the abovementioned complete lack of knowledge of trade union leaders and HR in the Bank Zachodni WBK about the existence of the analyzed texts, the in-depth interview about the effects use was pointless. Therefore such a survey was conducted only in the SCB.

5.1.3 Joint declaration on equal treatment for women and men - 2008

There was no direct use of the Declaration and no measures supporting its implementation were taken. Principles of equal treatment are reflected in the workplace regulation and regulation of conditions of remuneration, rules of the social fund and the Code of Ethics of SCB.

With regard to the latter document periodic training (e-learning) is held. No references to the content of the declaration were made in the context of the training. It is generally assessed by the trade unions and HR as vague and not bringing the added value in comparison with the national legislation. One may share this view, yet it must be noted that the declaration also emphasizes the need to create conditions to facilitate the reconciliation of work and private life, which is not explicitly promoted by the Polish law. It seems that this is the issue that trade unions in Santander could more actively pursue taking the advantage of the provisions of the declaration.

It should be noted that the opinion of a limited usefulness of the declaration arises from the Polish legal requirements in this regard. The equality of women and men is enshrined in the Constitution which indicates the necessity of equal treatment irrespective of gender in employment, access to promotion and equal remuneration for work of equal value. It is put in more concrete provisions in the legal regulations of a lower order. The Labour Code clearly states that any discrimination in employment, direct or indirect, including gender discrimination, is unacceptable. The report prepared by the World Bank as early as 2004 emphasized that although there are disparities between women and men on the labor market, and the situation of women is worse due to the gender stereotypes it should be appreciated that the Polish legal system provides equal access to jobs, vocational training and promotion⁷⁸.

The situation concerning the differences in the level of wages is not assessed clearly. The Global Gender Gap Report (2011) reports the unfavourable ratio of women's earnings to men for the same work. Poland was ranked at 123 place (out of the 134 countries included in the ranking). Yet according to the European Commission data women in the EU earn on average about 16, 4% less than men. In Poland, this difference is 6, 4% (ie, the situation would be

⁷⁸ Report: Gender and Economic Opportunities in Poland: women lost transformation?, World Bank Report No. 29205, p. 10.

relatively better than the average, which is probably due to the better education of women in relation to men).

5.1.4 Declaration on social rights and labor relations - 2009

The Declaration is perceived by trade unions as vague. Its provisions oblige only to comply with national law. As a result it was not the basis for collective bargaining at the enterprise. One should emphasize relatively high stability of employment (80% of workers are employed under permanent contracts) and the existence of mechanisms for internal mobility. The needs of workers (medical care, recreation, additional forms of activity) are supported by the employer through employee benefit fund. Trade unions regularly participate in the distribution of its resources and setting priorities for implementation. It is pointed out that all these activities were undertaken independently of the existence of the declaration. In the opinion of trade unions there should be the attempt to develop transnational agreement within the group on pay and working conditions in the domestic subsidiaries. This is particularly important because of the noticeable limits in the ability of local management in relation to bargaining key issues ("command coming from Madrid").

One of the reasons for the low suitability of the declaration is the existence of a legally guaranteed institution, the social fund, in which unions in Poland play an important role. One can assume that in practice in these workplaces where trade unions operate, such a fund is always created. The rules of spending its resources are agreed upon with the trade union. The means are allocated to grants, funding packages and rehabilitation, housing loans, financing nurseries and kindergartens. Benefits are disposed of by taking into account the social criterion and financial and family situation.

5.1.5 Joint declaration regarding to the labor relations framework for the provisioning of financial services -2011

The declaration is perceived as valid (on the important issue of ethics in business), but not specific enough. Trade union representative stressed that the Polish Banking Supervisory Commission regulations are more stringent - in particular the so-called H recommendation concerning the bank's internal control. The provisions of the declaration were reflected in the Code of Ethics of SCB in the form of restrictions on direct sales channels (door-to-

door). There is periodic training conducted on the subject. In the opinion of trade unions an agreement setting out the terms and conditions of the tasks of the group by standardizing internal regulations could be more useful.

Public debate and discussions with representatives of trade unions in the banking sector show that the pressure increases on workers of banks to offer customers financial solutions that are clearly only in the interests of the bank and not the customer. Similarly, there is a growing problem of creation of banks sales plans, the execution of which will interfere with the possibility of an ethical approach to a potential client of the bank. Due to the low level of knowledge on the part of consumers these are socially relevant issues. It seems that the significance of this declaration will be more important for the Bank Zachodni WBK part of Santander, which currently offering greater range of banking services.

5.1.3. Conclusions

The provisions of all three declarations were evaluated by the trade unions in SCB as very general and not very useful. It has been indicated that because of existing extensive national legal framework relating to the matters contained in the declarations, they do not bring added value. The general assessment of trade unions from both banks was that there is a need to negotiate transnational texts, but the provisions should be more concrete and focused at elaborating joint labour standards within the group. In particular it is desirable that such texts have a binding nature.

The research revealed the serious problem of blockage of communication channels on the employees' side. This applies both to the negotiation process as well as the subsequent period. Since, according to the Directive 2009/38, EWC members represent collectively the interest of employees (art. 10) it seems that the information about the declarations should be disseminated by the EWC amongst all employees of the Santander Group regardless of whether they are present in the EWC or not. That was not the case for Polish workforce. Fortunately, Polish trade unions are preparing for appointing the EWC members at last, so the situation can be improved.

5.2. The implementation process of TCAs at UK

5.2.1. Trade union representation and industrial relations

Santander in the UK has expanded significantly over the last ten years with a number of key developments taking place in terms of industrial relations and employee representation. These developments include the consolidation of the role of the two main unions, Advance and the Communication Workers Union (CWU), following a period of some conflict and derecognition in the case of Alliance and Leicester.

Industrial relations have been internationalized within the group to some extent, with these unions now represented on the EWC for Santander and some links evolving between unions in the UK and other unions elsewhere in the bank's international operations. Advance and the CWU each have two seats on the European Works Council. The two unions have harmonized terms and conditions but separate agreements, with the Advance agreement explicitly described as a partnership and the CWU rejecting this terminology.

Systems of consultation and negotiation over change, especially to micro-level processes within the workplace, were seen as superior to those in Spain, where management were perceived (on the basis of discussions between UK trade unionists and their Spanish counterparts) to be more hierarchical and with greater capacity to unilaterally implement change in comparison to the UK. This was largely seen as relating to the legal system with regards to consultation in the UK as well as the role of existing collective agreements which preceded the Santander takeover.⁷⁹ While these complex internal industrial relations structures meant that a relatively high proportion of the workforce had union representation, with tangible results evident through negotiated agreements between the company and employee representatives, the complexity suggests that developing a more coordinated approach to transnational activity will not be easily achievable; the different unions had differing inclinations to participate in such activity and these differences present challenges to greater international coordination.

⁷⁹ Interview, General secretary, Advance

5.2.2 The implementation process of TCAs at UK

Actors, procedures and contents of the TCA

The three transnational agreements within Santander relate to: Equal Treatment of Women and Men (2008 Agreement); Social Rights and Labour Relations (2009 Agreement); and Provision of Sustainable Financial Services (2011 Agreement); these agreements were made via the European Works Council within Santander. The CWU first attended a EWC meeting in 2009; as mentioned above CWU and Advance each have two seats on the EWC. The EWC was seen as having a somewhat limited impact in general (by interviewees from both the CWU and Advance), although some positive outcomes in terms of information sharing and the development of links between union representatives from different countries were acknowledged:

It probably doesn't change anything that we do, but it's the opportunity to see how the company's operating on a global basis. Which we don't always get information on and so it's good to meet people from the different operating companies, and it's also good for us to share common areas of interest or concern with our other union colleagues in the different countries. But it's very stage managed, it's a yearly meeting where the company provide a lot of information on slides and whatnot, it's all very nice, lots of shaking hands, group photos, it's all very stage managed, and it doesn't really help with the day to day industrial picture. It's better for...I think the union side get the chance to network a bit so that's always useful, so we get our links, and what we've done for the last two meetings is the union side has picked a topic and done a presentation back to the management side on our key issues and concerns...So [UK and Spanish representatives] have done a joint presentation on things like sales targets and how people are performance managed, because they're common things that cut across all of the countries really. So that's made it a little less one sided so we're getting our things and our side of the story out there. (Branch president, CWU ALGUS branch)

Similar reflections were made in an interview with an employee relations advisor from the Santander UK HR department:

It's a one day meeting every year, which is essentially a download of information. There are no actual decisions made... Certainly in the UK there is no implication of any of this... I would say, it's just not known at all, unless you're very interested in it or you come across it through work, you wouldn't know about it. (Santander employee relations advisor).

Communications on discussions and agreements made at EWC meetings would be posted on the company intranet, but it was felt that “the vast majority of the staff here wouldn't really be aware of it”⁸⁰, and that the single annual meeting was insufficient in terms of developing strong links and coordination between unions in different countries. Separate, union-only meetings had been held around some of these annual meetings, but again these were seen to be of insufficient frequency to develop strong, embedded links across national borders.

The subject matter of EWC meetings was said to often be quite general, whereas if more specific issues were addressed that had a more direct bearing on employees experiences of work, there would be more potential to communicate these discussions and engage the workforce more; “just seeing a joint statement after a European Works Council meeting once a year is not really going to engage the staff.”⁸¹ However, some benefits were apparent from these links; it was noted that in the UK, in part because of financial services regulation and punishment of numerous banks for misselling financial products, there was a move away from more sales-driven systems of performance management towards an emphasis on higher quality customer service; representatives from the UK had shared the details of this changed emphasis with their Spanish counterparts, providing the basis for the Spanish union to challenge management on some of their performance management approaches by making reference to the UK case.⁸² Representation varied across different parts of the business; for example, in the Santander IT subsidiary Isban, while CWU representation encompassed their concerns as members, for management, it was felt that the EWC “doesn't exist as far as Isban is concerned”⁸³, with the subsidiary said to pay little attention to its workings and Isban UK not having a specific company representative on the EWC.

⁸⁰ Interview, Branch president, CWU ALGUS branch

⁸¹ *Ibid.*

⁸² Interview, Branch president, CWU ALGUS branch

⁸³ Interview, CWU representative, Isban

Tensions and conflict apparent in some national subsidiaries were problematic; while considerable levels of support and sympathy with workers affected by redundancy, confrontational management and industrial conflict was apparent, it was felt that there were difficulties in coordinating a response to such issues due to the different legal systems in place, different employer cultures in different countries, and a fear that:

[I]f you start trying to force certain agreements with the other countries it could actually sour the good working relationship we had with people in our operating companies and that's something that we really didn't want to go anywhere near. (Branch president, CWU ALGUS branch)

Discussions had taken place within the EWC and meetings of the GUF UNI Global's Finance Section relating to conflict in Italy over major headcount reductions, ongoing strikes and conflict in Latin America, and other particular issues in subsidiaries, but coordinating action was seen as problematic and often not practically feasible. Differing legal systems, varied approaches to performance management, different regulations with regard to redundancy, language barriers, diverse orientations of unions and local management within different countries and corporate governance status, where some national 'subsidiaries' of Santander were wholly independent of the Spanish headquarters, in part due to the regulatory framework with regard to banking and capital requirements needed to set up a bank in the UK, were raised as barriers to greater integration of unions within Santander subsidiaries⁸⁴.

Aside from the EWC, UK union involvement in the global union federation (GUF) Uni Global's finance section varied; CWU remained affiliated whereas Advance had, after several years of affiliation, withdrawn from the federation due to the cost involved and limits on how much impact they felt they were able to achieve given their small size relative to other union actors. Advance representatives had visited the US with the TUC on educational programmes and were clearly interested in this international dimension, but felt the institutional structures currently supporting international trade unionism did not entirely suit them strategically. This contrasts somewhat with the approach of the CWU; while interviewees from this union raised issues with regard to the challenges faced by attempts to internationalise their work, they

⁸⁴ Interview, General Secretary, Advance.

remained affiliated to Uni Global, and had made statements calling for a global agreement between Santander and the GUF following high profile instances of victimization of union activists by the Santander subsidiary Sovereign Bank in the US.⁸⁵ There seems to be an emerging interest in such international issues, particularly from the CWU, allowing representatives to engage more with international structures and networks, although challenges remain.

The Implementation and follow up of the TCA at the National and local level

In general, levels of awareness of the EWC and agreements it had made were low among the workforce and management, and there seems to be a need for the EWC to be more visible. In terms of the three substantive TCAs within Santander, it was felt by all interviewees that the 2008 agreement on Equal Treatment of Women and Men had little impact on substantive issues within the firm, in large part because legislation in the UK relating to discrimination on the grounds of gender, ethnicity, sexuality, religion and other protected characteristics are enshrined in law, particularly through the 2010 Equalities Act which integrated and updated anti-discrimination legislation from as far back as 1970. Relatively developed internal policies on equalities, which had been driven by management who had prioritised these issues within Santander UK, meant that the TCA itself did not add notably to what was already in place. Similarly, the 2011 agreement on the Provision of Sustainable Financial Services did not raise issues that were not already covered by the regulatory framework covering financial services and therefore a legal requirement for any financial institution operating in the UK. The 2009 Social Rights and Labour Relations Agreement had a somewhat limited impact; in the two Santander subsidiaries, Prohuban and Isban, there were a group of middle and senior managers who did not have union recognition. Alliance and Leicester had derecognised the CWU in 2006, and while CWU recognition was re-established for most staff following the Santander takeover of Alliance and Leicester in 2008, when this group of around 30 managers was transferred over under the TUPE regulations they were without recognition. In negotiations in 2013, the 2009 agreement was raised by union negotiators, in an attempt to

⁸⁵ 'Branch News: Dismay as Santander sacks US union activists.' CWU Bradford Financial Services, 6 July 2010. Accessed from <https://sites.google.com/site/cwualleeds/branch-news/dismayassantandersacksusunionactivists> on 15.9.2014

use the commitment to freedom of association as the basis for a recognition agreement for this group of staff, but:

I was hoping that because we've got that declaration, because it talks about freedom of association and I thought 'right, that's the very bit that we can now use in a very practical and real way', and it didn't work out that way this time unfortunately. (Branch president, CWU ALGUS branch) We made reference to it, but they just turned a deaf ear. (CWU representative, Isban)

Management in Isban were reluctant to engage with the union, which had 85% membership density among the group of staff seeking recognition, and negotiations did not progress despite the TCA; the union felt it had no option but to approach the Central Arbitration Committee (CAC) to gain statutory recognition for this staff group. In the initial stages of this process the CAC confirmed that the membership density among the staff group would entitle them to gain recognition; once this was reported back to management concessions were made and ultimately a voluntary recognition agreement was secured. While it was felt that the TCAs in general were a valuable statement of rights within the firm, their concrete application had been highly problematic, and some in the workforce reportedly suspected that local management had been pressurised by management at Isban Madrid to obstruct attempts to gain recognition. While industrial relations in broad terms in the rest of Santander UK were seen in a reasonably favourable light, Isban, Produban and Geoban were seen as more problematic, with a confrontational management style reported and little credence placed by managers on the contents of the TCAs agreed between the unions, the EWC and the company itself.

The impact on local industrial relations

The sections above have outlined the key changes in terms of industrial relations within Santander UK since it took over Abbey National and made other acquisitions. The precise contents of the TCAs appeared to have had relatively little impact on employment and industrial relations within the firm; the HR manager interviewed felt that there was considerable continuity in these areas:

to be perfectly honest, they haven't really changed. There was an approach to industrial relations and working with unions in Abbey before Santander acquired it, which was based on working in partnership...Within the UK, actually all the various acquisitions have not really made any difference to the overall approach of the way we work with [unions]...None of that has been dictated or predicated by the group at all...Union arrangements are very much a local, national matter...there's really nothing, very little, I think, on an HR front that's common... As far as IR goes, it's national (Santander HR manager)

Union interviewees indicated that the redundancies that came during initial restructuring, and the implementation of a common IT system across the firms taken over, had been “a really painful process”⁸⁶, but that these issues had largely settled down. While the specific content of the TCAs were seen as having a limited effect, it was felt that the 2009 Social Rights and Labour Relations Agreement was emblematic of an acknowledgement of the legitimacy of unions within the firm that was an improvement on some of the problems that had existed prior to the takeovers, such as the union derecognition in Alliance and Leicester. A defined benefit pension scheme had been retained, and the firm had awarded above-inflation pay rises over the last few years, a period in which pay freezes and below-inflation rises have been common across the UK economy. Problems remained in some Santander subsidiaries; Isban was said to operate on the basis of around 20% of staff holding permanent contracts with the rest consisting of short-term contractors, and the management style was said to be hierarchical, authoritarian and, as seen above with the issue over securing recognition, somewhat averse to working with unions. Disagreements between management and unions were noted, and problems had arisen but in general it was felt that in most areas of the company these could usually be addressed through dialogue and negotiation.

Conclusion and perspectives

Santander in the UK has expanded significantly over the last ten years with a number of key developments taking place in terms of industrial relations and employee representation. As noted above, these developments include the consolidation of the role of the two main unions,

⁸⁶ Interview, Branch president, CWU ALGUS branch

Advance and the CWU, following a period of some conflict and derecognition in the case of Alliance and Leicester. Industrial relations have been internationalized within the group to some extent, with these unions now represented on the EWC for Santander and some links evolving between unions in the UK and other unions elsewhere in the bank's international operations. Limitations were noted with regard to the EWC, its influence and the agreements deriving from its work; in the one key example raised where attempts had been made to invoke the 2009 Social Rights and Labour Relations Agreement, management had largely ignored it, and the other two TCAs were largely seen to be overridden by existing equalities legislation, internal policies, and financial regulation. The agreements did appear to have some symbolic value at least, with the company seemingly more committed to maintaining union representation within the firm and relatively strong internal policies on equalities and how sales related to performance management regimes. The company has been expanding in the post-2008 period of financial crisis and recession, with above-average pay rises awarded through collective agreements. Future developments in terms of TCAs are questionable; while the CWU has called for a formal global agreement between the firm and the GUF Uni Global, the largest union in Santander UK, Advance, has withdrawn from this federation. Interviewees from both unions questioned the influence of the EWC and more frequent meetings and engagement, with a stronger union influence over meeting agendas based on more specific, workplace-focused topics, may be a way of broadening and deepening such international engagement. Greater levels of management engagement with and awareness of the EWC would also need to be explored. Problems in terms of industrial relations and management culture were noted in some of Santander's subsidiaries, most notably Isban, but at least at the national level, and in comparison to the situation in many comparable employers in the UK, the position of unions, industrial relations structures and an acceptance of the legitimacy of collective representation appeared to be relatively strong. Developing the international dimension of these structures is likely to be challenging given the diversity of employment systems within which Santander operates, differences in national union orientations, the limitations of the EWC, and the status of Santander UK as an ostensibly independent operator within a wider multinational corporate network.

6. Key findings: value of of TCAs and prospects

The three cases studies carried out in Spain, Poland and UK allow us to highlight some key findings with regard to the transnational dynamic of industrial relations at the Santander Group.

On the positive side, it is worth noting the launching of an informal process of negotiation at European level, even though the competences of the EWC are formally restricted to information and consultation. As a result of this process, three Agreements have been reached between 2008 and 2011. The second of these agreements, focused on social dialogue and industrial relations (2009), deserves special attention, not only for its content but also because many of its provisions were later incorporated into the General Code of Conduct, which is applicable to the whole Santander Group.

On the negative side, firstly the difficulties in reaching a Global Agreement must be mentioned, due to the reluctance of management to negotiate with the trade unions over a minimum transnational level of working conditions when there is no legal framework of support (as it is the case of Latin America).

Secondly, the contents of the TCAs appeared to have had relatively little impact on employment and industrial relations within the firm in the subsidiaries in Poland and the UK: this was due on the one hand to the general nature of the provisions of all three declarations, which made them not very useful when taking into consideration the existing extensive national legal framework regarding these matters. On the other hand, in the one key example raised where attempts had been made to invoke the 2009 Social Rights and Labour Relations Agreement in UK, management had largely ignored it.

Thirdly, the research has shown a serious problem of coordination within the EWC on the employee's side, which can be rooted in the problems in terms of the national dynamic of industrial relations in UK, and the lack of involvement of the Polish representatives in the EWC (although this situation seems to be being resolved).

To sum up: the transnational company agreements signed so far at Santander Group appear to have some symbolic value at least, with the company seemingly more committed to maintaining union representation within the firm and relatively strong internal policies on equalities and how sales related to performance management regimes.

Developing this process is likely to be challenging given the diversity of employment systems within which Santander operates, differences in national union orientations, the limitations of the EWC, and the status of Santander UK as an ostensibly independent operator within a wider multinational corporate network.

In this regard, it would be advisable to enhance the supranational cooperation and coordination of the employee's representatives, in order to have the necessary strength to negotiate more substantial agreement, with more specific and binding provisions aimed at elaborating joint labour standards within the group.

TCA in Unicredit

*Giorgio Verrecchia⁸⁷, Michela Cirioni⁸⁸,
Michael Whittall⁸⁹, Ekaterina Ribarova⁹⁰, Snejana Dimitrova⁹¹*

1. The Unicredit Group

The UniCredit Group is the outcome of a complex stratification of national and international mergers. The first merger stage saw nine of Italy's biggest banks form the Gruppo Unicredito Italiano in 1998. In 1999, UniCredito Italiano began expanding in central and Eastern Europe, the group making strategic acquisitions in Bulgaria, Croatia, Czech Republic, Romania, Slovakia and Turkey. In 2005, UniCredit merged with the Hypovereinsbank (HVB), an important German banking group. The merger with HVB, a group that had linked -up with Bank Austria Creditanstalt in 2000 and had a strong territorial presence in Europe, allowed UniCredit Group to grow further and strengthen its role in the European banking sector. UniCredit group has also acquired and merged with some Italian banks in recent years, too.

⁸⁷ Labour Lawyer, PhD University of Cassino

⁸⁸ Researcher at Sindova

⁸⁹ Lecture in the sociology of work and industrial relations at the Technische Universität München, Germany and Nottingham Trent University, UK.

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⁹¹ Senior Researcher at ISTUR-CITUB

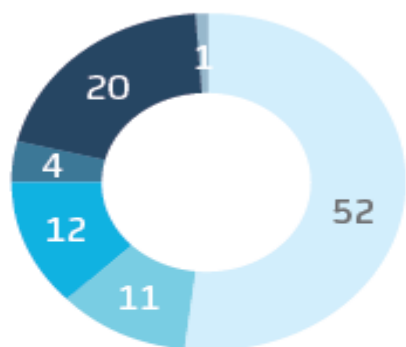


The Group operates in 22 European countries, with 33% of its' activities in Italy, 13% in Germany, 12% in Poland, 10% in Turkey, 6% in Austria and the remaining 26% mostly in central and eastern Europe (CEE). Altogether it is active 17 countries, a workforce 147 000 employees and 8900 branches (see 2013 Sustainability report UniCredit Group). However, within a year, the number of employees employed in Unicredit Group is decreased. From news reported on the Group's web site through June 2014 workers are 130.577 (see below).

