

Conclusions

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The major aims of the book are to provide a better understanding and a critical analysis of the emergence and development of transnational collective bargaining (TCB) and its possible (legal) framing in the context of domestic, European and/or international industrial relations systems. This research project, conducted by a multidisciplinary team of researchers, combines the theoretical background and practical role and impact of transnational company agreements (TCAs) in the framing of industrial relations in the European Union.

Starting with the roots and content of collective bargaining transnationalisation, the research first focuses on the relationship between industrial relations, collective bargaining and social dialogue traditions in EU Member States and on emerging collective bargaining structures with MNCs in the context of a Europeanisation of collective bargaining. While coordination of bargaining processes and outcomes between different bargaining levels in the European Union remains a challenging task, the addition of an extra level of collective bargaining (i.e. with MNCs) reveals a major imbalance of power between internationally operating companies and nationally rooted trade union structures and strategies.

Furthermore, the European institutional and legal framework shaping the European industrial relations system remains incomplete. On the one hand, Art 152-155 TFEU partially define the European collective bargaining system through organizing the European social dialogue. This framework appears, however, unsuitable for addressing the effective implementation and enforcement of such agreements as the European framework agreements resulting from European cross-sectoral and sectoral social dialogue, although many problems identified and challenges to be faced are the same if not similar to the ones encountered with TCAs. On the other hand, the legal framework establishing a European works council or a procedure for informing and consulting employees in a community scale undertaking or group of undertakings (Recast

Directive 2009/38/EC) does not foresee the EWC involvement in transnational collective bargaining. This puts a question-mark over the legal capacity of EWCs to negotiate, whereas de facto they are already greatly involved in bargaining, signing and monitoring TCAs.

Although TCAs have evolved in a legal no-man's-land, they are developing in an international, European and national legal environment from which they gain inspiration, with national and European legal and contractual collective bargaining practices representing in most cases the basis for TCA negotiations between trade unions and MNCs. TCA practices influence existing industrial relations systems, for example in respect of innovative internal alternative dispute resolution mechanisms developed by the parties to ensure effective TCA implementation and monitoring.

As demonstrated by the authors of this book, TCAs do not fit into any of the existing (legal) categories of collective bargaining outcomes defined in domestic, European or private international law. Instead they represent a new form of collective, social (private) regulation, adding a new dimension to the European industrial relations system and the existing legal set-up for company-level transnational collective bargaining. These developments raise a number of questions regarding the nature, value, impact and enforcement of such agreements but also regarding their interaction with other legal and contractual instruments stemming from collective bargaining activities. Furthermore, both employers and workers, while progressively taking ownership of and responsibility for transnational collective bargaining activities, underline the insecurity caused by the lack of any legal and/or conventional rules supporting TCAs. Such rules would allow TCAs to gain in legitimacy and credibility and help dissociate them from unilateral CSR initiatives.

Attempts – as yet unsuccessful – have been made by the European Commission to pave the way towards a legal framework for company-level transnational collective bargaining, aimed at enhancing legal security in TCA practices which have been developing rather erratically. This would give the parties the necessary tools to make TCAs an effective part of transnational collective bargaining at European Union level. Recent studies carried out at the request of the European Commission have investigated whether private international law and domestic legislation could provide legal direction and solutions in

support of transnational collective bargaining. Yet neither provide for the uniform application of TCAs in all MNC subsidiaries, as either domestic legislation and courts rulings or the rules applied to domestic collective agreements in each country need to be followed. The significant differences between EU Member States and between non-EU legal orders cannot provide the required uniformity in the implementation and enforcement of TCAs, needed by the parties for legal certainty and predictability.

At the same time, certain Global / European Trade Union Federations have developed 'model agreements' to support their affiliated workers organisations in negotiating, signing, and implementing TCAs. Although such 'model agreements' are not mandatory and therefore cannot provide for legal security, they do provide a working structure and guidance based on existing TCB practices. Such 'model agreements' appear to be much appreciated by practitioners and could serve as a basis for a legal framework.

It is the search for certainty and predictability of TCB outcomes that drives practitioners, European institutions (such as the European Commission) and academia to investigate different avenues serving such purpose. Research results have repeatedly demonstrated the need for a European legal initiative in the form of either a directive (Ales *et al.* 2006, 33-41) or a 'European rule' (van Hoek and Hendrickx 2009, 95 and 109) filling the (legal) gap existing with regard to TCA implementation and enforcement, and thus rounding off the European industrial relations system (together with alternative dispute resolution mechanisms – see Valdés Dal-Ré, 2002).

Such an initiative, as the authors demonstrate in this book, would assure uniform TCA application by giving TCAs direct legal effect. Furthermore, it would remedy the undesirable development of TCAs parallel to legislation and help avoid disputes over who – trade unions and/or EWCs – has the mandate to negotiate and implement TCAs. In addition, it would clarify coordination between TCB levels and outcomes, as well as proposing a typology of TCB and European social dialogue instruments building on the experience gained so far both in the context of the European social dialogue (Art. 152-155 TFEU) and in TCB processes. Such a European legal initiative would in addition strengthen trade union capacity to act transnationally, a capacity that currently remains

limited and dependent on transnational solidarity, capacity building activities and increased resources. Finally it would address the fundamental issue at stake – the role and position of the industrial relations system – and contribute to the ultimate aim of a TCB system – to redress the unequal balance of power between globally operating management and nationally rooted labour.

With this book, the authors are contributing to the debate over the development, role and impact of a European industrial relation system from an academic, institutional and trade union perspective, focusing on a new dimension of transnational collective bargaining: transnational company agreements. The authors have shown that the concept of '*transnationality*' in European and domestic industrial relations has developed both as a concept and in practice. However, '*transnationality*' needs not only further appropriation and implementation on the part of the labour movement and employers, but also political support from the European institutions to achieve a sound and sustainable European framework in which all existing TCB-based initiatives can evolve. This would acknowledge that 'transnationality is part of European law in action' (Sciarra 2009, 21). The authors hope that this book provides valuable help for trade unions and practitioners to prepare and be prepared for action internationalising industrial relations.

References

- Ales, E. *et al.* (2006) *Transnational collective bargaining: past, present and future*, Brussels: European Commission.
- Van Hoek, A. and F. Hendrickx (2009) *International private law aspects and dispute settlement related to transnational company agreements*. Study undertaken on behalf of the European Commission (Contract number VC/2009/0157), Brussels.
- Valdés Dal-Ré, F. (2002) *Synthesis report on conciliation, mediation and arbitration in the European Union countries*, Brussels: European Commission.
- Sciarra, S. (2009) *Transnational and European Ways Forward for Collective Bargaining*, Working Paper C.S.D.L.E. "Massimo D'Antona".INT-73/2009, Catania: Università degli Studi di Catania.