

***International private law aspects and dispute settlement related
to transnational company agreements***

ANNEX 2

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Study undertaken on behalf of the European Commission
Contract number VC/2009/0157

ANNEX 2 – Final report 20 October 2009

QUESTIONNAIRE SUMMARY

What kind of company-level agreements does your national legal system know or distinguish (enterprise collective agreements / agreements with works councils or other representative bodies / other agreements)?

- a. **What is the legal definition of these agreements (a definition by legislation, by case law, by doctrine)?**

Belgium

- Belgian law recognises the concept of a collective bargaining agreement (hereinafter "CBA"). A CBA is an agreement concluded between one or more employees' organisations and one or more employers or employers' associations, governing individual and collective employer-employee relations within a company or at industry level and regulating the rights and obligations of the contracting parties (Article 5 of the Act on Collective Bargaining Agreements and Joint Committees of 5 December 1968, hereinafter the "Act").
- Furthermore, the literature acknowledges the possibility for an individual employer to enter into an agreement with an employee representative body, i.e. the works council, the committee for prevention and protection at work, the trade union delegation or a delegation of employees within the company. This type of company-level agreement cannot be characterized as a CBA. In order to be considered a CBA, the agreement must be entered into with one or more employee organisations. There is no general statutory definition for this type of agreement as it is not regulated by law. However, there is a specific example in which a company-level agreement is recognised and regulated by law, such as in the case of a works council agreement on the work regulations, which determine certain company-level working conditions for the employees in the company, and which are governed by an Act of 8 April 1965.

Sweden

- A collective agreement is an agreement concluded by an employers' organisation or an employer, on the one hand, and a trade union on the other. The agreement shall be in writing and concern "the conditions of employment and otherwise the relationship between employer and the employee".
- Employee representation is channelled exclusively through the trade unions. In principle, works councils do not exist, with the exception of European works councils. It is possible for a EWC to conclude a legally binding agreement with the enterprise. However, since the EWC is not a trade union, this agreement is not a collective agreement, but will still be legally valid according to general contract law.

France

- Agreements between an employer and trade unions at company level are referred to as *accords collectifs* or *conventions collectives*. Such agreements are governed by the Labour Code, which defines them as agreements between an employer and one or more trade unions to determine employment and working conditions as well as social guarantees (*garanties sociales*).
- *Conventions collectives* may deal with all types of employment and working conditions, whereas *accords collectifs* typically cover only one or a few issues.

Germany

- Two types of agreements can be distinguished: collective agreements (*Tarifverträge*) and company (works) agreements (*Betriebsvereinbarungen*). In general, both types of agreements have the same legal effect.

- The main difference between these two types of agreements is the party entering into the agreement on the side of the employees. Collective agreements can only be concluded by trade unions, while company agreements can only be concluded by works councils. Collective agreements are an expression of the fundamental freedom of association; a union's authority to enter into this type of agreement derives from the employees' voluntary membership in the union. The authority of a works council to enter into a company (works) agreement derives from the democratic election of the council members by the company's employees.
- In the event of a restructuring, the law provides for a special kind of agreement between the employer (owner) and the works council. This *sui generis* agreement, known as a coordination of interests (*Interessenausgleich*), covers how the proposed structural changes will be implemented by the employer. Furthermore, the employer and the works council must agree on a social plan to resolve or mitigate the adverse consequences to the employees of the planned structural changes. This type of agreement is a special kind of company (works) agreement.

Hungary

- The Labour Code does not expressly define a collective agreement. A collective agreement can thus be defined as an agreement with respect to working conditions, concluded between the employer (or the employer's representative body or several employers) and the relevant trade union (or unions). The Labour Code mainly contains provisions with respect to so-called company-level collective agreements; however, employment and working conditions may also be contained in collective agreements concluded at sector or sub-sector level or within certain specific sectors.
- A collective agreement can be included amongst the provisions/rules pertaining to employment relations. At present, no other type of agreement that can be concluded at company level is thus recognised and therefore capable of having legal effect.

Italy

- There are two types of collective agreements: national agreements and company-level agreements.
- Some of the literature distinguishes between two types of company agreements: group agreements (e.g., an agreement with respect to the payment of a *premio di produttività* or productivity bonus) and agreements dealing with management/production units (e.g., an agreement on a collective dismissal, vocational training or changes to working time).
- There is no clear definition of a "company agreement" in the law. The national collective agreement of 23 July 1993, the so-called *Giugni Protocol*, signed by employers' associations, the main trade union confederations and the government, provides for rules governing Italian industrial relations. This protocol stipulates the permissible subject matter as well as the terms and timetable of company-level agreements.

The Netherlands

- It is possible to conclude a collective agreement at company level (within a single employer). A collective agreement is defined as "an agreement between one or more employers or associations of employers and one or more trade unions, which primarily or exclusively regulates terms and conditions of employment to be observed in individual employment contracts".
- The works council may conclude written agreements with the employer on further details of its functioning or the enlargement of its facilities and powers. Agreements

on such issues can have different names such as protocols, pacts and covenants. The legal status of such agreements is not completely clear.

United Kingdom

- A definition of “collective agreement” can be found in UK law. This definition applies for the purposes of the legislation itself. The usual position under English law is that a collective agreement is not a contract. As a result, it is only enforceable by persuasion and industrial action, not by legal mechanisms.
- UK law does not contain any provisions regarding the status of agreements concluded between the works council and management, other than agreements governing the creation and operation of the works council itself. An agreement between management and a works council would be unlikely to constitute a collective agreement unless there was a high degree of union involvement so that it could be said to have been made ‘by or on behalf of one or more trade unions’. The status of any such agreement would depend on the common law rules on contracts.

b. What is their (possible) content?

Belgium

- In keeping with the principle of freedom of contract, the content of these agreements can vary. In general, CBAs deal with employer-employee relations and can thus extend to all areas of law. Most provisions fall within one of the two following categories, normative (individual and collective) and obligatory.). The obligatory provisions define the rights and obligations of the contracting parties while the normative provisions deal with individual or collective employer-employee relations.
- Agreements with employee representatives are often concluded within the framework of a collective conflict, possibly accompanied by a strike.
- As mentioned above, a specifically regulated works council agreement concerns the work regulations of the company. These agreements contain working time schedules, collective holidays, manner of payment of the wages, and various other provisions relating to the (practical) organisation of the work in the company. Health and safety issues or worker, equal treatment (equal pay) or data protection may be covered.

Sweden

- Collective agreements relate to “the conditions of employment and otherwise the relationship between employer and the employee”.
- The concept covers not only the relationship between the employer and individual employees, but also the relationship between the employer and the trade union, and even questions concerning the relationship between trade unions and employers’ organisations.

France

- Collective agreements relate to “employment, working conditions and social guarantees”. Labour and management have a great deal of freedom to include the provisions of their choosing in the agreement, within the limits of public policy (i.e. certain issues cannot be regulated privately).
- There is no particular subject matter reserved for collective agreements concluded at another level (e.g., branch level).

Germany

- Collective agreements deal mainly with key conditions of employment, such as working time and wages. However, collective agreements are increasingly addressing corporate restructuring issues. Over the past few years, collective agreements have contained more and more institutional arrangements intended to help employees find new jobs (especially through training). In addition, many “job security agreements” (*Standortsicherungsvereinbarungen*) have been concluded in the past several years. In this type of agreement, the company pledges not to make dismissals for a certain period of time, in exchange for which the union agrees to less favorable employment conditions.
- Corporate social responsibility issues are not usually mentioned in collective agreements as these topics are often not precise enough to fall within the obligatory or even the normative parts of a collective agreement. The same holds true for subcontracting clauses, which are not found in collective agreements in Germany. Finally, collective agreements sometimes focus on equal opportunity matters.
- A company (works) agreement can contain provisions pertaining to all aspects of labour-management relations within the company.

Hungary

- Collective agreements govern the rights and obligations arising from employment relationships, the exercise, fulfilment and procedural order of such relationships, and the relations between parties to the agreement.
- The parties do not have complete freedom of contract when it comes to collective agreements. With respect to certain mandatory statutory provisions, the law either excludes altogether or restricts freedom of contract.