With regard to the financial data (information updated to 30 June 2014):

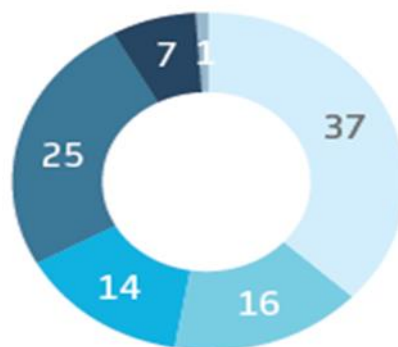
Gross income	5.733
Operating profit (loss)	2.317
Net profit ¹ (loss)	403
Net assets	48.937
Common Equity Tier 1 Ratio	10,58%
Total Capital Ratio	14,98%
Employees ²	130.577
Subsidiaries ³	7.765
Total assets	838.689

Filiali di UniCredit per area geografica¹ (%)



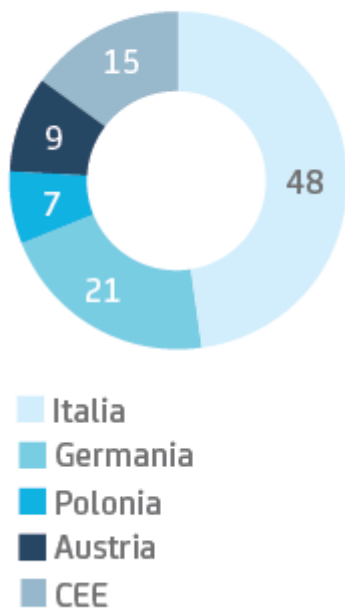
- Italia
- Germania
- Polonia
- Austria
- CEE
- Altri

Dipendenti di UniCredit per nazione² (%)



- Italia
- Germania
- Polonia
- CEE
- Austria
- Altri

Ricavi per aree geografiche³ (%)



Ricavi per Linee di Business (%)



Data updated to 31 March 2014.

1.1 Case study countries: Italy, Germany and Bulgaria

UniCredit is one of the two major Italian banks (the other one is Banca Intesa, data updated to February 2013). It is the result of the merger of nine of the major Italian banks, and the subsequent aggregation with the German group HVB and the Italian group Capitalia. The number of its employees is currently around 45000, 44% of them are women. The most recent restructuring policy resulted in 5,200 redundancies.

The Hypovereinsbank is the German subsidiary of Uncredit. Hypovereinsbank takes its name from a merger between the Bayerische Hypotheken- und Wechsel-Bank and the Bayerische Vereinsbank in 1998 – subsequently acquired by Unicredit in 2005. In terms of its market share the Hypovereinsbank is sixth largest bank in Germany, with total assets of around Euro 929 billion.

Following its takeover in 2005, the Hypovereinsbank employed around 32,000 employees. After various redundancy waves, however, the bank currently employs just-under 20,000 employees. Although a small percentage of the workforce is organized by Verdi, around (10?), the union's actual influence well exceeds its presence within the company measured against membership levels. A number of factors help to explain this. Firstly, the Hypovereinsbank is home of strong German co-determination structures, these include company and joint works councils, plus the existence of a supervisory board on which the vice-chair is held by an employee representative. Furthermore, officers on these councils are active members of Ver.di and as a consequence a Ver.di fulltime official sits on the Unicredit EWC (UEWC) as an external expert and is a key advisor to the German UEWC delegation.

Founded over 40 years ago, first established as the "Bulgarian Bank for Foreign Trade", UniCredit Bulbank is today Bulgaria's biggest bank. UniCredit's Bulgarian subsidiary was acquired in 1998 following privatization. In 2005, when the UniCredit Group merged with HVB, the UniCredit Bulbank merged with Biohim as well as Hebrons banks both of which had previously been owned by HVB. Today, the bank serves 1,3 million clients, these include individuals and private households, small and medium-sized enterprises, large national and multi-national companies, municipalities and budget organizations. With around 200 offices throughout the country it has a workforce in the region of 4508⁹². These figures also include UniCredit Leasing, UniCredit Consumer Financing, UniCredit Factoring and Pioneer Investments. Of the 4508 employees 3000 are employed UniCredit Bulbank. Furthermore, more than 77% of the employees are women. Concerning employment relations 50% of the workforce is organized by one union, the Independent Trade Union of the Employees of UniCredit Bulbank. Collective bargaining has been in place for many years, negotiations taking place every two years. a company union the Independent Trade Union of the Employees of UniCredit Bulbank neither has national, nor European/international affiliations, plus there is no sectoral collective bargaining for the Bulgarian banking sector. The UniCredit Bulbank promotes also the corporate social responsibility in the country. The management team organise many events and charity actions.

⁹² See <http://www.unicreditbulbank.bg>

2. The Unicredit EWC

Unicredit's EWC (UEWC) agreement was completed on the 26th January 2007. Today it covers all the employees employed by Unicredit Group in 22 Member States – including more than 130.000 employees. EWC is made up of 44 members representing 22 countries within and beyond the borders of the European Union. The amendment of certain articles (already contained in the Agreement of 2007 on the establishment of the EWC), relating to the composition of the EWC and the electoral threshold, was necessary to better represent the current structure of the Group in terms of number of employees and geographical presence⁹³. The Unicredit EWC (UEWC) has created a dialectic confrontation on some important issues within the Group. Because of their size and importance these issues must be governed by the EWC.

The EWC was established according to the Italian act of transposition of the European Directive 94/45/CE. With regard to the enterprise with a transnational dimension, the Italian law (art. 6.2 of Act 74/2002)⁹⁴ provides that the Unitary Trade Union Representatives⁹⁵ (here after RSU) has a link with the EWC through the joint appointment by trade union organizations and the RSU of the Italian members of the SNB. If in an establishment or enterprise the trade union representation body does not exist, the national trade union organizations have to agree with the management of the enterprise arrangements for the involvement of employees of the establishment or enterprise in the appointment of the SNB members. The abrogation of the legislative decree n. 74/2002 by the art. 19 of the legislative decree n. 113 of 22nd June 2012, does not change the above commented provisions. So, EWC of the Italian home country has a strong trade-union nature, in the sense that the members of

⁹³ Source <https://www.unicreditgroup.eu/it/governance/system-policies/european-works-council.html>

⁹⁴ Now d.lgs. 113/12 on implementation of European Directive on EWC

⁹⁵ The RSU are the form of representation at workplace level chosen by the trade unions through an Agreement signed in 1993 between the trade union confederations. The Rsu complements form of legal representation referred to in art. 19 of L. 300/70, defined trade union representative body (here after RSA). The RSU is alternative to RSA. In other words, the Trade Union chooses to establish RSA cannot participate in the RSU election. For more details about RSA see footnote n. 63.

SNB and EWC are appointed by the union. As is widely known, the union - especially the Italian trade union –has a strong propensity to conclude collective agreements. The trade-union nature of the EWC is therefore the reason why Unicredit EWC is so active in the drafting and signing of transnational agreements⁹⁶. UEWC members are all unionized, also – according to a former President of the EWC – even from the countries with weak a union presence.

A conscious choice was taken in order to involve employees’ representatives in all countries where the Unicredit Group is operating, with the aim of promoting social dialogue. The employees’ representatives say that the information received at EWC Unicredit meetings was always complete and timely and that Unicredit was always collaborative and willing to give as much information and data as possible. Interesting, although national trade union federations played a fundamental role in establishing the EWC, they did not play such a role in drafting the TCAs / joint declarations.

In Italy the credit sector pays great attention to the establishment and functioning of the EWC. The transnational dimension in Italy is an important aspect of industrial relations in Unicredit. Information and consultation rights are considered important and broadly practiced. This fact has important consequences both in terms of industrial relations and from a legal perspective. Traditionally the Italian system provides for a single channel of representation at the workplace with some aspects of the dual-channel model, with the election of representatives from trade union lists. The relevance of Unicredit EWC is justified also by its ability to gather information and opinions from employees representatives as well as overcome difficulties between union members and non union members within the EWC. We just argued above that EWC Italian members belong to a union. This is particular important when considering that how industrial relations, for example, just between Italy and

⁹⁶ The trade union nature of SNB (and, of consequence of EWC) was confirmed, recently, by case law. In particular, the *Corte d’Appello* of Turin, labour section, has received an appeal made by the trade union CGIL to the exclusion of its member from the SNB of Fiat. The Court of Appeal of Turin has recognized that Fiat does not have the power to influence the designation of –SNB members because this is a prerogative of the trade union. So, the behavior of Fiat, aimed to influence the designation of a member of SNB (choosing someone different from FIOM CGIL), is considered as anti-union (see Court of Appeal of Turin, 7.05.2014).

Germany differ⁹⁷. As indicated below such differences have led to the occasional misunderstanding.

Germany; for a number of reasons the position of German delegates within the UEWC as well as their view of this European institution is both complicated and at times contradictory. A junior partner, possessing a mere 4 seats, the UEWC not only owes its existence to employee representatives from the Hypovereinsbank according to respondents in Germany,⁹⁸ but together with their Austrian colleagues they possess a wealth experience pertaining generally to works councils and specifically to EWCs. In the latter case this knowledge is gleaned from running the HVBEWC for ten years.

Although the vice-president of the UEWC comes from Munich (himself the former chair of the HVBEWC) and is an active influence within the UEWC steering committee, the fact remains that Unicredit is an Italian company based in Milan. Conscious that the shift in power from Munich to Milan, even given that they still had access to HVB supervisory board, would undermine their access to and influence over board decisions respondents saw the need to have a EWC:

“The question was “How decisions are reached that affect jobs, maybe whole sites, the export of jobs and so on...” These were now decisions that were no-longer taken in Munich

⁹⁷ In Italy, the Act 20th May 1970 n. 300, the so-called Workers Statute (*Statuto dei Lavoratori*, SL), recognises the right to trade union representation within undertakings employing more than 15 workers. Article 19 of L. 300/70, in its original text, provided that in order to establish a trade union representative body (*Rappresentanze Sindacali Aziendali*, hereafter RSA) within the undertaking, workers had to refer to the most representative trade union confederations at national level, or to the trade unions which had signed a national or provincial collective agreement that applied within the enterprise. Art. 19 has been radically modified by a referendum on the 11th June 1995, so that now, in order to constitute a RSA, workers may only refer to the trade unions which have signed the collective agreement applied in the enterprise. However, in practice, the situation differs from the model defined by article 19, because on 23rd July 1993 a tripartite agreement provided a new model of trade union representation at the workplace. So now the Italian experience is characterized at plant level, by the presence of the trade union unitary representative body (*Rappresentanze Sindacali Unitarie*, hereafter RSU), dominated, de facto, by CGIL, CISL, and UIL. Instead RSA is the model of representation in the Fiat Industrial Group. However, RSU members enjoy the same rights and protection as RSA members, as provided by Title III of the L. 300/70 which guarantees that employees’ representatives are able to fully perform their tasks. The RSU can conclude collective agreements at plant level and has information and consultation rights provided by national collective agreements and by the law.

⁹⁸ According to HVB respondents employee representatives used their influence on the HVB supervisory board to ensure that negotiations surrounding the takeover in 2005 ensured concessions concerning the founding of an EWC.

but in Milan. For this reason I was in this special negotiating body to set up the EWC” (External UEWC expert).

However, as German respondents have subsequently come to acknowledge the UEWC has not been without its problems. Irrespective of the fact that the EWC Directive is devoid of co-determination rights, the way of doing business has also proven challenging, discrepancies over the nature of employee representation often leading to confusion amongst UEWC delegates – especially between Munich and Milan. As a consequence the development of a coordinated employee response to managerial decisions has not always been guaranteed. As one HVB respondent noted, they were shocked if not somewhat amused to have the red carpet rolled out when on business trip to Italy. The Italian union officer and management at the site they visited were of the belief that the individual in question was a top German manager simply because they sat on the supervisory board. The respondent in question notes that Italians until today still ask the same question:

“How can I be a trade unionist and at the same time sit on the supervisory board?” (German UEWC member)

Such a cultural confusion over the role of employee representation even extended to the relationship between works councils and trade unions in Germany and Austria as well as how to conduct negotiations with management. In the former case a degree of mistrust of works councils would appear to exist on the part of Italian trade unions. Whilst in the latter case developing an independent employee position prior to entering into negotiations with management also appeared to be an anomaly for their Italian colleagues.

In sum, the enthusiasm German employee representatives initially invested in the UEWC would appear, certainly at first sight, to have been dampened. Undoubtedly relations between EWC delegates generally have improved, and the steering committee is in the process of raising its profile. Even given the wealth of experience pertaining to EWCs amongst some UEWC delegates, this institution, still relatively new compared to EWCs founded in the 1990s; remains in an important development phase. As will be exemplified below TCAs are

conceived as an important tool in this phase, one that has helped to improve and possibly continue to improve the status of the UEWC amongst German employee representatives generally.

In the case of Bulgaria, though, a more picture can be observed. According to both the local managers and the employee representatives at UniCredit Bulbank, the organizational culture of UniCredit Group promotes the respect of human rights (non-discrimination, rights to organize, freedom to association and to act) as well as transparency and trust. The organization usually supports the effective human resource management and promotes social dialogue, including collective bargaining, negotiations and agreements at trans-national level, as well as the information and consultation rights, especially at European level. Corporate social responsibility is also among the main values of the company. In many cases such culture influences the industrial relations within national subsidiaries. However, they are dependent also on the national industrial relations traditions.

Trade union representatives are also members of the UEWC. The dialogue is promoted at the level of the national subsidiary and also the relations between national and European level are well co-ordinated. The collective bargaining and information and consultation are strongly separated. Only a few of the issues, discussed at EWC-meetings are discussed and included in the collective bargaining at the national level.

“The purpose of the bank as an employer is that all its’ employees should be informed on time” (Representative of the UniCredit Bulbank HRM team)

The information concerns the results of the banking activity, and all the policies concerning employment. The bank implements a Code of ethics and Charter of integrity, policies on gender equality and the management of diversity. The information is provided via electronic messages as well as via Intranet, where the most important information is presented.

3. The Transnational Bargaining: the two Joint Declarations of 2008 and 2009

3.1 The negotiating process

In the agreement establishing the UEWC, it was potentially envisaged that joint declarations with the counterparts would be signed. According to the interviews carried out with some UEWC members, the UEWC immediately after its establishment started to push the company to define the contents of some joint declarations. Although the initiative came from the EWC, but there was no resistance on the side of the company.

The UEWC and central management started to work on two statements on training and equal opportunities. In April 2008 two Joint Commissions were established. They were composed respectively of 6 EWC delegates and 6 HR managers. Finally, the Joint Commissions produced two Joint Declarations, respectively, on “Training, Learning and Professional Development” and “Equal Opportunity and Non-Discrimination”. These two texts were signed respectively in December 2008 and May 2009.

Although the amicable atmosphere in which the Declarations were developed and negotiated might be put-down to the issues in question, equal opportunities and lifelong learning issues not related to either pay or employment, German respondents were keen to point out the positive role played by the then CEO, Alessandro Profumo.

I have to say something quite non-political to the two declarations. He [Profumo] wanted a contract in which he could say “look I am a good manager” (German T.U. representative)

In some respects, this negotiation process represented a false dawn. The endeavor, specifically on the part of UNIFINANCE but supported by German UEWC delegates, to sign a Global Framework Agreement, as well as an interest amongst some UEWC members to sign an agreement regulating sale’s targets, saw relations both between employee representatives but also with management became noticeably less amicable. As the following respondent notes, cultural differences in industrial relations, specifically the different perceptions relating to representation affected the ability of the employee side to negotiate collectively:

Where we seem to have a very different opinion to that of Italian colleagues concerns the fact that they only react to situations... Concerning question of whether it is good or bad to close branches, they do not understand this or that we have discussions over such things. Whilst we will criticize the company and come up with other solutions – although here you have to be careful that this does not involve co-management – they do not understand such a reaction (German external trade union officer)

Such idiosyncrasies would appear to undermine the ability of employee representatives to jointly oppose management at a European level as well as collectively develop future declarations. This became quite obvious in the dispute surrounding the so-called Newton project in 2012. The dispute involved the outsourcing of data processing potentially threatening around 1000 jobs across Europe. According to one German respondent instead creating a common European position each country undertook to unilaterally deal with this problem and, as a result the Italians called a day action across Europe – “no to Newton”:

So, the Italians did something, they went on strike, and we trailed behind them. There was no planned vote. Obviously we sold it as a successful European day of action... And what I observed is that every country negotiated independently with management - although it was a central European project. It was subsequently not possible to force management to agree to joint standards.... (German UEWC 2)

German respondents were unequivocal in claiming that the negotiations surrounding the two Declarations were not convoluted, discussions amongst EWC delegates as well as between management and the employee-side are depicted mainly as constructive. On the employees side a commitment prevailed to ensure that any eventual agreements should account for differences in national settings. For example, the German delegation were supportive of the Italian unions’ insistence that the Declarations reference the individual right to proceed with legal action. The drafts drawn-up by two commissions made up of employees and management representatives appear to have been rubber stamped by the UEWC:

In the steering committee we discussed the commissions' proposals and said "we can live with them." Then we had a plenary meeting and signed them (German T.U. representative)

"The company was present at EWC meetings and illustrated the steps taken to implementing the declarations. As part of the annual meetings, there was a specific part in which the company reported with respect to their work" (Ex UEWC President)

The Bulgarian actors were not particularly involved in the negotiation process. As they participated in the EWC meetings since 2007, they attended the discussions concerning the negotiations for the two declarations. They also participated in the contact groups of the UniCredit EWC, where information about the negotiations was shared. The information concerning the results was disseminated by the EWC, and by the employer in Bulgaria. The joint declarations have been sent and then translated in Bulgarian (Bulgarian negotiation process).

*The negotiations were undertaken by the EWC. The final agreement was signed by all the members of the EWC, including the two Bulgarian representatives. The implementation was discussed at the EWC meetings. The declarations were not ratified at national level – this was not necessary according to the trade union leadership (Bulgarian trade union representative) **WHY!***

At the end, the two Joint Declarations were not ratified or co-signed by the national trade unions of the countries in which they are expected to be implemented. The two Joint Declarations are applicable wherever the corporation is present even if they are not represented on the UEWC.

The two documents contain principles and guidelines that, while respecting the different cultures, social and historical background of the countries where the Group operates, nevertheless aim to guide specific activities and everyday processes. According to some of the interviewees, the legal form of a joint declaration has certain advantages over an

agreement, the flexible nature of the declaration can account for the different national legal systems already in place.

Once signed, the two TCAs were made public on the company intranet, and sent to the trade union organizations of different countries. EWC representatives of the different countries were called upon to implement these declarations.

The UEWC is in charge of monitoring the declarations. In each country, national trade unions are responsible for ensuring that the statements are applied. (UEWC member). Monitoring practices foresee that in addition to the two annual meetings, there will also be meetings within the UEWC select committee, during which the company will report on the path by which the statements were made operational.

3.2 The contents: the Joint declaration on training, learning and professional developments

The Joint Declaration from 2008 defines common directions for the Group concerning the professional qualification, vocational training, career development. The company is also committed to mainstreaming all initiatives and activities throughout the group. This is a result of the Group's culture and values as expressed in charters CSR and Integrity.

The Italian Group Unicredit expressed its interest in the topic of skill development and training for employees with the signing of the "*Joint declaration on learning, training and professional development*"⁹⁹. The Head of Human Resources, the Head of Industrial Relations of UniCredit Group, Chairman and Select Committee of the UniCredit European Works Council (UEWC) signed the Agreement on 16th December 2008. The Group committed itself to putting in place guidelines in the field of Training, Learning and Professional Development, according to the principles established previously in the Unicredit's Corporate Social Responsibility and Integrity Charters. For the definition of the Agreement, the signatories parties also referred to the "*EU Bank Social Partners Joint Declaration on Lifelong Learning in the Banking Sector*" of 2003, which had the objective of building a culture on lifelong learning, based on the definition of professional, vocational and

⁹⁹ EC Database, "Joint declaration on learning, training and professional development"
<http://ec.europa.eu/social/main.jsp?catId=978&langId=en&agreementId=182>

entry level skills, the validation of competencies and skills, the provision of information, the support on principles, rights and responsibilities, the employment and retraining by the mobilization of resources. The Joint declaration of the Unicredit Group and its EWC underline that a qualified and skilled workforce is the key instrument needed for gaining a competitive advantage. Adequate training can help to achieve a better understanding of the needs of customers and enhance the quality of services provided. Therefore, the Agreement states that:

“Lifelong Learning and Development [...] becomes crucial to guarantee long-term sustainability of economic results, assuring continuous deployment of People, being human capital recognized as a fundamental basis for the success of any company’s strategy”.

It is stressed in particular the importance of the training in order to address the crucial reorganization and globalization of markets, product and services in sectors such as the Banking and the Finance, which require a high level of expertise. This approach to the training gives therefore new competencies to the employees of the Group and represents a priority investment aimed at ensuring market competitiveness.

Among the fundamental principles enounced in the Agreement, the text underlines that training is crucial in specific moments of the employee’s working life, such as hiring, new responsibilities , modification of procedures, return after a long absence from work and processes of relocation after restructuring or reorganization. Furthermore, in order to provide a better and more effective training the Agreement focuses on the importance of management training, aimed at strengthening company values and improving the skills of their teams in relation annual individual appraisal meetings.

(...) as a key moment for the assessment of Employees’ needs functional to the planning of the training and development, where the Manager and the Employee have to play a proactive role in fostering the growth process.

With reference to the methodology used for providing the training, the Group can count on traditional classroom training, new technologies and “on-the-job-training”. These activities are generally scheduled during working hours, except in specific cases or circumstances. The periodic monitoring of the contents provided by the Declaration is ensured by one or two ordinary UEWC meetings. During these meetings, the parties have the possibility to exchange information and evaluate the current situation, in order to establishing cooperation at local level and the promotion of open discussions through social dialogue principles.

The UniCredit culture, which is fully accepted by the Bulgarian subsidiaries has been based on the principles of promoting the qualification of employees so as to correspond to the clients’ needs according to a human resource manager. This is also a condition for the quality of performance, which is the main principle of everyday work of the employees.

3.3 The Joint Declaration on equal opportunities

Signed on 14th May 2009 by the Head of Human Resources and Head of Industrial Relations of UniCredit Group, Chairman and Select Committee of the UEWC, the equal opportunities agreement addresses the main topic of equal opportunities, non-discrimination and diversity. It also deepens the issues of social dialogue, work-life balance, family friendly policies, performance evaluation and compensation systems, training, and management of career paths.

