

## **Chapter 5**

# **Transnational company agreements: towards an internationalisation of industrial relations**

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Over the last decades, the growing political debate on international working standards and the necessary accompanying norms has been greatly influenced by the globalisation of the economy, with the liberalisation of trade and capital movements challenging established national industrial relations structures, and leaving MNCs and labour to frame their European and international bargaining demands in a legal no mans' land. At the same time, a large number of MNCs are being urged to pay more attention to the social, environmental and societal impact of their activities, mostly in response to concerns raised by trade unions, NGOs and consumer groups. First attempts tended to focus on corporate social responsibility (CSR) policies. Coming from the US, CSR is defined as a voluntary response to social and environmental concerns enshrined in a company's business operations and its interaction with stakeholders. Rapidly and quite erratically a large range of initiatives were launched by MNCs, first unilaterally in the form of so-called codes of conduct, declarations, etc., then in a more coordinated and bargained way (so-called international or transnational framework agreements, global agreements, transnational company agreements, etc.). The common feature of all these agreements was they were the result of negotiations between trade unions and MNC management. This is reflected in the European Industrial Relations Dictionary (Eurofound), where the term international framework agreements (IFAs) has been adopted as a means of clearly distinguishing between negotiated agreements and voluntary and unilateral codes of conducts.

Recently, there has been a major rise the quantity and the quality of such agreements, attracting the attention of both international and European institutions and calling for more research. Studies have been

looking into whether IFAs may pave the way towards an internationalization of industrial relations, spotlighting worker involvement as a way of strengthening international social dialogue between labour and management in MNCs (Schömann 2011; Schömann *et al.* 2008). In the same vein, recent research projects tend to highlight the European dimension of certain framework agreements, fathoming out whether there is a need for an institutionalised European-level legal and/or contractual, optional framework (Telljohann *et al.* 2009; Ales 2006). Transnational framework agreements, whether international or European (also known – as we will see later – as transnational company agreements), are increasingly forming part of our contemporary understanding of what constitutes cross-border or transnational social dialogue. In doing so, they have a major impact on the European industrial relations system.

## **1. Transnational company agreements as the latest development in transnational collective bargaining?**

### 1.1. Brief historical perspective

Transnational company agreements (TCAs) are not a totally recent phenomenon (Béthoux 2008, Telljohan *et al.* 2009: 15-17), initially appearing as global or international company agreements. In the wake of the growing internationalisation of companies in the early 1960s and 1970s, debate centred on the theoretical and practical consequences of globalisation on industrial relations, looking in particular at ways of responding to the challenge posed by the new MNCs with regard to working and employment conditions, the organisation of employee representation and the expression of collective action. In this context, two forms of answer were explored: regulation of MNCs through international public agencies (OECD 1976 and 2000; ILO 1977 and 2001) and “private” regulation via international trade unions (essentially the IMF and ICF) aimed at establishing global worker representation bodies (in the form of world works councils) for the purpose of facilitating the exchange of information between MNC employees and coordinating trade union activity (da Costa and Rehfeldt 2008: 43-62). Although failing to lead to international collective

bargaining, these experiences did lead to the birth of transnational collective negotiations.

The first such transnational negotiations took place in the 1980s, leading to agreements being signed between Thomson Grand Public and the EMF (1985), establishing a permanent liaison committee with the recently nationalised French multinational; and at BSN-Danone (1986), with the IUF identifying four joint work areas: the promotion of relevant social and economic information, professional equality between men and women, training, and right of association within the companies making up the group. The 1986 BSN Danone/IUF agreement was soon followed by four further agreements implementing the 1986 agreement: two on social and economic information and professional equality in 1989, one on training in 1992 and one on the right to organise in 1994. Aimed at harmonising social measures and employment status within the subsidiaries of these MNCs, they were basically designed to promote negotiation at local level and ease the negotiation of agreements between the parties. An interesting characteristic of the early development of IFAs was that, ‘although IFAs were a logical outcome of international negotiations, they were not the principal objective of trade unions’ (Gallin 2008: 26-31). Of far greater importance was the aspect of international coordination, with this being viewed “as a tool for unions to build up countervailing power comparable to that of the MNCs’. The ICF has since developed a Code of Labour Practices considered as a guide for unions negotiating with MNCs. This guide urges companies to respect the fundamental labour rights defined in the 1998 ILO Tripartite Declaration and to impose the same obligation on their subcontractors. It is used by GUFs as a reference for negotiating IFAs and as a basis for their own model framework agreements (IMF model framework agreement).

