

Chapter 1

Transnational collective bargaining: a literature review

Romuald Jagodzinski

Introduction

The present literature review does not claim to be exhaustive and it was not designed as such. Its main purpose is to familiarise the reader with the discussions on transnational collective bargaining and its outcomes. These have been going on for significantly longer than just the last decade, during which the topic has aroused greater interest due to EU initiatives in this area. Consequently, the chapter offers a selective and subjective choice of sources dealing with the topic that could be useful in understanding the analyses undertaken in the rest of the book. Completed in mid-2011, the literature review's focus is not necessarily on the most recent publications, but aims at providing a comprehensive overview, both in content and time scope.

Even though collective bargaining in its transnational or European dimension has been a focus of EU-level industrial relations debate over the last ten years or so, the issue goes back to the 1970s when various European (i.e. introduced by the European Communities) company statutes were being discussed and expected to emerge (e.g. the 'Societas Europaea' or SE). Even back then a number of researchers were forecasting and discussing the emergence of collective bargaining on a truly European level, together with its necessary legal framework (Kravaritou 1970; on this see also Dorssemont and Dufresne 2011). The first International Framework Agreement (IFA) was signed in 1988 (Stevis 2010: 2). The following section aims to present a review of *selected* literature on this subject, with the goal of providing a collection of the most interesting views on Transnational Company Agreements

(TCA), and the process referred to as Transnational Collective Bargaining (TCB)¹.

Though scarce until the end of 1990s (Platzer 1998: 81), available literature has grown within the last decade and especially over the last 5 years, and now seems to have identified quite extensively and aptly the main questions of the debate. On the other hand, though the subject of a growing number of publications in recent years, concrete theoretical and well-reasoned concepts of organising and structuring TCB still need to be developed. The most recent (at the time of writing) attempt to structure and organise knowledge on TCB is the comprehensive study ‘Transnationale Unternehmensvereinbarungen’ (Rüb, Platzer and Müller 2011), combining a theoretical analysis of TCB with contextualisation and case studies on specific companies.

1. The emergence of TCB: the next stage in the Europeanisation of industrial relations or a mere CSR ploy?

The question whether TCB is indeed the next development stage of industrial relations stems from the debate over its categorisation. One body of thought perceives TFAs and other similar agreements as a continuation of developments in the area of corporate social responsibility (Telljohann *et al.* 2009: 11; Schoemann *et al.* 2008). Alternatively, the former conceptual approach is challenged by views linking TCB to the functional expansion of industrial relations to a transnational dimension, in other words with the Europeanisation or internationalisation of industrial relations (Telljohann *et al.* 2009: 11).

1. As a term referring to a variety of developments at transnational level, such as the conclusion of International or European Framework Agreements (IFA/EFAs), or Transnational Company Agreements negotiated or signed by European Works Councils, the term Transnational Collective Bargaining (TCB) is progressively losing its popularity due to criticism over its similarity with national-level collective bargaining. The criticism refers mainly to the fact that these transnational developments are in many aspects (content, binding character, legal framework, procedures, etc.) still far from what is known under national collective bargaining. Preference is thus given to the term of Transnational Company Agreements. For further debate see the section ‘The origin and content of the term ‘transnational collective bargaining’ below and Dorssemont and Dufresne 2011: 239.

In the context of this debate a ‘common implicit hypothesis (...) is that economic changes – such as the European Single Market or increased globalisation – have an (almost direct) impact on labour relations, industrial relations systems, or the governance of employment and working conditions. The extent and nature of the impact of economic changes on unemployment relations, however, is neither obvious nor easy to quantify.’ (ibid). As is being pointed out, the implicit convergence hypothesis is not necessarily borne out either by the human resource (HR) strategies of MNCs, or by labour strategies which remain diversified both at national, regional and global levels (ibid.; Traxler and Woitech 2000). Nevertheless, the Europeanisation of industrial relations is often analysed from the point of view of a growing Europeanisation of industrial relations actors, the development and strengthening of European social dialogue, European coordination of collective bargaining, the introduction of European Works Councils and the European company (SE) statute, or European policy and macroeconomic dialogue (Telljohann *et al.* 2009: 13). Hoffmann *et al.* (2002: 45) define ‘Europeanisation’ explicitly as ‘the development of a complementary layer of actors, structures and processes at the European level (of a governmental and non-governmental nature) which are interacting with national institutions and actors’, thereby giving justification to viewing the emergence of TCB as a stage in the Europeanisation of IR. Adopting this perspective leaves one confronted with the pertinent question of whether the new European level of CB should be complementary to the national level or rather an autonomous, supranational layer, with all its consequences (Telljohann *et al.* 2009: 13; Hoffmann *et al.* 2002).

Attempts to launch cross-border negotiations between workforces represented by trade unions and employers are not a specifically European phenomenon, though admittedly a rather recent one. Its origins can be traced back to the 1970s when the ILO and OECD undertook initiatives which produced important though non-binding codes (Stevis 2010: 1). However, trade union strategies in the early years (1990s) of this development differed from the current approach, unsuccessfully seeking to insert labour clauses into WTO regulations (Stevis 2010; Roozendaal 2002; Stevis and Boswell; 2007a). This was followed by growing MNC interest in CSR, understood as unilateral initiatives adopting Codes of Conduct (Stevis 2010:2). The obvious shortcomings of such a unilateral approach subsequently focused attention and efforts on a multi-stakeholder approach increasingly involving more

complex and ambitious civil society initiatives (referred to as ‘civil regulation’; *ibid*; Ütting 2002; Ruggie 2004; Crook 2005; Rondinelli 2007, Franklin 2008; ISO 2008). One of the trends within this *civil regulation* was the trade union strategy of ‘redirecting the proliferating private codes of conduct away from discretionary forms of CSR and towards global social dialogue and industrial relations’ (Stevis 2010: 2).

1.1 Europeanisation of industrial relations

The general context for TCB is provided by an array of developments often referred to as the Europeanisation of industrial relations. This process is closely linked to other more global developments, such as Europe’s increasing economic and political integration, as witnessed by the establishment of the Economic and Monetary Union (EMU). The Europeanisation of industrial relations can, consequently, be observed on many levels: intersectoral, sectoral and company levels, both in national and transnational dimensions (Carley 2001: 2+). With regard to the more specific issue of the Europeanisation of collective bargaining an important study was published by Marginson and Schulten (1999). This pointed to an increase in the use of cross-border comparisons of pay, working conditions and employment practice in established bargaining procedures at sectoral and company levels within each country. Furthermore, Marginson and Schulten (*ibid.*) observed a development of forms of bargaining coordination across European borders. The study argued for a change of paradigm, moving away from an emphasis on ‘implicit’ forms of coordination (the use of international comparisons or developments in other countries as benchmarks in sectoral and company-level bargaining) towards more ‘explicit’ forms of coordination (formal coordination of bargaining agendas across borders and/or collective agreements whose terms are expressly contingent on developments in other countries). Even though the study concludes that the development of any pan-European collective bargaining structures to determine pay and major employment conditions at inter-sectoral, sectoral and/or multinational company levels remains a distant prospect, it highlights the probable direction of the changes.

Similarly, Traxler and Schmitter (1995) note that industrial relations belong to the domains that ‘have, as yet, been least caught up in the wake of European integration’. This deficit occurred in spite of a number

of studies arguing in favour of developing a 'European industrial relations area' which would be an 'important institutional component of a new productive system' (Teague and Grahl 1992: 77). The latter, even though necessary, was not considered a straightforward process (*ibid*: 78). As Platzer notes (Platzer 1998: 82), 'despite the progressing EU integration and the broadening of the scope for action in the social policy field together with a strengthened social dialogue, academic research continues to be dominated by scepticism as far as the emergence of supranational structures of industrial relations are concerned'. Not long afterwards, the Dublin Foundation for Improvement of Living and Working Conditions published a report (Carley 2001) looking into transnational texts negotiated by EWCs, which opens with the words:

'the negotiation of joint texts by EWCs is a very restricted, if growing, phenomenon. Although the issues raised are of considerable importance and it can be said to constitute a form of European-level bargaining (albeit limited), the activity is largely concerned with principles and policies rather than substantive issues, and with providing a framework for future action rather than having a direct effect in itself. (Carley 2001: v).

It thus becomes clear that the fast progressing economic integration of Europe combined with the impacts of globalisation has been changing the conditions under which multinational companies operate, forcing them to adapt. Their new business strategies are focused on creating European-level management structures for the purpose of integrating production, distribution and marketing across borders (Carley 2001: 3). It is argued that in the area of HR management, transnational coordination in big MNCs is well developed and includes corporate HR functions collecting data on labour-related performance aspects (using such indicators as workforce numbers, labour productivity, labour turnover and absenteeism, pay settlements, the incidence of industrial disputes, overall labour costs) (*ibid*). These real-life developments seem to challenge stakeholders (e.g. EWCs) to engage in bargaining over supranational responses to cross-border challenges on a voluntary basis. At the same time they also reveal an incompatibility between real-life developments and requirements on the one hand, and present structures, traditional tools and available solutions on the other.

2. The origin and scope of the term 'transnational collective bargaining'

2.1 Origin and scope

When studying the available literature one comes across various definitions of what TCB actually is. It is often seen as the Europeanisation of collective bargaining, even though in terms of content and scope the European version falls short of national collective bargaining. Alternatively Transnational Company Agreements (TCAs) are understood, limiting TCB to a company level.

In general, mainstream research supports the view that TCB was born together with and derives from the European Social Dialogue (ESD). What differentiates these views, however, is the dissent about how far back ESD roots can be traced. According to Ales (Ales *et al.* 2006: 9) the initial signs of a transnationalisation of collective bargaining date back to the period 1952-1974, during which the Commission established 'comités paritaires' for sectoral social dialogue (SSD) in six sectors of common European economic policy: mining (1952), road transport (1965), inland waterways (1967), railways (1972), and agriculture and fisheries (1974). Even though these committees did not conclude transnational agreements (often considered a requirement for discussing TCB), they did operate as consultative bodies for the Commission with a view to developing a socio-economic policy for 'the EEC of the six' (*ibid.*). Despite the fact that the committees remained primarily consultative bodies until the 1990s, their operation was seen as 'aiming at a certain harmonisation of the employment conditions and at a strengthening of the economic position and of the competitiveness of the sector concerned' (European Commission 1998: 10). The growing interest in the sectoral level 'can be partly motivated by the progressive shift of SSD Committees from a mere consultative into an also negotiating function' (Ales *et al.* 2006: 12). It is also emphasized that within TCB, understood as negotiations and consultation within sectoral social dialogue, the scope of issues has gradually developed beyond the traditional ones (such as forced or compulsory labour, child labour, non-discrimination, health and safety) (*ibid.*). Arguably, Ales claims that, even though the SSD outcomes or tools are common positions, joint opinions, declarations and recommendations, these still

represent a certain form of agreements between the SSD partners and can thus be seen as an outcome of European-scale bargaining.

As Schulten (2002: 3) points out, mainstream research is indeed ‘focused almost exclusively on the issue of “European Social Dialogue” (..) initiated by the Val Duchesse process, and further reinforced by the Social Protocol of the Maastricht Treaty’. Schulten notes that this ‘emergence of more systematic and institutionalised relations between trade unions and employers’ associations at European level became widely regarded as an embryonic form of supranational European collective bargaining system’ (ibid). The belief that European Social Dialogue² represented a ‘changed institutional framework’ triggering the emergence of TCB, was supported by the so-called ‘Euro-optimists’ (Platzer 1998: 84). This view seems also to be quite commonly supported by others (Blank 1998; Blasco 2004), pointing out that the term TCB emerged in the late 1980s with the political debate on the Social Charter of the European Communities (Blank 1998: 157) and the Val Duchesse process (Blasco 2004). At the same time, the approach linking social dialogue, and especially the Val Duchesse process, with the emergence of TCB is not unchallenged ‘as neither agreements on working hours in agriculture nor the opinions on specific aspects from the Val Duchesse meetings can be considered as the origins of what we know as European collective agreements’ (Ojeda Aviles 2004: 430³). The argument in favour of this conclusion is the fact that, even though the social partners might have had the will to regulate working conditions, the ‘employers had no organisation with bargaining power, nor were they willing to authorise the UNICE or the CEEP to sign collective agreements’ (ibid). The agreement on parental leave of 1995 and the CBI’s refusal to confer UNICE with the mandate to sign it can be seen as examples of this. Conversely, the legislative outcomes (EU directives) of agreements between European social partners on working

-
2. Along with such other factors as: a) the changed political constellation within the Council of Ministers as a result of the accession rounds in the 1990s; b) the ‘strategic exigencies confronting the employers’ side; c) the assumption that under certain circumstances negotiations as an alternative to legislation constitute a non-zero sum game for the European social partners (Platzer 1998: 85; Bookmann 1995: 197).
 3. Ojeda Aviles does not however question the role of the Social Policy Agreement annexed to the Maastricht Treaty (see: ibid: 430).

time (93/104/EC) and on European Works Councils (94/45/EC) are often seen as the beginning of TCB in Europe (Ojeda Aviles 2004: 432).