In addition to the Corporate Social Responsibility and Integrity Charter, the Agreement also makes reference to the general framework defined by the EU Social Partner Statement on “Employment & Social Affairs in the European Banking Sector: Some aspects related to CSR”, European Social Partners UNICE/UEAPME, CEEP and ETUC “*Framework of actions on Gender Equality*” and UN Global Compact principles. More in depth, the Declaration refers to the Sixth Principle of the UN’s Global Compact, which focuses on the concept of non-discrimination in the working environment.

The text is based on the need to address dynamism and flexibility in a modern society, by taking into account that Diversity Management plays a major role in the improvement of competitiveness and the development of a positive cultural change.

The declaration states therefore that it: *“stems from the strong belief that managing inner diversities through policies based on equal opportunities and non-discrimination, contributes to develop a corporate culture of diversity, which will improve the working environment, thus enhancing a stronger sense of inclusion and achieving better quality of life at work”*.

The Declaration enounces several fundamental principles to which the parties commit themselves:

- Equal treatment and same dignity for each diversity
- The culture of diversity as a joint and cross-organizational process
- Meritocracy as the basis for equal opportunities and non-discrimination

These objectives involve the overcoming of the existing gaps and the further development of existing gender initiatives, considered as a cornerstone in the promotion of awareness on such topics. The commitment of the parties involves both the Social Dialogue level, the individual contribution and the role of managers of UniCredit Group, in order to guarantee strong cooperation, providing support to these principles and increasing awareness concerning existing diversities.

When Discussing “best practices” the agreement states: *“while respecting the local socio-economic and legal systems, the sharing of best practices, their valorization and further improvement represent a common aim pursued by spreading the activities that have already been successfully adopted within the Group”*.

In a specific case, involving the Committee on Equal Opportunities, it was necessary to find a joint solution (UEWC member).

The duration of the Agreement is not explicitly defined as is also the case concerning the implementation and dissemination. The Declaration just mentions that the implementation

will be subject to periodic monitoring among the parties and that the results will be discussed with the UEWC during official meetings. This has in fact created some problems:

Despite the range of topics covered varied from equal opportunities between citizens of different countries, or between disabled workers and equal opportunities among different religions, the Committee was not taking note of female gender equality. This aspect was not successfully solved by the Committee and it required a specific negotiation. The company did not accept that there was a problem of women valorization within the group. Although it was evident from Unicredit Group's statistical data, the company made resistance on this aspect. EWC representatives in the Committee insisted that the declaration made explicit this problem, while the management of the Committee was resisting. So, the visions were different (ex UEWC President)

4. The implementation of the two Joint Declarations

As widely known and illustrated in this report, too, the Joint Declarations are not legally enforceable. There exists no body to ensure companies apply such declarations - it belongs to the voluntary sphere. Clearly unions have brought about political pressure to change this situation. Guaranteeing their implementation would require a direct reference in collective agreements at enterprise level. Only then could it be ensured that the training courses on equal opportunities, for example, are in accordance with the Joint Declaration independent of collective agreements at enterprise level. This would also ensure the legal binding effect of the Joint Declarations and the ability of individual workers to demand their application.

4.1. In Italy

Italian trade unionists and experts consider the Unicredit case as one of the most relevant examples of home-based EWC. The success of Unicredit industrial relations, in particular with regard to TCB and EWC, can be traced to two different factors.

The first one is the role of trade unions, and their ability to negotiate. The second one is the aptitude of Unicredit in being able to seize trade unions' indications. It is not a coincidence that the Unicredit EWC is composed of a number of members higher than that required by law.

A research carried out on collective agreements applied at Unicredit Italy (second level collective agreements), concluded that the second level collective agreement does not mention Joint Declarations. In other words, the collective bargaining at workplace level ignores the existence of the Joint Declarations. Furthermore, the issues of the Joint Declarations (Equal opportunities and non-discrimination, and Training, learning and professional development, see the following paragraph) are addressed in collective agreements at workplace level. So, even if equal opportunities and training, learning and professional development are issues of collective bargaining at workplace level, there is not a link between Joint Declaration and collective agreement applied in the workplace. This could be a *vulnus* of the implementation of Joint Declaration in Unicredit Italy.

This lack of connection between international and national level is evident by considering the industrial plan and the agreement on redundancies of 27.06.2014 of Unicredit Italy. In fact, the «Global Strategic Plan 2018» of Unicredit Group contains objectives, strategies and planned actions (so, also planned reduction of staff) until 2018 for all Group entities operating in various states in which it is present. It was presented at the EWC on March 11, 2014. So EWC was informed on the contents of this plan. This “knowledge” has not led to subsequent information and consultation of the EWC in workforce reduction taken by Unicredit Group country by country.

In fact, the “Protocol on the prospects of recovery related to the Strategic Plan 2018 Unicredit Group - Italian perimeter”, was signed between Unicredit and national trade unions without providing a information and consultation with EWC for the reduction of staff scheduled¹⁰⁰.

There is, therefore, awareness on role of EWC negotiations but, as underlined by scrolling through the Plan of the Italian perimeter, EWC was not involved in the plan of dismissals¹⁰¹.

However, it is true that the dismissals pursuant to the plan in question concern only the Italian perimeter but it is also true that the level of dismissals in the Strategic Plan covers also other countries and not just Italy.

¹⁰⁰ It is more strange if we consider that in Article 4, on “Quality of work and trade policies”, the Parties agree on the advisability of concluding a “Memorandum on the welfare of the workplace and Trade Policy” and of stipulating a “Joint Declaration” on this issue with the European Works Council. Furthermore, in art. 8 on “Labour relations and social dialogue”, the parties agree that the industrial relations system in Italy will be achieved through the involvement of trade unions in the national information and consultation phase scheduled for EWC (according to the art. 12 of Dir. 2009/38) and through regular meetings finalized to the discussion with Group senior management and National Unions.

¹⁰¹ Indeed, this voluntary redundancies will be managed by a separate agreement with national trade union in the second half of 2015.

However, we must point out that the staff reduction has been scheduled by recourse to voluntary retirement incentivized. Anyway, this staff reduction is an information that EWC should receive because of the transnational relevance of the measure because the staff reduction also affects other countries.

Moreover, what about the selection criteria? It refers, as we can see, to the proximity to retirement. In fact, voluntary dismissals are only for employees that obtain the legal requirements for entitlement to a pension before 31 December 2018¹⁰².

This selection criteria are compatible with the anti-discrimination law on ground of age? As known, the directive 2000/78/CE provides the prohibition of direct or indirect discrimination on grounds of age. The proximity to retirement is a condition indirectly linked to the age. So, when the proximity of retirement is the only criteria used by the social partners to designate the candidates to the dismissals, it is invalid.

This conclusion is the same also considering that the Plan provided new recruitments with apprenticeships. In fact, we think that new recruitments with apprenticeships cannot balance the sacrifice prompted to the principle of non-discrimination on ground of age.

Furthermore, with respect to the plan of redundancies, the Strategic Plan provides incentives for early (voluntary) retirement to avoid the application of Law 223/91, and so to avoid the application of the information and consultation rights recognized to employees' representatives. So, each Group Company will notify the unilateral termination of employment to employees of every kind and degree - including managers - that mature before 31 December 2018, the legal requirements for entitlement to a pension (regardless of whether they might have decided to continue in service). The only way to avoid this procedure is to hope that the 2400 voluntary redundancies are not fulfilled. In this case, in fact, it shall be followed the procedure provided by Law 223/91 that provides information and consultation rights with employees' representatives. So the possibility to reach agreements to avoid the collective dismissals (as, for example, solidarity contract).

¹⁰² There will be a second phase of the Strategic Plan 2018. In this phase are expected 2.700 redundancies of employees that will obtain the required criteria for pension from 1.1.2019.

4.2 In Germany

German respondents indicate that the implementation of both Declarations was achieved without any difficulties. A number of factors were pivotal here, though. Firstly, the vice-president of the UEWC was also chair of the HBV joint works council as well as in close contact with the company works council. Because of the complicated corporate structure in Germany, in addition to the HVB there exist numerous subsidiaries such as UBIS, Unicredit Business Integrated Solutions, which report directly to Milan, many employee representatives legally have no right to formally meet outside of the UEWC. Ironically a mere 200 meters separate the HBV and UBIS works councils:

We [joint and concern works councils] work closely together on particular issues – sometimes really close, sometimes not so close. But actually the different entities are legally separate (German UEWC 2)

To address this legal conundrum, however, the German employee representatives founded an informal working group for the Unicredit German works councils to achieve greater transparency and cohesion:

This forum cannot reach any agreements, or rather any binding agreements. You can only use it to discuss the different positions, exchange information and to form an opinion. (German UEWC 1)

This forum was essential in helping to form a coordinated input into discussions surrounding the declarations. As the UEWC vice-president notes, by attending such meetings as well as his own joint and company works council meetings he was able to get the all-important “GO”. A further spin-off of such an arrangement also meant any eventual agreements could be 1) implemented without any difficulty; a joint position had already been reached, and 2) irrespective of the complicated German corporate structure there prevailed a uniform standard.

The implementation, however, was also facilitated by the fact that the head of personnel for Germany at the time was not only involved in the negotiations but was a co-signatory of the Declarations: two facts that raised the agreements’ standing. Furthermore, as the following

respondent argues the head of personnel also had the responsibility of informing German management:

Together with me she was responsible for presenting agreements to the German works councils as well as German management. At the European level we also agreed we would be responsible for the monitoring [in Germany] ... (German UEWC 1)

So far respondents suggest that both agreements have been implemented and applied correctly in Germany. Certainly, the existence of a strong industrial relations structure has helped this process according to the UEWC external expert. For example, in the case of Lifelong Learning Declaration, the existence of a training committee has been empowered to monitor that training takes place in working time and that employees do not incur any costs. To date respondents suggest management is abiding by with the guidelines set down in the lifelong Learning Declaration.

4.3. In Bulgaria

In Bulgaria all the necessary principles of implementation of the joint declarations and disclosure all the information concerning the content and mechanisms of using the documents, were made¹⁰³.

Also an ombudsman for the Bulgarian personnel of UniCredit is envisaged and his/her role is used also for the purpose of implementing of the joint declarations and guarding against deviations.

As the EWC is the main actor in the process of the implementation of the declarations, all the information is provided via EWC. The role of the European and Global federations is not very well known in Bulgaria, as the union is also not part of such structures. Some of the issues of the declarations are covered collective bargaining -especially issues concerning the education and training chapters, including the responsibility of the employees. The local employer and the trade union are both actors in the collective bargaining and responsible for

¹⁰³ The mechanism includes: welcome kit for new employees; inclusion of the declaration on “Training, Learning and Professional Development” in the invitation mail for training and workshops and in all feedback questionnaires given to participants; inclusion of the declaration on “Equal Opportunities and Non-Discrimination” in the training course on Diversity; Participation in the Sustainability Report; Meetings with Employees Representatives organized for Bulgaria; Trade Unions electronic communications.

the implementation of the declarations. According to a human resource management representative individual employees are responsible for the implementation of the declarations, too.

As a result, a program for vocational training includes team training/building, training for selling new products, client services and management development was established and implemented in the UniCredit Bulbank. The program is related to the business requirements and the economical environment and is also agreed via collective bargaining. The principles of non-discrimination, equal opportunity and diversity are implemented in the improvement of education, vocational training and career and human resources development policies and in all the human resources policies and management practices.

As mentioned above, in the UniCredit Bulbank there also exists a Charter of integrity. Its' main principles are as follows: eliminating patronage and preferential treatment, respect for people and fundamental rights; honesty/fairness; transparency; respect for equal treatments; freedom and trust. All these approaches should be addressed to the employees, clients and suppliers, investors/stockholders, local community. Some of the principles of the Charter are also based on the joint declarations and the charter is co-signed at national level by the trade union leader.

Every three months there are meetings between the management team and trade union leadership and all the issues concerning labour are discussed, including the training and equalities.

The influence of the declarations on the local industrial relations seems to be positive, but it does not address broad processes of industrial relations, as the declarations are focused only on the two groups of issues.

In the process of industrial relations also other dimensions of the impact of declarations could be observed- there are joint commissions established and regular consultations, concerning the training and qualification and also the issues of diversity are carried out. The social partners are consulting also about the many qualification courses, including also courses of the implementation of declarations. The information and consultation of employees about the declarations, including dissemination of the text of declarations in Bulgarian and guidelines of their implementation is made together by the management and the trade unions and this also promotes the process of industrial relations.

The implementation of the declarations is of use for improvement of the industrial relations culture and improvement of the position of the bank and its' employees comparing to the other banks in Bulgaria.

According to the interviewed representatives of the management and employees, the proactive and participatory approaches are part of the policy of the bank. The standards of training are higher than the average for the country, which is of use for employees' involvement. New training methods and many new courses are used. The education and qualification policies brought to promotion of innovations, which are too necessary in the time of globalization of services, competition restructuring, crisis and higher requirements by the side of clients.

At the same time, the joint declaration of equal opportunities is too useful for identifying the appropriate workforce. The Bulgarian labour market is attacked by many challenges like demographical issues (aging, immigration of young and qualified workforce, worsening of the health status, leading to many cases of disability, difficulties for old employees and for young employees without experience to find job, problems in education and qualification) since many years. Policies like work-life balance and gender balance in hiring, hiring of disabled, telework and parental leaves supported the sustainability of diversities among the staff as well as to ensure, maintenance and development of acceptable and qualified workforce.

The coordination of the implementation of joint declarations and its monitoring is made both by the trade union representatives and the managers all over the country – in all the UniCredit subsidiaries and branches in Bulgaria. The employees' participation is also implemented via joint commissions, purposed on the training and diversity issues.

The implementation of the declarations didn't provoke any changes on the employee' representation structures- the main channel of representation are still the trade unions and the EWC members are representing the employees at transnational level (they are also trade union representatives) and in the network of UniCredit national trade unions. What is new is the ombudsman, but he/she is responsible for the solving grievance procedures concerning more broad labour issues and other issues of employee-management or employee-employee relations which could arise from the implementation of the Charter of integrity and other policies.

5. Concluding remarks

The presence of TCAs is considered very important in Italy. The Joint Declaration on Equal opportunities and non-discrimination is essential to avoid bad behavior. Furthermore, as non-discrimination is a fundamental right, we can say that this fundamental right is now present in the enterprise thanks to the TCA - especially in those countries do not have a solid legal apparatus or a constitutional provisions on this matter.

So, the conclusion of TCA on these kind of matters is obviously a good thing. However, we expected something more. TCAs should also address matters nearest to the simplest needs of workers, such as salary, working time and the risk of dismissals during the restructuring. Nevertheless, we appreciate the fundamental role played the EWC in the conclusion of TCAs. In fact, EWC has negotiated the provisions contained in the TCAs. This has demonstrated that EWC can play an essential role in transnational collective agreements.

The EWC is authorized to address with Unicredit Group matters that go beyond the borders of a single country. This allows a better protection of rights and interests of employees in the various European countries. However, because of this we would have expected a greater involvement of the EWC in cases concerning the definition of strategic plans. In the latter, in fact, there are many redundancies in Italy and in other countries, but it does not seem that EWC has had a particular role to play. In the end, job losses is one of the main concerns of each worker. And this is a matter “of importance for the European workforce in terms of the scope of their potential effects” (see considerandum n. 16 of directive 2009/38).

It can be argued that especially in these matters the power of the EWC should emerge. UniCredit should consult the EWC not after but before the preparation of strategic plans. In this sense UniCredit must inform the EWC about redundancies at the European level and beyond, and listen to EWC’s proposals. In using, for example, the Italian legal categories, the EWC may propose contracts of internal solidarity. In any case, it would have the opportunity to participate not in the definition of the problem but in its solution.

In other words, issues such employment and redundancies may be a matter of transnational company agreement as lifelong learning and equal opportunities and non-discrimination. EWC members have the skills to address these kind of problems at the general level of the joint declaration.

From a German perspective the value of TCAs would appear to be threefold. Firstly, contrary to widely held assumptions, certainly in the negotiation phase, the Declarations have been of considerable benefit for German works councils. This became particularly apparent when Unicredit implemented a uniform IT platform dealing with customer credit in Austria, Germany and the Czech Republic. The introduction of this new platform required affected employees to be trained over a three week period – although differences between management and the works councils seemed to have surfaced - management promoting the idea that such training could be completed on-line at home over the weekend. As the following respondent notes, however, the works councils were reluctant to agree to this:

Those that do it home, maybe do it home anyway. But they do not write the hours down and we have an agreement [Declaration] that learning takes place during working hours. This joint Declaration on Lifelong Learning really, really helped us in this conflict. It continues to

Secondly, this realization greatly helped to improve the standing of the UEWC amongst German works councils. Respondents readily admit how they felt quite skeptical about the value of such agreements when they were signed, nice to have but ultimately inferior to what was already in place in Germany. Furthermore, certainly subconsciously, such opinions underlined the general disappointment in the UEWC that initially prevailed in the early years. Within three months of signing the Lifelong Learning Declaration these same actors were forced to reassess their stance, to acknowledge that the UEWC could facilitate the negotiation of important agreements:

Then, hey, I saw that I had something of real value. I am now totally convinced that similar subjects will now be developed that will help to do our work. (German UEWC 1)

Finally, such an experience, one could even describe it as a conversion, highlights how TCAs can have 1) a positive influence on relations between EWC delegates as well as 2) an increase in support, something that was not always visible, for this European institution. As a consequence, certainly amongst German UEWC delegates, one could observe them

identifying more with the UEWC as well as demonstrating a sense of responsibility for non-German employees without access to well-developed representative structures:

As a person I fell responsible for my Slovakian colleagues when they send me an e-mail and say that management is taking such issues [Declarations] seriously. As a member of the EWC I feel responsible (German UEWC 2)

From a German perspective the Declarations, specifically the Lifelong Learning agreement, surpassed their initial expectations. Furthermore, it led to a positive reassessment of the UEWC as well as a commitment to develop it as an institution.

The Bulgarian experts report that the implementation of joint declarations did not impact that much on the restructuring and crisis problems settlement in the Bulgarian UniCredit subsidiaries. The improvement of qualification supported the possibility of finding new job in the case of redundancy. At the same time the promotion of carrier development, motivation and improvement of work organization are factors for sustainable development of the company. The promotion of diversity and equal treatment are also means for finding jobs of disabled people and other vulnerable groups in the times of crisis.

The policies of the bank were of use for the employment promotion and human resources development under the conditions of crisis, compared to many other companies, where the redundancies and reduction of human resources budgets were made.

This includes at first such policies and practices like: the acceptance of the fundamental role of learning; the involvement of all employees in the policies designed to meet their needs and the need of the business; the improvement in the prospects of individual development; management training; non-discrimination and equal opportunities in the process of training and career development; the usage of new technologies and on the job training; the share of responsibility of employer and employees.

At second, the policies and practices of promotion of diversity, non-discrimination, equal opportunities, meritocracy, work-life balance, family support, telework are also a good examples and good practices , which could be disseminated.

Something more, the two group of policies are related to each other. The diversity, equal opportunities and gender balance are implemented in the policies and practices of education, qualification, career development and life-long learning. Also the policies and practices of learning, career development and meritocracy support the equal opportunities and diversity.

The implementation of the joint declarations supports the improvement of national industrial relations and social dialogue, but only at the company level, not at the sectoral level. At the same time, the main issues of the social dialogue at the company level are the wages and working conditions, which are not the subject of the declarations.

As mentioned above, the industrial relations are still too close to the company and the collective bargaining is strongly separated from the EWC information and consultation procedures. In the group much attention is paid to the EWC, sometimes seems it seems that the employers give prefer to offer advantages to the EWC rather than to the trade unions. Something more, the Bulgarian trade union in UniCredit Bulbank and other subsidiaries is neither affiliated to the European/global trade union structures (although it is being involved from time to time in some of the projects of the UNI Europe Finance), nor to any other national trade union organization.

Although the implementation of joint declaration looks successful, the employees' and trade union representative express some feelings that the management does not share all the information, concerning the employees. It seems some sophisticated approach to avoid some negative impacts is used.

Many issues like health and safety at work, the increase of occupational stress, wages and employment issues, including minimum standards of payment, are not put into the joint declarations or any other joint document of the UniCredit Group.

Although they are discussed at the EWC-meetings, their regulation continues to be based mainly on the national legislation and on the collective bargaining at the company level. In fact, the Bulgarian trade union representative shared their disappointment in not successfully negotiating framework agreements for the company, which could include more issues. In conclusion, the general influence on the industrial relations culture is rather positive, but its scope is still too limited.

BNP Paribas and the European Agreement on Employment Policies. The negotiation of an agreement or the agreement to negotiate?

Sebastian Schulze-Marmeling and Christophe Teissier¹⁰⁴

1. Introduction

European social dialogue at BNP Paribas developed relatively late. Although the company's European Works Council (EWC) was established in 1996, no transnational company agreement (TCA) was concluded before July 2012. The agenda for the first round of TCAs focused on issues that were considered as relatively consensual and that harbour little potential for conflict, and were viewed as important fields to take initiatives in a period of growth through acquisition. Employment management policies were chosen as the topic for the first TCA at BNP. It is largely accepted by most actors that the provisions of the agreement had relatively little impact on the bank's core business units in France, Belgium and Luxembourg. More importantly, negotiations and the conclusions of the agreement seem to have strengthened the role of the EWC and of its Select Committee in particular, and facilitated the development of social dialogue between management and employee representatives at European level.

Based on interviews with a large range of stakeholders, this chapter seeks to shed light on the negotiation process of the bank's first TCA, and provides some insight into its possible impact on employment policies throughout BNP's European subsidiaries. It starts with a brief profile of the company and its European industrial relations institutions. Subsequently, the negotiation parties and processes are discussed in some detail. Moreover, we give an overview of the content of the employment management agreement and its impact. Some concluding remarks are presented at the end.

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2. The BNP Paribas Group – A brief company profile

The BNP Paribas Group was created in 2000 as the result of a merger between the National Bank of Paris (*Banque nationale de Paris, BNP*) and Paribas (formerly Bank of Paris and the Netherlands, *Banque de Paris et des Pays-Bas*). Since its creation, the newly established Paris-based company has continued to grow through external acquisitions, which has made it one of the largest banks in the world. Most notably, the BNP Paribas Group acquired the Italian *Banca Nazionale del Lavoro* (BNL) in 2006 and the Belgium *Fortis Bank* in 2009.

The company's activities are grouped in three main activities. Retail banking (RB) is the most important branch both in terms of revenues (62 per cent) and in terms of headcount (71 per cent). Corporate and investment banking (CIB) and investment solutions (IS) account for 22 and 16 per cent of revenues, respectively. BNP Paribas has an overall workforce of some 180,000 people worldwide, the large majority of which work in Europe (140,000).