Italy

- The normative parts of industry-level agreements generally include rules governing certain aspects of individual labour relations (usually economic aspects). Such agreements often provide for payments closely tied to the achievement of proposals agreed by workers and employers, such as premiums for an increase in productivity or quality, etc.
- The obligatory parts of a collective agreement set forth the rights and obligations of the signatories to the agreement, such as clauses dealing with the duty to inform employees and the creation of a joint committee to oversee compliance with the agreement. These parts can also include provisions regulating industrial disputes. Some areas, such as the management of production units, are reserved to company agreements.

The Netherlands

- There is no exhaustive list of subjects. The parties can decide what they want to include in the agreement. The content can thus relate to all matters of mutual concern to employers and employees. Most provisions fall into one of three categories: normative, mandatory or diagonal clauses. Normative provisions are intended to regulate individual employer-employee relations. Mandatory (or contractual) provisions set forth agreements reached between the respective parties. Diagonal provisions are not immediately relevant to employment contracts. These provisions apply between a given signatory and the members of another signatory at a lower organisational level. Diagonal provisions appear only in sector-level collective agreements.
- An agreement regulating a specific aspect of employment, such as early retirement, educational leave or a training fund, can also be considered a collective agreement.

Even a redundancy plan governing the consequences of a corporate restructuring can take the form of a collective agreement.

- An agreement with a works council can contain details of the council's functioning or the enlargement of its facilities and powers. Works council involvement in the implementation of (sector-level) collective agreements can also result in an agreement (see above). Such agreements can address various topics.

United Kingdom

See the definition above. However, since collective bargaining is fundamentally a matter for the parties, it is up to them to decide what they want to agree on. They can include matters not mentioned in the definition in their agreement.

c. Who can be party to these agreements?

Belgium

- An industry-wide or nationwide CBA is concluded between one or more employees' organisations and one or more employers' organisations affiliated to a joint body, while a company-level CBA is concluded between one or more employees' organisations and one or more employers' organisations or one or more employers outside a joint body. The employees' and employers' organisations must be representative.
- Collective bargaining takes place at three different levels, i.e. at the national and inter-professional level within the National Labour Council (*Nationale Arbeidsraad*), at industry level within the joint committees or subcommittees and at company level. At company level, collective bargaining is handled by the trade union delegation.
- The works council agreement that qualifies as work regulations (1965 Act) is concluded by the works council, in which elected workers representatives have a seat as well as the company's management representatives.

Sweden

- Only employers' organisation or an employer, on the one hand, and an employees' organisation (trade union) on the other, may be parties to a collective agreement.
- An EWC is not regarded as an employees organisation.

France

- Traditionally, collective agreements had to be negotiated and concluded with the trade unions that represented the employees concerned (so-called representative unions). Agreements with work councils (*comités d'entreprise*) were not considered collective agreements; although such agreements could have legal effect and create rights, they did not have the same binding force as true collective agreements.
- In companies where representative unions are not present, recent reforms (in 2004 and 2008) have allowed collective agreements to be concluded with work councils or, in the absence thereof, with the employees directly, who are authorised to stand in place of the union(s) for the purpose of negotiating the agreement. The conditions under which collective agreements can be concluded with work councils or employees in lieu of unions, when there are no representative unions within the company, will be relaxed after January 2010. However, the scope of such agreements will be strictly limited; they will only be allowed when a derogation from the law necessitates the conclusion of a collective agreement at company level (for instance, to introduce derogations from the statutory provisions on working time).

Germany

- Only trade unions can conclude collective agreements. An association of trade unions can be a party to a collective agreement if it is empowered to do so by its members (i.e., the unions that belong to the association). Another option is the so-called multi-unit collective agreement (*mehrgliedrige Tarifverträge*) whereby two or more trade unions conclude a collective agreement on the workers' side. On the employers' side, every individual employer is entitled to conclude a collective agreement. As far as groups of companies are concerned, it is not entirely clear from either the law or the case law which party has the capacity to conclude collective agreements. There are two options to ensure uniform employment conditions within a group of companies. The first option is for the parent company to act as the employer and to enter into the collective agreement on behalf of the other group companies, with the latter's authorisation. The second option is to conclude a multi-unit collective agreement pursuant to which all companies belonging to the group are parties to the collective agreement. Most collective agreements are concluded by associations of employers above the level of a single company or group of companies.
- Employers and works councils may conclude company (works) agreements. If a company has multiple places of business and thus several works councils, the various councils must form a company works council (*Gesamtbetriebsrat*) to conclude a company works agreement. In a group of companies, it is up to the company works councils to establish a group works council (*Konzernbetriebsrat*) for the purpose of concluding a group works agreement.

Hungary

- A collective agreement may be concluded, on the one hand, by an employer, an employers' organisation or several employers and, on the other hand, by a trade union or several trade unions. However, a collective agreement cannot be concluded by an employer within which no unions are represented.
- Only trade unions are allowed to enter into collective agreements on the employees' behalf. As a general rule, only trade unions and employers' organisations that are independent of the other side shall be entitled to conclude a collective agreement. As regards collective agreements to be concluded at company/organisational level, if the trade union or unions do not receive the necessary percentage of votes in the works council elections, negotiations may nonetheless proceed to enter into a collective agreement but the agreement may only be concluded with the consent of the employees concerned. The employees shall vote whether to grant or withhold their consent.
- On the employers' side, both individual employers (with respect to company-level collective agreements) and employers' organisations as well as *ad hoc* groups of employers (without an association or coalition) are entitled to conclude collective agreements. A collective agreement that extends to several employers can be entered into by an employers' organisation or by several individual employers.

Italy

- Company-level agreements are signed by the company's management body and company-level union committees. In some cases, mostly the most difficult ones, these committees may be supported by local union committees. In other cases, especially for the negotiation of company-level agreements for larger companies, the national union committee conducts the negotiations.
- The employer is free to decide which unions are entitled to bargain on behalf of the employees.

The Netherlands

- Any association of employers or employees may enter into a collective agreement. There are no requirements with respect to the size, independence or representativeness of the parties.
- There are two statutory conditions for trade unions and employers' organisations to be able to enter into collective agreements. The organisation or union must (i) have full legal personality and (ii) be expressly authorised by its articles of association to enter into collective agreements.
- Works councils do not generally negotiate "primary" issues such as pay. Indeed, Dutch law prohibits works councils from interfering in fields that are exhaustively regulated by collective agreements. The Dutch legislature assumed that works councils would not enter into formal agreements with employers. Works councils have only advisory and co-decision-making powers. They are, however, often involved in negotiations to implement parts of (industry-level) collective agreements.

United Kingdom

The statutory definition of a collective agreement applies to agreements between one or more trade unions and one or more employers or associations of employers. Normally, collective bargaining in the UK takes place at company level with a single employer.

- d. Are there special requirements e.g. as regards registration, for agreements to be recognized as a specific type of company-level agreement?**

Belgium

- In order to be valid a CBA must be in writing and should be drafted in both Dutch and French (Art. 13 of the Act). However, a CBA can be prepared in Dutch, French or German alone if it applies only in a particular linguistic area. Under Belgian law, CBAs must be registered with the Federal Public Service for Employment, Labour and Social Dialogue. In the absence of registration, the agreement will not be considered a CBA and will only be binding on its signatories.
- Registration is not required for the other types of company-level agreements, which must however be drafted in Dutch, French or German, depending on the location of the company's place of business. The agreement will be deemed null and void if it is drafted in the incorrect language.

Sweden

No.

France

- The law requires that collective agreements be in writing in order to be valid. Collective agreements must be drafted in French. If this is not the case, employees will not be bound by the provisions of the agreement. Publication is also required, through submission of a copy of the agreement to the Ministry of Labour and the labour court of the judicial district where the company's central place of administration is located.
- The employer is obliged to inform its employees of the existence of collective agreements upon hiring, by means of a public notice posted on the company's premises.

Germany

- Collective agreements must be in writing. In addition, every employer shall display collective agreements which are binding on it at an appropriate place within the establishment. Furthermore, every collective agreement shall be listed in a register kept by the federal Ministry of Labour. However, failure to fulfill the last two requirements will not affect the validity of a collective agreement.
- A company (works) agreement must be in writing.