According to some researchers (Schulten 2002: 3; Keller 2001: 123-284) the link between European social dialogue and collective bargaining might be misleading for yet another reason. The scope of TCB in its European form reveals considerable differences vis-à-vis that of national collective bargaining ('soft issues' vs. 'hard issues' such as pay (explicitly excluded from the EU Social Protocol), working time, the right to strike, lock-outs, etc.; Schulten 2002: 3). This finding leads some authors to conclude that 'the European social dialogue does not represent an emerging European collective bargaining system, but might be better characterised as a new form of symbolic 'Euro-Corporatism' which has, at least for trade unions, rather ambiguous effects' (ibid; Bieling and Schulten 2001:23-26).

Yet another approach was promoted in the 1990s, arguing that social dialogue within the Social Protocol could not be interpreted as offering a path towards European collective bargaining in its classical sense (Platzer 1998: 85). Neither could it be regarded as a suitable legal basis for the emerging TCB in its true supranational sense at EU level (Blank 1998: 164). Nevertheless, according to this point of view European social dialogue can be viewed as a 'practice ground' (Lecher 1996: 36) for the construction of a legal framework for collective agreements.

On the other hand, as an alternative to linking TCB to European social dialogue, it is pointed out that TCB originates not only in the will of the social partners (agreements), but to a much more decisive extent in the legal texts adopted by the European Community/EU. For instance, the 1989 Social Charter in its version proposed by the European Commission (COM (89) 248 final) contained the 'Right to Freedom of Association and Collective Bargaining' which 'shall imply that relations based on agreements may be established by the two sides of industry at European level if they consider it desirable'. In a similar way, Ojeda Aviles (2004) argued that the European Commission at that time was the motor of developments and the source of impulses for the emergence of TCB:

'It was only in 1987 that the Single European Act, with its incorporation of article 118B and its support via the Commission of European social dialogue and collective agreements on this level, did the necessary

phases for the emergence of European collective agreements start to appear. This was followed by the Community Charter of Fundamental Social Rights, pushed along by a powerful personality, Commissioner V. Papandreou, Article 14 of which clearly states that the right to bargain and sign collective agreements implies that “relations based on agreements may be established between the two sides of industry at European level if they consider it desirable,” and that these agreements can cover employment and working conditions and the corresponding social benefits’. (Ojeda Aviles 2004: 430)

Blank (1998: 164) seems to share the view that the debate on TCB dates back to 1987 when social dialogue was granted a place in the EEC treaty through the Single European Act (Art. 118b allowing the social partners to conclude ‘relations based on agreement’ within the context of dialogue between labour and management at European level). According to Blank, since the SEA did not specify what this agreement might be, the social partners were allowed to also participate in collective agreements or collective bargaining.

Blank reports however (Blank 1998: 157) that the European Commission, in its Action Programme for the said Charter, adhered to the view that the Community had no role to play in this area, as all EU Member States recognised the principle of free collective bargaining. Indeed, reference has also been made by other researchers (e.g. Platzer 1998: 83) to the possible obstacle represented by the lack of EU-level institutions capable of aggregating interests at supranational level and the absence of a ‘(quasi-) official supranational actor’ which could structure and politically shape transnational industrial relations (*ibid.*). All in all, the European Commission’s above-mentioned retreat from involvement in a structured TCB framework might have been the reason for the Commission’s relatively late intervention (*vide* the commissioning of a study on a legal framework for TCB by the expert group led by E. Ales in 2006).

Lastly, it is pointed out that the emergence of TCB in its various forms (be it collective bargaining coordination or the conclusion of numerous transnational agreements) does not have its origins ‘by design’ in the formal institution-building through which the EU has sought to give market and economic integration a social dimension (Marginson 2008: 12), but seems instead to be a response of stakeholders to the lack of necessary tools for shaping industrial relations that remain national in a global environment.

2.2 Terminology and its choice dependent on social partner positions

The above-quoted statements on TCB mirror a quite characteristic ambiguity on the application of a term used sometimes to refer to European social dialogue, or to the coordination of national collective agreements (against a background of profound differences between the national systems of collective negotiations in the EU Member States), and, on other occasions, understood as a truly supranational layer of collective industrial relations. In this regard Blank (1998) alludes to the term's varying conceptual scope, sometimes covering not only collective agreements *sensu stricto*, but also the right to strike (industrial action), freedom of association and even the right to co-determination, information and consultation (e.g. Cooke 2001: 285).

Clearly, the perception and understanding of the term TCB differ dependent on the (mainly political) interests and traditional positions held by the stakeholders most affected, i.e. unions and employers: 'While trade unions usually seek supranational protection against competitive deregulation of social and labour standards, for the employers European market integration is an opportunity to bypass national social regulation and to take advantage of increased regime competition' (Schulden 2002: 3; see also: Streeck 1999). Therefore 'the European employers' associations were only prepared to negotiate a European agreement under the Social Dialogue when they might have been able to avoid what in their eyes was a "less favourable" EU directive' (Bieling and Schulden 2001: 25). For trade unions, on the other hand, the progress of European social dialogue, especially since the Social Protocol of the Maastricht Treaty, helped to realise the 'structural superiority of capital at transnational level' (Streeck 1999), implying that 'labour can seek its class interest only through supranational protection against competitive deregulation while capital can seek its class interest by simply rejecting and blocking a European-wide social regulation' (Bieling and Schulden 2001: 25)

For trade unions TCB can be an option to re-establish their positions at national level since 'from the point of view of union membership many of the recent forms of social concentration and corporatist involvement seem to be exhausted. Since management and investors make use of their capacities to play off the employees of different plants, on the firm level

concentration is often associated with deteriorating work and employment conditions, while on the national and European level there are only few signs of social progress. Without a macro-economic dimension, national corporatism – i.e. wage bargaining, labour market policies and social reform – is strongly determined by competitive issues, and the European social agenda contains hardly any issues of substantial regulation, but mostly issues of procedural co-ordination (Falkner 2000). How such weak, often only symbolic forms of concentration will create sufficient consent on the part of union membership, remains therefore rather unclear and uncertain' (Bieling and Schulten 2001: 29). This will probably hold true, unless the European social agenda can incorporate substantial and meaningful regulation, allowing for instance TCB to create responses to supranational challenges.

The lines delimiting varying concepts and ideas on the scope of TCB do not, however, run exclusively along the divide between labour and employers. There have also been differing conceptions of what European collective bargaining is and should be within the trade union movement. As Blank points out (Blank 1998), the ETUC has seen TCB to be a new supranational layer, whereas the European Metalworkers Federation considers its purpose to be coordination. This approach of understanding TCB as the coordination of national collective bargaining has its critics, with Schulten (2002:5) arguing that the so-called 'coordination approach' does not in fact target the European dimension of collective bargaining, but instead assumes and supports the existence of different national systems which, even though interconnected, aim at limiting cross-border competition on wages and labour costs developments. Taking into account this diversity of views and the complexity of such questions as the origin, scope and outcomes of the emerging TCB, Marginson and Sisson (1998: 13) proposed differentiating between three levels of TCB (the EU multi-sector level; the EU sector level; and the Euro-company level) and their integration into a single definition *sensu largo*⁴.

4. It is the author's view that, according to this differentiation and with regard to collective bargaining at Euro-company level, it would seem reasonable to use the term 'Transnational Company Agreements'. The company level is often referred to as the core layer of TCB and thus the author is in support of referring to transnational company-level collective negotiations as TCB *sensu stricto* (even if only in nascent forms).

3. The transnationalisation of collective bargaining

Almost all research on the emergence of TCB points to the globalisation of the economy and MNC activities as the triggering factor. Opinions start to differ, however, when looking at additional factors, circumstances or developments.

The most straightforward explanation is that the growing globalisation of the economy led to increased competition. This in turn led to massive restructuring measures in MNCs, following a strategy of ‘centrally controlled decentralisation’ (Telljohann *et al.* 2009: 5). In response to MNCs’ growing flexibility and production shifts between countries, trade unions adapted their activities to the new globalised circumstances, developing networks capable of dealing with challenges transcending national borders. With the capacity for global-level political regulation limited, what turned out to be a viable response involved pushing for greater self-regulation through the conclusion of transnational company agreements and international framework agreements (*ibid.*).

In contrast to the above explanation highlighting a limited capacity for political regulation, certain researchers see the emergence of TCB as a political process arising for instance from the development of European social dialogue (e.g. Moreau 2011: 237). An alternative view explaining the transnationalisation of collective bargaining sees it as a process of seeking the most effective way of giving collective bargaining the framework conditions it lacks in a transnational context (no regulatory framework), emphasising the voluntary character of such negotiations, changing views on the role and place of MNCs in society, and evolving trade union and business strategies. According to this approach (Stevis 2010), TCB (or rather IFAs) dates back to the 1970s when the ILO and OECD undertook initiatives producing important but non-binding codes (*ibid.*: 1). However, trade union strategies at the beginning of this development (1990s) differed from the current approach, unsuccessfully seeking to insert labour clauses into WTO regulations (Stevis 2010; Roozendaal 2002; Stevis and Boswell; 2007a). This was followed by growing MNC interest in CSR, understood as unilateral initiatives adopting Codes of Conduct (Stevis 2010:2). It is argued that the obvious shortcomings of such a unilateral approach subsequently focused attention and efforts on a multi-stakeholder approach involving increasingly complex and ambitious civil society initiatives (referred to as ‘civil

regulation'; *ibid*; Ütting 2002; Ruggie 2004; Crook 2005; Rondinelli 2007, Franklin 2008; ISO 2008). This point is not however unequivocally shared, as for others (Telljohann *et al.* 2009: 5) the 'development of dialogue between trade unions and the management has been facilitated by the fact that the issue of 'social responsibility' became more important for the TNCs [Transnational Companies] themselves'. Contrary to this opinion, one of the trends within the civil regulation was the a strategy of the unions to 'redirect the proliferating private codes of conduct away from discretionary forms of CSR and towards global social dialogue and industrial relations' (Stevis 2010: 2). With views on the role of CSR and the social reporting of companies diverging, a question-mark remains over whether the growing interest in CSR was a facilitator for developing TCB, or whether it should be seen as a technique feigning social responsibility and boosting companies' PR, thereby acting as a TCB inhibitor and thus needing to be abandoned by the unions as a strategy.

Correct as this approach might be, it does not however explain the origins of the need (the motivation) for developing transnational collective industrial relations.

One explanation points to the paradigm shift that occurred in the 1990s. Collective bargaining (CB) had previously been considered as a democratic institution promoting economic growth by redressing the power imbalance between labour and management (Mahnkopf and Altvater 1995: 101). However, deregulation has now supplanted CB since the latter is thought to interfere with the free market. This phenomenon has two aspects, deregulation by national legislators and the decentralization of CB by employers, both in the name of flexibilisation and underlining the will to hand over control of wages, working time, etc. to individual companies. In this regard the emergence of TCB appears a natural consequence of the transnationalisation of economies (Mahnkopf and Altvater 1995: 102). The reasons are twofold. The first lies in the shift of corporate strategies from a national to an international level, removing the ability of national governments to resist deregulatory pressure from transnational markets. Secondly, at the same time, even though strategies are determined at a transnational level, responsibility for achieving managerial, business and employment targets are determined at the level of a single MNC or even its subsidiaries, which by consequence requires decentralisation. Due to these factors CB is challenged by other forms of employee interest

representation and participation, with wages becoming de-coupled from the physical productivity of labour and increasingly dependent on a company's 'financial performance'. Consequently, trade unions are exposed to new pressures, with their role becoming transformed from labour representatives to mediators (ibid). In this context a brief explanation provided by Marginson (2008: 1) seems very instructive:

'The internationalisation of economic activity is embracing ever more national economies as rapid industrialisation proceeds amongst the emergent economies (...), emergence of global supply chains in a growing number of sectors, reaching into services as well as manufacturing, in which the division of labour between operations in different parts of the international economy is continually under review according to the imperatives of cost, flexibility and productivity. (...) In addition to considerations of costs, flexibilities, skills provision, productivity and labour standards as shaped by national institutions and regulations, the performance of individual sites and the localities in which they are situated is under continuous scrutiny. The social and industrial relations consequences of these internationalised economic dynamics increasingly call for cross-border, coordinated responses and initiatives by trade unions, and other institutions of employee representation, at transnational sector and company levels. These include the emergence of forms of transnational collective bargaining'.

Even in the 1990s, certain researchers were already quite aptly predicting that European integration as such, especially after Maastricht, and its economic and monetary logic would have major consequences for collective bargaining. The belief was that a number of CB elements, conducted until the mid-1990s on a national level, would gradually shift to the supranational level (Mahnkopf and Altvater 1995: 102).

At the same time it is pointed out that a further strengthening of EU competencies, for instance in the area of competition regulations, even though not formally involving the issue of national collective bargaining, will gradually exert greater influence on national-level collective negotiations (e.g. the European Court of Justice's ruling in the 'Albany' case; see Blasco 2004: 18). Given the ever-widening global scope of collective bargaining and the increasing shift of relative power to MNCs, there appears to be a growing interest among union leaders across borders to forge more effective and enduring alliances for conducting

transnational negotiations with MNCs. Though this interest increasingly transcends national boundaries, unions have not (yet) reconfigured their collective bargaining structures beyond national boundaries. An obvious question is: why not? What dilemmas did unions face that made this reconfiguration so difficult? Alternatively, one can ask about the conditions and incentives needed for increased support. Further important questions are what would be the response of MNCs and what topics would such transnational negotiations between employers and labour cover (Cooke 2001)? In search of replies to these questions Cooke formulates several theoretical conditions, for use in designing union strategies towards TCB. He also takes into account the necessity to create mechanisms for the case of certain unions withdrawing from collective agreements/partnerships. Unfortunately, in designing his model solutions, Cooke (2001) devotes no attention to the implementation and enforceability of collective agreements concluded on a transnational basis.