The financial situation of the company is described to be relatively stable. In 2013, BNP Paribas Group recorded total revenues of €38.8 billion (€39.1 billion in 2012) and an annual net income of €4.8 billion (€6.6 billion in 2012). The large drop in income is accounted to non-recurrent expenses in 2013, most notable €798 million in anticipation of – at the time – the outcomes of pending legal proceedings in the United States and €661 million to finance its long-term restructuring plan called *simple & efficient* (see next paragraph).¹⁰⁵ In June 2014, however, the New York State Court condemned BNP Paribas to pay a €6.5 billion fine for circumventing the US embargo on Cuba, Iran and Sudan. Since this sum is far in excess of the company's reserve for the legal case, it is expected that the fine has severe consequences on BNP's financial situation although top management denies that there will be a significant impact on employment.

The second budgetary item that caused high non-recurring costs in 2013 is the *simple & efficient* (S&E) programme. S&E was launched in early 2013 and aims at the reduction of operating costs by the end of 2015. Senior management has allocated roughly €1 billion to invest in the restructuring of the company's activities in order to increase efficiency through the simplification of processes, avoidance of unnecessary tasks, facilitation of decision-making processes, reduction of abundances, pooling of resources and other simplification measures.

¹⁰⁵ Les Echos, 14/02/2014.

3. The European Works Council and European Industrial Relations

The European Works Council was established in July 1996 at what was then the *Banque Nationale de Paris* (BNP). The agreement to set up the EWC was chosen to be just before the deadline for transposition of the first EWC Directive (94/45/EC). EWC agreement concluded before 22 September 1996 are not covered by the Directive and must thus not respect its minimum requirements. The latter is important since the so-called Article 13 agreement is still in place although it has been amended in 2003 after the merger with Paribas, in 2008 following the acquisition of the Italian *Banca Nazionale del Lavoro* and, finally, in 2010 as a consequence of the takeover of the Belgium *Fortis Bank*.

The latest amendment had a particularly significant impact on the functioning of the EWC. Most notably, it strengthened the rights of the body and increased the number of meetings. Prior to the new provisions, the EWC met with management once a year for half a day, now there are two full-day meetings preceded by time for preparation and followed by a debriefing (0.5 days each) at which all delegates may be present.

Moreover, the amendment takes into account the new European structure of the group and it seems that it has triggered a shift towards a truly European employee representation structure. Article 1 lays out the calculation formula for the composition of the EWC. Hence, each country with 150 to 1,499 employees has the right to send one delegate and one substitute to the EWC and there are two delegates for countries with at least 1,500 and less than 3,500 workers. Large national activities with more than 3,500 employees are eligible to delegate three members and one additional delegate per 6,000 workers.¹⁰⁶ The maximum number of delegates per country is set to 13 employee representatives, but there may be additional national members representing trade unions.

The mode of calculation permits the representation of small countries to the disadvantage of the group's core countries with large workforces. Using the data at the time of signature of the agreement, France represented 48 per cent of European workers, but only 27 per cent of EWC members. Small countries are relatively overrepresented. For instance, only 3 per cent of BNP Paribas' staff were working in Luxembourg in 2010, but 6 per cent of EWC delegates

¹⁰⁶ For instance, substitutes of the BNP Paribas Group in Belgium had, at the time the amendment was signed, some 19,000 employees, which resulted in five EWC delegates. The threshold for a sixth member would be 21,500 employees (3,500 + 3 x 6,000).

came from the Grand Duchy. An indicator that suggests the extent to which the 2010 amendment has ‘Europeanised’ the body is the signatory of its agreements. Whereas the amendment itself was signed by representatives from five French trade unions and one person from each UNI Finance and FECEC, the 2012 employment management agreement bears the signature of five EWC members from four different countries (Belgium, France, Italy and Luxembourg).

EWC delegates are designated at national level according to local legislation and practises for a mandate of four years. The latest mandate started in December 2013. The current EWC consists of 46 members from 17 countries.

In addition to its regular members, the EWC comes with a ten-member Select Committee that is elected by all EWC delegates. Its secretary and their two deputies are also elected by all EWC members. The committee may be described as the executive body of the EWC and it is very active in the everyday dealings with management and, as the remainder of this chapter will show, in negotiating transnational agreements. The body currently consists of members from Belgium (two members including one deputy secretary), France (3), Germany (1), Italy (2), Luxembourg (the secretary), and Spain (one of the deputy secretaries).

In terms of formal prerogatives, the EWC is by agreement an information body with no statutory right to consultation. There have been instances, however, in which a *de facto* consultation takes place, according to the Select Committee members. The 2010 amendment stipulates that during the first annual meeting, management informs the employee representatives about structural changes and acquisitions or sales of parts of the group.¹⁰⁷ The second meeting is to be dedicated to the development of employment by occupational groups and the situation in selected member states. In between the annual meetings, managers shall inform the EWC secretary of transnational acquisitions or sales or operations that are likely to have a strategic impact at European level. In the event of an unforeseen development that concerns more than one member state, the EWC may call for an extraordinary meeting.

Apart from formal rights, both management and the EWC Select Committee describe the climate of their relationship as very positive. In that regard, one senior HR manager said: “We are influenced by dialogue rather than by a juridical culture. Few [legal] processes, little

¹⁰⁷ These information rights have been extended through the 2012 Employment Management Agreement (see below).

conflict.” Some of the EWC members, on the other hand, raised concerns on the quality and timeliness of information provided by management and stated that they did not receive answers to all of their questions.

In conclusion, it can be noted that the EWC has greatly developed since the 2010 amendment. Most notably, the body has been ‘Europeanised’ and substantially boosted its activities leading to the development of a continuous European social dialogue, as the following sections seek to show.

4. The transnational company agreement

4.1 The negotiation parties

According to a management representative, the initiative to negotiate a transnational company agreement was taken by management, but EWC representatives were consulted at a very early stage. Before the parties agreed to negotiate on employment management, there were two other topics on the table¹⁰⁸, namely gender equality and psycho-social risks. The former was chosen because representatives from both management and labour agreed that it was the least controversial issue, that there was a need to formulate anticipative management strategies, in particular in the context of the merger with Fortis, and a successful agreement could pave the way for further negotiations. Furthermore, management openly admitted that they were happy to conclude an agreement that could be integrated into the company’s social marketing campaign. In their own words, “the agreement constitutes the first concrete content of the Group’s ‘European Social Charter’, which will be gradually complemented” (BNP Paribas press release, 10 July 2012).

In order to negotiate the agreement, both management and labour constituted negotiation committees. The negotiators for the bank were two managers from the central Social Relations Department, and the so-called Responsible for the Steering Centre HR. It is noteworthy that all three representatives participated in the negotiations in their role as members of the company’s *European* management team.

The employee side was represented by members of the European Works Council’s Select Committee. There are specific rules for the creation of working groups. According to the

¹⁰⁸ Est-ce qu’on sait qui a proposé ces sujets ?

EWC's rules of procedure, the Council may form working groups on specific topics. The organisation of such working groups is assigned to the Select Committee. If possible, working groups should include members of at least three countries and at least one secretary. The EWC's secretary and deputy secretaries may join the working group at any moment. In accordance with these rules, the working group for the negotiation of the employment management agreement consisted of the EWC General Secretary, her two deputies and two regular members of the Select Committee. The five members came from Belgium (two delegates), France, Italy and Luxembourg. Moreover, delegates from two European trade union federations were invited to participate in the negotiations, namely UNI Finance and the European Federation of Credit Establishment Managerial Staff (FECEC).

4.2 The negotiation process

Negotiations started with a kick-off meeting in order to chart the course for the upcoming negotiation process. Discussions were held over three meetings and the agreement was signed on 10 July 2012 in Paris by management, the five EWC delegates and the two representatives from the European trade union confederations, UNI Finance and FECEC. It came into force on 1 September 2012 for a duration of three years and covers some 150,000 employees in 20 European countries.

According to management, the negotiations were fairly informal and did not follow a clearly specified procedure. The same source also reported that it was management who prepared and distributed the documents for each meeting, such as national agreements on similar issues, and drafted a first version of a chapter of the agreement. According to a union representative present at the negotiations, the employee negotiation committee drafted, in cooperation with the EWC Select Committee and sometimes with national unions, proposals that formed the base of negotiations. During the meetings, the parties sought to translate propositions into chapters of the future agreement, and negotiated on procedural issues such as the agenda and working groups for upcoming meetings.

During the entire negotiation process, the employee negotiation committee constantly communicated with the EWC Select Committee. According to a French trade union source, the working group presented the results of its negotiations to the Select Committee, which

then discussed and approved or disapproved the propositions. Results of these discussions were also communicated with the other EWC members.

A member of the negotiation committee underlined the importance of the permanent exchange between the negotiators and other employee representatives for the legitimacy of the agreement.

“It has helped to emphasise certain elements of the debate since some national representatives found it useless or even dangerous to negotiate the agreement given that they had local or national agreements in place. The discussions came to underline that the agreement was not a substitute for any existing provision, but that its added value was primarily to provide guarantees to countries that did not have anything like that.”

According to employee representatives, numerous modifications were made to the agreement as a consequence of internal debates. The ‘external’ members of the negotiation committee, that is the representatives of FECEC and UNI Finance, are depicted as important sources for expertise and “drivers for negotiations” (French trade unionist). Management reported that FECEC was very present during the negotiations whereas the UNI delegate did not attend all meetings.

In addition to the regular communication between the employee negotiation committee and the EWC Steering Committee, the latter was asked to ratify the final draft agreement. The regular members of the European Works Council were also asked to vote on the draft. Moreover, the two other signatory parties for labour, the European Trade Union Federations, validated the agreement. UNI asked for adjustments subsequent to the final meeting of the negotiation committees, and the confederation emphasised that, according to its internal rules, it would only sign the agreement once it had been ratified by the EWC.

The internal ratification process of the ETUF is difficult to assess. Whereas we have no information on the internal process of FECEC, an interviewee from a French union affiliated to UNI told us that the national unions were informed about the content of the agreement, but were not given the opportunity to modify its terms or veto the agreement as a whole. There was no indication that the national union would have preferred a stronger role in the validation process and it seemed that the responsible officers thought that it was the EWC’s prerogative to validate the agreement.

The latter might be related to the composition of the EWC's Select Committee. The particular situation of the French union landscape with multiple actors present in most companies makes it necessary to devote special attention to a fair representation of the individual unions in all representative bodies. Therefore, it is not by accident that all unions that are considered representative in BNP France have a seat in the company's EWC Steering Committee, which was regularly informed about the progress of the negotiations and participated in the elaboration of draft chapters.

Given the information available, it is not possible to assess systematically whether or not and, if yes, to what extent national unions from France and the other European countries that send delegates to the EWC have been informed about the negotiations, or whether there have been attempts to assert influence on the negotiation process. As a general rule, it was left up to the individual EWC member to manage their relations to national structures, according to a EWC Steering Committee member, who stated that “[i]t is their [the EWC delegates'] responsibility to respect local procedures [in their home countries]”.

French EWC members reported, for instance, that there have been discussions within the union about a possible derogation of French rules and practices through the agreement. The issue has been raised and discussed

Finally, one of the company representatives reported that there have been attempts from management to inform the workforce in those countries that were not involved in the negotiation process and do not have established a system of employee representation. If and how such information meetings have taken place could not be verified. Furthermore, management reported that they sought to establish a permanent exchange with HR representatives from all countries covered by the negotiations.

4.3 The agreement

The main aim of the agreement is to ensure an early anticipation of changes in the needs for labour within the company. Its stated aim is to “realise structural and organisational adjustments under the best possible conditions for the management of employment and competences” within the company. To this end, the agreement lists a number of tools that are to be implemented at national level if no comparable practises are in place.

First, national practises of individually interviewing employees are to be harmonised across the group's European activities. Managers are asked to hold regular meetings with individual employees in order to assess their skill set and future developments within the group. *Evaluation and appraisal interviews* are to be carried out at least once a year by a manager on the employee's workplace and tasks, their individual competences and needs for training. *Career interviews* may be conducted on a multi-annual basis (for instance every five years) between each employee and an HR specialist. The content of the exchange should focus on the individual skills and competences of the employee, their personal career goals, long-term training plans to achieve these goals, and eventual wishes for functional or geographical mobility.

Second, improved internal mobility is supposed to internalise the adjustment of fluctuating demand for labour and to avoid redundancies. Internal mobility might be functional, i.e. the employee may shift between different fields of activities, geographical, which includes changing the physical location where the work is conducted, or both. In order to achieve this aim, internal job postings are to increase the visibility of vacancies and explicitly mention the possibility of a worker moving to another country.

In terms of employment management practises, the agreement emphasises the company's intention to avoid mass redundancies, but to rely on alternative ways of adjusting the workforce. These alternatives include so-called natural departures (including the non-renewal of short-term contracts), internal mobility, the active search for capacities at other entities of the company, and, if such provisions exist in the given country, access to early retirement and voluntary departure schemes.

In cases in which a redundancy plan appears to be the only possible solution, the company pledges to strictly oblige to national legislation and to offer, on a voluntary basis, accompanying measures for affected employees.

Social dialogue is to play a key role in the implementation of the agreement both at national and at European level. The 2010 agreement that created the European Works Council explicitly states that issues of strategy and long-term employment planning are systematically put on the agenda of the EWC meetings. Taking into account these principles, the current agreement specifies the company's information policy towards the EWC.

Hence, BNPP's CEO presents the company's financial results and the group's strategy during the first of two annual plenary meetings. Moreover, the bank's social development report is to be presented and discussed including national and European indicators on changes in employment levels, the company's age pyramid, recruitment and departure, absenteeism, working time, diversity and training. Whereas the first session shall give an overview of the situation, the second EWC meeting should dedicate time for the discussion of the specific situation of certain occupational groups, countries or company units.

At company level, the agreement obligates management to regularly inform the representatives of the local workforce on the Group's strategy, necessary adjustments to the company's environment, and their consequences on employment. The agreement also stipulates the creation of an institutionalised form of employee representation.

"It is the signatories' express wish that, in countries where no specific legislation exists, or where employee representation is not provided for in law, a discussion forum be established for management and employee consultation on matters affecting the workforce."

This section has presented the three main topics covered by the agreement – the collective anticipation and management of change, individual career monitoring through regularly interviews, and the stipulation of local and European social dialogue. The following part will analyse the implementation of the agreement and the impact of its provisions in more detail.

4.4 The implementation and impact of the agreement

In formal terms, the agreement explicitly states the scope of its applicability. "The present agreement applies to all BNP Paribas-controlled branches and fully-integrated subsidiaries within the geographical remit of the European Works Council."

The challenge, however, is to assess to what extent the provision of the employment management agreement have made an impact on rules and practises at both European and national level. This section seeks to shed light on this question by discussing the effect the impact of the agreement on, on the one hand, harmonising management practises, which was the stated aim of the negotiations, and, on the other hand, the way in which it has changed the practises of social dialogue at both European and national level. The key management tool to evaluate the impact is the formal evaluation procedure put in place by the agreement. Our analysis, however, also draws on information gained through interviews with various actors.

In that regard, it is important to point towards an important caveat that limits the scope of our analysis. During data collection, we had comprehensive access to management and the Select Committee of the European Works Council. We interviewed three senior HR managers and had several occasions to discuss with either the entire Select Committee or selected members. Moreover, we conducted three interviews with national delegates from three different French unions¹⁰⁹.

It would have been of great value for the research to have access to employee representatives from other countries, especially those whose national legislation is less extensive than the provisions set out in the agreement (for instance Bulgaria, Czech Republic, Poland, Romania, or Slovakia). There were numerous reasons for which the latter was not possible. Most notably, employment in these countries is often fragmented in a great number of small business units, and trade unions, which could serve as a point of access, are rarely present. The assessment of the impact of the employment management agreement on these countries is thus limited to statements by central European management and EWC Select Committee members, none of which comes from any of the countries concerned. We had, however, few occasions to discuss with EWC members informally, which permits a superficial and fragmented insight into the implementation of the agreement. The remainder of this section should be read with these caveats in mind.

4.5 Monitoring

The agreement includes a comprehensive follow-up mechanism that sets up a monitoring process with the aim to evaluate the harmonisation of management practises on all major elements of the agreement. For this purpose, central management has added social indicators to its annual social report (*bilan social*) in order to monitor the implementation of the management tools from a macro perspective. An assessment report is to be presented annually to the EWC Select Committee. The text of the agreement states that “[t]he evaluation will encompass the following points:

¹⁰⁹ We made interviews with: Senior HR manager; group level Senior HR manager; group level Senior HR manager, national (France) and group level; Select Committee of the European Works Council (on several occasions, group and individual interviews) National union delegates (2), France; National union delegate, France National union delegate; France Informal discussions with EWC members from various countries

- The operational success of management and staff discussion forums on staffing matters in countries without representative forums;
- The progress of member countries in implementing employee appraisals;
- The progress of member countries in implementing career development interviews;
- The application of the provisions of Section 2 by businesses covered by the scope of the agreement where it has been necessary to implement a reorganisation with significant staffing impacts during the previous 12 months.”

In practical terms, a senior HR manager is giving a presentation to the EWC Select Committee in the first quarter of each year and based on data from the previous fiscal year. For instance, the first meeting took place in March 2014 with data from 2013. The presentations include a systematic information on a range of indicators broken down by countries. Each country is assessed on each dimension using a system of emoticons and colours. A green smiley with a happy face indicates that the measure is in place in the respective country, a yellow smiley with a straight face means that action has been taken, and a red and frowning smiley signals that the measure has not yet been implemented.

According to management, the first evaluation report produced in early 2014 shows a very high level of compliance with the agreement on the vast majority of indicators. There are, however, two caveats to this relatively general assessment. First, the report does not include information on the national situations prior to the conclusion of the agreement. Hence, it is not possible to analyse to what extent measures have been introduced *as a consequence* of the European provisions. A more detailed analysis presented below provides some evidence that an important part of these practises have been in place previously.

Second, the macro indicators are based on reports from local managers. It is not possible to assess if individual interviews, for instance, are really carried out in a regular manner or whether their content complies with the expectations formulated in the agreement. Informal accounts from national EWC members suggest that local management is not always keen to implement the provisions in a meaningful way. In such cases, it is the responsibility of employee representatives to take charge. The control of local levels on the respect of the agreement is generally described as very limited, in particular in small business units.

Individual interviews and internal mobility. According to the company indicators on individual appraisal and career interviews, there is only a very small number of business units

that has not formally introduced these measures. The official European Social Report¹¹⁰ does not provide information by business units, but data suggest that all European countries had introduced appraisal interviews in 2013 and only one member state for which such reports are available does not conduct individual career interviews (Czech Republic).

Representatives from France and other core countries of BNP's Western European business activities have reported that the provisions stipulated by the agreement are inferior to national legislation and practises, and their impact on management practises in these countries is thus limited. The latter, however, does not necessarily undermine the goals of the agreement since its stated purpose is to create an "overall framework" for these management tools. In other words, it aims at *harmonising* and not necessarily at improving management practises; an approach that a French trade union source called an "orientation towards the minimum".

On the other hand, however, the agreement clearly states that none of its provisions should deteriorate the situation in any country, as some of the negotiating parties feared beforehand (see above). Therefore, a non-regression clause has been introduced that stipulates that

"[the agreement] establishes an overall framework, and is not intended to supersede or replace national legislation and/or any national and/or company collective agreements currently in force or which may be concluded in future, where the provisions of such agreements are more advantageous."

This clause, in combination with the minimum standards introduced by the agreement, corroborates the assessment that the aim of the negotiations were to trigger a process of upward convergence towards a level that remains inferior to practises in the company's core business units in Western Europe.

A somehow logic applies to the provisions on internal mobility. The rationale to harmonise policies on this matter stems from the idea that a transparent and accessible internal job market boosts mobility within and across business units and even countries. Transparency and accessibility are to be achieved, for instance, through the repeal of reference to specific diplomas in job announcements (except for jobs that require highly specialised skills). Power of decision remains, however, with local management. As one senior HR manager reported,

¹¹⁰ BNP Paribas (2014) European social report 2013. Available at http://media.cms.bnpparibas.com/file/68/4/european_social_report_2013.32684.pdf.

“the choice has been made for mobility management that is relatively decentralised, and strongly constricted external recruitment policies. Only the transversal sectors, the so-called functional branches, are organised in a centralised manner.”

Increased internal mobility through an accessible internal job market is thus coupled with restrictions of external recruitment (except for ‘local’ jobs and tasks with a high level of confidentiality). As discussed above, the aim of an increased mobility is also to avoid redundancies.

Management draws a positive balance of the provisions of the agreement. 17 of 20 European countries had introduced the internal announcement tool *e-jobs* by the end of 2013. Internal job announcements have increased by one third cent between 2012 and 2013, mainly due to a 44 per cent jump in France.

On the other hand, some EWC members have reported that many local managers do not post job offers in the internal system, no training is available to facilitate transition to other business units or activities, and responses are given late. Moreover, union representatives have stated higher workload for HR manager that is not compensated by new recruitment.

More globally, it is noteworthy that there has not been any large-scale redundancy plan since the implementation of the agreement. Whether or not the latter can be considered a consequence of the former is difficult to assess.

4.6 Social dialogue

Arguably the most important impact of the agreement can be observed with regards to social dialogue, in particular at European level. The negotiation process that led to the conclusion of the agreement has created networks of actors on both sides, management and labour and it has, thus, contributed to a culture of European dialogue. Moreover, few cases have been reported in which the agreement has triggered social dialogue at national level. Limited data access, however, does not permit a more detailed analysis of the latter (see beginning of this section above).

As discussed in the section on the content of the agreement above, the EWC is to be informed about the Group’s general employment trends and, at its second annual meeting, about the situation in particular countries. It is certain that at least two annual meetings take place and that senior management is present at both occasions. In addition, a senior manager stated that,

as a general rule, “important projects are taken to the EWC”. There is additional exchange between the EWC Select Committee, which holds monthly meetings, and management. Although some EWC delegates have raised concerns about the quality of information provided and have reported that they did not always receive satisfying replies to their requests, it seems that the general principles of the agreement concerning the information rights of the EWC are respected by management.

Although the company is undergoing a long-term restructuring plan (simple & efficient, see section 3 above), it is noteworthy that no major restructuring plan that includes mass redundancies or relocation of substantial numbers of jobs has been announced since the agreement came into force. Therefore, it is fair to conclude that, even though information provisions seems to be respected by management, the mechanisms have not passed the litmus test yet.

Within the EWC, French members have reported that the process of negotiation and the communication between the negotiation team, the Select Committee and the regular members has greatly improved, in particular towards delegates from countries that have not previously been well integrated into existing structures.