These developments clearly influenced the first voluntary European-level negotiations in a number of MNCs. In the early 1980s, in response to the difficult debate on the European Commission’s proposal on information and consultation in multinational enterprises (Vredeling Directive), European industry federations and in particular the EMF led the way, launching negotiations with MNCs based in the European Union. These served as precedents for negotiations between MNCs and trade unions at transnational level, influencing the nascent institutional arrangements on EWCs (Telljohan *et al.* 2009: 18-20) that were to lead

to the 1994 adoption of the EWC Directive. In this case, practice preceded EU legislation. One of the major contributions of the EWC Directive was the establishment of rules identifying and legitimising the parties involved (Laulom 2007: 46). This particular European contribution to transnational collective bargaining has clearly influenced the development of transnational negotiations between MNCs and trade unions since then, with EWCs serving as facilitators in two-thirds of the IFAs and with more than half of all IFAs signed by MNCs having their headquarters in Europe.

Though a number of GUFs (the IUF for instance) question EWC involvement in negotiating and concluding IFAs, others (the IMF and BWI for instance) agree to such, as long as the GUF concerned is kept informed and remains involved in a coordinating role. One of the main criticisms is that an EWC is a European body and as such does not have any mandate to negotiate a global agreement that affect workers outside the EU. Another important criticism is that EWCs are not trade union bodies, possibly composed of non-unionised delegates.

At European level, EWCs play a much stronger role in initiating, negotiating, signing and implementing European framework agreements. They are commonly identified as facilitators in transnational procedures, providing an institutional structure of information and consultation for MNC workforces. In this respect most European industry federations have developed strategies related to transnational company agreements involving EWCs, whereby most of them face the dilemma that the EWC Directive does not confer on EWCs the legal capacity to engage in collective bargaining. The ETUC expressed its concerns regarding the European Commission proposal for a measure to give legal underpinning to transnational company agreements, addressing the more general issue of the emerging bargaining role of EWCs. In a resolution adopted in December 2005, while underlining the need for such a legislative measure, the ETUC called for the right to sign transnational company agreements to be confined to the trade unions. In the ETUC's view, EWCs 'are not the appropriate bodies for negotiations given the current state of legislation'. With reference to the recast EWC Directive 2009/38/EC of 6 May 2009 ([http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/social\\_dialogue/c10805\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/social_dialogue/c10805_en.htm)), the ETUC welcomed in particular the better recognition of trade unions and the improved definition of information and consultation rights in a

transnational context, thus strengthening genuine transnational dialogue between workers and management (<http://www.etuc.org/a/6102>).