Against the background of globalising economies, corporate governance and company strategies, is the development of TCB and the devotion of union resources to creating transnational partnerships to this aim the rational response to these challenges? An affirmative answer to this question can only be given when these efforts yield a net added value (Cooke 2001: 289 and 296). But when is a net added value achieved? For trade unions, the answer is not self-evident. As Streeck (Streeck 1999: 121) argues, for European union organisations all harmonisation or supranational alignment processes are treated with uncertainty or mistrust with regard to their impact not only on the balance of power between capital and labour, but also on the respective position of union-represented employees in different countries. The result of such a trade union approach is what Streeck (*ibid*) terms as *institutional nationalism*, rationing union support for any advanced form of transnational integration to the extent that the stability and autonomy of national institutions remain intact and the status quo remains preserved. A direct corollary of such union perceptions is their preference for subsidiarity rather than harmonisation or centralisation, even though the former is sub-optimal in terms of pursuing transnational class interests (*ibid*).

Departing from a single-actor oriented explanation of the reasons for TCB, Arrowsmith and Marginson propose a more holistic view of the possible drivers making the stakeholders engage in TCB (Arrowsmith and Marginson 2006):

- 1) the dismantling of national borders in union activities within the EU;
- 2) the growing extent of internationalization, of companies fuelled by an explosion of cross-border mergers and acquisitions in 1990s;
- 3) the decline of sectoral bargaining within countries, extending the scope for company-level negotiation and variation (Arrowsmith *et al.* 2003; Traxler 1995) as well as pressures from employers to reorient national and local bargaining agendas towards market-led considerations of competitiveness and adaptability (Schulten 2002).

Complementing this fairly general list of possible motives for TCB, there are also more concrete ones driving MNCs to sign transnational agreements. Arrowsmith and Marginson (2006) mention three key drivers:

- 1) management concerns to secure legitimacy for pan-European, company HR policies (advantages deriving from the additional legitimacy that can arise through securing employee representatives' consent or approval via a formal agreement);
- 2) minimising the transactions costs potentially entailed through a series of parallel local negotiations (see also Telljohann *et al.* 2009: 5);
- 3) management responses to being pressured into European-level negotiations by a demonstrable employee-side capacity to coordinate local negotiations and if necessary cross-border forms of action.

Against the background of the possible incentives for employers to engage in TCB or to support the emergence of a structured legal framework, Schulten (2002) emphasizes that these actor-specific drivers are not sufficiently strong to produce a legal framework:

'In fact, there is a far-reaching consensus among industrial relations researchers that without political initiatives for social regulation coming from the European Commission the employers would have only little interest in concluding so called "European social partners' agreements" (Schulten 2002: 3).

Similarly Blank (1998: 165) finds that, despite the clear conclusion that European-level TCB is a missing link in the current industrial relations

set-up, social partners alone will not be able to work out a legal framework. Hence the European Commission must take a pro-active role. Collective bargaining is frequently not a question leading to dialogue, but instead one often culminating in conflict (ibid). Therefore a legal framework imposed from above by the legislator would seem to be the best solution.

4. TCB as a challenge for trade unions

Apart from looking at internal differences in understanding the notion of TCB (Blank 1998; see above), the available literature also devotes a certain amount of attention to trade union reservations with regard to TCB (Mahnkopf and Altvater 1995). In this respect trade unions are sometimes seen to be trapped in a dilemma visible especially in regard to European social dialogue, but arguably also applying to the emerging TCB:

‘On the one hand EU institutions strengthen the role and capacity of trade union organisations at European level and formally involve them in various areas of EU policy making. In exchange for such an involvement, however, the European trade unions are expected to support those integration projects, which further undermine social regulation in Europe’ (Schulden 2002: 4; Martin and Ross 1999).

Schulden (2002: 5) sees the dilemma within unions on TCB becoming quite fundamental (if not dramatic, as one may see it nowadays), arguing on the one hand that European economic integration is undermining the basic functions of collective bargaining (a transition from *productivity-oriented* to *competition-oriented* collective bargaining; Schulden 2001a, 2002), while at the same time stating that the emergence of a supranational European collective bargaining system seems a very likely prospect (Schulden 2002: 5).

According to Blank (Blank 1998) there are further conflicts over TCB amongst trade unions. Even though the emerging question of a Europeanization of collective bargaining was identified by the unions some two decades ago, it did not gain prominence on their agenda. As pointed out by Blank, in many cases trade unions have, if at all willing and capable of taking a stance on TCB, applied national concepts to a phenomenon which naturally needs to be a compromise between or a

reconciliation of the various systems in place in the EU Member States (for differences between the Member States refer to Chapter 2). The fact that (national) unions have tended to focus on national collective bargaining rather than its transnational dimension can be attributed to each national union considering the prospective European bargaining model from their own national point of view (*ibid*)⁵. By this token national systems, even though efficient and often quoted as template solutions (such as the German one), cannot be simply cut out of their national context and transposed to a European level. Without the complex system of national institutions and their interdependencies they would be doomed to failure (*ibid*: 160). In this context Bridgford and Stirling (1994) found that collective bargaining in Europe ‘forms a multi-form mosaic reflecting the different social, economic and political conditions existing in each country... At the European level there has been a reluctance to match the process of collective bargaining to the forces at play in the broader economy, and the Europeanization of the economy has not yet been accompanied by the Europeanization of the process of collective bargaining.’ (Bridgford and Stirling 1994: 161). The belief that differences in the organisation, ideology and interests of Europe’s national trade unions are the main obstacle to the emergence of a European CB system is thus not uncommon in the literature (e.g. ‘Euro-pessimists’ see: Platzer 1998: 86), with Blasco (2004) even considering the differences to be ‘insurmountable’. At the same time the ‘empirical diversity of national systems’ (Platzer 1998: 88), seen by some as indispensable for the emergence of TCB, may become a structural barrier to any form of transnationalisation (*ibid*). Consequently, when discussing supranational institutions, some researchers emphasize that, when designing any future genuinely supranational collective bargaining, one must remember that it will function differently - and needs to be designed accordingly - from its national counterparts from which it might originate (Streeck 1999: 121; for contrary views see Chapter 6 and 7).

5. This, on the other hand stems probably from the nature of independent unions that have typically deep-rooted desires for maintaining autonomy and national identity (Cooke 2001: 285). Further reasons are obviously differences in national industrial relations (IR) systems and social welfare policies (*ibidem*).

The traditional positions of trade unions are also challenged in another respect. The majority of trade unions fear that the introduction, development and expected gradual strengthening of a supranational level of collective bargaining will take place at their cost. Marginson and Sisson (1998: 19) argue that 'virtual' collective bargaining (as a possible scenario for the development or emergence of TCB) is perceived by unions as threatening to undermine, rather than build on, past collective bargaining achievements:

'Understandably, too, such worries are likely to be especially pronounced in countries which have a long tradition of detailed normative contracts. Notable among these will be colleagues from Austria, Germany and the Nordic countries. The possibility of collective bargaining becoming 'virtual' is likely to confirm their worst fears. They might conclude that greater EU integration is likely to mean, at best, calling a halt to the use of collective bargaining as an instrument of social progress: it may even mean, far worse, the undermining of the position that has already been established.' (ibid).

However, Marginson and Sisson emphasize that such argumentation often fails to reflect the fact that 'the terms of sector-wide collective agreements have relatively little impact in many workplaces' (ibid).

These reservations are not a recent characteristic of trade union positions (Keller 1995; Turner 1993) and have led to 'the reluctance of national trade union organisations, both peak federations and individual affiliates, to yield the necessary authority and resources to European-level organisations, thereby limiting trade union capacity to organise and pressurise employers on a supranational basis' (Marginson and Sisson 1998: 11). It seems that this observation, made in the 1990's, remains at least partially true today as cross-national collaboration between unions within the EU 'remains minimal principally because of the preoccupation of national actors with specific national problems' (Turner 1993: 203). It seems however that, by focusing on the national level and their sustained reluctance to actively move to the supranational one, trade unions miss one key feature of the entire emerging structure, namely that the key characteristic of IFAs (as one of main recent TCB developments) is not that they are negotiated (as admittedly a number of other multi-stakeholder agreements are, too), but that MNCs recognise a global institution representing workers

(whether a Global Union Federation or a global employee organisation; Stevis 2010). This lack of understanding for this key opportunity seems to be, however, linked to the limited resources at the disposal of unions. In such an environment, 'allocating (the resources) appropriately between co-ordination and the struggle to maintain the coverage and depth of existing national systems is going to be especially difficult.' (Marginson and Sisson 1998: 19). This might be the reason why unions have continued to focus predominantly on the national level, in turn not paying sufficient attention to the transnational dimension of company-level bargaining. The challenge is definitely significant as the risk of focusing solely on the national level is that 'collective bargaining could become an empty shell to which employers and policy makers pay lip service but little else. Trade unions in particular will have to be on their guard.' (ibid).

Other authors see the central problem for unions arising from the fact that, while Europeanization requires the harmonisation of bargaining policies (alignment of negotiating procedures and objectives), regional and sectoral wage differentiation has played a major role in compensating for differences in productivity and financial performance. This makes EU trade union unity both necessary and impossible (Mahnkopf and Altvater 1995: 102), and might be an explanation for those senior management executives, who were reportedly (Walsh et al 1995: 94) surprised by the failure or refusal of trade unions to push for transnational pay comparisons.

It is being pointed out that yet another, more technical challenge for trade unions seems to have contributed to the relative underdevelopment of TCB strategies compared to MNC activities:

'Trade union efforts at cross-border networking and benchmarking within MNCs are generally less developed than those of management, and EU enlargement has correspondingly enhanced the challenges unions face. Arrowsmith and Marginson (2006) found that this was a product of resource constraints, lack of a central 'authority', divisions wrought by multi-unionism and the effects of inter-plant competition.' (Marginson 2008; 7).

These seemingly serious or even insurmountable predicaments faced by European trade unions contrast somewhat with their often pioneering support in the early days of TCB. Ales (Ales *et al.* 2006: 10) reports that

in the late 1990s the unions had the expectation of European social dialogue becoming a tool bridging the interests of employees and employers and aiding the development of a ‘set of fair standards to be applied all over the EU in the spirit of “co-operation and negotiations to the benefit of all associated organisations and their members’ (Pochet *et al.* 2003). Nonetheless, ‘The ambitions of some Trade Unions went even further. At its collective bargaining conference in 1998, in a long term perspective, the European Metalworkers’ Federation adopted a resolution stating that “European minimum standards (as to wages, maximum working time) should be introduced which should be raised progressively” (Ales *et al.* 2006: 10). To achieve this goal European framework agreements within the context of the relevant SSD committee were considered a useful instrument (EIRO 1998). Though regulation by means of collective agreement was seen as a certain constraint for individual employees, it was also felt that any standardisation of employment conditions helped secure the overall status of employees (Streeck 1992: ch.2).

Yet another challenge of a more general nature that unions face is the availability of representative supranational structures with the requisite negotiating competence (a problem also applying to employer organizations). Short of representative organizations able to negotiate at European level, it is pointed out that unions need to develop the kind of transnational networks long possessed by companies in order to reduce uncertainty and manage their interdependence (Mahnkopf and Altvater 1995: 114). ‘It’s not a matter of simply replicating national structures at transnational level, or of aggregating existing national organisations – which is the current focus of European unions -, but rather of cooperation in new kinds of structure (...)’ (*ibid.*).

Finally, some authors claim that EWC Directive 94/45/EC provided trade unions with an ‘exceptional opportunity’ (Cooke 2001: 285), which has not as yet been fully taken up. Despite the opportunities EWCs are believed to offer, only ‘few unions appear to have used this unique opportunity to overcome transnational barriers and, in turn, to build even minimal alliances’ (Cooke 2001: 285; Beaupain *et al.* 2003; Martin and Ross, 2000).

Cooke (2001) argues that ‘to optimise net payoffs, unions need to minimise the costs to forging and sustaining partnerships by effectively

accommodating differences across unions and minimising the transaction costs of day-to-day activities of partnerships'. This will require them to develop collective bargaining structures explicitly tailored to their transnational activities without compromising existing national structures (ibid: 296). Cooke argues that EWCs and their global counterparts, World Works Councils⁶, do correspond to these requirements and thus represent suitable forms of partnerships to accommodate TCB functions. Such 'transnational councils' would have to first formulate their overall transnational collective demands. These would need to go beyond those that any one member union would otherwise pursue and attain on its own (one could see this as a form of a principle of subsidiarity characterising the entire EU integration process).

5. Incentives for parties to become involved in TCB

The above mentioned challenges, forcing trade unions in particular to upgrade their collective bargaining to a supranational level, require major effort and adaptation and generate certain costs. These costs can be justified if one finds commensurate incentives and arguments in favour of such a shift. Incentives are clearly needed also on the part of employers whose decision to involve in TCB might be even more dependent on a strict cost-benefit analysis.

Firstly, certain researchers point to the fact that TCB has a broader societal dimension, transcending union and employer interests: proposals for increased flexibility (*de facto* uncoordinated wage cuts and other means of reducing labour costs) challenge citizenship rights within the European common market. If trade unions can prove themselves capable of countering such deregulation and flexibilisation via TCB they will be defending not only workers' interests but also more general societal interests against short-sighted economic policies (Mahnkopf and Altvater 1995: 114).