At local level, the agreement aims at fostering the development of social dialogue on restructuring and grants information rights to employee representatives on these matters. Given the scarcity of information available (see beginning of this section), it is somehow challenging to make a general assessment. The patchy information available suggests that the agreement has had a positive or neutral impact on countries in which an active social dialogue had been previously practised. Apart from some anecdotal evidence, there is little support for a broad positive impact on the development of institutions and practises of social dialogue. The remainder of this section presents some positive examples, but they are by no means representative for the general situation.

Most notably, some change in practises is reported from Poland. The first case refers to the role of the EWC in more general terms, the second one is directly related to the agreement. First, it has been reported that the process of electing EWC delegates has fostered the installation of networks between employees and candidates, according to an EWC Select Committee member.

“It has been brought to my attention that for the purpose of electing [Polish] EWC delegates, since there are no unions in the Polish subsidiaries, the candidates had access to means of communication with the workforce to make themselves known. This has not been the case in previous elections.”

The impact of the second example relates directly to national industrial practises. As one EWC Select Committee member reported, special attention has been paid to the particular situation of Polish industrial relations when drafting the report. Therefore, the section on anticipating change stipulates that

“Each local senior management team [is] also encouraged to take advantage of the forums or other opportunities that exist locally, to provide regular updates to *employee representatives* or, where there are no employee representatives, to the staff themselves” (italics added).

It is noteworthy that the usual point of contact for managers in Poland is the union, regardless of its implementation in the workforce, and not the local employee representatives. At BNP Paribas Poland, this particularity created a situation, in which non-unionised EWC members were not invited to information meetings with management, but the local union that, in turn, was weakly representative of the local workforce. The agreement takes into account this particularity by referring directly to *employee representatives*. It has been brought to our attention that EWC members are henceforth invited to information meetings with management, in spite of resistance from one of the trade unions.

Finally, it has been reported that the validation process of the agreement has also triggered the creation of an employee representation body in Hungary. It was not possible, however, to verify the information or to obtain further details.

5. Concluding remarks

This chapter sought to give an overview of the negotiation process of BNP Paribas’ employment management agreement. The concluding remarks attempt to summarise the main reasons for the successful launch and conclusion of negotiations, and assesses its potential long-term impact on European social dialogue at the bank.

It has been shown that it was of great importance for the process that management in close cooperation with the EWC Select Committee took the initiative to engage in negotiations in order to give the bank a European Social Charter. Moreover, evidence provided by both

managers and employee representatives suggest that management has shown a great willingness to pursue talks until an agreement was concluded. At no point was there a notion of conflict between the two sides, let alone the possibility of failure of the negotiations.

The latter is obviously not only management's achievement, but also a result of the role taken by the EWC during the negotiations. One of the crucial points in the negotiation is arguably the very active EWC Select Committee that was a key driver of the negotiations. The Committee's reactivity, however, sometimes came at the expense of a thorough information policy towards regular EWC delegate, some of which expressed their criticism about the Select Committee's information policy. The two European Trade Union Federations involved played an important role as experts during the negotiations (FECEC in particular) and as a facilitator for validating the agreement afterwards.

Nevertheless, it is worth highlighting that the EWC Select Committee remains the main driver of the European Social Dialogue at BNP Paribas. Union influence is assured through strong union presence within the Committee and, as far as data available permit such an evaluation, communication between Committee members and their local union branches. In order to improve legitimacy of the agreements and other EWC activities, the Committee has recently taken measures to improve the involvement of other EWC members in the process.

In addition, it is noteworthy that the nature of the topic chosen for negotiations, employment management, made it easy to identify a common goal for management and labour. The choice was made on purpose since smooth negotiations were expected to launch a process of social dialogue that would make it possible to tackle more difficult issues. Hence, the second agreement on workplace equality was a greater challenge since there is no homogeneous concept of equality across countries, and its provisions are expected to have a greater impact on all countries. Although it is too early for an in-depth assessment, negotiators reported that no incidence of conflict or strong disagreement appeared during the negotiations.

In conclusion, our reading of the events suggests that the greatest achievement of this agreement is not to be found in its provisions, but in the practises and structures that were created in the wake of the negotiations. It implicitly includes an agreement to negotiate further issues at European level. It remains to be seen, however, to what extent the latter will last. The BNP's European Social Charter was designed to comprise three agreements. Negotiations for the last one on psycho-social risks are under preparation. No information is

available yet on which strategy social partners will adapt afterwards. Will negotiations continue? On which issues? Who sets the agenda? Is the European social dialogue at BNP Paribas already strong enough to survive conflict between or within the negotiating parties? Answers to these questions are crucial in order to assess the sustainability of European industrial relations within the company, but the Employment Management Agreement appears to be an important step in the right direction.

Other theoretical analysis

The Unbearable Lightness of TCAs. Is an EU legal framework the right choice to approach this reality?

*Andrea Gana*¹¹¹

1. Transnational company agreements: an introduction

The negotiation and conclusion of transnational company agreements (TCAs) is a recent phenomenon, emerging in the early 2000s, as a way by which social partners may approach and jointly define issues related to corporate, labor and wages policy and company restructuring plans.

It has been defined as “*a multi-dimensional, open-ended and politically controversial*”¹¹² process which, even in the absence of any legal regulation, may be considered as a new stage in the development of an European industrial relations system.

In this field of study it is important to understand that a multi – dimensional phenomenon, as the growth of a transnational bargaining, cannot be rightly understood without a flexible approach. For two main reasons.

First of all, it is clearly an outcome of the European social dialogue. Therefore it cannot be explained only with ideas or concepts belonging to the national industrial relations system. It is necessary, instead, to be aware of the European context’s specificity which is regulated by its own rules.

At the same time, as it has no legal regulation at the European or national level, negotiation and conclusion of transnational texts should be described like a social phenomenon whose characteristics may be understood only analyzing how TCAs are empirically concluded and how they are able to modify the real interaction between the signatories parties.

This approach is helpful for understanding what transnational company agreements are and what they could become if the EU Commission’s project to introduce a legal framework for TCAs will become reality.

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¹¹² T. Müller, H.W. Platzer, S. Rüb, “*Transnational company agreements and the role of European Works Councils in negotiations. A quantitative analysis in the metalworking sector*”, ETUI, Brussels, 2013.

From this point of view, the opportunity of an EU regulation is highly controversial: it could be considered as an example of "*reflexive law*,¹¹³" with which regulate the self-regulating processes of social partners.

However, employers' associations and trade unions have taken, until now, radically opposed position. In fact, employers' associations strongly reject the idea of an EU legal framework as they believe that, in case of transnational company agreements, choices related to actors involved, forms and legal nature of the texts should be made by the relevant company level actors.

Instead, trade unions, while appreciating the Commission's initiative, think that an EU legal framework should be based on certain conditions, which are considered as essential and non-negotiable. These conditions should ensure that only trade unions are entitled to start negotiations and sign transnational texts. In this way, in their point of view, it would be possible to ensure the compatibility with existing national collective agreements negotiated at any relevant levels, avoiding the conclusion, at transnational level, of any agreement which may represent a regression in relational to national regulation's quality.

These strongly opposed positions reflect "*the wide range of legally and politically sensitive issues involved in transnational legal framework. It also explain why the trade unions in Europe and their European confederations have not put the question of a transnational legal framework at the top of their EU agenda, expressing general support for the idea but not promoting it with any great vigour.*"¹¹⁴

Anyway, through the contribution of studies carried out in the last years on this subject, I will try to highlight some drawbacks which are arising as the most controversial issues related to transnational texts¹¹⁵.

I refer to the right choice of the actors entitled to start a transnational bargaining (especially on the employee side), to the form in which TCAs may be concluded and to the relation between its title and its content, as well as to the definition of the implementation procedure able to involve local partners, ensuring the effectiveness of the texts concluded.

¹¹³ For this definition K. Kolben, *Transnational Labor Regulation and the Limits of Governance*, Berkeley Electronic Press, 2011. On the concept of "*reflexive law*" see G. Teubner, "*Substantive and reflexive elements in modern law*", *Law and Society review*, 1983, p. 239 ff.

¹¹⁴ T. Müller et al.; p. 14.

¹¹⁵ The issues are clearly greater than those I will analyze. For instance, due to the absence of any applicable and pre-existing regulations, negotiation between parties should be initially on the same negotiation's rules.

To these crucial issues I will focus my analysis, after a brief analysis of what kind of texts may be defined as transnational collective agreements.

2. Definition of transnational collective agreements

A TCA has been defined by the European Commission as “*an agreement comprising reciprocal commitments, the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers’ organizations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives*”¹¹⁶

With a broader approach, all transnational texts signed between representatives of the company and its workforce may be qualified as TCAs.

The latter definition seems preferable because it does not require the existence of a reciprocal commitment. As I will show later, in a relevant number of cases, concluded TCAs are considered by the parties signatories as gentlemen’s agreements or as declaration of general, and not binding, principles. For this reason, these agreements are also called joint texts or transnational texts, without any further specifications.

In order to correctly approach this phenomenon in its specificity, it is necessary to immediately understand that agreements’ capacity to produce binding effects between the parties involved is not a necessary requirement.

Finally, a methodological choice. According to a diffuse opinion¹¹⁷, it is appropriate to avoid considering TCAs as collective bargaining’s outcome. At least, if collective bargaining is understood in its technical dimension. Otherwise, this would mean that, despite the traditional competences of national social partners, collective bargaining is not only a national but also an issue with a specific European dimension. In our opinion this statement is not entirely acceptable.

¹¹⁶ EC Staff working document on “*The role of transnational company agreements in the context of increasing international integration*” (SEC (2008) <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>).

¹¹⁷ For this suggestion see R. Jagodzinski “*European Works Councils and transnational company agreements – balancing on the thin line between effective consultation and overstepping competences*”, ETUI, Brussels, 2012.

3. A classification of TCAs based on the issues faced

In times of economic and social change¹¹⁸, as in the context of the current crisis, TCAs represent an interesting development of social dialogue at transnational level. In fact, through the conclusion of joint texts, social partners may arrange restructuring plans, reorganization and anticipative measures coping with the different social and economic effects which could emerge in the countries where the multinational companies operate.

First of all, it is appropriate to further investigate on the issues addressed with such transnational agreements and on the reasons that could push central management and workers representatives to engage in this type of cooperation.

Regarding the issues addressed by signatories parties, three main categories of TCAs may be distinguished:

- TCAs related to concrete restructuring events;
- TCAs which organize in advance a joint restructuring plan;
- TCAs dedicated to anticipation of change: more precisely, these agreements may establish a long term social policy in order to ensure the future of employment.

These issues may be addressed in various ways. For instance, when a plant closures is unavoidable, with the first type of agreements it is possible to provide accompanying measures. These measures could range from the maintenance of employment terms and conditions (in case of employees' transfer to another company) to specific programs aimed to helping workers' outplacement and provide them with the necessary skills to be qualified for other jobs. This type of agreements has been recently defined as *“politically the most important and explosive since restructuring programs often go hand in hand with far reaching negative repercussions for employees¹¹⁹”*

Otherwise, agreements could be signed with the purpose to plan in advance company's restructure in a socially responsible manner. In this way, it is possible to set guidelines or social minimum standards with which enforce the social policy of the group and promote job security and employability.

¹¹⁸ For this analysis references in EC Staff working document *“Transnational company agreements: realizing the potential of social dialogue”* SWD (2012) and in Expert Group *“Transnational company agreements. Report”* 2012.

¹¹⁹ Rüb, S. and Platzer, H.-W. and Müller, T. (2011) *Transnationale Unternehmensvereinbarungen – Zur Neuordnung der Arbeitsbeziehungen in Europa*, Berlin, edition sigma. For this reference see also Torsten Müller, Hans-Wolfgang Platzer and Stefan Rüb, *“Transnational company agreements and the role of European Works Councils in negotiations. A quantitative analysis in the metalworking sector”*, 46.

This brief analysis has highlight some positive benefits arising from the conclusion of TCAs. Nevertheless, sometimes these benefits are only potential due to the difficulty of giving them a concrete implementation.

Anyway, beyond these actual or potential advantages and according to the opinions emerging from social partners involved in their conclusion¹²⁰, TCAs on restructuring plans may also bring less direct benefits.

First of all, they can strengthen a common corporate identity across borders, improving mutual understanding and confidence between management and workers' representatives.

Moreover, they promote the awareness in the actors involved that a joint approach is the best way to deal with the inevitable social changes. In fact, through the conclusion of such agreements, signatories parties could manage them in a European dimension.

Furthermore, TCAs may also give a real meaning to the role of EWCs, linking them in a more effective way to the needs of national and local levels. It is important also to stress how a well-functioning, active and well-resourced EWC, with effective information and consultation rights on restructuring plans, appears as a necessary precondition for the conclusion of these agreements.

Having introduced briefly some interesting aspects of TCAs, just to get an initial overview, it is important now to approach them in a more technical manner. In fact, the effectiveness that these TCAs have shown in various circumstances does not deny the need to understand them with also a technical approach.

Therefore, it is necessary to pay particular attention to a series of open questions emerging from the TCAs phenomenon. These questions are particularly related to actors involved, implementation, legal effects and links with other norms and dispute settlement.

On some of them I will focus my analysis.

4. EU Commission's database and the existence of informal agreements

Transnational negotiation process has emerged, from the early 2000s, mainly in big multinationals in the metal, construction, chemicals, food and financial sectors, headquartered in Europe and characterized for a well- established European Works Council.

¹²⁰ Expert Group "*Transnational company agreements. Report*" 2012, 19.

By mid-2007, already 150 texts had been concluded in companies employing 7.5 million people.

In the last six years, a significant growth was observed. In fact, by mid-2013, 251 TCAs are listed in the European Commission's database on transnational company agreements¹²¹. For more updated figures, see now the Rehfeldt's chapter on this report, where they're counted for 267.

Despite being concentrated in a relatively small number of companies, recorded TCAs have already acquired a significant relevance. In fact, they involve at least 10 million employees and 100 multinationals headquartered in Europe, most of the European and international trade union federations and, at least 10% of the EWCs.

Usually these agreements are sent to public institutions or directly to the EU Commission for their publication.

In addition to them, as pointed out in a recent research¹²², there are evidences regarding a significant number of unpublished and informal arrangements. In this case, the negotiation's outcome does not have the formal status of a written agreement, but only the form of gentlemen's agreements. Apparently, in these cases signatories parties do not regard a more formal and written document as necessary for ensuring the agreement's effectiveness. For instance, sometimes these arrangements between EWC and corporate management are only recorded in the minutes of EWC meetings.

It is important to highlight that EWCs that have concluded informal arrangements tend to be younger than those who are able to conclude formal agreements¹²³. Therefore, it has been argued that probably informal arrangements are signed as a precursor to formal agreements: in fact, before EWCs become able to conclude formal agreements, they need to build a strong working relationship with corporate management and develop its internal operating rules.

It is also clear that, sometimes, the obstacle to formalizing informal arrangements is not EWC's experience or capacity, but management's opposition, particularly in non-European companies.

¹²¹ EC Database on transnational company agreement, <http://ec.europa.eu/social/main.jsp?catId=978&langId=en>, 2013 (July).

¹²² Torsten Müller, Hans-Wolfgang Platzer and Stefan Rüb, "Transnational company agreements and the role of European Works Councils in negotiations. A quantitative analysis in the metalworking sector", ETUI, Brussels, 2013.

¹²³ Even with some exceptions, EWCs that have concluded informal arrangements are normally under 10 years old.

Even if the conclusion of informal arrangements has not been depth investigated by researchers, it is possible to underline two main aspects of this phenomenon¹²⁴.

The conclusion of informal arrangements, related to significant topics as profit sharing but without trade union involvement, may produce a relevant dissociation between company level arrangements and trade union policy on collective bargaining.

On the other hand, the conclusion of informal arrangements may be considered as a compromise and pragmatic solution to a specific problem arising in a company where, due to management opposition, there are no possibilities to conclude formal agreements.

5. TCAs: a relation between agreement's scope and its contents

Following the European Commission's database, a first distinction based on the different agreements' scope may be introduced.

Usually global agreements¹²⁵ are distinguished from the European ones. In fact, while the first ones typically focus on fundamental rights or on various aspects of corporate social responsibility, TCAs for the European area mostly have the purpose to approach and jointly regulate restructuring plans, reorganization and anticipative measures.

In this respect, agreements with an European scope have shown greater capacity than global agreements to attain their objectives, as far as they can take advantage of a more homogenous set of rules and practices.

It is also remarkable that while global texts are usually signed by International and national union federations, EWCs have taken a leading role in the negotiation of TCAs with an European scope. Even if sometimes they are able to play this role only with the decisive support of International and European union organizations.

Clearly, transnational company negotiations affect the interaction between national trade unions, European federations and EWCs.

Through this empirical observation it is possible to introduce and further analyze the problem of the actors involved in TCAs, with special regard to the legitimacy and capacity of employee's representatives.

¹²⁴ T. Müller et al.; p. 87.

¹²⁵ Also called International Framework agreements. Usually, these agreements are signed by one or more global trade union federations and they have a global scope, regardless to their specific content.

6. Actors involved on the employee side

Due to the lack of any regulation on transnational negotiation at the European or local level, several workers representatives may feel entitled to start the negotiation's process.

According to studies carried out on this aspect¹²⁶, on employee side TCAs may involve: EWCs, International and European Union workers' federations and national workers organizations.

In the current framework, none of these three categories of actors have a full legitimacy or legal capacity to conclude transnational texts which may have effects in several Member States.

The representativeness of European and international workers' organizations and their mandate to negotiate and sign TCAs are rather unclear. Thus, European Federations have begun to adopt internal rules with which regulate this field of activity.

Under this aspect, the leading role has been taken by the European Metalworkers' Federation¹²⁷.

In any case, it is undeniable that their participation in the negotiation and signing procedure may promote coordination between different local instances and necessities that need to be faced when social partners wish to bargain at a transnational level.

Regarding national unions' legitimacy, even if their involvement in the signature of transnational texts is clearly linked to the will to associate the majors local actors in the implementation's procedure, it is difficult to overcome the simple remark that their competence is limited to the national level. At the same time, their involvement may play an important role since it would be possible to give to the TCA the character of a company collective agreement under a national law.

Finally, the role of EWCs deserves to be separately analyzed.

¹²⁶ References, for instance, in EC Staff working document "*Transnational company agreements: realizing the potential of social dialogue*" SWD (2012) and in Expert Group "*Transnational company agreements. Report*" 2012.

¹²⁷ With the explicit goal to ensure the leading role for trade unions in European company – level negotiations and guarantee the ultimate decision-making right of the national trade unions, regarded as European actors, an internal procedure has been approved in 2006 by EMF Executive Committee. The erosion of EWC's involvement is evident, even if, in some countries, when EWC's members are trade unionists they usually have a central role in the negotiation process. Anyway, for starting negotiations, an unanimous decision has to be made by all EMF-affiliated trade unions concerned in the transnational company. Trade unions may also have the right to stop negotiation's start if they represent at least five per cent of the European workforce. Such provision is aimed to ensure trade unions' control over transnational negotiations.

7. Focus on EWC's involvement in transnational negotiation process

The competences of EWCs under Directive 94/45/EC and Recast Directive 2009/38/EC are information and consultation. No negotiation powers have been provided.

Nevertheless, it has been noted¹²⁸ that this lack of express competences may be overcome with a “*voluntaristic approach*”. From this point of view, the outcome of information and consultation arrangements is not prescribed or strictly regulated by the EU legislator. Indeed, this outcome is left to the voluntarism of the contractual parties, to their mutual recognition and willingness to overstep the boundaries between consultation and bargaining.

In a more simple way, since there is no legal prohibition in the Recast Directive, central management and SNB at first, and subsequently the same EWC, may introduce and exercise concrete negotiation powers.

This approach seems as the correct way to understand a multidimensional phenomenon like the EWC's creation and its concrete activity, bearing in mind that effectiveness of EWC's powers may push this body over the politic and historical limits that the EU legislator has not been able to overcome with its regulation.

If this assumption is true, it doesn't seem useful to appeal to a broader interpretation of the Recast Directive provision¹²⁹ related to the recognition of EWC's competence to represent collectively the interests of the employees. In fact, it has been argued that, even if this provision is clearly stated in order to provide EWCs with concrete legitimacy to go to court, with a broad approach it could be used as a sufficient legal basis to affirm the existence of EWC's negotiating powers¹³⁰.

This interpretation is not convincing at all.

In fact, it is difficult to consider this interpretation as legally acceptable since it would exceed the EU legislator's intentions.

Nevertheless, if the Recast Directive does not offer suitable legal basis to this purpose, the correct way to explain the existence of EWC's negotiating powers is to consider EWCs as legitimate to the exercise of them on the basis of a mutual recognition by the parties involved.

¹²⁸ R. Jagodzinski “*European Works Councils and transnational company agreements – balancing on the thin line between effective consultation and overstepping competences*”, 173.

¹²⁹ Art. 10.1 of Directive 2009/38/EC.

¹³⁰ R. Jagodzinski “*European Works Councils and transnational company agreements – balancing on the thin line between effective consultation and overstepping competences*”, 177.

From this point of view, the effectiveness of the EWC's powers seems a direct consequence of the experience gained by this body over many years of existence. In fact, specific studies have shown that it is more likely to detect negotiating powers in EWCs that have played an active work for about a decade or more¹³¹. The experience gained makes easier for these bodies to undergo further information and consultation procedure, asking central management for an active negotiating role. By this way, they may develop into what has been described as "*participative EWC*"¹³²

If the voluntaristic approach described above seems useful to overcome the inconsistency of the Recast Directive regarding EWC's negotiating powers, another possible critical point can be identified in relation to the mandate of the EWC's members.

In fact, they are elected as representatives in an information and consultation body. When they start to sign TCAs, which sometimes can significantly modify working conditions, the lack of legitimacy for such an action appears clear.

Moreover, under this aspect others unacceptable consequences may also arise.

Anticipating some remarks that I will make later about the form assumed by TCAs, transnational agreements may have binding effects whenever parties involved decide to assume a reciprocal commitment, going further a mere declaration of intents. But, in this case, TCAs have binding effects even in local companies not involved in the election of EWC's delegates. This can happen, for instance, when local companies are not entitled to send delegate to the EWC or they can participate in the I & C procedure only in a passive way.

As pointed out in a recent research¹³³, EWCs which want to participate in transnational bargaining, must fulfill even legitimacy requirements.

From this perspective, it would be necessary that EWC's delegates obtain an explicit mandate including negotiation activity, ensuring the signatories' capacity to represent and enter into contractual commitments.

¹³¹ See for instance Torsten Müller, Hans-Wolfgang Platzer and Stefan Rüb, "*Transnational company agreements and the role of European Works Councils in negotiations. A quantitative analysis in the metalworking sector*" and R. Jagodzinski "*European Works Councils and transnational company agreements – balancing on the thin line between effective consultation and overstepping competences*".

¹³² Lecher, W., Platzer, H.-W., Rüb, S. and Weiner, K.-P. "*European Works Councils: Developments, Types and Networking*", Aldershot, Ashgate, 2001.