In the late 1990s, the European Commission (European Commission 1996) emphasised the growing need to support the development of new levels of dialogue, referring specifically to social dialogue in transnational companies at regional level, particularly in cross-border regions. In the conclusion to its communication on ‘Enhancing the contribution of European social dialogue’ in 2004, the European Commission announced its intention to consult the social partners on the need for a Community framework for transnational collective bargaining (European Commission 2004: 11). This represented a further step in the development of and debates on transnational negotiation at company level. Included in the 2005 Social Policy Agenda (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0033:FIN:EN:PDF> on page 8), the idea was backed up by a European study, ‘Transnational collective bargaining. Past, present and future’, coordinated by E. Ales (Ales *et al.* 2006). Put in a nutshell, the study provided a comprehensive overview of the developments in transnational collective bargaining in Europe and identified the main trends, one of them being the development of transnational company agreements. It further dealt with practical and legal obstacles to the further development of transnational collective bargaining, going on to suggest ways of overcoming existing obstacles and promoting and supporting further development in the field of company agreements as part of transnational collective bargaining. The study was conducted in the context of the European Commission’s objective to support the European social dialogue, with the conclusion of transnational company agreements seen as a key factor in the development of the European actors’ future capacity to conduct a social dialogue taking into account “the increasingly transnational nature of company organisation and the need to anticipate change and have strategies to deal with it’ (European Commission 2008). In the face of fierce opposition on the part of the European employer associations, the European Commission launched a series of studies to map the development of transnational texts negotiated at corporate level (European Commission 2008a; Béthoux 2008). In addition, it set up an expert group on transnational company agreements whose mission was to monitor developments and exchange information on how to support the ongoing process.

## 1.2 Main characteristics of transnational company agreements

According to the European Industrial Relations Dictionary (<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/internationalframeworkagreement.htm>), international framework agreements (IFAs) are “negotiated between transnational enterprises (TNEs) and Global Union Federations (GUFs). IFAs are a form of transnational framework agreement that are different in scope and content from European Framework Agreements (EFAs). While IFAs are a global instrument with the main purpose of ensuring the international labour standards in all of the target company’s locations, EFAs are limited to the European context and cover a broader range of topics. In general, EFAs also contain more concrete and focused arrangements.” Initial attempts to refer to 'European framework agreements' have now been abandoned, as these led to confusion with existing instruments stemming from institutionalised European social dialogue (See chapter 'European framework agreements' of Stefan Clauwaert).

The European Commission currently uses the term ‘transnational company agreements’, defining them ‘as agreements comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers’ organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives’ (European Commission 2008). This choice of terminology takes into account the fact that the distinction between the international and the regional dimensions of such framework agreements is difficult to define. This can explain the attempt to 'go regional' at least in the terminology. However, we will show that a more generic term appears to be more appropriate when comparing the two dimensions of the agreements,

In general, IFAs differ in scope and content from framework agreements with a European dimension, whereby this distinction is slowly disappearing. IFAs are becoming more detailed, whereas framework agreements with a European dimension may include international aspects. The current terminology used by the European Commission no longer refers to a territorial (i.e. European) scope, due to the difficulty of distinguishing between IFAs and EFAs. Instead the Commission

prefers to use the generic term of ‘transnational company agreements’, omitting the ‘framework’ character of such agreements and thus possibly avoiding confusion with the so-called European framework agreements signed by the ETUC and BusinessEurope in the context of Art. 154 and 155 TFEU. However, this preference is not reflected internationally, with the term used remaining ‘international (or global) framework agreement’, as such agreements are seen to set a ‘general’ framework to be applied at the different levels within MNCs and their suppliers/subsidiaries.

Looking at the content of transnational company agreements, IFAs – in contrast to EFAs – tend to be based on ILO core labour standards<sup>1</sup>, though they may also be used as instruments for ensuring decent wages and working conditions as well as occupational health and safety and/or sustainable development (mainly in the form of environmental issues), thus including issues usually found in EFAs. In a few cases, IFAs are being used as a way of extending labour and industrial relations policies to company locations outside corporate control, including subcontractors and suppliers. Some IFAs contain clauses encouraging subcontractors and suppliers to respect the principles laid down in the IFA, whereby such provisions vary in detail from a mere mention to concrete provisions obliging suppliers to comply with the terms of the IFA, with the MNC assuming full responsibility.