Secondly, it needs to be pointed out that the beginnings of the debate on TCB and the motives for it date back to the 1970s. As Eurofound

6. For the list of World Works Councils (and their various types depending on the legal basis for their creation), see www.ewcdb.eu

research points out (Telljohann *et al.* 2009: 17) the goal and motive of world works councils in fact was involvement in TCB, understood not as genuine collective bargaining as it is known on national level, but the more modest cross-border coordination of trade union activities (Gumbrell and McCormick 2000a and 2000b). A different understanding of TCB was presented by Levinson (Levinson 1972: 111), who refers to TCB as a strategy for coordinating wages and working conditions trans-nationally. As pointed out by Telljohan (Telljohann *et al.* 2009: 17), despite marked differences and delays, at the end of the day it is Levinson's vision that is eventually starting to emerge at European level, although in a form different from the original ideas.

One can argue therefore that TCB is in the unions' vital interest. It seems it can contribute to the overall revival of unions, though this is dependent on their increased effectiveness, e.g. via the creation of European networks (see e.g. Mahnkopf and Altvater 1995: 114). Other sources argue that for 'the employee side, IFAs are an interesting regulatory instrument for three main reasons: first, IFAs can be used to ensure a floor of minimum social standards that apply to all the TNC's operations worldwide; second IFAs may represent a stepping stone for the establishment of worldwide networks and representation structures; and third, IFAs can provide a useful organising tool to build up and strengthen national union structures' (Telljohann *et al.* 2009: 8). Furthermore they generate potential spill-over effects, including the promotion of social dialogue and cooperation, the development of mutual trust, and new potential for conflict resolution (*ibid.*). In certain cases, it is argued, IFAs also contribute to the introduction of global information and dialogue structures between central management and global union federations (GUFs; Müller and Rüb 2004). Furthermore, they can also help strengthen employee representation structures, whether on a global level (Telljohann *et al.* 2009: 8) or a European level.

Platzer (1998: 95) stresses that living up to the above challenges and taking advantage of the opportunities require unions to resort to non-union sources of strength, cooperating with social movements, influencing public opinion, and putting pressure on political parties. To sustain and perhaps enlarge the scope for collective bargaining, union strategies must transcend the field of collective bargaining, 're-politicising' themselves. Platzer (*ibid.*) similarly argues that 'it is vital that trade unions can respond to the growing mobility of capital by extending their own

organisational scope' as this will enable them to gain a relative advantage over employers on the labour market.

At the same time, 'it is in the interest of employers to regulate the employment relationship on an individual basis' (ibid; Platzer 1992: 779 ff). However, under certain conditions and circumstances in a product market (the establishment of 'productivity coalitions' with their employees leading to competitive advantages over other companies) employers may have a preference for collective regulations (Platzer 1998: 96). Traxler (1995) argues in this regard that employers will be interested in European collective bargaining on the micro and, in certain circumstances, on the meso levels, but not at the macro level. Just recently, employer organisations analysed the advantages and disadvantages of TCB as a managerial tool potentially serving company goals. One of the pros was that companies 'that have engaged often claim that these agreements are good vehicles for deepening social dialogue, because they provide an additional platform for communication and cooperation with trade unions or workers' representatives.' (ITC 2010). This is consistent with Eurofound's assessment (2009: 85), arguing that from a management perspective IFAs are 'mainly a tool to deepen dialogue with employees and trade unions and to define and communicate a set of shared norms and values, rather than as an industrial relations exercise'. The ITC working paper also points out that 'Perhaps not surprisingly, a majority of these agreements are entered into by companies with a long and strong culture of social dialogue' and that 'some agreements are a reaction or counter-measure to high-profile cases of labour conflict (often in far-away locations) or are the result of trade union requests or pressure.' (ITC 2010: 10). Despite this trend of being to a certain extent responsive to the employee and trade union driven struggle for TCAs, there are 'a number of examples of companies seeing their situation, at local level, improve significantly with the signing of such agreements' (ibid). One participant spoke of TCAs as a way of "buying stability and peace". A number of companies also point out how these agreements provide early-warning systems or act as tools for avoiding trade union campaigns. Yet another incentive for management is the shortening of communication channels, which in crisis situations can 'help control a situation before it becomes public' (ibid). Furthermore, the efficiency gains of handling contacts with multiple trade unions and workers' representatives collectively rather than on an individual basis (union by union or strike by strike) was

identified as an incentive. Interestingly, MNCs found themselves inclined to sign TCAs through other types of pressure (non IR-related) coming from NGOs and consumer groups within the context of the CSR debate:

‘TCAs are instruments that, like CSR codes of conduct, communicate externally what companies see as their strategy and policy in the social field. They are seen from a public relations perspective, and have the potential to enhance a company’s reputation and image. This is particularly relevant to access to public procurement markets and the role of social rating agencies. For those companies supplying the European and other public markets, these agreements seem to help with fulfilling governmental procurement stipulations and criteria. Social rating agencies’ procedures and requirements are also increasingly driving companies to sign. A good ‘social score’ influences how a company performs in financial markets, accesses capital, etc.’ (ITC 2010: 10).

6. Company-level TCB and EWCs

A prominent thread in the debate is occupied by TCB on a company level, with a link being made between TCB and EWCs. Although an issue of considerable speculation, the involvement of EWCs in negotiating trans-border collective agreements has in the past (at least in the 1990s) received relatively little attention (Carley 2001: 1).

6.1 EWC involvement as a form of TCB

The range of assessments of EWCs’ competence or eligibility to sign transnational agreements has obviously grown in line with the increasing incidence of such agreements. By late 2007, estimates suggested that EWCs were party to some 62⁷ agreements concluded with around 40 MNCs, compared to virtually none in the 1990s (Papadakis 2008: V).

7. Marginson (2008: 8) reports over 70 such agreements.

It is now universally recognised that TCB is not limited to one specific type of trans-border collective negotiations, but that it can take the form of either sectoral or company level bargaining (Ales et. al. 2006: 9; Marginson and Sisson 1998). These two paths of TCB development seem well grasped by Marginson (Marginson 2008: 2):

‘On the one hand, it takes the form of cross-border information exchange of bargaining-relevant data, by either employers or trade unions, with the aim of setting the context for the national and local negotiations which take place in sectors and companies. At its most developed, such activity can result in coordination of bargaining agendas and outcomes in different local and national negotiations. On the other, it takes the form of transnational negotiations resulting in the adoption of joint texts and framework agreements of varying degrees of regulatory “hardness” or “softness”.’

Interestingly Marginson points out that the development of TCB up to now has been characterised by the differing focuses of the social partners: for trade unions the primary focus has been on the sectoral level, whereas employers have concentrated on the MNC level (ibid). It would be unfair to claim that unions do not respond to the articulation of local negotiations in MNCs, but ‘such response is far from widespread’ (ibid). On the other hand, due to the twofold nature of TCB, and especially the ‘cross-border information exchange of bargaining-relevant data’ mentioned above, EWC’s, in their capacity as the primary company-level transnational information and consultation bodies, could assume this new task, thus filling the gap (Marginson 2008: 2; Marginson and Schulten 1999). Carley (2001) takes this up, stating that:

‘Contact, liaison and cooperation between trade unions organising in the various European operations of a multinational is developing, both through direct contacts between unions and in the context of EWCs. It is in this area that EWCs appear to have developed a role in the Europeanisation of bargaining within multinationals, facilitating an exchange of information on working conditions, working hours, employment practice and sometimes pay between employee representatives from different countries. This information is relevant to local and national-level negotiations within the enterprise.’

Not long afterwards, it is established that EWCs not only facilitate the flow and exchange of information relevant for collective bargaining, but that they themselves participate in such bargaining:

‘[EWCs] have (...) been mobilised in ways not anticipated by the 1994 EWC Directive. These include context setting activity around local negotiations by management and by trade unions, and the emergence of transnational negotiating activity in a small but growing number of EWCs.’ (Marginson 2008: 2)

Recognising this evolution, a big question remains as to ‘whether they have moved or can move a stage further, to become a forum for negotiations over issues of relevance to all of a multinational’s European operations’ (Carley 2001: 4). In search of an answer to this question, some commentators support the view (Marginson and Sisson 1996; Marginson and Sisson 1998) that, in the light of the above-mentioned trends, EWCs may develop a form of bargaining role at European level.

A further outstanding question involves the form in which EWCs would participate in TCB. It is suggested that ‘EWCs may become the forum for joint opinions or framework agreements on aspects of employment and industrial relations policy... Such framework agreements would establish the broad parameters of policy which negotiations to secure implementation then took place at national or business unit level within the enterprise.’ (Carley 2001: 4).

Reflecting the different characteristics of individual companies and entire sectors of the economy (Arrowsmith and Marginson 2006), it is emphasized that the development of company-level TCB varies according to exposure to international competition (Hollingsworth *et al.* 1994) and the strength of union organisation along with its propensity to negotiate at company level (Dolvik, 2001). This means that TCB is especially prevalent in sectors characterised by high international integration of production⁸ (Meardi *et al.* 2008) and reflects company-level considerations such as the degree and nature of operational inter-

8. Incidentally, these sectors are also the ones with relatively high ratios of EWCs installed, see Kerckhofs 2006.

nationalisation, and differences in ownership and management structures (Marginson 1992; Marginson et al 2004). These

‘differences between sectors were attributed to relative exposure to international competition and the extent to which production (or service provision) is integrated across borders. Within sectors, differences related to several influences including: the degree and nature of internationalisation of operations (in some banks, for example, back-office operations were centralised across borders); the degree of diversity of the products and production systems across operations; and ownership, where the scale and symbolism of home-based operations served to blunt cross-border comparisons.’(Marginson 2008: 6)

Such distinctive differences combined with increasingly extensive international contacts and the exchange of labour-related data naturally resulted in comparisons. In fact it is believed that the desire of MNC management ‘to bring international comparisons of costs and productivity to bear within local, company-based negotiations, aiming to secure equivalent bargaining outcomes and/or lever workforce concessions at sites in different countries’ was one of the key root causes behind the emergence of TCB (Marginson 2008: 5). MNC support for TCB is believed to be closely linked to the dual function that transnational negotiations have: on the one hand, engaging in such negotiations enables international comparisons and the benchmarking of local-level practices, performance and costs, in turn allowing management to continually enhance competitiveness; and on the other hand, it facilitates the concurrent diffusion of ‘best practices’ in different countries (ibid). It must, however, also be mentioned that such transnational comparisons within MNCs (Mueller and Purcell, 1992) can lead to ‘coercive comparisons’ (Edwards, 2004) and, consequently, to concession bargaining across borders (Hancké 2000; for instance the cross-border round of concession bargaining at General Motors Europe).

Due to the fact that cross-border ‘coercive comparisons’ of labour costs are a tool particularly useful and applied by management, it is believed that it is management that drives the cross-border articulation of local bargaining agendas and outcomes within MNCs (Edwards, 2004; Arrowsmith and Marginson 2006: 246). It is also pointed out that, due to productivity levels in the 12 EU new Member States catching up with those of the ‘old’ EU-15 and the consequently growing gap in pay within

the EU, the pressure for such comparisons and thus for a spontaneous proliferation of transnational company level collective agreements will grow (Marginson 2008: 7).

Last but not least, the increasing involvement of EWCs in cross-border collective negotiations can be seen as the result of increasing company restructuring and the necessity to draw up plans and strategies to alleviate their adverse social effects. Certain observers argue that, given the transnational scale of restructuring and the resulting transnational impacts of such, these problems might become a natural issue for collective negotiations handled by EWCs as the common denominator (Carley 2001: 7). This is probable because, as some authors believe, ‘EWCs offer an institutional framework which can potentially underpin cross-border bargaining’ (Arrowsmith and Marginson 2006: 255). The company-level dimensions of TCB have ‘emerged more recently than at sectoral level, but for several reasons their development is likely to be at least as important since, in many cases, enterprises prefer to negotiate at company rather than at sectoral level, be it national or transnational’ (Ales *et al.* 2006: 16). Reportedly, the main interest of MNCs in TCB lies in regulating various corporate responsibility issues, whereby MNCs want to gain a comparative advantage by adopting norms rather than binding rules (*ibid.*). Moreover, with regard to company restructuring measures, company-level TCB seems much more effective than similar approaches at national or sectoral level (*ibid.*)⁹. Furthermore the spontaneous and voluntary adaptation of EWCs to go beyond information and consultation seems to lie in the fact that one of the main functions of these bodies is to create a forum where employee representatives from different national industrial relations systems can meet and get to know the differences between their national systems. Based on this knowledge representatives can then reach agreement on strategic objectives, issue joint opinions, or even present demands to management especially in situations where company management is ready and willing to go beyond information and consultation and negotiate *joint texts* or even *agreements*. The latter instruments have potential as tools for creating trust and a common company culture and

9. Nevertheless, it is also pointed out that so far, agreements on restructuring have been reactive rather than proactive, dealing with specific restructuring situations (Ales *et al.* 2006: 29).

for triggering the development of a pan-European HR policy within the company aimed at harmonising certain social standards such as CSR (Ales *et al.* 2006: 21).