¹³³ R. Jagodzinski "*European Works Councils and transnational company agreements – balancing on the thin line between effective consultation and overstepping competences*", 191.

Without these conditions, problems of implementation may arise. Sometimes, these problems have made necessary to provide for “*opt-outs clause*”, managing in this way disagreements aroused between national actors and negotiators.

In further cases, the texts have simply remained locally ignored.

After this analysis, the identification of the actors, especially on the employee side, entitled to start and participate in a transnational bargaining has emerged as a crucial issue. Moreover, agreement’s capacity to fulfill its purpose depends also on other factors, as the form given to the agreement, clarity about aim and consequences, besides the quality of implementation.

8. The TCAs’ form: a clear lack of clarity and precision

Regarding the TCAs’ form, a wide diversity in the titles given to the texts may be observed. While several are called “*agreement*” “*European/global agreement*” or “*framework agreement*”, in other cases the signatory parties have used only general titles as “*guidelines*”, “*principles*” “*joint declaration*” or “*protocol*”.

Furthermore, frequently there is no a clear correspondence between the issues addressed in the texts and their binding or declarative nature. In fact, most of the texts called agreements cannot have the legal character of a collective agreement under any national laws.

However, even the opposite may be true. A clear example may be found in the “*GM Framework*” adopted in 2001. In fact, despite its title, this text is considered as the most achieved example of an agreement with concrete, binding and detailed rules.

It correctly shows how the term “*framework*” does not imply necessarily the adoption of only general provisions; indeed, it is also used to mean that the texts have to be implemented into national or local agreements to become legally binding.

Generally, if there is no certainty on the legal status of the text, it is obviously more difficult to determine the ways in which it needs to be put in effect.

So, at this regard, it has been noted that, despite the formal title used, TCAs are frequently intended, by signatories parties, only as “*frameworks*”, containing general rules or principles that need to be implemented at local levels¹³⁴.

¹³⁴ Clearly, this observation is not true when the agreement is signed by national trade unions. In this case, it could be considered as collective agreement under relevant national law. Even if, as explained above, is also doubtful if these workers’ representatives are entitled to enter in a kind of negotiation that overstep the boundaries of their national field of competence.

The lack of clarity in the way by which many TCAs are drafted is not related only with the titles used for these texts. It also depends on the fact that basic information, as the date, name and functions of the signatories, scope and duration of the agreements are not always clear. This obviously makes more difficult to ensure an appropriate implementation at local levels. For this reason, it seems as a shared opinion that the drafting of transnational texts should observe certain principles when the parties wish to conclude agreements with binding effects. For instance, texts will be easier to implement if they are dated and signed, with a clear indication of the name and capacity of the signatories parties. Moreover, it could be useful to indicate the date by which the provisions are to be implemented and the way in which this will be done, providing also for monitoring procedures and rules for settling disputes¹³⁵. Under this aspect, it is also important to highlight that intended and concrete legal effects of TCAs may largely differ, even when signatories parties agreed on giving them binding effects.

These binding effects, in fact, are conditioned by the applicable national framework. In this regard, there are relevant differences, in the Member States' legislation, relatively to what constitutes a collective agreement at company level and to the minimum requirements needed by the text to this purpose. On this field, various elements may be considered and regulated in different ways across Member States: for instance, content, signatories parties and their capacity to negotiate, link between company agreements and other levels of social dialogue and the effects on individual working conditions¹³⁶ may largely differ in the national legislations.

In this regard, it is unacceptable that TCA's legal status may change from one country to another. So, the need of an EU legal framework on transnational collective agreements appears noticeable. Through this tool, it would be possible to introduce a voluntary mechanism able to provide TCAs with legal effects, when its requirements are fulfilled. Even under this aspect, it seems necessary to ensure the legal capacity and legitimacy of signatory parties and the introduction of appropriate implementation procedure.

¹³⁵ These suggestions may be found, for instance, in the Commission Staff Working Document "*Transnational company agreements: realizing the potential of social dialogue*"

¹³⁶ Across Member States, effects of company agreement on individual working conditions are mainly regulated in two different ways. The agreement's provisions are applied to all employees who fall within the scope of the agreement, even if they are not member of the signatory union. Otherwise the agreement may produce its effects only on the workers affiliated to the trade union which has signed the agreement.

It becomes increasingly clear how transnational bargaining, although essentially born spontaneously in the industrial relations system as a phenomenon desired by social partners, requires more and more an institutional structure to regulate and accommodate it in an homogenous way¹³⁷.

Finally, after the analysis of actors involved on the employee side and having exposed crucial issues related to the TCAs form, it is possible to focus the attention on the procedure for TCA's implementation.

9. Implementation of TCAs: the need to ensure a collective ownership of the text

The effectiveness of TCAs depends on the quality of implementation. Quality of implementation clearly derives from the procedures provided by signatories parties for this purpose. Procedures should ensure a profitable integration with the different levels of social dialogue existing in the multinational company's landscape and the collective ownership of the text by all of the actors involved.

To this purpose, some transnational texts provide mechanisms for its dissemination to local management and employees. Through these mechanisms, it is possible to involve local actors avoiding that they do not feel bound by agreements which they have not negotiated.

Follow up provisions appear in most of the TCAs recorded in the European Commission's database: they ensure, usually through an annual review of the implementation's status, the monitoring of commitments. To this purpose, it is possible that negotiating parties agreed to the creation of an *ad hoc* committee, which involves EWC's members, internal staff and European or international trade unions organizations¹³⁸.

Moreover a different approach may be highlighted. Some transnational texts become legally binding after an implementation in a local company agreements, although it is clear that in this way the implementation process become more complex, requiring multiple national negotiations with possible issues related to their different outcomes.

Furthermore, the implementation process may pose coordination's challenges with the pre – existing local company agreements as far as TCAs do not provide a non-regression clause.

¹³⁷ References to the neo functionalism perspective based on the motto “*forms follow functions*” in R. Jagodzinski “*European Works Councils and transnational company agreements – balancing on the thin line between effective consultation and overstepping competences*”

¹³⁸ If they have signed the agreement. For an interesting example, see EDF Agreement on Corporate Social Responsibility. This agreement, in fact, involves international union federation in a monitoring bodies.

From this point of view, it is necessary to consider that collective bargaining at higher levels usually runs counter to the almost prevailing logic of devolving financial and strategic responsibility to local management. In fact, intensification of international competition, greater uncertainty and consistent shifts in demand have pushed local management to introduce employment and work practices tailored to their local business requirements, favoring a decentralization process in collective bargaining structures across Europe¹³⁹. These aspects have been highlighted by the economic crisis since in many Member States we can face a general process of decentralization of collective bargaining to the detriment and loss of importance of national collective bargaining¹⁴⁰.

Therefore, local actors of the industrial relations systems may not desire the implementation of an agreement which, with its transnational nature, is not tailored to the local workers' and management necessities.

10. Conclusions

Given the lack of any legal regulation, TCAs have been analyzed paying attention to the characteristics emerging from the agreements until now concluded. In fact, the use of national legal categories or rules could only allow a partial comprehension of a multi-dimensional and political controversial process.

As it has been shown above, EWCs, which are able to represent the interests of the entire workforce, have become more and more a main actor in the transnational negotiation process. Even in the absence, also in this case, of any explicit competence on this field.

I have argued that this lack of regulation does not prevent EWCs to exercise negotiating powers as they are mutually introduced and recognized by relevant social parties.

But not only the right identification of actors involved has emerged as an important issue. Also the form, the legal status and implementation's procedure raise questions on the transnational negotiation process not easy to solve.

¹³⁹ Paul Marginson, Keith Sisson "European Works Councils - Opening the Door to European Bargaining?" *Industrielle Beziehungen*, 3. Jg., Heft 3, 1996.

³⁰ See national reports in M – C. Escande Varniol, S. Laulom, E. Masuyer (sous le direction de) "*Quel droit social dans une Europe en crise?*", Larcier, Bruxelles, 2012.

So the intervention of EU legislator appears, in my opinion, as an unanswerable need, especially to ensure an homogeneous legal status to TCAs. This latter is clearly a necessity if we want recognize TCAs the role that they are potentially able to play, in the European dimension, in times of social and economic changes.

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The relationship between ETUFs and EWCs, with a focus on their role as bargaining agents

Giulia Frosecchi

1. Introduction

The European workforce is represented by several actors, at various level. National trade unions still play a crucial role, they are well rooted in the national industrial relations' traditions and they are characterized by peculiar features. The globalisation of markets and, especially, the economic freedoms that companies can enjoy within the EU fostered the transnational dialogue between trade unions. Therefore, most of the European national unions are now affiliated to organizations at European level. The European Trade Union Federations (ETUFs) perform an important task in respect to Transnational Companies (TNCs) operating in Europe. Indeed, they try to monitor policies and activities of the undertakings freely moving across borders. However, the ETUFs act towards TNCs as external bodies. Indeed, within the bigger companies another institution is taking shape: European Works Councils (EWCs). EWCs, although legally recognised at European level, are still "an institution in process" (Waddington 2011, p. 510).). Consequently, it is still to be clarified in which way they can be integrated within the European industrial relations system which is itself an ongoing process.

A moment when national trade unions, ETUFs and EWCs bump into each other is the moment when transnational collective bargaining is either taking place, or when it is expected to take place in the near future. It follows that there is a necessity to explore if and how the three agents coordinate their strategies and actions, particularly in relation to the delicate moment of the transnational negotiation at company level.

The strong distinction between EWCs and trade unions is due to the fact that the European bodies could be, at least potentially, completely independent from, 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 (Müller et al. 2011, p. 221).

The objective of the essay is to give an overview on the relationships existing among EWCs, and, on the other hand, both national organizations *per se*, but also, and especially, as members of the European Trade Union Federations. The analysis considers the actors in relation to the transnational negotiation at company level.

First, the article looks at European Works Councils, mainly as negotiators of transnational collective agreements (TCAs). This section aims at giving an overview over the wide academic debate around the role and function of EWCs, with a special focus on the delicate field of transnational collective bargaining. Both quantitative and qualitative arguments are taken into account. Therefore, the analysis goes beyond considerations over the number of TCAs concluded by EWCs, by reviewing studies meant to assess their quality.

Second, the relationship between EWC and ETUFs is considered. This paragraph is helpful to frame the already existing, and mostly consolidated, dynamics between the two actors. The last paragraph reviews the ETUFs' policy developed for bargaining at transnational level; attention is given to what extent EWCs are integrated into negotiating procedures. In particular, the EMF (now IndustriAll European Trade Union) and European Public Service Union (EPSU) guidelines are assessed.

2. EWCs as negotiators

A directive approved in 1994 (Directive 94/45/EC of 22 September 1994) provided for the establishment of European Works Councils (EWCs). On 23 April 2009, the recast directive was adopted (Directive 2009/38/EC of 6 May 2009). Some commentators were disappointed by the irrelevant advancements of the new text. Others carried out an attentive analysis of the new provisions, showing that a progress had been made (Jagodzinski 2009). The recast directive entered into force in 2011 and a quantitative increase of EWCs was one of the expected goals (Jagodzinski, 2011).

By the end of 2008, 834 EWCs were active, and the workforce covered was estimated at around 14.5 million workers (Köhler and Begega, 2010). These bodies have not been homogeneously established over the years (Ibid, p. 592). However, nowadays the number is quite remarkable, indeed the latest data collected by ETUI count 1294 EWCs, and only 239 of them are no longer effective (ETUI database).

According to two authoritative scholars of European industrial relations (Marginson Sisson 1996), EWCs represent an important step towards the Europeanization of collective bargaining. In 1996, the authors expressed the hope that EWCs would manage to elaborate common negotiating strategies and goals, promoting European forms of collective bargaining (Ibid).

However, in the same years, other authors highlighted that a central role of EWC in European collective bargaining would likely support management-driven negotiations and foster the decentralization of collective bargaining in Europe (Streeck 1997, p. 333; see also Schulten 1996).

Over the years, other arguments have been added to both sides of the debate. For instance, some authors have underlined the fact that the number of EWCs is constantly increasing, their role is evolving over time and they represent a “powerful transnational potential” (Jagodzinski 2012, p. 159; Jagodzinski 2011; Köhler et al. 2010). On the other hand, Euro-pessimists highlight the dissatisfaction of workers and trade unions towards these bodies (as reviewed in Köhler et al. 2010, p. 598).

Jagodzinski (2012) assesses international and European legal basis that would justify a transnational bargaining agent role for EWCs. In particular, in respect to ILO sources he concludes that the international organisation, besides recognising workers’ and employers’ organisation as negotiating agents, also “seem to provide room for other methods of CB that allow ‘representatives of employees’ or ‘workers’ representatives’ to bargain” (Ibid. P. 167). However, it is not unquestionable that EWCs are workers’ representatives. The recast Directive is relevant in this respect. Indeed, it was clear in the ETUC opinion about the revision of the 1994 Directive (ETUC 2008) that both the EU Commission and the European Confederation agreed that there was a need to “explicitly recognise the EWC as the representative of the firm’s or group’s employee” (Ibid. P.8), as to enable the EWC to fully exercise his rights. As a result, Article 10(1) of the recast Directive (2009/38/EC) tries to clarify the function of the EWC, by providing that it “shall have the means required to apply the rights arising from this Directive, to represent collectively the interests of the employees”. Therefore, it is now to be understood which rights are covered by the EWC Directive and if the right to negotiate can be considered included. Jagodzinski (2012) underlines that the European legislation (not even the 2009 Directive) does not clarify the boundaries of the right

to *consultation*. On the other hand, it does not even prevent EWCs from conducting transnational negotiations (Ibid. p. 176). However, the fact that the 1994 Directive has its roots in point 17 of the Community Charter of Fundamental Social Rights, which recognises information and consultation, but not negotiation rights (see Recitals to Directive 94/45/EC), may imply that the intention of the legislator was not to give negotiating power to the EWCs. Moreover, going beyond the legal definition of EWCs as workers' representatives, it is to be discussed whether the EWC is truly representative of the workforce, in a context where a large number of the European workers not only do not know about the existence of these bodies (strong evidence is given by the Transnational Company Agreements at Santander Group, published in this report), but also do not have a saying in this respect. Indeed, there is uncertainty over the democratic designation of EWC members (Rehfeldt 2014). In addition, as also Jagodzinski mentions, it is not clear if and when they can be considered as mandated bodies (Jagodzinski 2012, p. 179).

The arguments presented by the author, to support the negotiating role of EWCs, are several and detailed. Inter alia, it is argued that the variety of bargaining agents, that can be found in the various national industrial relations systems, gives room for a bargaining agent as the EWC at EU level. Moreover, the author refers to the voluntaristic approach, especially relevant given the absence of a EU legal framework for transnational collective bargaining (TCB), while arguing that "what can be identified as the key causative factor for transnational collective bargaining within this approach is the mutual recognition of the contracting parties" (Jagodzinski 2012, p. 175). Therefore, what would make the EWC a negotiating agent would be the recognition by the management side. In that case, the industrial relation system of the country where the Multinational Company has its headquarter would play a crucial role (see, inter alia, Rehfeldt 2013).

Going beyond theoretical debates, as a matter of fact, EWCs have had a remarkable role in the negotiation and conclusion EFAs (Rehfeldt 2013, pp. 178, 179). Among the 124 EFAs counted between 1988 and 2013, 60 have been signed by EWC alone and 19 by EWC and ETUF, while only 16 have been negotiated and concluded solely by ETUFs (Rehfeldt 2014). A number of case studies on EWCs have shed a light over this complex world, going beyond the pure quantitative analysis. Overall, it is often stressed that the EWCs differ a lot among themselves, both in scope, composition and activity, and it is extremely incorrect to treat

them as a single static category (Hertwig et al. 2010; Timming 2010, Waddington 2003; Gold and Rees 2013).

The categorization of EWCs elaborated by Lecher in 2001 considered three possible types of EWCs: *symbolic EWCs*, where no real participation takes place; *service-oriented*, where the activities revolve around the right to information; *project-oriented EWC* which implies some kind of cooperation among workers and a common agenda; *participative EWCs*, meaning those ones where transnational links are established and the EWC is active not only in consultation, but also in negotiating transnational company agreements (Lecher et al. 2001).

Broadly speaking, EWCs can be either merely symbolic bodies or important actors (Mueller et al. 2013a). Hertwig et al. (2010)'s empirical analysis shows what this distinction means in practice, by comparing two cases: GME EWC, which signed 6 agreements in 11 years time and the PSA EWC, which only adopted a Charter of Social Rights. The different levels of action strongly depend on the conditions in which the EWC is operating. The main influencing factors are the company type, which implies different organizational needs, and both cultural and institutional factors.

According to other scholars, the difficulty for EWCs in engaging in transnational collective bargaining is also related to the different national origins of EWC members. It has been noted that there are different understandings about what a EWC is and which strategies it should develop (Waddington 2003). Moreover, ambiguous relationships between EWC members and national trade unions, which is often added to a lack of funding from the national organizations (Hann 2010), obstruct the development of strategies at international level, as the collective negotiation of transnational company agreements.

The case studies on Santander and BNP's Transnational Collective Agreements give a clear idea on how different the role of national trade unions can be, with regard to the European level negotiation. Indeed, in the latter case the EWC was the bargaining agent, and the council members were free to decide if and how to communicate with the respective national unions. While, in the negotiation at Santander only trade unions from Spain had a central role (see the case study on this report).

A publication of the European Trade Union Institute has made available the findings of a qualitative study regarding the approach of EWCs towards the specific activity of negotiating transnational collective agreements (Müller et al., 2013). The authors investigated on both

formal and informal arrangements between EWC and the management, in the metalworking sector, 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 TNCs with German headquarter have concluded several formal and informal agreements. Furthermore, after evaluating the EWCs’ approach towards transnational negotiations, the authors have concluded that the number of arrangements, both formal and informal, between TNCs and EWCs is likely to grow, even if an exponential increase is not to be expected (Ibid, p. 85).

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, that do not have a written form (Mueller et al. 2013, p. 9).

The findings are various and interesting. 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, 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 (Müller et al. 2013, p. 66).

In relation to formal agreements, usually the management takes the initiative and, in that case, all EWCs interviewed seem to be very keen to positively engage in negotiations and willing to conclude the agreement. 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. The vast majority of EWCs that have not negotiated or concluded any agreement expressed the need to enter into negotiations. The EWCs members of German companies were expressing lesser this need, mainly due to the general structure of the company that well integrated the EWC itself (Mueller et al., 2013; 68-70).

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, communication is 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. It is to be highlighted that the 57% of the agreements concluded with involvement of EWCs have been found in accordance with the EMF statutory procedure (Mueller et al. 2013).

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, European industrial relations will be shaped according to what the practice is now, therefore, some scholars seem to imply that a negotiating role for the EWC may favour a European industrial relation system (IRS) not strongly trade union-centric (Mueller et al 2011, p. 221). Moreover, we can remind that EWCs, operating without sectoral level coordination by ETUFs, risk to foster the creation of a form of "transnational micro-corporatism" (Schulzen 1996).

Someone strongly concludes that, notwithstanding the remarkable 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 2012, 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 2012, p. 26). Consistently, ETUC tried, although unsuccessfully, to highlight the importance of a clear role of ETUFs within the EWCs in the occasion of the revision of Directive 95/45/EC (ETUC 2008).

3. ETUFs and EWCs, which relationship?

Let us now have a wider look at the correlation between ETUFs and EWCs, going beyond the peculiar activity of negotiating TCAs.

European Federations have strongly supported a European legal framework for workers' representation at company level (Rehfeldt 2013). Moreover, the ETUFs have often closely followed, or even lead the agreements to put in place a EWC have, especially the European Metalworkers' Federation (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), the European federations have managed to get involved in the EWC activities.

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. 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. Ever since, EWCs came "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; Waddington 2011). Another key step was the development of a new figure: the EWC coordinator, who is appointed by the respective ETUF for each EWC (Telljohan et al. 2009a,). The ETUF EWC coordinator has a central function. His main task is to maintain the linkage between the two European trade unions and the European company bodies (Rüb et al. 2013).

In 2011, Waddington published the results of a study assessing the level of actual performance of European Works Councils in relation to ETUFs' policies. 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 raise the number of EWC coordinators, but also the quality of their presence and involvement is to be increased (Waddington 2011).

Besides the specific figure of the EWC coordinator, all ETUFs try 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 negotiation, and they provide political supervision (Mueller et al. 2010, p. 515). Therefore, it is not surprising that the participation of European Federation of Credit Establishment Managerial Staff (FECEC) and UNI Finance representatives, external members of the negotiating committee at BNP, has been considered of high value by the EWC members, since it improved the expertise of the committee (see the case study in this report).

However, empirical studies show that, in many cases, 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 the respective national trade union. A consequence of the reliance on national trade unions is that a real transnational identity within EWCs can hardly develop (Waddington, 2011).

Summing up, EWCs' activities are more meaningful when the members are unionized and a ETUF representative is actively taking part in the EWC (Waddington, 2011). Waddington's study shows that information and consultation at EWCs are more efficient where the ETUFs policies are applied and the support of ETUFs representatives is guaranteed (Ibid). 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 consultations at EWCs is poor, often much less than what provided for by the EWC establishing agreement (Waddington 2011).

The existence of a link between ETUFs and EWCs guarantee also a connection between the European company bodies and national trade unions, in as much as the general purpose of the European federations is to be the European voice of national organisations. Indeed, national trade unions are the indispensable skeleton of ETUFs. First, European federations are

financed through affiliates' fees and EU funding. Moreover, national affiliates contribute by sharing their expertise and general resources (Mueller et al. 2010, p. 512).

The ETUFs still suffer of a "limited transnational capacity" (Ibid, p. 513). However, lately, the ETUFs have acquired a functional profile defined as *associative governance* and characterized by a wider power and more autonomy from national trade unions in core activities. This improvement is shown by the fact that national affiliates have accepted ETUFs as transnational negotiators and collective bargaining coordinators (Mueller et al. 2010, p. 512).

4. The ETUFs negotiating procedure and the involvement of EWCs.

The latest ETUFs' policy, which also concerns the relationship between the European federations and EWCs, is the mandate procedure to negotiate EFAs. What follows is not a detailed review of all ETUFs' procedures, but an overview over the procedures applied by IndustriAll Europe and EPSU, with special attention to the EWC role.

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, a 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 fourth 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; Dufrense, 2012), which is now an appendix to the IndustriAll European Trade Union Statute (IndustriAll-Europe, 2012). Therefore, it now applies to transnational negotiations with TNCs employing a wide range of workers, including chemical, textile, energy and metal workers.

In 2001, the EMF adopted a position paper where it clearly declared that trade unions have a monopoly over collective bargaining. 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 (Rüb et al., 2013).

In June 2005, the executive committee of EMF 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.