IFA implementation and monitoring processes are based on joint trade union and management responsibility. To organise the monitoring, either *ad hoc* global worker representation bodies (such as WWCs) are set up or existing ones adapted. Implementation on the other hand requires the involvement of national and local trade unions. However, experience varies considerably. While in some instances employees have merely been informed about the existence of an IFA, in others, concrete steps have been taken to build international union networks and to develop

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1. The majority of the IFAs refer to Conventions No.87 on the freedom of association and No. 98 on the right to collective bargaining. A number of IFAs also refer to Convention No. 135 on the non-discrimination of labour representatives. Most of the IFAs explicitly recognise ILO conventions No. 29 and No.105 on the abolition of forced labour, No. 100 and No. 111 on the prevention of discrimination in employment and equal pay for work of equal value, as well as No. 138 and No.182 on the elimination of child labour.

action plans to make fullest use of the IFAs to ensure that complaints are acted on. In various cases, annual meetings are organised to monitor the application of the agreement. Occasionally the monitoring is supported by non-governmental organisations (NGOs). With no legal enforcement mechanisms existing at either global or European level, enforcement of both IFAs and EFAs relies on management readiness to cooperate and on the capacity of trade unions to compel companies to resolve complaints. To date, there have been relatively few instances of complaints being raised under an IFA. Complaints are usually dealt with internally, with information rarely disclosed.

Clearly IFAs and EFAs (jointly termed 'transnational company agreements' or TCAs) are cross-border agreements negotiated in cross-border social dialogue (Papadakis 2008). They are based on a twofold approach: (1) a bottom-up approach, in many cases initiated by national trade unions, of national social dialogue aimed at a social regulation of MNC activities, thus without any legal framework at national, European or international level; (2) a transnational negotiation approach, (a) including more than one European Member State and usually other non-EU states (depending on where the multinational operates), and leading to (b) the signature of negotiated texts between an MNC and the GUF, EIF and/or national trade unions and/or workers' representatives (EWC). In some cases, negotiations and signing procedures are based on internal rules of procedure, guidelines or policies (model agreements) issued by a GUF or an ETUF; in other cases a mandate is foreseen, specifically defining a trade union's capacity to conduct negotiations. Undoubtedly, TCAs can be seen as a way of fostering industrial peace through strengthening social dialogue between MNC management and trade unions. They also play a clear role in MNC risk management.

All these features qualify TCAs as tools for achieving better working conditions throughout an MNC, with TCA negotiation being seen as the start of collective bargaining at transnational level (<http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/internationalframeworkagreement.htm>). Generally speaking, trade unions consider TCAs as an opportunity to involve MNCs in a process of private standard-setting for the purpose of improving the conditions of workers and trade unions worldwide. How far a TCA meets the requirements of a collective (bargaining) agreement is still a pending

question (see chapter on the legal questions), though no doubt exists with regard to their impact on industrial relations.

### 1.3 TCAs as transnational collective bargaining instruments?

Essential features of any system of industrial relations are linked to current economic, political and social developments. At European level, the Charter of Fundamental Rights, now part of the Lisbon Treaty, supports an EU system of industrial relations by including the right of association (Article 12), the right of collective bargaining and collective action (Article 28), and the right to information and consultation (Article 27). Further features of the EU system of collective industrial relations (Alongside the European Employment Strategy, the Charter of Fundamental Rights of the European Union, the macroeconomic dialogue (euro: <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/eusystemofindustrialrelations.htm>) include the European Social Dialogue, transnational coordination of collective bargaining, and workplace employee representation and participation structures.

In its report of March 2002, the Commission's High-Level Group on Industrial Relations (European Commission 2002) identified globalisation as one of the new challenges for industrial relations in Europe. In a working document of 2008 (European Commission 2008), the European Commission emphasised the role and potential of transnational company agreements to manage the process of globalisation in a balanced way. In its 2008 report on industrial relations in Europe (European Commission 2008b), transnational negotiations between MNC management and workforce representatives were analysed as a recent form of transnational collective bargaining, part of developing transnational industrial relations arrangements (Marginson 2008, with a focus on the facilitating role of EWCs, 'in a manner which de facto extends their remit beyond the provision of transnational employee information and consultation as specified in the 1994 EWC Directive, p. 32).