Hungary

- The parties to a collective agreement shall jointly submit it to the labour and employment minister for registration. If the collective agreement applies to more than one employer, the parties must submit the original agreement.
- Furthermore, employers must enable their employees to become aware of the terms and conditions of collective agreements. Employers must also ensure that the members of the works council, the trade union delegates and those employees obliged to apply the collective agreement when fulfilling their duties have a copy of the agreement. With respect to new hires, the employer must notify each new employee upon conclusion of the employment contract whether the employee falls within the scope of the collective agreement.

Italy

- Company agreements need not be registered in order to be enforceable. The date as from which the agreement is enforceable appears on the agreement itself. Filing is only required, with the Provincial Labour Directorate, in order to benefit from certain tax relief with respect to productivity premiums. However, in any case, the obligations arising from the agreement are immediately binding on the signatories, regardless of any formal acknowledgment thereof.
- In practice, some unions may try to submit the agreement to a referendum so as to have worker approval; refusal can lead to renegotiation of the agreement.

The Netherlands

- Collective agreements must be in writing.
- The agreement must be submitted to the Ministry of Social Affairs in order to have legal effect.

United Kingdom

No.

- e. **Can the content of these agreements be extended to non-signatories? In other words, can other parties acquire rights and obligations from the agreement? If so, how and under which conditions?**

Belgium

- The parties that are directly bound in full by a CBA are (i) the organisations that have entered into the CBA and the employers that belong to such organisations or have entered into the CBA themselves, (ii) organisations and employers adhering to the CBA and employers that belong to such organisations; (iii) employers that become members of an organisation bound by the CBA and all employees of employers bound by the CBA.

- In addition, individual employment contracts between an employer and its employees, provided they are not already bound, must respect the individual normative provisions of a CBA entered into within a joint body, unless the individual employment contract expressly states that it deviates from the normative provisions of the CBA.
- The normative provisions of a CBA which have been declared generally binding apply to all employers and employees falling under the relevant joint body and thus within the CBA's scope of application. These employers and employees are thus bound by the CBA in the same way as the employers and employees that initially entered into it.
- Belgian law also recognises the concept of continued effect. In other words, the individual normative provisions of a CBA continue in effect even after the CBA has been terminated, unless the CBA specifically provides otherwise.
- If an agreement is concluded between an employer and certain employee representatives, it should be noted that the latter do not have the power to act on behalf of – and thus bind - all employees. The same holds true for agreements with a delegation of employees within a company.

Sweden

- There is no system for declaring collective agreement universally applicable.
- Collective agreements only have normative mandatory effects in relations between employers who have signed an agreement or are members of an organisation (party to an agreement) and employees who are members of the trade union party to the same agreement (outside employee). However, this does not mean that collective agreements lack any significance for outside employees.

France

- On the workers' side, a collective agreement applies to all employees of the employer that has signed it. It is not restricted to union members. The ability of collective agreements to benefit all workers is derived from the representativeness (*représentativité*) of trade unions. No theory of incorporation of collective agreements into employment contracts applies. By way of an exception, individual rights provided for in a collective agreement may be incorporated into employment contracts when the agreement ceases to apply.
- As for trade unions, only the signatory unions are bound by the agreement. When the agreement contains provisions regarding union rights, the application of those provisions to all unions, even those who did not sign the agreement, is required.
- On the company side, the collective agreement applies only to the employer that has entered into it. Collective agreements can be concluded by a group of companies. This practice has developed without specific rules, giving rise to a series of issues comparable to those surrounding TCAs. Since 2004, this specific type of agreement has been governed by statute. Such agreements must be negotiated by the parent company or by representatives of all companies in the group. On the workers' side, all representative unions in the group or within each group company take part in the bargaining process. Group agreements have the same legal effect as other company-level agreements but, unlike company-level agreements, cannot derogate from the applicable branch agreement (unless the branch agreement provides otherwise).

Germany

- Individual normative provisions of collective agreements apply directly and with mandatory effect to the employment contracts if the employment relationship falls within the scope of the agreement and both parties are bound by the agreement. The employer is bound by a collective agreement if it has entered into the agreement. An

employee is bound if s/he is a member of the trade union that has concluded the collective agreement. For this purpose, it is not sufficient for the employer alone to be bound by the agreement. If an employee is not a union member, the working conditions laid down in the collective agreement do not apply to that employee's relationship with the employer. Collective normative provisions apply if the employer is bound by the collective agreement. It is not necessary for an employee or even a majority of the employees of the establishment to be bound.

- A collective agreement may be extended pursuant to an extension order (*Allgemeinverbindlicherklärung*). In general, such an order can be used for collective agreements concluded with associations of employers or with a single employer. The extension renders the agreement binding on those employers and employees that are not yet bound by it. The extension does not broaden the scope of the collective agreement and, in particular, cannot render a collective agreement concluded by one employer binding on another employer.
- The normative provisions of a company (works) agreement apply to the employment contracts of all employees in the company. Union membership is not relevant. As a signatory of the agreement, the works council is entitled to enforce the agreement. This right can be exercised only when the employer disturbs the collective order as a whole. An individual breach of the agreement is not sufficient.
- The same applies *mutatis mutandis* to company works agreements and group works agreements. It should be noted that, according to the case law, a group works agreement has normative effect for all employees working in the subsidiaries of the group. In contrast to collective agreements, it is not necessary for the subsidiaries to have entered into the group works agreement themselves or to have authorised the parent company to conclude the agreement in their names.

Hungary

- The parts of a collective agreement governing relations between the parties are typically binding only on the parties thereto and cannot be extended to third parties.
- A collective agreement applies to the employer that concluded the agreement with the trade union(s), alone or together with one or more other employers. The scope of a collective agreement concluded by an employers' organisation extends to the employers that belonged to the organisation at the time the collective agreement was concluded and to employers that subsequently join the organisation, provided they are concerned by the collective agreement. In this case, however, the consent of the local trade union is required in order for the collective agreement to apply to the employer.
- A collective agreement applies to all employees of employers covered by the agreement, with the exception of executive employees. It should be noted that a collective agreement applies to employees even if they are not members of a trade union or if they are members of trade unions that are not parties to the agreement.
- The minister of labour and employment may extend the scope of a collective agreement to the entire sector (or subsector), if so requested by the parties and at the request of the national employees' and employers' organisations affected by the extension, provided the parties to the agreement qualify as representative organisations for the sector (or subsector) in question. The minister is not bound by the opinions of the trade unions concerned but can take these into consideration when ruling on the request.

Italy

- Company agreements are effective only between the parties thereto.

- The case law and literature, however, recognise the possibility of an extension, in which case the agreement must involve the employees' indivisible collective interests. In practice, however, there is a tendency to extend such agreements through specific clauses in the individual employment contracts. It is fundamental that the employer respects these contracts.
- The question arises as to whether a company agreement should be applied to certain employees when it derogates from the terms of a sector-level agreement. A minority of the case law holds that it should not be applied to employees who have not agreed on it. The mention in the law that collective agreements (including company agreements) are intended to govern specific or related matters gives these agreements general validity, at least as a comparison for the court.

The Netherlands

- Employers that are bound by a collective agreement are legally obliged to apply the provisions of the agreement to all employees, including those who are not members of the signatory union.
- Dutch law provides for the possibility to extend (*erga omnes* effect) provisions of collective agreements through a ministerial decree. The signing parties can request the minister of social affairs to declare the collective agreement generally binding on the entire industry/sector. Company-level agreements cannot be declared generally binding. Nor can agreements signed with a works council, as these are always company-level agreements. When a collective agreement has been declared generally binding on an entire sector, all employers and employees (regardless of whether they are unionised) in that sector are subject to the provisions of the collective agreement by operation of law.

United Kingdom

- If the agreement is a contract, only the signatories to it can acquire rights and obligations due to the doctrine of privity of contract. A third party can only sue on the basis of the contract where the parties expressly provided for this or where the court finds that they intended to confer a benefit on the third party and for the third party to be able to enforce that benefit.
- The terms of a collective agreement can be incorporated into the employment contracts of the individual workers in the category to which the collective agreement relates. In contrast to many other legal systems, this is neither automatic nor compulsory in the UK and depends on common law rules rather than legislation.