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 national unions 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. This perspective completely rejected by the Italian trade unions that accepted as signatories only the European Federation representatives (Rüb et al. 2013; Dufrense 2012).

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, IndustriAll commits to involve national trade unions also in TCB.

Both for IndustriAll and EPSU, 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 IndustriAll coordinator, the EWC select committee and the interested EWC. In the same way, EPSU provides for a complete information and consultation round among the trade unions involved

in the company, the EPSU Secretariat, EWC select committee and the EWC. However, it is up to the trade unions involved to find an agreement as to start the negotiations (EPSU 2009). In both cases, the national trade unions agree upon both the negotiating team, which can also be composed by EWC members which are also trade unions members, and the main positions to be taken during the negotiation (EMF, 2006).

The IndustriAll guidelines are clear on the fact that 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. 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.

It has been underlined (Rüb et al., 2013) that there is a duty to involve EWC members only in the first phase of the procedure. The EWC is especially relevant at that stage of the process, since it can prepare the right environment for the negotiation. On the other hand, as far as the real negotiation is concerned, EWC members are given significant position only if they are trade union members, of the respective national organisation (see also Rehfeldt 2013). Overall, 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 Rüb, Mueller and Platzer 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" (Rüb et al., 2013,).

5. Conclusions

All in all, European Trade Union Federations and European Works Councils are well-established realities that are steadily improving, both in number and activities. The relationship between them can be characterized by moments of intense cooperation and constructive dialogue and situations of contrast or even conflict. This last scenario is very likely to happen when both EWCs and ETUFs are claiming control over the same activities.

An example can be found when transnational collective bargaining at European/company level is at stake.

Although both are in practice involved in TCB, the respective roles are everything but clear and the two bodies may end up competing instead of cooperating, in this respect. The legitimacy of who is negotiating on the workers' side is one of the main problems related to EFAs (see Mueller et al. 2011, 219); a problem, that, according to most scholars, could be solved by a European legal framework (Ales et al. 2006; da Costa and Rehfeldt 2007; Sciarra 2010).

The relationship between 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). A clear example is the one of Unicredit (see the case study in this report), where the EWC has proposed to start transnational negotiations and it has concluded, with the management, two Joint Declarations on "Training, Learning and Professional Development" and "Equal Opportunity and Non-Discrimination".

However, this does not mean that EWCs are always excluding European trade unions from transnational collective bargaining, as shown in the negotiation at BNP, concluded in July 2012, where UNI Finance and the FECEC were invited to participate (see the case study in this report).

The EWC directive does not help shedding a light on these points, since, on the one hand, it does not recognise a role to ETUFs in respect to EWCs, and on the other hand a right to negotiate for EWCs is not provided for.

In a context where a legal framework to negotiate EFAs is totally missing, the guidelines developed by the European Trade Union Federations can be crucial in finding a way for EWCs and ETUFs to cooperate and learn from each other, with the final aim to strengthen the employee side in the negotiation phase. However, in order to reach this objective the Federations' procedures have to take in due account the EWC, indeed the EWC can bring a

positive contribution inasmuch as it likely knows the company internal dynamics and the EWC members are directly concerned with the management's decisions. In this respect, the fact that the ETUFs' procedures seen above are giving more space exclusively to trade union members sitting in the EWC could be interpreted as a way to make sure that trade unions' strategies concerning the negotiation are not shared with what could be called a "yellow EWC".

At the same time, the EWC needs to be inclusive towards trade unions and ready to dialogue with the European representatives. As a matter of fact, the ETUF can guarantee a certain level of representation of the workforce and involvement of national trade unions, especially when a mandate procedure is applied. Furthermore, the European Federation is able to provide the necessary expertise to the employee side, as to avoid a management-led negotiation.

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Global and European Corporate Framework Agreements: counterpoint and legal elements for discussion

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I have been asked to provide a comparative view of International and European Framework Agreements, with particular attention to the problems posed by these instruments. And that is what I am going to do, starting from the background of my reflections accumulated in the course of my participation, first as a co-ordinator of a working party on “globalization and collective bargaining” within the Confederated Observatory for Collective Bargaining, and later in a research project devoted to the study of transnational labour management instruments of Spanish multinationals, including their International Framework Agreements.

If this experience allows me to draw any contrasts, it is that the process of constructing these instruments is not only in progress but is evolving perhaps faster than our ability to apprehend its results, even in a period of crisis such as the current.

In principle, this process is the result of the hybridization of two phenomena of different origin: on the one hand, the autonomous creation of transnational regulatory instruments by multinational companies, through which they manage the end-to-end operation of their activities on a global scale; and, on the other hand, the growing universalization of the demands by society for these corporations to assume some kind of responsibility for the social and environment consequences of their actions. This latter demand is one that has found its essential space in the unilateral regulatory power of multinational companies, insofar as the need to provide the resulting legitimacy instruments vis-à-vis society has led them to assume ever greater levels of commitment with the subjects involved in their activities.

As we know, this process has given rise to its fullest expression in International Framework Agreements, created mainly in the scope of European multinational companies in order to

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ensure the currency of fundamental employment rights and a central core of basic working conditions within the groups of companies they control and their supply chains around the world.

Seen in this light, as has been stated, these Agreements “are the translation of a European focus” on how to deal with the challenges of globalization, based on social dialogue and fundamental employment rights as their shared values. But that is not all. They are also an instrument for defending the European social model that embodies these values, as its long-term sustainability requires the continued currency of social rights, and particularly the freedom of workers to form trade unions and engage in collective bargaining in the rest of the world.

In view of their function, these agreements naturally only make sense if they are devised and applied at a global rather than a European level. Although there could be some discussion about whether or not fundamental rights, especially collective rights, are fully respected in all European Union Member States, the fact is that it is very difficult to imagine a multinational limiting its scope of action to Europe. Even if all its subsidiaries are located inside the European Union, you can be sure its production and supply networks reach worldwide.

What has happened is that guaranteeing fundamental rights for workers does not constitute the only function that can be fulfilled through collective autonomy when deployed at transnational level. Collective autonomy is also a particularly suitable tool for facing the very complex work-related problems posed by the end-to-end operation of business groups, particularly when these operate on a transnational scale.

Hence, in parallel with the International Framework Agreements, we have seen in Europe the emergence of another instrument that, while sharing their same nature, can be clearly distinguished by their function: European Framework Agreements, which have been studied by the EUROACTA Project.

The primary function of European Framework Agreements is not, as we know, to ensure the currency of fundamental workers’ rights, although clauses may be included in this direction, but rather to confront, from a collective agreement perspective, the needs and problems that may arise from the action of business groups in a context of constant change and high competitiveness such as the European Union.

For this reason, although their contents may be diverse, their main subject matter is the management of corporate re-organizations. What is more, resorting to collective bargaining enables the adoption in these cases of solutions with a wide diversity of types and intensity, thus capable of adapting to every situation and need, as well as the potential for agreement between the parties: from “weak” or “procedural” agreements that design programme-oriented rules or principles to be applied in managing future re-organizations, generally inspired by demands for early change management, to “strong” or “content-based” agreements that define specific processes of this type.

The usefulness and potential of this instrument are therefore enormous. That is why they should be encouraged in parallel with the promotion of International Framework Agreements. The difficulties facing the adoption of a European Framework Agreement are, however, far greater than those of an International Framework Agreement. Not only due to the greater complexity of the problems they have to deal with, but mainly because of the greater difficulty in bringing together the opposing interests of the different groups of workers involved for the purposes of confronting these problems from a joint or collective perspective. For this reason, although it may seem paradoxical, the signing of “weak” or “procedural” agreements is of great strategic importance despite their lower intensity, as these agreements will open up the path towards collaboration and a collective approach to the problems, essential tools for putting forward more complex agreements.

This problem of the difficulty in achieving an adequate synthesis between the different interests in play constitutes, in my opinion, the fundamental problem to be faced in the case of the European Framework Agreements. And in its fullest extension, this internal problem of the trade union movement in Europe is one that must be resolved.

Certainly, providing a legal framework for these agreements, not generally the case for International Framework Agreements, would help in the process of consolidating these European instruments in the same way as the approval of the Directive on European Works Committees helped launch these committees. However, it does not seem to me that the creation of such a framework, with the immense technical and political difficulties it would pose, is an essential requirement to continue moving forward in that direction. Firstly because it does not allow us to resolve the underlying trade union problem. But, secondly, because the

very nature of the tool used implies a few useful responses to the problems we are seeking to resolve through recourse to an external regulatory intervention.

As I indicated at the beginning, the agreements in question are the expression of a new kind of process for establishing transnational regulations that is still in its early days, soft in its origins but potentially tough in its effects. The force for imposing it stems not from the existence of internal or international norms that foresee its existence, nor from the representation potentially held by those drawing it up, but rather from the ability of the parent companies to impose fulfilment of the agreement on its their subsidiaries and suppliers around the world, as a result of the control they exercise over them.

In other words, in view of the absence of rules giving direct recognition to the power to oblige and the complex technical issues posed by the uniform application of the agreements' contents to business groups and the supply chains of multinational firms, what the parties are doing is resort to programme-based solutions, based on the instrumentalization of the organic or commercial relationship they have with their subsidiaries and suppliers, in order to turn it into a tool or "lever" for their projection towards the latter.

The foregoing is achieved through the inclusion in the framework agreements of the parent company's undertaking to the signatory trade union organizations to guarantee the fulfilment of the terms agreed inside the multinational group subject to its control and management. And, albeit less frequently, also by its subcontractors and suppliers. This is a result that, although not within the scope of the agreements through the creation of direct obligations on subsidiaries and suppliers, can be achieved by the parent company through the use of the resources it owns, controls or can influence.

In consequence, whenever a framework agreement includes measures of this type, and not just pure declarations of a programmatic or exhortative nature, it will give rise to an obligation of this kind on the multinational, that it will have to comply with by providing the necessary resources. In other words, by adopting decisions on the corporate or contractual plane that are capable of imposing compliance on subsidiaries and suppliers.

On the other hand, despite their atypical configuration, it is not possible to harbour any doubts about the potential effectiveness of stipulations of this kind, as they come with the backing of an entity, the parent company, that wields real and effective power to impose their observance on its subsidiaries and collaborators.

What needs to be done, then, is to strengthen that engagement, that space for negotiation and compromise, with the parent companies so that they impose respect for the framework agreements. And systematically apply the mechanisms for dispute resolution they all foresee, demanding compliance with them ever more forcefully all the way to the main signatory of the agreement, if necessary, by making use of public denunciations or collective pressure that could damage the socially responsible image the company attempted to offer the world when it signed the agreement, should it prove to be reluctant.

Nonetheless, although it is true that the global or European trade union federations do not enter into these agreements to drag companies before the courts but rather to channel a permanent dialogue with them, one can still wonder whether there is some kind of legal action that these organizations could resort to when neither the internal procedures nor the public accusations have borne any fruit.

Naturally, such an option does not exist in the case of clauses with purely programmatic contents. Or when the framework agreement expressly excludes recourse to courts of law. But it does exist when the agreement expressly reflects an undertaking by the multinational firm vis-à-vis the trade union organizations signing the document that it will impose respect for the agreement's contents on its subsidiaries and contractors, as this is an obligation validly stipulated through an agreement with evident binding force. What happens in this case is that the corresponding actions will not be directly applicable to a reluctant subsidiary or supplier, as they will not, in principle, have signed the agreement, but rather at the level of the parent company, so it must be the parent company that either imposes compliance or else assumes the responsibility arising out of not doing so.

In fact, this is a possibility that exists in Spain, when it comes to Framework Agreements signed in this country by multinational firms domiciled here, on the basis of applying, as has been proposed, article 25.2 of the Fundamental Law on the Judiciary enabling the Spanish labour courts to assume powers "in matters relating to claims arising out of collective labour conflicts promoted in Spanish territory".

Let me conclude my speech with a comment of more general scope. Globalization forces us to approach problems from a different perspective than that traditionally applied. There is at present, and there is not likely to be in the immediate future, anyone capable of regulating at

global level as directly and uniformly as current States now do. The only subject with global deployment and a real ability to impose uniform rules at a transnational level is a multinational. Although multinationals do not need a trade union to exercise that regulatory power, they do need it to endow their actions with legitimacy in the eyes of their intended recipients and society in general. In such conditions, I count myself among those who believe that what trade unions have to do is take advantage of that global regulatory capability of multinationals and their need for legitimacy for their own transnational deployment. As well as for the construction of a transnational regulation of working conditions and for managing the change in productive systems in Europe.

No less than the future of the European social model depends on it.

European Framework Agreements – the undervalued chance for the European trade unions to get out of the trap of globalization¹⁴³

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1. Preliminary remarks

The emergence of the European Works Councils in the last decade of the 20th century constituted a landmark in transnational relations between labour and capital. For the first time, it enabled workers to enter a debate with corporations on the level where strategic decisions were taken, ie. the transnational level. Equally, it provided an opportunity for the development of the transnational negotiation practice.

Transnational company agreements (TCA) could not possibly emerge at a better historical moment. The radical progress of globalisation led to destruction of the post-war socioeconomic order designed in Bretton Woods. As a result, trade unions were reduced to playing a defensive role in their struggle for workers rights.

In Western Europe, the trade unions have for many years remained falsely convinced that their status was exceptional, protected both by the widely accepted rules of the European Social Model and guaranteed by a stable and extended system of national negotiations. The first decade of the 21st Century shattered those illusions. The EU enlargement, including countries of the Central-Eastern Europe, in which industrial relations proved to be too weak to face the influx of foreign capital did not create the expected level of social stability. On the contrary, it was instability which spread towards the West. The vast differences in the cost of living between the two parts of the enlarged EU have been used by international capital to drag the workers into a transnational competition of employment costs. The fiscal crisis which shook the Eurozone became an excuse to dismantle the national wage-negotiation schemes.

¹⁴³ The paper expresses only the view of the authors and not the organization.

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As a result, European trade unions have become dependent upon capital and EU institutions. They can escape that trap only by developing international cooperation around fundamental issues: wages and common labour standards. With all respect for the role of SME, it is plainly obvious that the actual engine of the economic development is big business. The emergence of the European Framework Agreements, negotiated in transnational corporations creates a unique opportunity to spread the social standards across national borders. This opportunity remains underestimated. Western-European trade unions only began to appreciate the EFA once they noticed that this tool is also used to negotiate with non-union representative bodies such as EWC. Trade unions from the new member states are too weak to independently call for better quality transnational collective negotiations. Therefore, paradoxically, the only beneficiaries of that phenomenon are transnational corporations which, through signing the EFA can strengthen their image as socially-responsible companies and develop their management strategies.

Trade unions need to become the ‘owners’ of EFA. If they prove unable to use such instrument as a part of the broader system of collective negotiation (as well as accepting all the consequences of it, such as: filling these texts with concrete and tangible content, being able to enforce accepted solutions and conduct transnational action to negotiate the EFA) will be growing marginalization and mutual competition. As Fernando Rocha and Pere J. Beneyto point out, strengthening the internal trade union cooperation and supporting transnational activity is an adequate response to the current situation¹⁴⁶. Reliance on the national framework in collective negotiations, together with the devastating effects of the developing practice of defensive agreements in Western Europe demonstrates that when it comes to employment standards, the “race to the bottom” threat is a realistic scenario. It seems that the only way to change the current tendencies is for the European and national trade unions to take an active role in promoting and negotiating EFA.

2. Bleak prospects for collective bargaining in developed countries

The basic function of trade unions is collective representation of the workers’ interests. This means they can propose a balanced response to the demands of capital. Over the years, in

¹⁴⁶F. Rocha, P. J. Beneyto, Trade unions and Europeanisation of Industrial Relations: Challenges and Perspectives, in: S. Leonardi (eds.) *Transnational Company Agreements. A stepping stone towards a real internationalization of industrial relations?* Rome 2012, p. 192.

most countries of advanced capitalism, trade unions have managed to develop extended, multi-level systems of collective bargaining. This became a source of strength in their relations with capital and enabled them to influence both social and macroeconomic decisions made by the public authorities. In those countries where the unions failed to create hierarchical systems of collective bargaining, they have been marginalized both in social and economic terms. One typical example is the US where weakly developed collective bargaining structure is paralleled with declining union density. This is why the right to conduct efficient collective bargaining needs to be seen as a necessary condition for the stable existence of trade unions. In Western Europe it had become a part of the post-war consensus which enabled the reconstruction in the aftermath of the Second World War as well as the dynamic development of the region. However, it does not follow that it is an unquestionable right. The spread of globalisation and the technological revolution prompted a deterioration of the socio-economic system designed in 1944 in Bretton Woods. This has had serious consequences for trade unions. The labour markets in developed capitalist economies have, possibly permanently, lost their stability. Social issues have become subordinated to the exigencies of the narrowly defined economic competitiveness. As a result, strong collective bargaining systems are often perceived by governments as an obstacle to economic development. That is why attempts are being made to dismantle them with all available means. It is particularly clear in some developed non-European countries such as Australia or New Zealand. In the latter, purely by legislative means, in just a few years the authorities managed to liquidate the cross-sector level of collective bargaining, and then even the coverage of workplace negotiations has been limited¹⁴⁷ Such tendency can also be seen in Europe, where it is, however, counterbalanced by transnational mechanisms defending the right to collective bargaining, such as the: European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention), Revised European Social Charter or the Charter of Fundamental Rights of the European Union.

Nevertheless, it does not seem that the European trade unions should feel completely safe. In order to demonstrate that the collective bargaining right is deeply rooted in EU law, one normally refers to article 155 of the Treaty on the Functioning of the European Union

¹⁴⁷ S. Adamczyk, J. Czarzasty, *Związki zawodowe świata rozwiniętego kapitalizmu: raczej w obronie niż w ataku*, in: J. Czarzasty (eds.), *Rokowania zbiorowe w cieniu globalizacji. Rola i miejsce związków zawodowych w korporacjach ponadnarodowych*, Warszawa 2014, p. 102.

(TFEU). This is a regulation which allows the creation ‘hard’ law which is then enforced by individual member states. Without a doubt, it is a regulation which stands out in the global context.¹⁴⁸ What is crucial for future deliberation is the fact that the current functioning of the European social dialogue (ESD) implicitly assumes the existence of strong social dialogue structures in individual member states. It has been pointed out by, among others, Alan Bogg and Ruth Dukes who wrote: “European social dialogue will not succeed if it is not constructed atop strong collective bargaining structures by strong trade unions in Member States”¹⁴⁹. The problem is that TFEU guarantees this unique role of social partners on the European level, but it does not have an impact on the individual member-state rules. Freedom of association and the right to strike, as well as lockouts and defining wage scales, are outside the EU competences (article 153 section 5 TFEU). There is also article 28 of the EU Charter of Fundamental Rights which is highly relevant to our discussion. It states that, according to EU law and the legislation and practice of individual member-states, both the employers and employees (and their respective organisations) have the right to negotiate and conclude collective agreements at the appropriate levels. In case of a conflict they are entitled to defend their interests by taking collective action, including striking. Article 28 is often referred to in literature, in the context of the right to sign TCA. It is interesting that it directly indicates that the negotiation should take place on an ‘appropriate level’. For the first time this element appears in an international binding document (and constitutes progress when compared to ILO regulations). The Charter of Fundamental Rights can only be applied to enforce EU legislation¹⁵⁰; it cannot modify the competences defined by the Treaties¹⁵¹. Article 28 of the Charter does not state anything beyond indicating the obligation to respect the legal order of the member-states. Claiming that article 28 of the Charter provides a legal safeguard for the collective bargaining systems seems to be a far-fetched simplification. The Convention

¹⁴⁸ J. Lopez Lopez, *Solidarity and the Resocialisation of Risk*, in: N. Countouris, M. Freedland (eds.) *Resocialising Europe in a Time of Crisis*, Cambridge 2013, 353-372.

¹⁴⁹ A. Bogg, R. Dukes, *The European social dialogue- from autonomy to here*, in: N. Countouris, M. Freedland (eds.) *Resocialising Europe in a Time of Crisis*, Cambridge 2013, 466-492.

¹⁵⁰ Art. 51 paragraph 1 of the Charter states that The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States **only when they are implementing Union law**. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

¹⁵¹ Art. 51 paragraph 2 – The Charter does **not extend the field of application of Union law** beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

secures the rights to collective bargaining somewhat, albeit indirectly¹⁵². Freedom of association is guaranteed both by the Convention (article 11) and the Charter (article 12). In the *Demir and Baykara versus Turkey*¹⁵³ ruling (§154) The European Court of Human Rights (ECHR) indicates that taking into account the development of the international labour law and the labour law systems of the individual signatories of the Convention, the right to collective bargaining has become a part of the right to create and join trade unions to protect one's interests. In order to avoid an overenthusiastic reaction, one can say that firstly, the *Demir and Baykara* ruling has been criticized by some of its authors¹⁵⁴, and secondly, the ECHR is subject to a certain political pressure from member-states.¹⁵⁵ In the *RMT v. United Kingdom* (§86) ruling, the ECHR itself indicates that the logic of the *Demir and Baykara* ruling can be reinterpreted. This is not, however, the sole threat. European trade unions cannot forget what happened in 2012 during the General Session of International Labour Organization when for the first time in ILO history the employers unambiguously undermined the principle that the right to strike is guaranteed by the conventions Nos. 87 and 98 ILO¹⁵⁶.

Other elements which should keep trade unionists up at night are the consequences of the European Semester and the rulings of the Laval Quartet. The entirety of actions taken within the so called European Semester indicates that from the perspective of economic integration, the right to collective bargaining is not an imperative value. It is enough to quote the example of Greece, where the reforms of the Greek collective bargaining mechanisms enforced by Troika have been questioned by the International Labour Organisation in terms of their compliance with conventions 87 and 98¹⁵⁷. To make the picture even clearer we should also quote the rulings of the European Court of Justice on Laval Quartet. It follows that in case of

¹⁵² According to article 52 paragraph. 3 of the Charter – In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall **be the same** as those laid down by the said Convention.

¹⁵³ *Demir and Baykara versus Turkey* 1345/ 2008.

¹⁵⁴ W. Sanetra, Wyrok przeciwko Turcji a sprawa polska, *Praca i Zabezpieczenie Społeczne*, 2009, 5, 2-10; see also: Dissention opinion of the Polish judge Wojtyczek ECHR to RMT v United Kingdom ruling.

¹⁵⁵ A. Bogg, K. D. Ewing, The Implications of RMT Case, *Industrial Law Journal*, 2014, 43. pp. 221-252.

¹⁵⁶ K. E. Ewing, Myth and reality of the right to strike as a fundamental labour right, *International Journal of Comparative Labour Law and Industrial Relations*, 2013, 29(2), 145-165.