Rooted in a social dialogue, understood as the interaction between social partners at various levels and as such as a developing form of collective industrial relations in Europe, TCAs conform to the European social model (Daugareilh 2006: 116-135). However, scholars (Sobczak

2007: 466-488) agree that TCAs cannot be termed as ‘collective agreements’ as they are not concluded in accordance with the collective bargaining rules of an individual Member State. In particular, the lack of rules in the case of TCA does not confer any legitimacy on the party at stake. Neither are TCAs framed by international or European rules of procedure. One of the consequences of the lack of any legal TCB framework, whether at international, European or domestic level, is that no actors are actually empowered to negotiate such agreements. An alternative currently often used to circumvent this legal vacuum is to transform TCAs into a series of national collective agreements, each signed by at least one national union and local MNC management. Doing this changes the ‘sui generis’ nature of a TCA into a national collective agreement applying in the country of the MNC’s headquarters, insofar as the agreement complies with the national labour legislation in the country in question. In such a process, the involvement of national trade unions in negotiations varies from the participation of trade unions from all countries in which the MNC in question has major subsidiaries, to their being informed on the status of negotiations, thereby giving them the feeling of being involved and enabling them to sign the final agreement. Recourse to a specific mandate is also a legal technique used by the GUFs and the ETUFs. This may range from a general political mandate to promote TCAs to a specific mandate given to negotiate a TCA with a specific MNC. The strategic choice of a trade union actor positioned on the same transnational level as the MNC helps to avoid the main obstacles of company-level transnational collective bargaining, the first being the legal personality of subsidiaries and sub-contractors, and the second being potential conflicts between different national laws on workers’ representation and collective bargaining.

Nevertheless, both the process of negotiating TCAs as well as the parties involved qualify TCAs as being valid outcomes of a collective bargaining process<sup>2</sup>, i.e. negotiations between unions and employer on the terms and conditions of employment of employees, and on the rights and responsibilities of trade unions. It can be seen as a rule-making process,

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2. On this last point the European Commission’s position is that, ‘the process (...) cannot usually be considered equivalent to ‘collective bargaining’ as practiced at national level, such as that covering wages and salaries’ (see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2155:FIN:EN:PDF> (page 5)).

leading to joint regulation. Indeed, the increasing number of MNCs adopting TCAs gives additional impetus to European-level collective bargaining, especially when such agreements are initiated by ETUFs and/or European Works Councils (European Commission 2008b: 32).

While TCAs do not qualify as collective agreements *per se*, due in most cases to both the limited scope of application of collective labour law and the lack of European and international legal initiatives to fill the gaps in the existing legal framework of European collective bargaining as defined in Art. 152-155 of the Lisbon Treaty, this does not prevent TCA signatories from considering them similar to collective agreements in practice, declaring a TCA to have direct (conventional) binding effect and providing for its direct application (Schömann *et al.* 2008). These attempts reveal the need for a regulation responding to the challenges implicit in the transnational relationships between MNCs and worker representation bodies at global and regional levels. In most cases, MNCs, especially those based in the European Union, and international/European trade unions make use of existing TCB structures such as EWCs, as these already have significant experience in the field of transnational collective labour relations. As such, TCAs are contributing to the evolution of transnational bargaining, ‘setting a (conventional) framework for global industrial relations in each company and each sector’ (Higgs 2000).

## **2. Impact of TCAs on European industrial relations**

In many cases TCAs aim to maintain and improve relations between management and labour at MNC level and to ‘disseminate’ such relations to MNC subsidiaries and, whenever possible, to suppliers and subcontractors. Earlier studies (Bourque 2005; Hammer 2005; Schömann *et al.* 2008) have shown that successfully negotiating TCAs depends on the trust signatory parties have already built up at national and sectoral levels. TCAs can be seen to have an impact both on corporate governance and on the development of social dialogue at transnational level (Schömann 2011: 32-35).