Incorporation depends on the presence of a 'bridging term', referring to the collective agreement, in the individual employment contract. This bridging term may be express or implied. Where there is a bridging term, not every aspect of the collective agreement will be capable of incorporation into the individual employment contract. Normally, only aspects of the collective agreement that are directed at employer-employee relations, not matters of negotiating procedure, can be incorporated, although this distinction can be difficult to apply in practice.

- It should also be noted that since employers generally apply the results of collective bargaining to all relevant workers, not just union members, the terms of a collective agreement may be incorporated into the employment contracts of non-members if the above tests are met.

f. How and by whom can these agreements be enforced?

Belgium

- The contracting parties to a CBA are instrumental in enforcing it. Even though the employees' and employers' organisations concerned may not always have legal personality, they may take legal action in the event of violation of the CBA. Furthermore, employers that violate the provisions of a CBA which have been rendered generally binding by royal decree run the risk of criminal sanctions.
- CBAs may confer specific powers on the joint committees or sub-committees, including the power to sanction offenders that do not abide by the CBA. Moreover, the trade union delegations are empowered to verify that CBAs are correctly applied.
- Employees and employers can go directly to court to seek enforcement of a CBA.
- With regard to company-level agreements which do not qualify as CBAs, the signatories can enforce the provisions of the agreement and take legal action for noncompliance. If the agreement concerns a legally binding commitment, the beneficiaries, i.e. the employees, have the power to enforce the commitment.
- As far as work regulations (1965 Act) are concerned, both signatories, trade unions as well as the individual workers and their employer covered, can enforce the work regulations before the labour court.

Sweden

- An employer's breach of a collective agreement may be remedied at collective level, i.e. by the trade union. The main remedy for breaches of collective agreements is punitive damages. The significance of punitive damages (*allmänt skadestånd*) is that courts, in assessing quantum of damages, must pay attention to non-financial loss, such as the parties' interest that the provisions of the agreement are applied. There is no upper limit prescribed in the act.
- Disputes concerning (punitive) damages for breach of a collective agreement are handled by the Labour Court.
- Employees (members of a trade union) have a subsidiary right to engage in court action. If the trade union does not wish to proceed, a member may choose to initiate a summons, but in this case to the District Court (with the Labour Court as the court of appeal). Further, punitive damages may be awarded to individual employees (members of the trade union that has concluded the agreement) for breaches of provisions in the agreement intended to create rights for individual employees.

France

- Workers covered by a collective agreement can bring individual claims before the courts to obtain the benefits of the rights conferred by the agreement. In the first instance, such claims must be brought before an employment tribunal (*conseil de prud'hommes*). For breach of the agreement, damages can also be claimed. In some cases, a worker requests in court the benefit of a particular collective agreement as a whole (and not the application of a particular provision of the agreement). In this case, the employment tribunals, which have jurisdiction only over individual cases, lack jurisdiction. The claim must be brought before a court with general jurisdiction for civil matters (*Tribunal d'Instance* or *Tribunal de Grande Instance*). The law also recognizes the possibility for unions to bring to court workers' claims based on a collective agreement. In such cases, the unions are substituted for the individual workers (*action de substitution*).
- Unions can also take legal action to obtain the enforcement of a collective agreement to which they are a party (action to execute a collective agreement). Indeed, these actions are intended to force the employer to abide by its obligations to workers (and not only to the unions) but are different from individual actions and do not result in

remedies for individual workers. Union actions against employers must be brought before the regular courts (*Tribunal d'Instance* or *Tribunal de Grande Instance*).

Germany

- A trade union that is a party to a collective agreement is entitled to enforce it against the signatory company. The trade union may seek to enforce the collective agreement if the employer has violated the collective agreement as a whole. In other words, violation of the collective agreement in an individual case is not sufficient to warrant a union complaint. The works council has a general duty to supervise implementation of collective agreements concluded for the benefit of employees. Like the trade unions, the works council is not entitled to sue the employer for violation of individual normative provisions. However, the works council may sue the employer for the violation of collective normative provisions. Due to the normative effect of the individual normative provisions of a collective agreement, every worker may seek to enforce the agreement as well.
- An employer (company) is bound by a collective agreement if it is a signatory to that agreement. The same holds true for a group of companies if all companies involved are signatories to the multi-unit collective agreement. If some companies are not signatories to the collective agreement, they may not be sued directly by the unions. The same applies for a collective agreement that has been incorporated into the individual employment contracts. Enforcement against a part of the company or of the subsidiary, which is not a stand-alone legal entity, is not possible.

Hungary

- Collective agreements can be enforced by (i) trade unions and the employer/employers/employers' organisations through so-called collective labour disputes and (ii) by the employee(s), trade union(s) and the employer through so-called labour-related disputes. While the latter are heard by the labour courts, collective labour disputes can be settled via negotiation, mediation or arbitration.
- For labour-related disputes, the law also provides for the possibility of conciliation.

Italy

- The signatories to a company agreement are responsible for ensuring its enforcement. Should a dispute concerning enforcement arise, there are many ways to settle it. On the one hand, the workers may refer to the courts (labour courts specialised in individual labour disputes) for violation by the employer of clauses of the agreement governing aspects of individual labour relations.
- On the other hand, the local union committee can take legal action. The unions can also file proceedings before the ordinary courts for breach of contract.

The Netherlands

- If a party to the collective agreement violates the terms of that agreement, the counterparty can sue it for breach of contract, which may result in a damages award. Enforcement takes place via the ordinary (district) courts. The Netherlands does not have specialised labour courts. In some sectors and in some enterprises, the collective agreement provides for the establishment of a special conciliation and mediation body before which violations may be brought.
- It is however assumed that employees who are not members of the union that signed the agreement cannot seek enforcement of the agreement; the agreement can only be enforced by the signatories and their members. For collective agreements made generally binding, both unionised and non-unionised employees may take legal action to enforce the agreement.

- An employer that is bound by a collective agreement may take legal action against another employer that is also bound by the agreement to enforce it. A signatory of a collective agreement is entitled to take legal action against a member of another signatory that has not respected the agreement and can seek damages for the harm suffered by itself as well as its members.
- Furthermore, the works council is entitled to oversee management's compliance with the law, collective agreements and other rules concerning safety, health and well-being in the workplace. If the employer does not comply with these provisions, the works councils can take legal action.

United Kingdom

- Normally; collective agreements do not contain a provision rendering them legally enforceable as the usual position under English law is that a collective agreement is not a contract. As a result, it is only enforceable by persuasion and industrial action, not legal mechanisms.
 - Where a provision of a collective agreement has been incorporated into an individual employment contract, it can be enforced by the employee or the employer using the normal contractual mechanisms. However, that involves enforcing a term of the individual contract rather than the collective agreement as a whole.
- g. When a company-level agreement encompasses different companies within a single group, against which party at the side of management can such agreements be enforced: only the signatories or also subsidiaries, central management only or the management of all commercial units covered by the agreement?**

Belgium

- When a CBA is entered into at company level, there is no need for representation on the employer's side since the employer can act on its own behalf. The employer is thus able to directly participate in the conclusion of CBAs, which is not the case at sector or national level. Only representative employers' organisations are authorised to enter into a CBA that goes beyond company level.
- Company-level agreements which do not qualify as CBAs will only be binding on the signatories thereto. Under Belgian law, a decision by a parent company to enter into a company-level agreement will not automatically be binding on its subsidiaries. This will only be the case if the subsidiary executes the agreement voluntarily or provides a clear delegation of authority to the parent company to enter into the agreement on its behalf.

Sweden

- Only the signatory parties.
- However, it would probably be possible to construct some contractual responsibility for the behaviour of different companies within a group. If, for instance, a parent company signs a collective agreement according to which all companies within the group shall apply certain conditions, then the parent company may be liable for breaches of the conditions executed by a daughter company.

France

- Corporate groups are not separate legal entities. Only the entities (companies) that belong to the group can conclude a collective agreement. Agreements entered into by the parent company cannot, as such, bind other companies of the group, unless the

parent company is the official representative of its subsidiaries and can be considered their agent.