The above factors point to certain advantages to be gained from involving EWCs in company-level TCB:

- ‘(a) the concrete definition of a transnational dimension of collective negotiation which leads to the establishment of a transnational contractual relationship between management and SNB¹⁰;
- (b) the conclusion of agreements of a transnational dimension whose personal scope of application is supposed to go even beyond the signatory parties;
- (c) the establishment of transnational representative bodies on employees’ side.’ (Ales *et al.* 2006: 20)

Parallel to the discussion on EWC involvement in TCB and its mostly positive outcomes for both the multinational companies and employees, a fair share of attention has been paid to the EWC contribution to fostering European industrial relations at large. Initiatives at both workplace and pan-sectoral European level were judged to have the potential for shaping and further developing emerging pan-European structures (Platzer 1991). Other researchers were however foretelling that:

‘European level relations between capital and labour, instead of constituting the core of the European political economy, will for the foreseeable future remain compartmentalized in the private sphere of large multinational enterprises and will thus be essentially non-political and voluntaristic in character. Where labour-capital relations enter the political area, they will mainly take the form of a set of discrete “labour” and “social policy issues”.’ (Streeck and Schmitter 1991: 158)

10. A Special Negotiating Body, in line with the EWC directives (94/45/EC and 2009/38/EC), consists of a group of employee representatives (s)electd at national level to negotiate an agreement regulating the functioning of an EWC, its competences, relationship with management, etc.

6.2 Criticism of EWC involvement in TCB

Despite the largely positive assessment of EWC involvement in TCB some critical views on the (facilitating) role of EWCs in the development of TCB have been raised in the debate. Hancké (2000) sees EWCs as having proven ineffective as a mechanism facilitating the cross-border coordination of union bargaining positions. This is, however, seen as the result of local site egoism undermining trade unions; determined by their ability and willingness to counter benchmarking by management (*ibid*). Others point to concerns over the mandate of EWCs to engage in collective negotiations, suggesting that such voluntary activity of these originally information and consultation bodies raises concerns in terms of insufficient authority to enter into such contractual obligations on behalf of employees (Jagodzinski 2007). Further downsides of EWC involvement in TCB are similarly linked to their original design as information and consultation bodies (Ales *et al.* 2006: 20):

‘a) the fact that such a negotiation process, transnational agreements included, is limited in its ends to the establishment of an employees’ representative body;

(b) the fact that the highly differentiated composition of EWCs is likely to produce relevant consequences on:

- (b1) their legitimacy to go beyond information and consultation, negotiating with management
- (b2) Trade Unions aptitude towards the recognition of negotiating powers to EWC without a simultaneous formal recognition of Trade Unions role within them.’

Apart from such specific problems about EWC involvement in TCB there is another, more general criticism of linking these information and consultation bodies with European-level developments in collective bargaining. The view that transnational collective agreements signed at the level of multinational companies represent a form of TCB is not universally shared among the research community. Even (Even 2008), the author of an impressive discourse on TCB, argues that such

‘transnational collective labour agreements (...). must be considered “national” transnational collective labour agreements as referred to in chapter 1, section 2.1. They are nothing more and nothing less than

agreements governed by national law or laws, having effect in different countries. They have no Community relevance and do not qualify as European transnational collective labour agreements which are the research subject of this thesis' (Even 2008: 231).

Even goes on to list serious disadvantages and difficulties in the application and implementation of these agreements, which can differ from country to country (Even 2008: 238). In his view such differing national regimes regulating the same 'collective (national) transnational agreement' may lead to 'a situation that to one and the same employment agreement two sets of law apply: the law of the country in which the employee is working, and the law of the country applicable to the collective labour agreement' (ibid). The outcome is a system with no added value ('nothing new'), with little additional Community relevance, and weighed down by legal uncertainty and possible complications:

- (i) an unclear binding effect of the agreement reached,
- (ii) insufficient rules concerning the requirements that the European social partners have to meet,
- (iii) potential difficulties with regard to the implementation of the agreement,
- (iv) difficulties concerning the effects, follow-up and enforcement of the agreement. (Even 2008: 233-234).

International Framework Agreements (IFAs, see below), considered as an even more formal approach, are not seen as a solution here. As their implementation is dependent on national legislation, they are deprived of their transnational character and can no longer be referred to as 'transnational collective labour agreements' *sensu stricto* (ibid).

7. International Framework Agreements – a further TCB dimension

Alongside agreements signed by EWCs, International Framework Agreements (IFAs) represent another emerging form of TCB. IFAs, addressing core labour standards within the MNCs concerned (usually including their supply chains), had been concluded by Global Union Federations (GUFs) in some 65 companies by mid-2007 (Marginson 2008: 8), with

most having been signed after 2000. One important input to the research was a study by Schömann (Schömann *et al.* 2008) which *inter alia* proposed a definition of an IFA and what differentiates it from a code of conduct (see: *ibid.*: 85-86):

‘These agreements are concluded between global or European trade union federations and the management of individual multinational companies to define labour standards and joint principles of industrial relations. They are normally based on fundamental social rights as defined by the core conventions of the International Labour Organization (ILO).’ (Schömann *et al.* 2008: 1)

Comparing IFAs with codes of conduct, Schömann (Schömann *et al.* 2008) also found that IFAs are more efficient in terms of promoting fundamental social rights amongst multinational companies and, thus ‘tend to correspond to an emerging form of social dialogue at international level, whereas codes of conduct are mainly used as guidelines for behaviour and instruments of legal risk management for companies’ (*ibid.*: 2).

Although global in their reach, the vast majority (58 out of 65) of IFAs have been concluded with European-based companies. It is reported however that the few IFAs actually existing have only been concluded in a small group of front-running MNCs (30 of them have been signed in 10 companies; Marginson 2008: 8). Marginson sees IFAs as differing from agreements signed by EWCs in one significant aspect: the agent. In the case of an IFA, the agent signing the agreement on behalf of labour is a trade union, whereas EWC agreements are signed by employee representatives not necessarily appointed by the unions¹¹.

It is interesting to consider whether the reasons for signing IFAs could not be applied on a more general basis to the entirety of the emerging TCB. Stevis (2010: 11 ff) suggests a differentiation between the internal and external factors behind IFAs. Looking first at external factors he argues that the geographical distribution of IFAs suggests ‘that corporations from countries characterized by some form of coordinated capitalism are more

11. In fact these signatories often intersect, with an EWC co-signing alongside trade unions. Béthoux (2008) however points out that agreements signed solely with EWCs prevail in US-based multinationals.

likely to consider an IFA than corporations from countries with more liberal and thus conflictual traditions'. This is also corroborated by the analysis done by Marginson and his collaborators (Marginson *et al.* 2008). Looking at the countries of origin and the degrees of institutionalisation of labour voice, they found it to be best articulated in continental European companies accounting for the vast majority of IFAs signed. However, such external factors explicitly linked to specific industrial systems only suggest certain causal relationships, but cannot serve as sufficient explanation, given the fact that a number of IFAs were refused in Europe as well (Stevis 2010: 12). At this juncture attention is turned toward internal factors and the hypothesis that 'high union density (e.g. in automobile sector), or other political or social resources that unions often possess, may lead the corporation to negotiate an agreement in order to prevent labour unrest as well as legitimate its internationalisation strategy' (*ibid.*). Furthermore, public scrutiny and the possibility of public regulation are also possible incentives (ORSE 2006). Finally, 'some MNEs may see agreements as part of a strategy to bring some order to their human resource management' (Stevis 2010: 12).

8. The legal nature of TCB

With regard to the legal anchoring of transnational agreements the lack of clarity over their binding force and enforcement is often pointed out. Some researchers see them as nothing more than 'agreements', arguing that they are little different in character to other texts titled 'joint declarations' or 'charters' (Béthoux, 2008).

Based on the content and relative 'hardness' or 'softness' of an agreement, certain researchers are proposing a classification of transnational agreements into four categories (Carley 2001):

- 1) general principles of a company's personnel policy not envisaging or not requiring any specific actions (the softest);
- 2) agreements committing the signatory parties to specific actions (e.g. establishment of a health and safety observatory), but not calling for action by local management and employee representatives;
- 3) framework agreements establishing a set of general principles on a specific issue, and inciting – but not requiring – follow-up action by MNC management and employee representatives at lower levels;

- 4) obligatory frameworks requiring action by the parties at lower levels within the company, but where national and local-level implementation practice can vary (the hardest).

One of the major problems pointed to when discussing TCB in the form of agreements is their enforceability and binding effect (see for instance Ales *et al.* 2006: 23). This is due to a) the lack of a specific international legal framework for such agreements (see for instance Jagodzinski 2007), and b) to legal concerns about the mandate and acceptance of any binding results of TCB by national organisations affiliated to the negotiating parties (e.g. trade unions) (Ales *et al.* 2006: 24).

In view of these challenges only a limited number of solutions have been proposed. As the solution the Ales' report (Ales *et al.* 2006) proposes to consider the following three options:

- 1) negotiations between the management and the EWC (status quo);
- 2) negotiations with international sectoral unions and the conclusion of so-called *framework agreements*;
- 3) Association of national unions to the negotiations with the management of the transnational company.

9. Obstacles to the emergence of TCB

Looking at the probability of and possible obstacles to the emergence of an institutionalised European collective bargaining system, different and often contradictory views have been presented. Certain authors (e.g. Platzer 1998) view the emergence of a transnational layer of CB as being unlikely, due to:

- a) the 'European and transnational weakness' of trade unions resulting from the heterogeneity of their material and ideological interests;
- b) the 'transnational organisational weakness' of employers and their strategic lack of interest in a supranational organisation of collective bargaining;
- c) the 'supranational weakness of the state', i.e. of the EU (Ebbinghaus and Visser 1994: 223).

In contrast to this approach highlighting the weakness of the actors, another approach sees their being wedded to national systems of collective bargaining as being the crucial factor. Marginson and Sisson (1998: 5) find that ‘much comparative industrial relations analysis has privileged the enduring specific features of different national systems as the principal factor underpinning continued diversity.’ and that ‘in analysing the counter play between these two sets of forces [homogenous national systems vs. supranational actors and institutions] commentators have tended to underline both the durability of existing national systems of industrial relations and the imperative of establishing transnational actors with the authority, resources and capabilities to deliver European-level sectoral bargaining mirroring those characteristic of many national systems (Jacobi 1995: 50).’

Even (2008: 194 ff) points to further shortcomings in the current set-up (being at the same time in fact partly critical remarks on the system of European social dialogue), mentioning:

- the absence from the institutionalised framework of European social dialogue framework (as defined by the TFEU) of important constitutional rights (freedom of association, right to collective bargaining and the right to strike)¹²;
- concerns regarding the status of the participants in European social dialogue (who are “management and labour”, are they representative and do they have full autonomy?);
- the lack of any direct normative effect of the European agreements concluded, leading to the lack of uniform applicability of European collective agreements;
- currently signed autonomous agreements have no clear binding effect;
- insufficient rules in the EU Treaties defining requirements the social partners have to meet in order to be granted the Treaty status of social partners.

12. Even 2008 explains that despite some of these rights (e.g. right to collective bargaining or arguably also the freedom of association) are stipulated in the TFEU, however, they lack the quality of constitutional rights.

Arguments characterising a Euro-pessimist approach to the possibility of a pan-European industrial relations system emerging (including European collective bargaining) have also been collected by Platzer (Platzer 1998: 86-88). By and large, according to this sceptical group of researchers, ‘the creation of “procedural regulations”, necessary for any system of European industrial relations, is seen as improbable as the “follow-on costs” – at least for those countries which would have to adopt procedures alien to their political context – are largely unknown’ (Platzer 1998: 87; see also Windolf 1992).

When discussing the probability of or obstacles to the development of European collective bargaining the spotlight is often put on the actors. Advocates of a transnational system of industrial relations often assume that such a system ‘at sectoral and supra-national level require[s] capable European transnational actors on both sides of industry’ (Platzer 1998: 99). Kohler-Koch (1992: 81) and Platzer (1998: 100) point out that the 4 levels of transnational societal actors¹³ have not however been sufficiently investigated, especially with regard to the development of transnationalisation processes in their organisations, due to an inadequate systematic-comparative perspective on their developments. Referring to the integration theory of institutionalism, Platzer (1998: 100) argues that the development of actors is a corollary to the gradual intensification of European integration processes and the emergence of its specific organisations and frameworks¹⁴, including in particular the creation of the European Single Market. In the wake of these steps various societal groups, including trade unions and employers, are seen to have developed relevant strategies and institutions allowing them to face the new challenges. Therefore, even though the development of supra-national societal actors (supranational representative organisations of ‘capital’ and ‘labour’) seems the *sine qua non* condition, it is not sufficient for the emergence of TCB (ibid; see also the above section: ‘Roots of transnationalisation of collective

-
13. The 4 levels are: 1) multi-industry European confederations (ETUC, UNICE, CEEP); 2) European branch and sectoral organisations (EIFs and sectoral employers’ organisations); 3) the interregional level; 4) transnational companies and groups in Europe (see: Platzer 1998: 104). One should also bear in mind that trade union and employer organisations on the various levels differ in terms of degree of advancement (see e.g. ETUC 1996: 2).
 14. In fact, on the employers’ part such institutional forms of supranational representative organisations do not yet exist (Platzer 1998: 105).

bargaining’). Based on the characteristics of European social dialogue which came into existence ‘by a set of specific interactions between “autonomous” transnational-societal, intergovernmental and supranational factors’ (Platzer 1998: 99) it is claimed that with regard to TCB the absence of a ‘supranational state actor’ could rule out the development of supranational industrial relations, including collective bargaining (ibid). This pessimistic view seems however not to take account of the existence and powers of the European Commission which is in a position to adopt the role of the ‘supranational state actor’, and secondly, of the possible changes in the EU Treaties that facilitated the necessary institutional frameworks (e.g. the Maastricht Social Protocol; ibid; Ojeda Aviles 2004: 430).