## 2.1 TCAs: a new form of governance in MNCs

'The concept of governance is based on the recognition that the state is not the sole authoritative source of regulation, and stresses the multiple interactions between public structures, economic actors and civil society' (Léonard *et al.* 2007; Eurofound a). While the territoriality of national labour law and national industrial relations systems makes it impossible to adapt to global challenges, private actors may take the initiative to develop norms in their own sphere of activity. Such initiatives also tend to compensate the incapacity of international and European institutions with respect to transnational regulation.

This notion implies (at least for academics and for public authorities. See Léonard *et al.* 2007: 7) a broader recognition of the regulatory attributes of private actors and a shift away from public authority and the state as the sole source of regulation. Applied to an increasingly globalised industrial relations environment, governance is characterized by an increasing reliance on soft law tools, as well as a multiplication of levels of governance. In such a context, new aspects of transnational governance emerge, including TCAs.

Corporate governance refers to a company's apparatus and control structures that may influence management decision-making (Eurofound b). Corporate governance is twofold: while it usually focuses on the pattern of corporate ownership and the exercise of power by a company's shareholders over management decision-making, corporate governance in the area of employment and industrial relations implies the participation of workers, as stakeholders, based on their direct interest in the company's activity. The initiatives taken by international, European and national trade unions to address MNCs as a whole and to convince MNC management to embark on negotiation and sign TCAs to promote core labour standards in MNC operations worldwide, are the result of the search for a new regulation responding to the specific features of the dominant MNC model (Moreau 2008: 253-259). TCAs are thus one of the key trade union responses to the growth of corporate power, for the most part building on existing good relationships within the company (usually at corporate level). TCAs contribute to developing social dialogue between management and trade unions and employee representation bodies at regional and local level (Schömann *et al.* 2008: 77). They also help raise the legitimacy of

trade unions and worker representation bodies at lower levels within an MNC, thus allowing for a better acceptance of workers' representation as a growing part of corporate identity and principles.

The impact of TCAs on the micro-level of social dialogue and corporate governance can be witnessed by the role trade unions and workers play in drafting TCAs as well as in monitoring and implementing them (Schömann 2011: 21-37). Trade union involvement is seen in regular reporting exercises, as a forum for exchanging information on the dissemination and appropriation of TCAs within an MNC, its subsidiaries and sometimes its suppliers and subcontractors. Unions also provide a consultation forum on possible difficulties encountered in implementing an agreement and a means of identifying joint solutions, as an alternative dispute resolution mechanism (Schömann *et al.* 2008: 40). The issue of conflict resolution is of particular relevance, as TCAs tend to set rules to deal with implementation disputes at all levels, thus providing existing international (labour) standards with enforcement mechanisms (Kocher 2008: 198-204). Although in differing ways, TCAs create procedures to deal with any breach of its clauses in the form of a series of dispute resolution steps, rather than to have recourse to a system of mediation (ombudsman). Compliance requirements can also be found in purchasing contracts with suppliers and subcontractors (Telljohann *et al.* 2009). In general, grievances are first dealt with at local management level on the initiative of workers' representatives. If no solution is found locally, then the complaint will be forwarded to the next higher level, usually the national level of workers' representation and management. The ultimate level involves the GUF informing MNC corporate management. The main objective is to make TCAs effective (Sobczak 2008) by creating internal (to the MNCs) grievance mechanisms that allow for internal solutions in close cooperation between workers' representatives and management. Data on resolved or pending conflicts is quite difficult to find, as both management and trade unions are reluctant to disclose such information. It seems that confidentiality is part of the 'in-house' resolution mechanisms of most TCAs, thus supporting the initial findings that TCAs are part of any MNC's risk management strategy. Studies do however show that complaints often relate to breaches of TCA provisions on freedom of association and the right to bargain collectively. Although TCAs are designed to be useful in countries where labour legislation is insufficient or poorly enforced,

case study research shows that TCAs also find application in old and new EU Member States.