- A reform was passed in 2004 to facilitate the conclusion of group agreements (*conventions de groupe*). Under the new legislation, all employers that fall within the scope of a group agreement are bound by its provisions.

Germany

- A company is represented by its agents. Restrictions on the ability to represent a company are enforceable only internally, not externally.
- A company's decision-making power can be restricted only if the normative part of a collective agreement is applicable. If a collective agreement contains only an obligation for the company to maintain an establishment, it follows that measures by management to promote the closing of the establishment are not legally invalid. However, in this case, general rules of law must allow the trade union to complain that these measures should not be taken.

Hungary

- Groups of companies are not considered separate legal entities under Hungarian law. A group is made up of legally independent companies, in which the subsidiaries are separate and independent employers, and the employees have employment relationships with the subsidiaries, not with the parent company.
- However, it is possible for several employers – without creating a coalition – to conclude a collective agreement. In this case, the collective agreement would be applicable to a “corporate group”. However, under such a collective agreement, all employers are independent parties, meaning the agreement can be enforced against only the signatory employer.

Italy

- The collective bargaining rules do not provide for group collective agreements. The general trend is to regard this type of agreement as a regular company agreement.
- The workers may bring proceedings before the labour court against the employer for violation of those clauses of the collective agreement governing individual labour relations. The local trade union representatives may go to court, regardless of whether the employer prohibits the practice of union rights and even if the law or the collective agreement provides otherwise. The local union reps may sue the employer's representative. As for collective disputes, the law provides for extrajudicial settlement mechanisms.

The Netherlands

According to the case law, a parent company may be held liable in tort towards a third party for breach of contract by its subsidiary only under specific circumstances. One decisive factor is the degree of interference by the parent company, which must knowingly harm the subsidiary's creditor thereby violating a duty of care to that creditor.

United Kingdom

This is not an important question in English law because “enforcement” is not usually through legal channels. The union can apply persuasion as it sees fit. The use of industrial action is more constrained because there must be a dispute between workers and “their employer” for the dispute to be lawful. Thus, if the collective agreement was breached by only one company in the group, it would *usually* be the case that only the workers at that company would be able to engage in industrial action.

h. Are the rules described under d, e and f different from the ordinary rules on contracts?

Belgium

The rules described under (d) differ from the ordinary rules on contracts with regard to CBAs. Belgian contract law does not recognise the concept of “*suppletieve binding*” (i.e., certain provisions of a CBA can be binding to a non-signatory unless if agreed otherwise), continued effect (survival) and generally declared binding of agreements. For the other types of company-level agreements, the ordinary rules of contract law apply.

Sweden

Yes. “Ordinary” contracts do not have normative mandatory effect (that is they are only binding on the signatory parties, and not, as collective agreement, binding also for members of their organisations). There is no punitive damages for ordinary contracts, only compensation for economic loss.

France

- Collective agreements are not treated as contracts with respect to their application. Collective agreements apply to employment relationships as rules which are not incorporated into employment contracts.
- Union actions can also be based on specific labour law rules, which are not ordinary rules of contract law, when they substitute themselves for the workers and bring individual claims before a court or seek to ensure protection of the employees’ collective interest.

Germany

No information provided.

Hungary

Yes. The Hungarian legal system distinguishes between labour law and civil law. Although a collective agreement is based on the (limited) autonomy of the parties - subject to the restrictions detailed above – it displays characteristics that make it impossible for such an agreement to be compared to a traditional contract in the civil law sense of the word.

Italy

No.

The Netherlands

- Collective agreements are treated as contracts under the civil law. The signatories are therefore bound by the agreement, like any other contracting party.
- However, the normative function of a collective agreement renders the collective agreement directly binding on the members of the contracting organisations, which lends it, metaphorically speaking, a “legislative” character. Provisions of collective agreements can be declared generally binding by means of a decree of the minister of social affairs (*erga omnes* effect). The thus “extended” provisions have the same effect as secondary legislation and therefore may be said to have the statutory status.

United Kingdom

This question is not relevant under English law as collective agreements are not contracts.

- i. **To what extent can private commitments influence the validity of company decisions under company law?**

Belgium

Under Belgian law, it is difficult to provide a general answer to this question. The answer will depend on the entity's corporate form, the provisions of its articles of association and publication in the *Belgian State Gazette*. In any event, the employee representatives cannot, however, prevent the company decision. Legal action would generally have a *posteriori* effect only and going through company law would be an exceptionally envisaged route.

Sweden

There is no such thing according to Swedish law.

France

No information provided.

Germany

No information provided.

Hungary

No information provided.

Italy

No information provided.

The Netherlands

No information provided.

United Kingdom

It does not seem likely that company law would be a useful avenue for litigation in respect of TCAs under English law.

What could be the status of a TCA under your national law?

- a. **Could TCAs be treated/qualified as national company-level agreements that are known in your system (which you may have described above) and, if relevant, under which circumstances/conditions would that be the case?**

Belgium

- The legal instrument which closely resembles a TCA is the CBA. However, CBAs cannot be entered into at the international level, since only representative employers' and employees' organisations are entitled to conclude a CBA. Furthermore, a CBA must meet strict requirements and entails negotiating with the trade union delegation.

The disadvantage of implementing a TCA in a CBA is that the content of a CBA can be renegotiated.

- It would also be possible to implement a TCA through an agreement with the European works council, the national works council, the committee for prevention and protection at work, the trade union delegation or even a delegation of employees. Such an agreement will be considered a unilateral engagement on the employer's part, however.
- A TCA will make sense under Belgian law on the employer's side, provided the parent company signs the agreement and the subsidiary (employer) executes it voluntarily or provides a sufficient delegation of authority to the parent company to enter into the agreement on its behalf (in which case, the decision to enter into the TCA would comply with Belgian company law).
- As far as the work regulations are concerned (1965 Act) a TCA would only be qualified as such if it has been concluded by a national works council (covered by the Act), not by a European Works Council and if the drafting procedures (provided by the Act) for the adoption of work rules has been respected.

Sweden

A TCA could very well be regarded as collective agreement according to Swedish law, if it is in writing, and is concluded by a trade union, on the employee side. On the employer side, a single company or an employers' organisation may be signatory party. The possible content of a collective agreement is, as indicated above, very wide.

France

- In view of the definition of a TCA, a TCA could be considered a collective agreement under French law, provided it is concluded by companies, on the one hand, and workers' organisations comprised of representative trade unions, in accordance with French criteria, on the other hand. A TCA should be signed by an organisation considered a union in France which is representative at the level the agreement applies (e.g., company or group level). This is a major obstacle. A TCA signed by international federations, for instance, will not pass muster.
- This conclusion could be slightly different if a French court had to apply foreign law and, under that country's law, the TCA was considered a collective agreement. Under French law, if foreign law applies, all collective agreements that form part of that law will apply as well, i.e. if the national law applicable pursuant to Article 6 §2 of the Rome Convention provides that employers, in that country, must apply collective agreements, the choice of another law in the employment contract may not deprive the employee of the protection afforded by the collective agreements.

Germany

- It is doubtful that some TCAs would be considered real collective agreements under German law since collective agreements must meet other requirements and have legal effect, as agreements concluded at company level. If German law applies, TCAs are legally binding.
- Furthermore, TCAs should be distinguished by means of the party that concluded the agreement on the workers' side. If certain requirements are fulfilled TCAs can be qualified as collective agreements under German law. Foreign trade unions must meet the same requirements as national trade unions. It is debatable whether international associations of trade unions have the capacity to conclude real collective agreements. On the employer's side, there are no specific obstacles. It is sufficient for the parent company to act as agent and represent the other companies. Furthermore,

German collective agreements are not applicable to individual employment contracts governed by foreign law.

- On the company level, agreements concluded with European works councils are the most relevant. Such agreements, according to Article 13 of Directive 94/45/EC, are considered *sui generis* collective agreements. An agreement on the information and consultation of employees within the meaning of Article 6 of Directive 94/45/EC is unanimously considered a *sui generis* collective agreement. If a TCA is legally binding between the signatories, the party to the agreement on the employees' side (trade union, works council, European works council) is entitled to rely on the agreement against the employer. Enforcement by third parties (in particular individual workers) is only possible if the agreement has normative effect.