By analogy to the success factors promoting the development of ESD it is not the European Commission alone but the work of EU institutions at large, combined with the establishment of a structured and representative bipartite body (Ales *et al.* 2006: 15), that seems decisive for establishing an institutional framework for TCB. Should a decision be taken not to develop an institutional framework for TCB transcending the current voluntarism of the actors, there is a chance of long-term inertia setting in:

‘(...) as far as the binding effect of “agreements” reached under such procedure and the impact on working conditions, sectoral social dialogue still depends either on the initiative of EU institutions or on Social Partners’ action at national level. In our opinion, these conditions can hamper the further development of European sectoral social dialogue in the view of: (a) assuming an autonomous relevance from national collective bargaining or EU institutions; (b) guaranteeing a direct and homogeneous impact of “agreements” on working conditions; (c) introducing in SSD Committee bargaining agenda more specific and even “hard” topics’. (Ales *et al.* 2006: 15)

The view that the lack of a European legal framework for TCB is a factor hampering the emergence of full-fledged cross-border bargaining due to missing legal certainty is also supported in one of the conclusions of the Eurofound study (Telljohann *et al.* 2009: 86). In this context the combination of the missing framework and the structural and cultural differences between national systems is pointed out as the main brake to further development of TCB.

Finally there is a set of factors possibly inhibiting the emergence of TCB related to the positions and views held by company management on the prospect of developing this new layer of negotiations. A series of workshops jointly organised by BusinessEurope and the ILO showed that a significant number of companies held the view that TCAs were not useful or not the right option for them (ITC 2010: 11). The main reason reported involved the risks and ambiguities surrounding such agreements, a concern shared among those who already have agreements.

10. Prospects for EU-level collective bargaining

The question about the prospects for TCB is probably one of the most important ones, as it takes into account a myriad of factors discussed above (incentives, motives, policies and strategies of the stakeholders) and incites readers to ponder whether the paradigm shift we are considering here is real or rather only an academic debate.

Looking at the future of TCB it seems important to emphasise that, 'since the conclusion of IFAs requires the existence and interplay of a whole range of favourable company-specific factors, the prospects for a quantitative spread of IFAs seem to be limited' (Telljohann *et al.* 2009: 86). The question is whether it is going to be the quantity of IFAs, EFAs and/or similar transnational company agreements that will define the moment when one can speak of true TCB. On the other hand, as far as quality is concerned, Marginson and Sisson (1998) present a rather sceptical view, arguing that

'These emerging forms of European-level collective bargaining are unlikely to lead, in the immediate future, to the conclusion of European collective agreements determining pay and other substantive conditions of the kind associated with the normative contracts of sector agreements in most individual countries. Rather they are creating what might best be described as 'virtual collective bargaining'. The term is used to cover two main processes. In one, the conclusion of 'joint opinions' or 'framework agreements' at European multi-sector, sector and Euro-company levels establishes parameters and objectives within which negotiators at subsidiary levels in individual countries (national, sector and enterprise) are expected or required to operate. Certain minimum conditions may also be specified in 'framework agreements'.

In the other, ‘arms length’ bargaining, employers and union representatives do not negotiate face-to-face at European level, but the outcomes of sector and enterprise bargaining are increasingly anticipated and co-ordinated across countries.’

Before providing a reply based on the qualitative determinants, Platzer (1998: 95 ff) posed three questions, considered fundamental to the emergence of supranational collective negotiations:

‘1) Will a trans- or supranational need for regulation arise to complement, harmonise or, in some fields in the longer term, replace national industrial relations regulatory mechanisms? If so, at what stage of integration of factor markets and at what degree of macroeconomic and monetary interdependence?

2) Do the actors have an interest in establishing such regulations? If so, are they organisationally and politically able to agree corresponding substantive regulations at supra- or inter-state level or, in a more difficult process, establish procedural rules?

3) Must a certain degree of ‘political integration’, a ‘positive merging of sovereignty’, exist in the EU, and how must ‘functional scope’ and ‘institutional capacities’ be shaped and developed in order to structure and foster the development of transnational industrial relations (...)?’

Interestingly, even though not directly inspired by the above questions, other researchers came up with answers. Ojeda Aviles (2004) claimed for example that ‘with the SPA [Social Policy Agreement], we already have all the necessary ingredients for European collective agreements to be made’ (ibid: 431).

Platzer (1998: 97) presumed that there would be two processes relevant for developing transnational industrial relations:

1) In the sphere of product market interests, the competitive dynamics of the Single Market (and globalisation) which can promote coincidences of interests between ‘capital’ and ‘labour’ (‘productivity coalitions’) in various formats (workplace, regional, sectoral or national);

- 2) In the sphere of social and employment policy interests there would be a trend towards a common set of trade union problems: ‘identical’ (requiring the cross-border synchronisation of actions) and ‘common’ (requiring supranational solutions).

The above differentiation might indeed explain today’s twofold approach of the unions, with the EMF for instance pursuing the coordination approach and other unions (slowly) becoming convinced of the advantages and necessity of the supranational solution (TCB).

Platzer (1998: 110) points out that the Euro-optimist approach, fuelled by EU developments in the 1990s, provided a more favourable environment for the creation of transnational industrial relations. The initial impulse was provided by the Maastricht Social Protocol (Art. 4) facilitating two options¹⁵ for concluding and implementing EU-level transnational agreements between the social partners. Platzer argues that such agreements could also, in theory, regulate pay arrangements on an EU scale. The second possibility was seen in agreements between the social partners instigating the adoption of new EU legislation by the Council of Ministers resulting in agreements with *erga omnes* effect, i.e. binding also for third parties.

A further interesting analysis looked at the cost the EU would incur through not coming up with a framework for TCB (apart from the above-mentioned institutional inertia; see the previous section). Such an analysis of prospects, the benefits of engagement and the costs of non-engagement for both unions and MNCs from a game-theory point of view was conducted by Cooke (2001).

15. “Paragraphs 1 and 2 of Article 4 of the Agreement on Social Policy in the Maastricht Treaty provided two paths through which the employers and trade unions at European level can implement agreements concluded between them. Under Paragraph 1, agreements can be concluded between the European social partners which could, in theory, include pay agreements with Europe-wide validity. (...) By contrast, the procedure under Paragraph 2 has an entirely novel character. This allows for the possibility, on a defined set of issues, for agreements between the two sides to pass into social legislation. The prerequisite is a decision within the Council of Ministers, which then leads to the agreement becoming binding *erga omnes* – i.e. on third parties who are not members of signatory organisations” (Platzer 1998: 110).

Generally speaking, a moderate assessment rating of developments, both in the 1990s as well as in the following decade, seemed to be the most relevant approach: TCB as a process is certainly worthy of note, '[h]owever we should guard against any overly Euro-optimistic extrapolation of current trends' (Platzer 1998: 115). We seem to currently be in a transitory phase with complex dynamics and contradictory developments taking place, such as globalisation and the decentralisation of economic and employment processes on the one hand, and an erosion or supplanting of traditional collective bargaining in some countries and a general exodus from collective organisations (ibid).

Marginson and Sisson (1998: 5) point out that the emergence of TCB does not necessarily have to be the result of any conflict between national and supranational levels, despite the debate being traditionally concentrated around these two camps. It may even become an unavoidable survival strategy for trade unions, forced to adapt to ever-deepening EU integration.¹⁶

They found this conceptualisation (competence and conflict between national systems and pressures from a supranational, EU level) ill-founded, arguing that IR in Europe would be characterised by increasing diversification (within rather than between national systems) and convergence at the same time (Marginson and Sisson 1998: 5). According to them such convergence will 'stem from the process of "virtual" collective bargaining at European level, in which developments at Euro-company level are likely to be to the fore.'¹⁷ It seems that this

16. Ibid: 'Much of the debate about developments in European-level collective bargaining posits a diverse set of internally homogenous national systems in potential conflict with convergent pressures deriving from economic and political integration within the EU, and the accompanying growth in the role and influence of supranational actors and institutions (Due et al. 1991). In analysing the counter play between these two sets of forces, commentators have tended to underline both the durability of existing national systems of industrial relations and the imperative of establishing transnational actors with the authority, resources and capabilities to deliver European-level sector agreements mirroring those characteristic of many national systems (Jacobi 1995:50). European Monetary Union (EMU) is seen as a defining moment in this process. In the words of Keller (1995:124), "the development of a related [i.e. European] structure for collective bargaining will become necessary and unavoidable". Otherwise, trade unions face the prospect of "ruinous cross-border wage competition" (Jacobi 1996:243) as employers engage in 'regime shopping' to secure the lowest cost production.'

17. Marginson and Sisson further sketched their prognosis: 'Negotiations will continue to take place through existing sector and enterprise structures in individual countries,

prediction, made in the late 1990s, has been corroborated by the practice in the 2000s and continues to be the mainstream approach to TCB in Europe. Marginson and Sisson also predicted that the trends towards diversification and convergence, ‘far from being incompatible, are mutually reinforcing’; leading to a situation where ‘The more the emphasis shifts from national to organisation-based systems, the more demand there is likely to be for some form of regulation at the EU level, and vice versa’ (Marginson and Sisson 1998: 5).

Other researchers go even further, finding that it is not only about a conflict between organisations on different levels, but that the national trade unions will not be able to sustain their positions and influence if they do not move their strategies, interests and actions to the European dimension (Schiek 2008; Waddington 2005).

Despite the mutual influence seen between the shift from national to organisation-based systems and the need for EU regulation, there remains an important question-mark over the future development of TCB. As pointed out by Stevis (2010: 12), the link between the strength and shape of social regulations within ‘coordinated capitalism’ has an impact on the frequency of signing IFAs. Consequently, since signing IFAs is associated with a particular kind of capitalism and industrial relations, a valid question is whether this strategy (and by implication the whole idea of developing supranational collective bargaining systems) ‘can survive the weakening of these national institutional arrangements due to the more liberal attitude of the European Union, or their demise, due to global liberalization?’ (ibid).

11. Future legal framework for TCB

The scope and gathering momentum of TCB makes the question of regulation in this area impossible to ignore.

but within the context of (1) ‘joint opinions’ and/or ‘framework agreements’ at EU and Euro-company levels rather than normative contracts and (2) a process of ‘arms-length’ bargaining, where the parties’ positions are increasingly co-ordinated across European borders. As a result some sub-national arrangements will “appear to have more in common with their equivalents in other countries” (Locke 1992: 230)’ (Marginson and Sisson 1998: 5).

The most important questions are:

11.1 ... whether there is any legal framework in place now regulating transnational collective negotiations and agreements?

With regard to this first question researchers' views vary. Even (2008: 28) finds that 'At EU level the European social partners have already been given the chance to conclude European collective agreements within the so-called European social dialogue' and considers the latter to be a form of transnational collective bargaining. Moreover, Even argues (2008: 29) that the existing 'Transnational collective labour agreements could be regarded as collective labour agreements that cover (have force in) more than one jurisdiction'. At the same time Even maintains that these agreements are not truly European ones, because they do not have Community, but only national effects. Consequently they are "national" transnational collective labour agreements' which 'satisfy the national requirements that collective labour agreements need to satisfy for the country concerned, having a scope of application covering several jurisdictions.' (ibid). Even argues that this definition of the current situation has only been forged for practical purposes and that from a purely legal stance transnational collective labour agreements do not yet exist¹⁸ as the present agreements do not have the necessary Community-wide effect. Therefore Even argues that a *new* EU legal framework is needed.

11.2 Is there a need for a legal framework one? Advantages of TCB

One point of departure for answering this question could be the statement by Even (2008: 231) that current company-level agreements represent a 'national' transnational form of collective bargaining,

18. Even argues: 'From a comparative law perspective, a "collective labour agreement" is simply not an unambiguous phenomenon'. See A.A.H. van Hoek, *Internationale mobiliteit van werknemers. Een onderzoek naar de interactie tussen arbeidsrecht, EG-recht en IPR aan de hand van de Detacheringsrichtlijn [International mobility of employees. Research into the interaction between employment law, EU law and PIL [private international law] in connection with the Posted Workers Directive]*, SDU, The Hague, 2000, page 487.

implying the lack of a truly supranational system with direct, uniform applicability. Other authors point out that leaving TCB unregulated will not only represent a ‘missed opportunity’, but that it is indeed of crucial importance for the interests of the EU, as further uncertainty regarding cross-border negotiations poses a ‘danger of distortion of competition’ which ‘has been, since the very beginning, a common ground for intervention by the EEC in the social field’ (Ales *et al.* 2006: 34). Further, more specific grounds for the introduction of a legal framework are listed:

- a. the lack of a legal status for transnational collective “agreements”, causing them to exist in a legal void;
- b. the unclear status of legal sources on which transnational tools rely;
- c. a variety of negotiating agents and the consequent ambiguity amplified by the lack of a legally binding and thus effective instrument for concluding transnational ‘agreements’ and/or by their questionable legitimacy to conclude agreements;
- d. the plurality of TCB actors giving rise to unclear relationships among decision-making levels;
- e. the mandate given by the EU Member States in Art. 28 of the Nice Charter of Fundamental Rights to actors on the most appropriate level (establishment of collective bargaining on any appropriate level).