Clearly, TCAs are means of promoting industrial peace by way of meaningful social dialogue with trade unions. But they are also to be seen as instruments helping MNCs to gain a positive public image, thereby avoiding potentially damaging public campaigns, and helping to gain access to capital and product markets (Eurofound). For trade unions, TCAs are seen as an opportunity to involve MNCs in a process of private standard-setting for the purpose of improving the conditions of workers and trade unions worldwide, as well as for strengthening the rights of local unions and workers' rights. Interestingly, one general trend is that TCAs signed recently include more specific implementation provisions, thus helping to resolve conflicts even in a context of highly institutionalised industrial relations, based on coordination between GUFs, ETUF and local actors.

## 2.2 TCAs: impact on trade unions strategies

Cross-border trade union cooperation (Eurofound c) may involve national confederations, sectoral federations, regional trade union structures or local unions. Such cooperation is understood as a precondition for cross-border social dialogue with employers and their organisations. One of the interesting outcomes of the surge in TCAs is the growth in relationships between different levels of trade unions within one or several sectors. Initiated by GUFs, ETUFs and national trade unions, as well as in many cases by EWCs, TCAs help deepen relations between trade unions. Once TCA negotiations begin, information starts flowing between the trade unions and workers' representatives involved. The implementation and monitoring phases foresee information and training being provided to guarantee a better understanding and implementation of the TCAs at local level. From a strategic perspective, the main interests of trade unions in developing TCAs, next to urging MNCs to comply with labour rights wherever they operate in the world, are threefold (Schömann *et al.* 2008: 41): to foster international solidarity and so lend support to unions throughout the world; to increase trade union membership; and to promote trade union rights and core labour standards. One of the most advanced examples of cross-border trade union cooperation at company level so

far involves the coordination approach pursued by the EMF, based on two sets of guidelines: the EMF policy approach towards socially responsible company restructuring and the Internal EMF procedures for negotiations at multinational company level ) (<http://www.emf-fem.org/Areas-of-work/Position-Papers/English/Company-Policy>).

The latter were adopted in response to the increased negotiating activities of EWCs in ensuring the national implementation of European framework agreements concluded at company level, thereby compensating for the lack of a transnational legal framework. These procedures guarantee close cooperation between the EMF and national trade union structures in all phases of the negotiation process. In the same vein, a number of GUFs have developed model agreements (BWI, IMF) as well as a range of initiatives including recommendations for the negotiation, implementation and enforcement of IFAs in order to 'build strong industrial metal unions', to quote the IMF 2006 guidelines (<http://www.imfmetal.org/index.cfm?c=7786>).

Furthermore, TCAs are windows of opportunity for trade unions to be recognised as legitimate social dialogue and bargaining partners. They should push for the conclusion of TCAs at global company level, as a second best option to political regulation (Telljohan *et al.* 2009: 44. See also Moreau 2008). Indeed, when evaluating the IFA-related strategies of the GUFs<sup>3</sup>, most of them – BWI, IMF, ICEM, ITGLWF – see IFAs as a strategic priority enabling them to develop a worldwide social dialogue with management, including the establishment of permanent transnational dialogue structures (for instance WWWs). Furthermore, the effect of such global strategies filters down to the local level, as IFA implementation requires the involvement of local trade unions. This in turn helps them to gain recognition and engage in a dialogue with local MNC management and at the MNC's suppliers and subcontractors. Moreover, the capacity of trade unions at national and local levels to organise workers and to conduct collective bargaining is, according to the BWI, a precondition for the full implementation of IFAs targeting core labour standards (Telljohan *et al.* 2009: 48). In addition, TCAs can help to 'soften up' MNCs with strong anti-union records and promote trade union recognition, possibly in combination with other

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3. GUFs tend to refer to IFAs instead of TCAs. TCA is a term recently adopted by the European Commission.

such tools as global union networks and campaigns (as planned by the ICEM). Clearly TCAs provide trade unions with organising and bargaining opportunities at local, European and international levels (Rossman 2001).