Hungary

- The rules on the conclusion of collective agreements are quite strict. According to these rules, only trade unions can be party to a collective agreement on the employees' side, and a given trade union can conclude a collective agreement only if a works council election has been held within the employer and the union has obtained the requisite percentage of votes.
- The Hungarian rules support the right to conclude a collective agreement for trade unions. Collective agreements concluded under the terms and scope of the Labour Code are the only agreements that can settle employment-related issues. Under the rules currently in force, the employer and the union cannot reach agreement in any other way, aside from a collective agreement.

Italy

- Since a company agreement is regarded as a contract under Italian law, TCAs may be subject to the same rules. Indeed, there are no particular rules concerning company agreements in Italian law. Thus, the law enforces the rules of contract law.
- Consequently, Italian lawmakers must determine whether the European or international unions have acted on behalf of the national unions, if the former concluded the agreements.

The Netherlands

- Only employees' and employers' associations possessing full legal personality may conclude collective agreements. Under Dutch law, the association must be explicitly authorised by its articles of association to enter into collective agreements. It is also important that the parties intended the agreement to be a collective agreement.
- Furthermore, the agreement must be submitted to the Ministry of Social Affairs in order to have legal effect as a collective agreement. If the signatories to the TCA meet the above requirements, the TCA can be considered a company-level collective agreement.
- It should be investigated whether the enterprise concerned is already bound by a sector-level or company-level collective agreement. Such collective agreements will have priority under Dutch law.

United Kingdom

- A TCA will count as a collective agreement under English law if it meets the definition in Section 178 TULRCA. The key elements of that definition are (i) the agreement must be made by or on behalf of one or more trade unions and one or more employers or employers' associations and (ii) it must relate to the listed matters.

Thus, it would be necessary to examine each TCA to determine who the parties were and the subject matter covered.

- However, the effect of being a collective agreement under English law would be to render the agreement unenforceable under Section 179 unless it contained a clear statement that it was intended to be a legally enforceable contract.

b. Could TCAs be recognized as /subsumed under another type of legally binding commitment?

Belgium

The agreement would be a contract under civil law, accordance with Belgian law, as far as it can be considered a legally binding commitment, regardless of whether it has been entered into by the employer or by a company in the employer's group.

Sweden

An EWC may conclude legally binding contracts. These will not be regarded a collective agreement. Instead general contract law will apply. There is no case law or legal writing which have discussed the legal effects of agreements concluded between the company and the EWC.

France

- If a TCA creates binding obligations on the parties, it could be considered a contract under French law.
- The concept of "unilateral" commitments by employers also exists under French law. It has been used to give legal effect to agreements concluded by an employer with a work council or other employee representatives who are not, unlike the unions, entitled to conclude collective agreements. TCAs granting rights or benefits to workers could, at the very least, be considered unilateral commitments under French law.

Germany

Please refer to answer (a).

Hungary

- In relation to the employees, a TCA could be considered a unilateral commitment by the employer or an internal code. Such commitments can be legally relevant in concrete disputes but do not have binding force. In order to render them binding, the TCA must be concluded in accordance with the abovementioned provisions of the Labour Code or the parties can incorporate the TCA into their collective agreement.
- There does not seem to be in Hungarian law a *sui generis* contract under which the TCA could be subsumed.

Italy

Please refer to answer (a).

The Netherlands

If the TCA is not acknowledged as a collective agreement, it could regarded as a (regular) contract, based on mutual consent.

United Kingdom

- A TCA would count as a collective agreement under English law if it meets the statutory definition. The key elements of this definition are: (i) the agreement must be made by or on behalf of one or more trade unions and one or more employers or employers' associations and (ii) the agreement must relate to the listed matters. Thus, it would be necessary to examine each TCA to identify the parties and determine the subject matter covered.
- However, if a TCA were deemed a collective agreement under English law, it would be unenforceable in law unless it contains a clear statement that it was intended to be a legally-enforceable contract.

Can you identify existing national legal provisions that allow an interested party (worker, employer, union, but also a competitor) to rely on (or to refer to) the substance or content matter of TCA provisions?

Belgium

- Insofar as the TCA takes the form of a mutual agreement, the signatories or, in the case of a CBA, the employees and the employers covered by the CBA will be able to rely on the provisions of the TCA. Although the employees' and employers' organisations that concluded the CBA may not always have legal personality, Belgian law allows them to take legal action for violation of the provisions of the CBA. One advantage of a CBA is that it contains implied provisions such as the "social peace obligation" and the principle of good faith. The social peace obligation means that the contracting parties shall not engage in action to end or alter the provisions of the CBA. The principle of good faith implies that the employees' and employers' organisations should inform their members of the existence of the CBA and do their utmost to ensure that their members fulfil the obligations arising from the CBA.
- Even though trade unions are not parties to a mutual agreement, they can represent the affected members or even non-member employees before a court.
- If the TCA cannot be considered a CBA, the signatories can rely on the provisions of the TCA and take legal action to enforce the TCA. The signatories should therefore take care to abide by the expressly obligatory provisions of the TCA. Indeed, under Belgian law, every contracting party should act reasonably and fairly towards other contracting parties. Should a contracting party breach an obligatory provision, the counterparty may commence legal proceedings against it. This may lead to rescission of the contract, the award of damages or specific performance.
- Third parties, such as subcontractors and competitors can, in principle, only have rights and obligations deriving from a company-level agreement if they expressly consented to the agreement.
- In the event of a legally binding commitment, only the beneficiaries, i.e. the employees, can rely on the TCA.

Sweden

It would probably be possible to incorporate a TCA (concluded for instance by parent company outside Sweden) into a Swedish collective agreement (through a reference). It would also probably be possible to take a TCA concerning for instance data protection into account when establishing what is considered "good labour market practice" (*god sed på arbetsmarknaden*).

France

- If a TCA is concluded through which an employer commits to grant rights to workers concerning their working and employment conditions and/or to organise in a certain

way relations with the workers or their representatives, the latter can rely on the agreement or refer to it.

- If a signatory company makes a legal commitment to workers, the workers employed by that company can rely on the existence of a unilateral act. They may also refer to it when construing the provisions of their employment contracts or the applicable collective agreement.
- As for the unions, they can obviously rely on the agreement as they are amongst the signatories thereto. In addition, if only some representative unions in the company signed the agreement, the principles of liberty and equality of unions requires that all unions at the same level be granted the same rights and benefits. Claims can be lodged for a violation of these principles if advantages are reserved only to the signatories. If no union at the national level is a party to the agreement, the unions can seek to enforce respect for the interests of the profession as a whole (*intérêt collectif de la profession*). Such an action would require that the conclusion/application or, conversely, the violation of a TCA has an adverse effect on the group of workers whose rights the union was formed to defend.
- Employers have a general duty to act in good faith in the execution of employment contracts, based on which the courts have identified a series of obligations (such as the obligation to ensure vocational training so as to allow an employee whose position has been eliminated to find another position within the company). It remains unclear how this duty of good faith could be connected with commitments made in the framework of a TCA.

Germany

- It is not clear whether commitments in TCAs (in particular if the commitments are not very precise or if the TCA lacks normative effect) can be used as a tool to interpret general clauses such as the employer's duty of care (*Fürsorgepflicht*) to its employees.
- It is not clear whether a competitor can rely on the provisions of a TCA. According to (older) case law, a competitor can seek to oblige a company to refrain from violating a collective agreement on the basis of the Unfair Competition Act if the company is using the violation to achieve a competitive advantage. However, since the 2004 reform of the Unfair Competition Act, it is uncertain whether this case law still applies.

Hungary

- At present, there is no provision of Hungarian law that would allow an interested party to rely on, or to refer to the substance or content of, the provisions of a TCA, especially as TCAs do not have legal effect under Hungarian law. Furthermore, none of the existing rules in the field of labour law can be used to invoke the provisions of a TCA.
- However, this does not mean that Hungarian law excludes this subject, only that the issue has not been dealt with thus far in Hungary, either in the literature or in the legislation.