The above arguments by Ales *et al.* can be complemented with those brought up by Even (2008: 260). Even claims that currently agreements are being signed despite the lack of a legal framework, stating that this has numerous drawbacks, since:

- ‘important constitutional rights (freedom of association, right to collective bargaining and the right to strike) are not defined;
- the participants in European social dialogue (who are “management and labour”, are they representative, and do they have full autonomy?) remain unidentified;
- there is a lack of direct normative effect of the European agreements reached, leading to the lack of uniform applicability of European collective labour agreements;
- the binding effect of any agreement reached is unclear;
- there are insufficient rules regarding the requirements the European social partners have to meet;

- potential difficulties exist with regard to the implementation of agreements;
- difficulties concerning the effects, follow-up and enforcement of any agreement (Even 2008 260-261).

The above-mentioned current problems allow the conclusion to be drawn that: ‘a new system enabling genuine transnational collective bargaining is necessary, when such transnational bargaining indeed is pursued.’ (Even 2008: 261)

Ales (Ales *et al.* 2006: 33) concludes that both at the level of sectoral social dialogue and at company level ‘the existing experiences of transnational collective negotiations (...) illustrate that there is a lack of a specific and comprehensive legal framework as far as: (a) the procedure; (b) the negotiating agents; (c) the conditions for the binding effect of concluded agreements’.

Apart from the disadvantageous factors identified by Ales (Ales *et al.* 2006), Even (2008: 238 ff) mentions two sets of clear advantages favouring the adoption of a new framework for TCB: institutional advantages, and advantages for the parties involved and their members. Institutional advantages stem from the fact that TCB may:

- (i) prove useful in cases where Community institutions are unable to come to decisions;
- (ii) help to overcome regulatory shortcomings;
- (iii) help to overcome the democratic deficit;
- (iv) prove to be an important tool for proper European Governance;
- (v) be a proper method for horizontal subsidiarity.

According to Even (*ibid*), advantages for the parties involved are:

- a) providing for a tool to respond to the challenge of the Europeanisation and internationalisation of markets and corporate strategies as well as making better use of European labour resources (e.g. increased employee mobility);
- b) preventing social dumping and maintaining a social Europe;
- c) institutionalised TCB would facilitate coordination of pay, financial and social policies in Europe, which, in the context of delegating fiscal policies to the EU level, would be an important contribution to

- the EU's overall economic stability (in addition to Even 2008, see also Coen 1998: 69-70 and: Lecher and Platzer 1998b: 7-8);
- d) the possibility to tackle “common” problems at the (most) appropriate level;

Prospective advantages for multinational companies (Even 2008: 250 ff):

- ‘creating corporate identity / image;
- tailor-made solutions for problems at company-level
- international familiar structures;
- equal level of health and safety protection;
- simplifying transnational restructuring processes;
- consistent and equal regime [or framework of rights and obligations resulting from collective agreements];
- introducing binding European Manuals;
- confidence-building / motivating employees.’

Similarly, ‘the lack of a *structured transnational response* by EC Law represents a missed opportunity in view of developing a reliable and uniform regulation of relevant social issues at the *appropriate* level (transnational in our case)’ and could be more effectively dealt with if supported by respective EC directives (Ales *et al.* 2006: 32). Furthermore, it is rightly argued (Even 2008: 654) that the EU principle of subsidiarity is not only a limitation of the Community’s right to regulate, but can also serve as an argument in favour of legislation in areas that are beyond a single Member State’s power (Even 2008: 654). Therefore this principle of (vertical) subsidiarity (Art. 5 TEU) can be perfectly applied in favour of establishing an EU legal framework for TCB, as the latter has clearly a transnational dimension thus outmatching a single Member State’s power and, consequently, calls for an EU intervention (*ibid.*).

However, problems were seen with regard to vertical subsidiarity. Both Even (Even 2008: 655) and Ales (Ales *et al.* 2006: 35) argue that in this respect it is the EU that needs to introduce legislation on TCB, as – even at EU level – the social partners lack the necessary competence to codify this area and introduce any act that would solve the problem. This view is not shared by Schiek (2005) who suggested that the Social Partners could perform this role.

11.3 Disadvantages of a legal framework for TCB

Even sees the introduction of a legal framework for TCB as possibly bringing disadvantages (Even 2008: 252). One of the most important ones is that CB has the intrinsic effect of artificially inflating wages, leading to diminishing demand for labour and higher costs for goods and services. This triggers a vicious circle, dampening consumption and affecting production and its demand for labour. In this way some claim that:

‘Seeing EC-level collective bargaining which will ultimately lead to common conditions throughout the EC as a goal is a dangerous illusion. It will hamper decision-making, remove competition, introduce rigidities and ultimately destroy jobs. It is the success of the market, or rather our success in competing in it, that has provided the living standards we now have in the EC. That has been achieved because of, not despite, diversity.’ (Reid 1998: 125).

Amongst the more sceptical views it is also being mentioned that a series of ‘practical arguments’ against TCB exist (Even 2008: 255; originally raised by Platzer and Keller 2003: 86; Voynett-Fourboul 2001: 346):

- ‘differences in the organization, ideology and interests of Europe’s national trade unions;
- limits of international solidarity of workers if strikes are needed;
- trade union weaknesses in establishing an autonomous transnational system of industrial relations;
- a lack of interest on the part of employers and employer organisations;
- the risks and costs of coming to European collective bargaining; and
- differences in the legal systems of the different countries’(Even 2008: 255).

Another potential objection against collective bargaining in general – a problem which may even be clearer at a transnational rather than a national level - is the declining level social partner representativity (ibid 253).

At the same time researchers argue that, without a transparent framework in place, further developments in this area are not possible to envisage (Ales *et al.* 2006: 33). This in turn may result in legal uncertainty, possibly with serious repercussions for labour (Jagodzinski 2007), especially if the entire system of TCB continues to be based solely on voluntarism. Leaving this domain an unregulated lacuna is likely to hamper further developments of TCB as an autonomous layer of collective negotiations in Europe (as compared to the national level) and will jeopardise the homogeneous impact of “agreements” signed at transnational level (Ales *et al.* 2006: 34).

Alternatively, the Europeanisation of CB, in the sense of the cross-border coordination of CB, is being pointed to as a substitute for TCB (Blank 1998: 166). The main difficulty in establishing TCB and an argument in favour of CB in Europe is that collective negotiations have always been a paramount national matter of trade unions. Thus it would be difficult for them to transfer their powers to European-level confederations. Yet it is not just unions facing such difficulties and unable to decide whether to become involved in and support TCB: UNICE has a similar negative track record on TCB (Blank 1998: 166).

11.4 The shape of a future legal framework for TCB

Even if the necessity of introducing some form of a framework regulating TCB is a view rather commonly shared by experts, opinions on the specific profile of such a framework diverge.

Before presenting concrete concepts, it seems worthwhile quoting one general remark emphasizing the need for a holistic, rather than a case-by-case approach. To influence macroeconomic variables and policies, collective bargaining must encompass monetary, environmental, energy and transport policy (Mahnkopf and Altvater 1995: 114). One can interpret this statement as an argument in favour of a true *system* of European collective bargaining, including links to other policy areas, rather than just a single act regulating specific questions, e.g. the applicability or direct effect of transnational agreements.

In general, two possible scenarios are conceivable: a) no legal framework for TCB and b) adoption of a legal framework (Dorssemont and Dufresne

2011: 267 ff.). As far as the latter is concerned, when discussing the future shape of a framework for TCB two main avenues can be distinguished: a) shaping a new framework for TCB as a supranational system *sui generi*; or b) modelling the future framework for TCB on existing national CB systems.

The most systematic and structured concepts of a future legal framework for TCB up to now have come from *i*) an expert group coordinated by Ales (Ales *et al.* 2006), presenting the ‘supranational solution’, *ii*) from Even (2008), favouring the national CB-based models, and *iii*) from Mathieu Hecquet (2008), the most debatable one¹⁹ supporting the development of autonomous company-based social dialogue in multinational enterprises and groups of enterprises excluding the role of European-level sectoral trade union federations (and including a ready-to-sign draft of a directive consisting of 15 articles).

According to Even (2008: 238) ‘a new system of transnational collective bargaining should not be based on a new form of European social dialogue but instead on “classical” collective bargaining as in place in the Member States’. Accordingly, the future European legal framework for TCB should be based on three classical principles:

- a. freedom of association of employer and employee representative organisations to join the transnational collective agreement;
- b. the right to collective bargaining and autonomy of the social partners guaranteeing the right to shape the contractual arrangements freely;
- c. the right of employee organisations to persuade/threaten the employers into proper arrangements by threatening them with collective action (here a right to European-level collective action would probably be required) (Even 2008: 641).

In this respect it is suggested that what is probably necessary is not just a single piece of legislation on TCB but an entire system of regulations including the above-mentioned classical principles related to national-level collective bargaining (Even 2008: 194 ff). The new framework would also need to be precise about what constitutes a collective agreement and what topics can be covered by it. According to Even

19. For an overview and evaluation of these three proposals see Dorsemont and Dufresne 2011.

(2008) the aim of the framework would be to ensure that ‘all Member States recognise and apply transnational collective labour agreements on equal footing’ (ibid.: 643).

The expert group led by E. Ales proposes a different concept based on the establishment of joint negotiating bodies within which transnational collective agreements could be concluded (Ales *et al.* 2006: 36). Such agreements ‘would not themselves have a legally binding effect, but acquire such an effect indirectly through their implementation by managerial decisions adopted by all national companies in the relevant sector. These managerial decisions should be submitted to a bilateral monitoring system at sectoral level and be recognized as legally binding in each EU Member State according to their law or practices.’ (ibid.). This vision of a future framework for TCB is criticised by Even (2008: 271 ff) due to representativity issues of the existing parties to ESD²⁰, risks regarding the implementation of agreements based on managerial discretion²¹, and the lack of uniform binding effects, all being at odds with existing national laws and practices. Even points out that a TCB framework in this form would in fact repeat the mistakes currently evident in ESD.

Other proposals argue in favour of a TCB system resembling the classical national CB regimes. For example Blank (1998: 166-167) calls for a system based on the classical rights and procedures in place in Member States (e.g. Germany):

‘If one looks at the more long-term prospect of cross-border European collective bargaining with the aim of cross-border agreements, it is evident that one indispensable precondition is the anchoring of collective

20. Even (2008 271 ff): ‘the proposals “copy” many of the flaws of institutionalised collective bargaining into the new system of bargaining in joint negotiating bodies. The joint negotiating bodies are comprised of the same European social partners that are active in the European social dialogue. (...) This choice is therefore, in my opinion, unfortunate (...). This is especially the case as all representativity issues that have arisen in the European social dialogue are even more “painfully” present in the proposed system than in the bargaining system within the European social dialogue. (...)’

21. Even (2008 271 ff): ‘Implementing collective labour agreements by managerial decision is in itself rather peculiar. Why should management have the sole power to implement a collective agreement which is the fruit of bargaining between two parties? To some extent, it negates the collective element of the agreement reached. The probable reason for this system is to circumvent private international law aspects.’

rights at European level. This includes freedom of association, the right to collective bargaining and the right to strike, along with a legal framework – comparable with the German Collective Agreements Act (Tarifvertragsgesetz) – to establish the way in which collective agreements are to be implemented.’

Bercusson (1999: 164-165) is a further proponent of European collective bargaining in line with Member State traditions. In Bercusson’s view, the European social dialogue was developed as a consequence of the failure of the legislative process to develop EC labour law. Therefore: ‘European labour law cannot afford to abandon national labour law systems, traditionally rooted also in an industrial relations model.’ (ibid).

These two sets of visions for a future TCB framework vary significantly. They are based on different points of departure (national collective bargaining vs. attempts of transnational collective agreements), propose different instruments of codification (regulation vs. directive), and strive for different goals (collective agreements with a direct, uniform applicability in all EU Member States vs. collective agreements implemented separately in each Member State). This last element seems the most significant discrepancy: what the proposal put forward by Ales sees as the final outcome of TCB codification is criticised by Even as a “national” transnational collective bargaining’.