GUF and ETUF strategies have now shifted from a quantitative approach focused on concluding as many TCAs as possible to a qualitative approach focused on strengthening the effective implementation and enforcement of agreements, giving rise to a wealth of best practices for use in pressuring companies and international and European institutions. However, a basic difficulty likely to limit trade unions' ambition is the issue of the financial and human resources needed to secure the negotiation and subsequent implementation and monitoring.

Finally, TCAs allow trade unions at all levels to better develop ownership of globalisation issues, being a 'key trade union tool for addressing the growth of corporate power' ([http://www.tuc.org.uk/globalisation/tus\\_in\\_action.htm](http://www.tuc.org.uk/globalisation/tus_in_action.htm)). The territoriality of labour law, where trade unions' collective bargaining rights are anchored, does not allow for transnational bargaining. Furthermore, MNCs operate globally, while workers are employed in a national context. This shifts the balance of power, as workers do not enjoy commensurate transnational collective bargaining rights. The elaboration of TCAs enables this legal vacuum to be overcome, thus creating a hybrid form of collective agreements between trade unions and MNCs, and promoting a transnational culture of legal compliance and respect for core labour standards - including trade unions rights. As the example of EWCs shows, practice may precede legislation. The theoretical debate on the possible recognition of a transnational legal order generated by the social actors themselves focuses on the interaction between public and private norm-setting, where the European Union has shown constructive originality in creating transnational social norms as a response to globalisation. As M.A. Moreau stresses, 'the example of the EU demonstrates that transnational social norms can emerge from a legal order and draw legitimacy from an institutional framework (...) as transnational regulation within a regional legal order. From this perspective the EU legal order has no equivalent in the world' (Moreau 2008: 266). Though regulating TCAs would probably slow down the use of 'normative self-service' (Supiot 2004: 541-458) on the other hand it

would bring more transparency and legal security for MNCs and trade unions.

## **Conclusion**

TCAs represent new instruments of industrial relations at global level, bringing formal recognition of transnational social partnerships. As such, this instrument enhances the quality of transnational industrial relations, providing workers with a contractual framework for promoting core labour standards and social dialogue with a view to fostering trade union and workers' rights at local level. Furthermore, TCAs provide procedural frameworks, whereby trade unions and management jointly develop implementation and monitoring procedures, and in the case of conflict, can rely on internal joint resolution mechanisms. TCAs thus represent new forms of private social regulation at the transnational level (Moreau 2008; Telljohann *et al.* 2009: 46-47). Spill-over effects cover the promotion of social dialogue and cooperation based for the most part on highly institutionalised and more cooperative national industrial relations traditions, the development of mutual trust and providing existing international labour standards with enforcement mechanisms, thereby facilitating conflict resolution.

From the very outset TCAs have led to the establishment of information and consultation structures for trade unions and workers' representation bodies in MNCs and in their subsidiaries – such as world works councils or similar bodies, inspired by the EWC concept. In some cases TCAs are leading to the introduction of global information and dialogue structures between corporate management and the GUFs, thus developing a legal no-man's land. Yet, this process takes place within a legal environment, particularly with the involvement of EWCs as facilitators for negotiating and supervising TCAs. TCAs can secure compliance with binding international labour standards and foster transnational networking among employee representation and trade unions. They also reflect the growing transnational interdependence of trade unions and of MNCs and their national based operations, raising awareness of and compliance with core workers' rights at local level.

TCAs are important not so much for what they do as for what they expose, i.e. the need for new organisational forms on the part of workers and trade unions to facilitate transnational cooperation, as trade unions are at present ill-equipped to deal with globalisation (Ewing 2008: 205-223). As outcomes of autonomous processes of transnational bargaining, TCAs contribute to the internationalisation / Europeanisation of industrial relations, i.e. the development of a complementary layer of private and public actors, structures and processes at international / European level, interacting with national institutions and actors (Hoffmann *et al.* 2002: 45). One of the main issues at stake is the interaction between different levels of regulation (company, sectoral, national, regional, and international) and between different natures of regulation, i.e. between public and private norm-setting. TCAs reflect actor-based responses to the challenges of globalisation, prodding (European) institutions to act.

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