Italy

If an employer obstructs or limits the freedom or practice of union rights (including those arising from company agreements), the local union representatives may go to court seeking an order obliging the employer to stop the illegitimate practices and remedy the effects these practices have caused.

The Netherlands

Employers and employees have a general duty to act as “good” employers or “good” employees, as the case may be. This is a carry over of the general duty to act in good faith in contractual relations. This provision is often cited in the Netherlands as a basis for claims which cannot be based on more specific rights and obligations laid down in the labour legislation.

United Kingdom

- If the TCA was regarded as a collective agreement under English law and did not contain a statement saying it was intended to be enforced as a contract, the TCA would not be legally enforceable by any of the parties to it.
- It is possible that some terms of the TCA could be regarded as incorporated into the employment contracts of the individual workers. Those individuals would then be able to enforce those terms using ordinary rules of contract law. This would depend on the rules on incorporation discussed above.

Enforcement of TCAs under national law

a. Does the stakeholder have legal personality or another specific legal capacity?

Belgium

- **On the side of the employer**
 - Under Belgian law, an employer, whether signatory or not, has legal personality.
 - Some (but not all) representative employers’ organisations (both organisations and confederations) are *de facto* associations without legal personality (*rechtspersoonlijkheid*). They do, however, have functional legal personality (*functionele rechtspersoonlijkheid*).
 - Management bodies of companies represent the legal entity they are part of in courts.
- **On the side of the workers**
 - Individual workers have legal personality. A collectivity of employees, however, does not have legal personality.
 - Collective organs such as works councils, committees for prevention and protection at work and trade union delegations, do not have the ability to go to court.
 - Representative employees’ organisations are *de facto* organisations without legal personality. As mentioned above, they do, however, have functional legal personality (*functionele rechtspersoonlijkheid*), which means they have rights explicitly granted to them in specific instruments. International employees’ organisations do not have functional legal personality (*functionele rechtspersoonlijkheid*), however.
 - National trade unions and national or European Works Councils do not have legal personality.
- **On the side of third parties**
Competitors and other companies (subcontractors or acquiring companies) have legal personality, depending on their legal form.

Sweden

- **On the side of the employer**
 - European and international employers’ associations have legal personality.
 - Signatory companies have legal capacity.
 - If the TCA is concluded by company, then non-signatory companies will not be bound by the agreement. The non-signatory companies will have no role in the enforcement of the TCA.

- There are no management bodies which play a role in the enforcement process.
- **On the side of the workers**
 - European and international trade unions have legal personality.
 - European Works Councils are legal persons which may conclude contracts and have standing in court.
 - National trade unions are non-profit making organisation and have legal personality.
 - National Works councils do not exist in. Sweden neither are there any other workers representatives bodies which may be involved in the enforcement of TCA
- **On the side of third parties**
No information provided.

France

- **On the side of the employer**
 - Employers or associations of employers have legal capacity.
 - Management bodies of companies represent the legal entity they are part of in courts.
- **On the side of the workers**
 - Individual workers have legal personality.
 - National trade unions and national Works Councils have legal personality. Other workers' representative bodies such as works councils are legal entities able to bring actions to courts. European Works Councils also have legal personality.
 - The legal personality for European and international trade unions or federations is ruled by the law of their central administration (*loi du siege*).
- **On the side of third parties**
Competitors and other companies (subcontractors or acquiring companies) have legal personality.

Germany

- **On the side of the employer**
 - All companies having concluded a TCA, have legal personality. The same goes for companies which have legal personality and the capacity to be a party to legal proceedings according to foreign law.
 - European and international employer associations have legal personality (if they are organized in generally acknowledged legal structures).
- **On the side of the workers**
 - Trade unions are traditionally associations which lack legal personality. However, trade unions have the capacity to sue and be sued in labor court proceedings. Trade unions can make claims in matters relating to collective agreements.
 - The same applies for European and international trade union associations but this question is obviously not yet discussed in German labour law.
 - Works councils and European works councils do not have a general legal personality but a specific legal capacity.
- **On the side of third parties**
No information provided.

Hungary

- **On the side of the employer**
 - The legal capacity of a European and international employers' associations. is to be determined on the basis of such person's personal law, which shall be the law of the country within the territory of which the central management is located.

- Since signatory companies appear as employers within the legal relationship, the rules applicable to the legal capacity of employers shall be considered. The same rule applies for non-signatory companies.
- Executive officers/management bodies have no legal personality.
- **On the side of the workers**
 - In respect of European and international employees associations: please refer to the above.
 - The European Works Council may not be considered as a legal entity and is not entitled to sue and may not be sued either.
 - Trade unions have legal personality.
 - Works councils may not be considered as legal entities. Although the works councils may be parties to lawsuits, such participation is limited.
 - Private individuals, legal entities and the organizations thereof qualify as legal entities.
 - Individual employees by nature have legal capacity.
- **On the side of third parties**
Third parties have generally legal capacity.

Italy

- **On the side of the employer**
 - International employers' associations have legal personality under condition of mutuality.
 - Signatory companies, as well as non-signatory companies have legal personality.
 - Management bodies have no legal personality. They act on behalf of the company.
- **On the side of the workers**
 - International employees associations have legal personality under condition of mutuality.
 - The European Works Council has the same legal personality as the trade union having established it.
 - Trade unions do not have legal personality. The trade union's representatives may take a case to court and are personally accountable.
 - Worker representatives do not have legal personality.
 - Individual employees by nature have legal personality.
- **On the side of third parties**
Some companies have a real legal personality with complete financial autonomy, whilst others have a limited personality which allows them to go to court.

The Netherlands

- **On the side of the employer**
 - European and international employers' associations have legal personality
 - Signatory and non-signatory companies have legal personality
 - Management bodies of these companies have legal personality if they have the power of attorney by the management board.
- **On the side of the workers**
 - European and international trade unions or federations thereof have legal personality.
 - European Works Councils do not have full legal personality. They do however have the right to litigate before court.
 - Most national trade unions associations have full legal personality.
 - National Works Councils Dutch Works Councils do not possess full legal personality.
 - Individual workers have legal personality.

- **On the side of third parties**
Competitors, acquiring companies and subcontractors covered by the agreement have legal personality.

United Kingdom

- **On the side of the employer**
 - If the European or international employers' association had legal personality in another Member State the English courts might recognise this.
 - Signatory and non signatory companies have legal personality.
 - Legal personality attaches to the company itself and not to management bodies.
- **On the side of the workers**
 - The status of a European or international trade union or federation would depend on whether it was subject to English law or not. If it was, its status would turn on the applicability of these definitions. If the European or international trade union or federation was governed by the law of another state which gave it legal personality, the English courts might recognise this.
 - A EWC has capacity to take a case to court where management is not complying with the agreement setting up the EWC but the legislation does not address the question of whether they have capacity to form contracts with the employer on other matters. It is possible that if the EWC was created under the law of another Member State which did give it legal personality, this would be recognised by the English courts.
 - A trade union in English law is not a body corporate but does have capacity to make contracts and to sue and be sued in its own name
 - Individual workers have legal personality.
- **On the side of third parties**
Competitors, acquiring companies and subcontractors covered by the agreement have legal personality.

b. Does the stakeholder have access to the Court?

Belgium

- **On the side of the employer**
 - Anyone with legal personality can in principle have access to the court if he or she has a legal claim, provided the stakeholder has a direct, personal, acquired and immediate interest in order to initiate legal proceedings. Legal claims, i.e. contract, tort claims, etc. as opposed to conflicting (diverging) interests. TCA disputes can be involved. However, the labour courts only recognise individual disputes relating to the application of collective (labour) agreements.
 - Failure to respect the obligatory provisions of a CBA may not result in the employers' or employees' organisations having to pay damages, unless this is specifically agreed in the CBA
- **On the side of the workers**
See above.
- **On the side of third parties**
See above.

Sweden

- **On the side of the employer**
 - The European and international employers' associations are not parties to the TCA and they will thus have not roll in enforcement process.