References

- Ales, E., S. Engblom, T. Jaspers, S. Laulom, S. Sciarra, A. Sobczak and F. Valdes Dal-Re (2006) *Transnational collective bargaining: past, present and future. Final report*, Brussels: European Commission.
- Arrowsmith, J. and P. Marginson (2006) ‘The European cross-border dimension to collective bargaining in multinational companies’, *European Journal of Industrial Relations*, 12 (3), 245-266.
- Arrowsmith, J., P. Marginson and K. Sisson (2003) ‘Externalisation and internalisation of collective bargaining in Europe: variation in the role of large companies’, *Industrielle Beziehungen*, 10 (3), 363-392.
- Beaupain, T., S. Jefferys and R. Annand (2003) ‘Early Days: Belgian and UK experiences of European Works Councils’, in W.N. Cooke

- (ed.) *Multinational companies and global human resources strategies*, Westport: Quorum Books, 329-346.
- Bercusson, B. (1999) 'Democratic legitimacy and European labour law', *Industrial Law Journal*, 28 (2), 153-170.
- Béthoux, E. (2008) *Transnational collective bargaining in Europe: development and issues at company level*, working document prepared for the Europe et Société symposium 'Transnational collective bargaining in Europe', Paris, 5-6 February 2008.
- Bieling, H-J. and T. Schulten (2001) 'Competitive restructuring and industrial relations within the European Union corporatist involvement and beyond?', WSI Discussion Paper No 99.
- Blank, M. (1998) 'Collective bargaining in the European Union: the standpoint of IG Metall', in W. E. Lecher and H.-W. Platzer (eds.) *European Union - European industrial relations? Global challenges, national developments and transnational dynamics*, London: Routledge, 157-168.
- Blasco, J.G. and A.L. de Val Tena (2004) 'Collective bargaining in Spain', in Comisión Consultativa Nacional de Convenios Colectivos (ed.) *Collective bargaining in Europe*, Madrid: Ministerio de Trabajo y Asuntos Sociales, 275-300.
- Bockmann, B. (1995) 'Das Verhandlungsverfahren nach dem Maastrichter sozialpolitischen Abkommen', in P. Oberender and M. Streit (eds.) *Europas Arbeitsmärkte im Integrationsprozeß*, Baden-Baden: Nomos.
- Bridgord, J. and J. Stirling (1994) *Employee relations in Europe*, Oxford: Blackwell.
- Carley, M. (2001) *Bargaining at European level? Joint texts negotiated by European Works Councils*, Luxembourg: Office for Official Publications of the European Communities.
- Coen, M. (1998) 'The European dimension to collective bargaining post-Maastricht', in W. E. Lecher and H.-W. Platzer (eds.) *European Union - European industrial relations? Global challenges, national developments and transnational dynamics*, London: Routledge, 65-71.
- Cooke, W. N. (2001) 'Exercising power in a prisoner's dilemma: transnational collective bargaining in an era of corporate globalisation?', *Industrial Relations Journal*, 36 (4), 283-302.
- Crook, C. (2005) 'The good company', *The Economist*, 20 January 2005.
- Due, J., J.S. Madsen and C.S. Jensen (1991) 'The social dimension: convergence or diversification of IR in the Single European Market?', *Industrial Relations Journal*, 22 (2), 85-102.

- EIRO (European Industrial Relations Observatory Online) 1998 'European Metalworkers' Federation adopts European coordination rule for national bargaining', German National Report (ID: DE9812283F), December 1998/De, available at: <http://www.eurofound.europa.eu/eiro/1998/12/feature/de9812283f.htm>
- ETUC (1996) *Bilans des négociations sectorielles au niveau européen*, Brussels: ETUC.
- European Commission (1998) Communication from the Commission, *Adapting and promoting the social dialogue at Community level*, COM(1998) 322 final, 20 May 1998, Brussels.
- Even, J. H. (2008) *Transnational collective bargaining in Europe. A proposal for a European regulation on transnational collective bargaining*, Den Haag: Boom Juridische Uitgevers.
- Franklin, D. (2008) 'Just good business', *The Economist*, 17 January 2008.
- Gumbrell-McCormick, R. (2000a) 'Quel internationalisme syndical? Passé, présent, avenir', *Les Temps Modernes*, 607, 178-206.
- Gumbrell-McCormick, R. (2000b) 'Facing new challenges: the International Confederation of Free Trade Unions (1972-1990s)', in A. Carew, M. Dreyfus, G. Van Goethem, R. Gumbrell-McCormick and M. van der Linden (eds.) *International Confederation of Free Trade Unions*, Bern: Peter Lang, 341ation
- Hancké, B. (2000) 'European Works Councils and industrial restructuring in the European motor industry', *European Journal of Industrial Relations*, 6 (1), 35-59.
- Hecquet, M. (2006) PhD Thesis, *Essai sur le dialogue social européen*, Paris: Université Panthéon-Assas.
- Hoffmann, J. et al. (2002) *The Europeanisation of industrial relations in a global perspective: a literature review*, Luxembourg: Office for Official Publication of the European Communities.
- International Training Centre (ITC) (2010) *Key issues for management to consider with regard to Transnational Company Agreements (TCAs). Lessons learned from a series of workshops with and for management representatives*. December 2010, VP 2009 003, Turin: International Training Centre of the International Labour Organization.
- ISO (International Standardization Organisation) (2008) *ISO and social responsibility*, Geneva: ISO.
- Jacobi, O. (1995) 'Der soziale Dialog in der Europäischen Union', in M. Mesch (ed.) *Sozialpartnerschaft und Arbeitsbeziehungen in Europa*, Wien: Manz, 257-287.

- Jagodzinski, R. (2007) 'Involving European works councils in transnational negotiations - a positive functional advance in their operation or trespassing?', *Industrielle Beziehungen*, 14 (4), 316-333.
- Kerckhofs, P. (2006) *European Works Councils. Facts and figures 2006*, Brussels: ETUI-REHS.
- Kohler-Koch, B. (1992) 'Verbände und europäische Integration', in M. Kreile (ed.) *Die Integration Europas*, Opladen: Westdeutscher Verlag.
- Kravaritou, Y. (1970) 'La Convention collective de la société européenne', *Cahiers de droit européen*, 284-305.
- Lecher, W. (1996) 'Supranationale Tarifpolitik ihre Möglichkeiten und Grenzen in der Europäischen Union', *Internationale Politik und Gesellschaft*, 1, 36-46.
- Lecher, W. and H.-W. Platzer (1998b) 'Global trends and the European context', in W. E. Lecher and H.-W. Platzer (eds.) *European Union - European industrial relations? Global challenges, national developments and transnational dynamics*, London: Routledge, 1-17.
- Marginson, P. (2008) *The transnational dimension to collective bargaining in a European context*, Industrial Relations Research Unit, University of Warwick, UK. http://www2.warwick.ac.uk/fac/soc/wbs/research/irru/publications/recentconf/pm_-_tnceurope.pdf
- Marginson, P. and K. Sisson (1996) 'EWCs - Opening the door to European bargaining?', *European Works Councils Bulletin*, Issue 1, 9-11.
- Marginson, P. and K. Sisson (1998) 'European collective bargaining: a virtual prospect?', *Journal of Common Market Studies*, 36 (4), 505-528.
- Marginson, P. and K. Sisson (1998) 'European collective bargaining: a virtual prospect', *Journal of Common Market Studies*, 36 (4), 505-528.
- Marginson, P. and T. Schulten (1999) 'The "Europeanisation" of collective bargaining', *EIROonline*, Record TN9907201S. <http://www.eiro.eurofound.ie>.
- Martin, A. and G. Ross (2000) 'European integration and the Europeanization of labor', in M. Gordon and L. Turner (eds.) *Transnational cooperation among labor unions*, Ithaca: Cornell University Press, 120-149.
- Meardi, G., P. Marginson, M. Fichter, M. Frybes, M. Stanojevič and A. Tóth (2009) 'The complexity of relocation and the diversity of trade union responses: efficiency-oriented foreign direct investment in Central Europe', *European Journal of Industrial Relations*, 15 (1), 27- 47.

- Moreau, M.-A. (2011) 'The evolution of European social integration under globalisation: some reflections on recent developments', in A. Blackett and C. Lévesque (eds.) *Social regionalism in the global economy*, New York: Routledge, 225-242.
- Müller, T. and S. Rüb (2004) 'Towards internationalisation of labour relations? Global union networks and international framework agreements: status quo and prospects', report for the FES Global Unions Seminar. Unpublished paper.
- Ojeda Avilés, A. (2004) 'Applicability of European collective agreements', in Comisión Consultativa Nacional de Convenios Colectivos (ed.) *Collective bargaining in Europe*, Madrid: Ministerio de Trabajo y Asuntos Sociales, 427-457.
- ORSE (Observatoire de la Responsabilité Sociétale des Entreprises) (2006) Communiqué de presse, *Réaction de l'ORSE vis-à-vis du nouveau standard de mondial de reporting développement durable des entreprises de la Global Reporting Initiative (GRI)*. http://www.orse.org/reaction_de_l_orse_vis_a_vis_du_nouveau_standard_de_mondial_de_reporting_developpement_durable_des_entreprises_de_la_global_reporting_initiative_gri-52-26.html
- Papadakis, K. (ed.) (2008) *Cross-border social dialogue and agreements: an emerging global industrial relations framework?*, Geneva: International Labour Organisation.
- Platzer, H-W. (1991) *Gewerkschaftspolitik ohne Grenzen? Die transnationale Zusammenarbeit der Gewerkschaften im Europa der 90er Jahre*, Bonn: Dietz.
- Platzer, H-W. (1992) 'Die Konstituierung europäischer Arbeitsbeziehungen', *WSI-Mitteilungen*, 45, 779-788.
- Platzer, H-W. (1998) 'Industrial relations and European integration: patterns, dynamics and limits of transnationalisation', in W. E. Lecher and H.-W. Platzer (eds.) *European Union - European industrial relations? Global challenges, national developments and transnational dynamics*, London: Routledge, 81-117.
- Platzer, H-W. and B. Keller (2003) *Industrial relations and European integration. Trans- and supranational developments and prospects*, Aldershot: Ashgate.
- Pochet, P., A. Dufresne, C. Degryse and D. Jadot (2003) *Dialogue social sectoriel. Rapport final*, Bruxelles: Observatoire social européen, Contrat VC/2003/0400-SI2.365647.
- Reid, P. (1998) 'Collective bargaining at European level: a sectoral employer's viewpoint', in W. E. Lecher and H.-W. Platzer (eds.) *European*

- Union - European industrial relations? Global challenges, national developments and transnational dynamics*, London: Routledge, 121-132.
- Rondinelli, D. (2007) 'Globalization of sustainable development: principles and practices in transnational corporations', *Multinational Business Review*, 15 (1), 1-24.
- Rüb, S., H.-W. Platzer and T. Müller (2011) *Transnationale Unternehmensvereinbarungen. Zur Neuordnung der Arbeitsbeziehungen in Europa*, Düsseldorf: Hans Böckler Stiftung.
- Ruggie, J.G. (2004) 'Reconstituting the global public domain - Issues, actors, and practices', *European Journal of International Relations*, 10 (4), 499-531.
- Schiek, D. (2008) 'Transnational collective labour agreements in Europe and at European level: further readings of Article 139 EC', in M. Rönmar (ed.) *EU industrial relations v. national industrial relations comparative and interdisciplinary perspectives*, The Hague: Kluwer Law International, 83-104.
- Schiek, D. (2005) 'Autonomous collective agreements as a regulatory device in European labour law: how to read Article 139 EC', *Industrial Law Journal*, 34 (1), 23-56.
- Schömann, I., A. Sobczak, E. Voss and P. Wilke (2008) *Codes of conduct and international framework agreements: new forms of governance at company level*, Luxembourg: Office for Official Publications of the European Communities.
- Stavis, D. (2010) 'International framework agreements and global social dialogue. Parameters and prospects', Employment Working Paper no 47, Geneva: ILO.
- Stavis, D. and T. Boswell (2007) 'International framework agreements: opportunities and challenges for global unionism', in K. Bronfenbrenner (ed.) *Global unions: challenging transnational capital through cross-border campaigns*, Ithaca: Cornell University Press, 174-194.
- Streeck, W. (1992) *Social institutions and economic performance studies of industrial relations in advanced capitalist economies*, London: Sage.
- Streeck, W. (1999) 'Entscheidung durch Nichtentscheidung zur Logik transnationaler Interessenpolitik', in W. Streeck, *Korporatismus in Deutschland: zwischen Nationalstaat und Europäischer Union*, Frankfurt /Main: Campus, 112-123.

- Teague, J. and P. Grahl (1992) 'Integration theory and European labour markets', *British Journal of Industrial Relations*, 30 (4), 515-527.
- Telljohann, V., I. da Costa, T. Müller, U. Rehfeldt and R. Zimmer (2009) *European and international framework agreements. Practical experiences and strategic approaches*, Luxembourg: Office for Official Publications of the European Communities.
- Traxler, F. (1995) 'Farewell to labour market associations? Organized versus disorganized decentralization as a map for industrial relations', in C. Crouch and F. Traxler (eds.) *Organized industrial relations in Europe: what future*, Aldershot: Avebury, 23-44
- Traxler, F. (1995) 'Entwicklungstendenzen in den Arbeitsbeziehungen Westeuropas. Auf dem Weg zur Konvergenz', in M. Mesch (ed.) *Sozialpartnerschaft und Arbeitsbeziehungen in Europa*, Vienna: Manz.
- Traxler, F. and B. Woitech (2000) 'Transnational investment and national labour market regimes: a case of "Regime Shopping"?', *European Journal of Industrial Relations*, 6 (2), 141-159.
- Turner, L. (1993) 'Beyond national unionism? Cross-national labour collaboration in the European Community', Discussion Paper 93-203, Berlin Wissenschaftszentrum für Sozialforschung.
- Utting, P. (2002) *Regulating business via multistakeholder initiatives: a preliminary assessment*, Geneva: United Nations Research Institute for Social Development.
- van Roozendaal, G. (2002) *Trade unions and global governance: the debate on the social clause*, London: Continuum.
- Voynett-Fourboul, C. (2001) 'European collective bargaining, new prospects or much ado about little', *International Journal of Comparative Labour Law and Industrial Relations*, 17 (3), 345-370.
- Waddington, J. (2005) 'Trade unions and the defence of the European social model', *Industrial Relations Journal*, 36 (6), 518-540.
- Walsh, J., G. Zappala and W. Brown (1995) 'European integration and the pay policies of British multinationals', *Industrial Relations Journal*, 26 (2), 84-96.
- Windolf, P. (1992) 'Mitbestimmung und 'corporate control' in der Europäischen Gemeinschaft', in M. Kreile (ed.) *Die Integration Europas*, Opladen: Westdeutscher Verlag, 120-142.