¹⁵⁷ M. Rocca, *Enemy at the (flood) gates. Bringing the EU back to social justice thought the international protection of social rights. A legal perspective*, Paper prepared for the Social Justice 2014 Conference, https://www.academia.edu/7657375/Enemy_at_the_flood_gates_Bringing_the_EU_back_to_social_justice_through_the_international_protection_of_social_rights._A_legal_perspective .

a conflict between economic freedoms and the right to collective bargaining, the latter is less significant¹⁵⁸.

The short analysis presented here leads to several conclusions which should be considered by the trade unions. Firstly, in advanced capitalist economies, together with the noticeable increase of power of big business, collective bargaining is no longer treated by the public authorities as a necessary element of the socio-economic order. Secondly, the European trade unions cannot count on the EU law for providing sufficient protection of the national autonomy of collective bargaining. Thirdly, the international legal guarantees which protect the collective bargaining schemes from destruction on the national level can prove insufficient¹⁵⁹. In our opinion this means that the question of strengthening the transnational level of collective bargaining can be decisive for the future of unionism.

3. The European dimension of industrial relations: does it exist?

The process of deepening economic integration within the EU is paralleled by certain phenomena which are collectively described as a ‘Europeanisation of industrial relations’. By this one should understand all kinds of organized interactions between capital and the workers’ representation on a transnational level. Among these, there are also some mechanisms which share certain features with collective bargaining. Their emergence is not a result of the directed actions of trade unions, but a reaction to the challenges which appear under the pressure of a globalising economy or creating a Single Market. The existence of the European social dialogue mechanism and the activity of European Workers Councils are often used as evidence to prove that there is a European level of industrial relations to speak of.

This, however, is a far too optimistic an approach. In our opinion, ESD does not constitute an independent mechanism of collective bargaining, but it is above all an instrument used to enforce the EU social policy. This can be proved by the fact that the main feature within the ESD framework is the negotiation of the issues which the European Commission deems

¹⁵⁸ B. Surdykowska, Kwartet Laval i jego wpływ na prawo do rokowań zbiorowych w Unii Europejskiej, in: J. Czarzasty (eds.), *Rokowania zbiorowe w cieniu globalizacji. Rola i miejsce związków zawodowych w korporacjach ponadnarodowych*, Warszawa 2014, 79- 85.

¹⁵⁹ However, it is the international law (UN pacts) which is used as model allowing to reverse the dangerous logic of the European Tribunal of Justice in Quartet Laval rulings, see also: K. D. Ewing, *A draft Monti II Regulation – An inadequate response to Viking and Laval*, 2012, <http://www.ier.org.uk/sites/ier.org.uk/files/The%20Draft%20Monti%2011%20Regulation%20by%20Keith%20Ewing%20March%202012.pdf>

necessary to regulate on the EU level. It seems that, contrary to the hopes of some Euro-enthusiasts such as Marco Biagi¹⁶⁰, the mechanism of the European social dialogue has not only failed to prompt the development of the European system of collective bargaining, but it is not even able to respond to any of the serious challenges the trade unions are currently facing. This is mirrored by the difficulty of convincing European employers' organisations to negotiate agreements based on article 155 TFEU.

Another example of successful Europeanisation frequently used is the functioning of European Workers Councils. It is true that the EWCs perform actions which can undoubtedly be described as a form of collective bargaining on a European scale.¹⁶¹ By this we mean negotiating the TCA, or more precisely its European variation, the EFA. Two problems appear here. Firstly, the legal status of such documents remains unclear.¹⁶² This also applies to attempts being made to base them on EU law.¹⁶³ Secondly, we should point out one important element. In the 94/45/EC directive there was no mention of the trade unions. A small reference to their role in the establishing and functioning of the EWC appeared only in a revised version of the directive, (ie, recast) which was passed in 2009¹⁶⁴, not without a major opposition from European business organisations. Therefore, the EWCs are not union

¹⁶⁰ M. Biagi, "Towards a new European corporatism- The role of social partners in Europe: From dialogue to partnership", in: *Comparative Labour Law & Policy Journal*, 1999, 20(3), 485-796.

¹⁶¹ R. Jagodziński, Europejskie negocjacje zbiorowe, *Dialog. Pismo Dialogu społecznego*, 2011, 1, 27-46.

¹⁶² We will not expand on this problem here, but it should be emphasised that a legal framework would offer a greater clarity and possibility to pursue individual claims based on EFA and solve doubts created by International Private Law. The biggest problem is the variety of industrial relations in individual states. The differences are plain when it comes to questions such as: who has the right to sign agreements (trade unions or non-union representatives) who is bound by the agreements (all the employees or only trade union members) what are the relations between agreements made on different levels. The three most important references on the subject of establishing new legal frameworks are: *Transnational collective bargaining: past, present and future*, 2006, <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>; R. Rodriguez et al., *Study on the and the legal effects of agreements between companies and workers' representatives*, 2011, <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>; S. Sciarra, M. Fuchs, A. Sobczak, *Towards a Legal Framework for Transnational Company Agreements*, 2013, http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20%20from%20Committee%20and%20Groups%20of%20Experts/20140424-015608_Report-TCA-EN_lowpdf.pdf.

¹⁶³ Some authors consider them to be based on articles 152 and 155 TFEU (e.g., R. Zimmer, Establish a Legal Frame for Transnational Collective Agreements in Europe: A Difficult Task, in: S. Leonardi (eds.), *Transnational Company Agreements. A stepping stone towards a real internationalization of industrial relations?* Rome 2012. Others point out that this article consider only European social dialogue (e.g. I. Schömann, *Transnational collective bargaining: in search of a legal framework*. W: I. Schömann at al, (eds.), *Transnational collective bargaining at company level. A new component of European industrial relations?* Brussels 2012.)

¹⁶⁴ European Parliament and Council Directive 2009/38/EC of 6th of May 2009 on the creation of European Workers Council or a alternative form of informing and consulting the employees in companies and business conglomerates with a European reach (revised version)

bodies, although in many cases trade unions use the councils as a convenient platform for initiating transnational cooperation. European industry federations attempt to coordinate such cooperation.¹⁶⁵ The conducting collective negotiations and signing agreements by a non-union workers representation questions a fundamental prerogative of the trade unions. Andrea Gana discusses the issue of the relation between the EWCs and the trade unions in this Report.

In the light of above-mentioned remarks we are of the opinion that neither the ESD nor the EWCs' activity can be regarded as a manifestation of real Europe-wide collective bargaining mechanism.

There is a broader question – can we speak of a Europeanisation of labour relations within the EU? One of the basic challenges which a potential Europeanisation process would face is a huge diversity of industrial relation systems in individual member-states. The diversity was further increased with the EU enlargement. The new Central and Eastern European member states brought in chaotic quasi-systems characterised by illusory corporatism.¹⁶⁶ It is significant that the pre-accession requirements did not include any points concerning industrial relations (such as: the role of collective agreements, effective generalisation, or a minimal number of workers bound by agreements). Ten years since the accession, we can hardly speak of any effective eastward transfer of the Western-European standards of social dialogue¹⁶⁷. European transnational corporations have not become the 'missionaries' of the European social model. We should also point out to the fact that the inactivity of DG Employment does not favour the development of European labour standards. There are no new directives aiming at higher common standards. Recent developments suggest that the opposite trend is emerging. The impulses sent to member-states from the European Commission (for instance through CSR) are going in the same negative direction: they support the decentralisation of negotiations, diminishing the unions' influence on salaries, limiting the generalisations of collective agreements. We can refer here to Guglielmo

¹⁶⁵ S. Adamczyk, Dla kogo europejskie rady zakładowe? Kilka uwag na piętnastolecie dyrektywy 94/45/ WE, *Dialog. Pismo Dialogu Społecznego*, 2011, 2, 17-22.

¹⁶⁶ D. Ost, 'Illusory corporatism'. Ten years later, *Warsaw Forum of Economic Sociology*, 2(1), 19-50.

¹⁶⁷ M. Kahancova, Industrial relations development in the new member states in Central and Eastern Europe, in: European Commission, *Industrial Relations in Europe 2012*, Brussels 2013, 67-118; S. Adamczyk, B. Surdykowska, Nadzieje i rzeczywistość: oddziaływanie europejskiego modelu społecznego na stosunki przemysłowe w Europie Środkowo-Wschodniej, *Praca i Zabezpieczenie Społeczne*, 2014, 2, 2-11.

Meardi's thesis that the European South is going East¹⁶⁸, by which he understands the process labour relations in the Mediterranean EU countries have becoming to resemble the atomised labour relations of Central and Eastern-European countries.

4. TCA: Trade unions should be in charge

If we consider the abovementioned specificity of the mechanisms protecting collective bargaining and the feeble progress of the Europeanisation of industrial relations, it becomes clear why the TCA might prove to be important for trade unions. They are certainly a symptom of privatisation of labour law, by which we understand the shift of the burden of international regulations from those regulations concerning a state (such as the conventions and recommendations of ILO) to the regulations which are both created and directed towards private entities (in this case, MNC). At this stage we might refer to the term 'transnational private labour regulations' (TPLR) discussed in detail by Kevin Kolben¹⁶⁹. The author indicates that the development of TPLRs, particularly those considering chains of subcontractors, constitutes both a political and a market response to a certain deficiency in the national and international labour regulations. Numerous authors point to this deficiency which also causes governance deficit. Gary Gereffi and Frederic Mayer name three spheres in which governance deficit can be seen¹⁷⁰. The first sphere is the 'management deficit in the home country', where the local authorities do not have the relevant tools to regulate the functioning of a corporation which, despite having headquarters in a given country, conducts most of its economic activity elsewhere. The second sphere of governance deficit one can describe as the weakness of the international rules and regulations which follow from international agreements. The typical example is a very weak and inefficient sanction system which the ILO has at its disposal in case of the breach of a ratified Convention¹⁷¹. It also has to be said that although there exists some kind of ILO sanctioning system in the case of nation states, the relationship between ILO and MNC is diametrically different. The third

¹⁶⁸ G. Meardi, *Peripheral convergence in the crisis?*, Paper for the SASE Annual Meeting, Boston, 28-30 June 2012, http://www2.warwick.ac.uk/fac/soc/wbs/research/irru/publications/recentconf/gm_sase12paper.pdf.

¹⁶⁹ e.g. K. Kelben, Transnational Labour Regulation and the Limits of Governance, *Theoretical Inquiries in Law*, 2011, 12(2), 403-437.

¹⁷⁰ G. Gereffi, F. Mayer, Globalization and the Demand for Governance, *The New Offshoring of Jobs and Global Development*, 2005, 39, 48-49.

¹⁷¹ Throughout the history of the International Labour Organisation, Article 33 has been invoked only once, against Burma.

sphere is the limited capacity of developing countries to efficiently regulate their social and economic reality.

These remarks were necessary to underline the fact that TCAs have to be seen as an element of a broader process, ie. the gradual dismantling of a model where regulations are created and addressed to nation-states. As Rodney Bruce Hall and Thomas J. Biersteker point out: “the state is no longer the sole, or in some instances even the principal source of authority, in either the domestic arena or in the international system.”¹⁷²

It seems that the emergence of the European variety of TCA was to some extent unexpected by the trade unions. EFA are far more detailed and concrete than global documents and they can have a significant influence on the situation of employees in terms of their working conditions, access to training schemes, organisation of work etc. There are some cases where the sphere regulated by the EFA is not only that of the so-called “soft issues” but the agreements include the “classical” topics of collective bargaining. Admittedly, in some heavily globalised industries, it was as early as the beginning of the 1970s when trade unions started to analyse the possibility of negotiating within international corporations. However, the so called Levinson rule, which was aimed at coordinating international bargaining in order to defend an agenda elaborated at the level of local subsidiaries in different countries has never gone beyond testing stage.¹⁷³

For many European corporations the EFA has become a useful instrument to boast their social responsibility. Therefore it is not surprising that in most cases the impulse to conduct negotiations comes from the company’s the managerial board. European Worker’s councils are frequently included in them, sometimes of their own accord.

The approach of trade unions is ambivalent. Under the pressure of the organisations from Central and Eastern Europe, the ETUC has begun to demand the introduction of optional legal framework for the EFA. There is a difference as to what should be the aim of those frameworks. Trade union members from the new member states would like the EFA to strengthen their local negotiation power. Our research on the EFA implementation in Poland clearly demonstrates that union leaders in local branches of transnational companies tend to

¹⁷² R. B. Hall, T. J. Biersteker, *The Emergence of Private Authority in the International System*, in: R. B. Hall, T. J. Biersteker (eds.) *The Emergence of Private Authority in Global Governance*, Cambridge 2002, 3-22.

¹⁷³ S. Adamczyk, B. Surdykowska, *Ponadnarodowe układy ramowe jako próba odpowiedzi związków zawodowych na wyzwania globalizacji*, *Praca i Zabezpieczenie Społeczne*, 2012, 1, 2-8.

expect the EFA to resemble classic collective agreements including those on wage issues.¹⁷⁴ Such an approach is exactly what worries the west-European trade unions which would much prefer the EFA to become a tool to solve ongoing issues such as the threat of restructuring or ‘soft issues’ such as development of human capital.

If we consider the lack of trust on the part of national trade union organisation, it is not surprising that in many cases the EFA is left to itself shortly after signing. There is no “owner” on the side of the workers. The managerial board achieves its goal, namely the strengthening of the company’s image as a socially-responsible employer. Trade unions from countries with a strong system of collective bargaining ensured that their autonomy was preserved. Of course, in many cases EWC exists as one of the co-signatories. However, the primary role of the EWC is not monitoring the enforcement of these agreements. EWCs are not union bodies. Available research demonstrates a certain weakness of most EWCs, where dialogue is not effective even when it comes to the council’s statutory aims.¹⁷⁵ Because the EFAs do not have an “owner” who would be responsible for them, their effect remains unnoticed by the employees. Changing this situation is as important for trade unions as creating legal framework.

5. Trade unions need transnational solidarity: EFA versus defensive agreements

When one looks at the collective negotiations taking place in many of the local branches of international companies in Europe it is hard not to get an impression that they are currently changing from offensive employee action to defensive position, one in fact defending the status quo. This is linked to a process taking place in the aftermath of the economic crisis, namely the legal changes which decrease employment stability such as removing common protection from reduction, shortening reduction notice and greater flexibility in signing atypical work contracts.¹⁷⁶ Another factor reducing employment stability is the dismantling

¹⁷⁴ S. Adamczyk, B. Surdykowska, The importance of Transnational Company Agreements from the perspective of industrial relations in the new member states: the Polish case, in: S. Leonardi (eds.), *Transnational Company Agreements. A stepping stone towards a real internationalisation of industrial relations?*. Rome 2012, 151-162.

¹⁷⁵ P. Kerckhofs, *EWCs: Facts and Figures*, Brussels 2006; M.-A. Moreau, S. Negrelli, P. Pochet (eds.) *Building Anticipation of Restructuring in Europe*, Brussels 2009; J. Waddington, *European Works Councils. A Transnational Industrial Relations Institution in the Making*, London 2010.

¹⁷⁶ I. Schömann, *Labour Law reforms in Europe: Adjusting employment protection legislation for the worse?*, ETUI Working Paper 2014.02; M. Aleksynska, A. Schmidt, *A chronology of employment protection legislation in some selected European countries*, Geneva 2014.

of the existing systems of collective bargaining.¹⁷⁷ It is important to indicate that the trade unions are currently operating in a growingly coherent, neoliberal socioeconomic space.¹⁷⁸

In this context we can mention the phenomenal popularity of the concession bargaining. It is a type of negotiation practice where, in order to avoid mass-reductions, trade unions agree to negative solutions such as pay reductions (normally in the form of cancelling bonuses) and introducing less advantageous working time regulations (increasing working hours without raising wage). The so-called defensive agreements also tend to include ‘open clauses’, which allow for significant departures from the standards established at sectoral level. This phenomenon is particularly evident in sectors exposed to strong international competitiveness.¹⁷⁹ It came out in the 1980s in the American automotive industry as a response to cost competition from Japanese manufacturers. It was originally marginal in Western Europe, but began to spread in the aftermath of the 2004 enlargement and the appearance of “cheap” jobs in the new member-states. Such practices allow temporary success in terms of job protection, particularly in crisis situations, which in recent years have been notorious in European industry.¹⁸⁰

The spread of defensive agreements is a result of a disturbed balance between trade unions and employers.¹⁸¹ It is hard to consider them a positive phenomenon. In the long run, it is a trend which could prove very dangerous for trade unions, particularly if coupled with decentralisation of collective bargaining across the entire sector. The legitimisation of this practice could mean that the downward spiral of concession bargaining will get out of hand and result in wage dumping.¹⁸² It is very hard for the unions to stay in control of concession bargaining, as the practice is not just a reaction to crisis situations in the economy. The employees of local West-European branches of international corporations frequently accept lowering of labour standards as they fear the threat of production being relocated. As a result,

¹⁷⁷ Eurofound, *Changes to wage-setting Mechanism in the context of the Crisis and the EU's New Economic Governance Regime*, Dublin 2014.

¹⁷⁸ O. Cramme, P. Diamond, *Social justice in the Global Age*, Cambridge 2009.

¹⁷⁹ T. Kochan, H. Katz, R. MacKersie, *The Transformation of American Industrial relations*, Ithaca 1994.

¹⁸⁰ S. Adamczyk, B. Surdykowska, Kryzys zadłużeniowy a presja na systemy rokowań zbiorowych w państwach UE, *Praca i Zabezpieczenie Społeczne*, 2013, 1, 2-9.

¹⁸¹ V. Telljohann, *Defensive agreements, open clauses: integrated strategies of worker involvement and collective bargaining against fragmentation and downgrading - draft final report*, 2014, collective.etuc.org/sites/default/files/EN%20Defensive%20agreements%20-%20final%20report%20VTelljohann_0.pdf.

¹⁸² R. Erne, *European Unions Labour quest for a Transnational Democracy*, Ithaca- London 2008.

trade unions accept far-reaching concessions, as in the case of efforts to save jobs in Italian FIAT¹⁸³ factories (at the expense of the company's employees in Poland).

It is a typical situation of transnational companies which have locations both in the new and the old member states. They always manage to convince trade unions of the EU-15 countries to adopt concession bargaining by blackmailing them with the low cost of labour in their locations in Central and Eastern Europe.

Corporations benefit from the weakness of collective bargaining and the absence of sectoral agreements in Central and Eastern Europe. Another factor is a still significant unemployment rate in these countries coupled with (when compared to Western Europe) a low level of social security in case of redundancy. This means that the trade unions in this region are fighting against the possible fall into poverty of those members who are vulnerable to reductions. The situation on the labour market is one of the reasons why wage dynamics in Central and Eastern-Europe do not reflect the increase in their productivity, and wage demands are self-moderated. These are perfect conditions for the development of the 'race to the bottom' strategy realized by the managerial boards of transnational corporations. The development of the abovementioned phenomena might eventually disturb the international solidarity of trade unions.¹⁸⁴ Therefore defensive agreements if concluded at local level have to be accompanied by EFA which will be able to secure a balance of interests on the workers' side. It is even more necessary in the current situation when one can observe the radical weakening of sectoral bargaining in Western Europe. Trade unions have to stop seeing themselves as above all national entities, capable of only some forms of international cooperation.¹⁸⁵ In our opinion, defensive agreements in transnational corporations need to have limitations introduced also through negotiations but of transnational nature, such as the EFA. The absence of such a security brake could push trade unions into a dead end of employment cost competition.

¹⁸³ S. Robin- Olivier, Bargaining in the shadow of free movement of capital, *European Review of Contract Law*, 2012, 2, 167- 183.

¹⁸⁴ Another possible obstacle is the existence of various historical contexts of different union bodies from East and West of Europe. M. Descolanges discusses this problem in: The Strike at Renault- Dacia. A Challenge for East- West trade Union Cooperation, in: P. Fairbrother, M.- A. Hennebert, Ch. Lévesque (eds.) *Transnational Trade Unionism. Building Union Power*, London 2013, 81-98.

¹⁸⁵ A. Tattersall, Labour- Community Coalitions, Global Unions Alliances, and the potential of SEIU's Global Partnerships, in: K. Bronfenbrenner (eds.) *Global unions: Challenging Transnational Capital through cross-Border Campaigns*, Ithaca 2007; G. Myconos, *The globalization of Organized Labour: 1945-2005*, Basingstoke 2005.

6. Final remarks

The condition of the world of labour has been changing dynamically in recent years. The changes have not been positive for trade unions. In most economies of advanced capitalism the status of collective bargaining as a basic instrument of the relation between labour and capital is systematically questioned. For a long time, European trade unions felt powerful, maintaining belief in the strength of the long-lasting European social model. Today Mario Draghi, the head of the European Central Bank says this model belongs to the past ¹⁸⁶.

It seems that we are currently witnessing a coupling of two mutually supporting trends. The first one can be described as a long-term phenomenon, linked to a growing decentralisation of collective bargaining and the increasing significance of bargaining aimed at protecting jobs. It is also related to the external globalising trend and a directed pressure exercised by transnational corporations on trade unions. The other one is a trend to subordinate national wage-negotiation mechanisms to new European economic governance. It is a short-term phenomenon but particularly brutal. In the countries which were hard-hit by the crisis, efforts are being made to quickly improve competitiveness by reducing wages and worsening labour conditions. A tacit, exotic agreement has been made between transnational capital and European institutions. Instead of ending casino-capitalism, the fiscal crisis has become a convenient excuse to attack the autonomy of collective bargaining and dismantle the national systems of industrial relations.

Globalisation is a primary background for all current deliberations on the future of labour market regulations. The functioning of trade unions in highly developed countries has to adapt to the fluid mobility of capital. We share the sentiment of Tonia Novitz who indicates that the main beneficiaries of the changes in the labour market are transnational corporations, whose profits are built upon a cheap workforce (which in Europe can be found in the EU new member states and in candidate countries, and, in a global dimension, in the global South)¹⁸⁷. As a result we are dealing with a self-perpetuating spiral of ever-stronger corporations and the growing destruction of post-industrial relations caused by the latter.

¹⁸⁶ 'Draghi Says Continent's Social Model Is 'Gone,' Won't Backtrack on Austerity', Wall Street Journal , 24 February 2012.

¹⁸⁷ T. Novitz, *From Trade in Goods to Trade in service- Implications for Transnational Labour Law*, Paper delivered at the 2013 LLRN Conference, Barcelona, http://www.upf.edu/gredtiss/_pdf/2013LLRNConf_Novitz.pdf , p. 28.

The only direction which can be recommended to trade unions is a rush ahead instead of remaining where they are today. The ever-weaker sectoral level of collective bargaining needs to be supplemented by the bargaining with key players such as transnational corporations. By this we mean regularly conducted (so, not exclusively limited to the context of short-term urgencies such as restructuring or planned change) negotiations, which will be initiated and improved by trade unions themselves not on transnational employer's request. If European trade unions want to get out of the trap of globalisation they need to begin to take the question of EFA seriously and become the spiritual owners of these agreements.

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