- The signatory companies have access to the Labour Court. The court procedure could cover every subject that could be included in a collective agreement. The normal sanction for breach of a collective agreement would be (punitive) damages. However other sanctions, such as specific performance, may also be applied for.
- **On the side of the workers**
 - European and international trade unions have access to the court under the same conditions as mentioned hereabove.
 - A dispute concerning a TCA concluded by a European works council will be regarded a labour dispute, which will be adjudicated by the Labour Court, in first instance or in appeal. No punitive damages is available, only financial loss will be covered.
 - National trade unions can go to Court if they are legally bound by the collective agreement.
- **On the side of third parties**
No information provided.

France

- **On the side of the employer**
 - Employers or associations of employers have access to courts, provided they have an interest. It is hard to imagine a case, in which an employer would act against a worker or a group of workers based on a TCA.
 - They could require respect of the TCA by the other party.
 - The competent court would be an ordinary civil court (TGI).
 - Remedies could be damages and/or the execution of the agreement (possibly with a penalty for each day of non-completion). Injunctive relief could be granted to compel, for instance, the unions to respect a procedure.
- **On the side of the workers**
 - Individual workers have access to courts (employment tribunals) for claims concerning their individual rights. If their employer has committed itself to granting them rights under a TCA, they should be able to obtain enforcement of these rights.
 - Trade Unions or work councils have access to courts (ordinary civil courts) for interpretation or application of a collective agreement or other collective relations issues. If they are parties, they may act before such courts in a case of litigious interpretation of a TCA. Unions also have access to court, to protect the collective interest of the profession (*intérêt collectif de la profession*). This could apply for TCAs. Unions can also act instead of workers to ensure protection of their individual rights.
 - European or international trade unions could be allowed to act before French courts as long as they are allowed to take the corresponding actions under the law determining their existence (law of their central administration).
 - As for European Works Councils, when they are part of a TCA, they have a contractual action. Otherwise, to bring a case based on a TCA, they would need to show not only that the application or violation of the agreement is illegal, but also that they have a particular interest in the case.
- **On the side of third parties**
 - As far as competitors are concerned, one may think about an action based on tort law, due to unfair practice (*concurrency déloyale*), if the TCA is unfairly used to attract the clients of the competitor.
 - Subcontractors covered by the agreement need to have accepted it in the sub-contract. They would have access to courts but it is difficult to imagine cases, in which they would go to court to obtain enforcement of the TCA.

Germany

- **On the side of the employer**
 - All claims which are mentioned in the questions can be made by or against the companies which have concluded a TCA. Every claim leads to specific performance and can be compulsory executed.
 - European and international employer associations have party capacity in labour court proceedings (if they are organized in generally acknowledged legal structures).
 - A company which has not concluded the TCA, but is member of a group in which a TCA is applicable, this company cannot be directly sued. However, the parent company is obliged to use her control (if it has sufficient control) and influence the subsidiary to respect the TCA. Secondly if one acknowledges the normative effect of a TCA (see above), the subsidiaries are directly bound to respect this agreement.
- **On the side of the workers**

Individual workers can rely on a TCA if this agreement has a normative effect. In this case they can start labor court proceedings.
- **On the side of third parties**
 - It is uncertain if competitors are entitled to enforce a TCA if a company doesn't respect its obligations relating to such an agreement.
 - Acquiring companies in a transfer of undertaking are bound by the TCA only if this TCA has a normative effect. If a TCA establishes obligations only between the parties which have concluded the agreement, an acquiring company is not bound.
 - Subcontractors cannot be legally bound by an agreement that is concluded between third parties. It is possible that a company agrees on an obligation to implement social clauses in contracts with subcontractors. In this case the trade union as party of the TCA can claim that the company has to enforce the social clause comprised in the contract with a subcontractor. A direct claim of the trade union against the subcontractor seems not possible

Hungary

- **On the side of the employer**
 - The employers (signatory companies, non-signatory companies covered by the agreement) have access to the labour court.
 - TCAs need to have direct binding force.
 - Claims may be filed both for establishment and condemnation, the collective agreement may be annulled or considered to be invalid, can be amended, or the Court can order a certain entitled person to display a specific conduct, compensation of damages etc.
- **On the side of the workers**
 - Employees, trade unions and other representative bodies have access to the labour court.
 - Trade unions also dispose of a veto right, which can include unlawful actions violating provisions of a TCA.
- **On the side of third parties**

Third parties have access to the ordinary court. The National Competition Authority can also be competent depending on the subject matter of the claim, i.e. unfair competition.

Italy

- **On the side of the employer**
 - International employers' associations may go to courts, provided they have direct and relevant interests.
 - Signatory companies may go to court or be sued. As for individual disputes, the competent court is the Labour court related to the individual right and obligations of the collective agreement. The same holds true for the management bodies. The non-signatory company may go to court or be

sued, provided it is represented by a specific commission or when it is willing to comply with a collective agreement with other signatory companies.

- **On the side of the workers**
 - International employees associations will not have access to court if they do not have signed the collective agreement.
 - The European Works Council can initiate legal proceedings before the competent court, i.e. the Labour Court.
 - Trade unions may go to court against the employer. For labour disputes, the Labour Court is competent.
 - Worker representatives can go to court.
 - Individual employees can go the Labour court. Specific performance, damages can be asked.
- **On the side of third parties**

A competitor may sue another company for damages or to stop unfair practices.

The Netherlands

- **On the side of the employer**

Anyone with legal personality can in principle have access to the court if he or she has a legal claim. The enforcement of collective agreements takes place via the ordinary court system (*sector kanton* of the District Court). The Netherlands does not have specialised labour courts. In order to enforce a claim legally in the Netherlands, it has to fall within the jurisdiction of the Dutch court. Breach of contract, accountability, compliance, compensation/damages claims can be involved. TCAs could be involved.
- **On the side of the workers**

See above.
- **On the side of third parties**

See above.

United Kingdom

- **On the side of the employer**

Anyone with legal personality can in principle have access to the courts if he or she has a legal claim. If the TCA is not enforceable as a contract in English law no-one will be able to invoke it in court. If the TCA is a contract the parties to the contract would be able to litigate, but no-one else. The main remedy available is damages for breach of contract. Specific performance is only available at the discretion of the court where the claimant can show that it is an appropriate remedy. Importantly, specific performance is not available where it would have the effect of forcing an individual to work.
- **On the side of the workers**

See above.
- **On the side of third parties**

See above.

c. Does the stakeholder have access to Arbitration?

Belgium

- **On the side of the employer**

Any dispute that arises out of a defined legal relationship and which is capable of settlement (*dading*) and does not affect public policy. Belgian law stipulates, however, that provisions in collective bargaining agreements that refer individual conflicts to arbitration are null and void. Furthermore, in matters over which the labour courts have jurisdiction, the parties may not agree to submit a dispute to arbitration before

the dispute arises, unless the law specifically provides otherwise. Nor can arbitration be used for social security disputes.

- **On the side of the workers**
See above.
- **On the side of third parties**
See above.

Sweden

- **On the side of the employer**
 - The European and international employers' associations do not have access to Arbitration.
 - With regard to the signatory parties, labour disputes may by agreement be referred for determination by an arbitrator. This is not permitted in discrimination dispute or dispute where one party seeks declare that a collective bargaining agreement by which the parties are bound is no longer applicable, due to a gross breach of such an agreement.
- **On the side of the workers**
 - With regard to European and international trade, please refer to the signatory parties on the side of the employer.
 - With regard to the European works council, please refer to the signatory parties on the side of the employer.
 - National trade unions do not have access to Arbitration.
- **On the side of third parties**
No information provided.

France

- **On the side of the employer**
Arbitration is not possible for dealing with conflicts opposing them to their employees, before the contract is terminated. It is possible, however, if the parties have decided in the TCA that conflicts arising would be subject to arbitration. It can be decided in collective agreements that in case of industrial actions, the case must be submitted to arbitration.
- **On the side of the workers**
Arbitration is not available for issues concerning work contracts under French law before the contract is terminated. It is not possible to derogate from the jurisdiction of employment tribunals during the execution of the contract. After termination, arbitration becomes possible. Arbitration is available to other stakeholders on workers' side.
- **On the side of third parties**
There is no reason why arbitration should not be accessible.

Germany

- **On the side of the employer**
The parties can substitute the labour courts by an arbitration court, as far as disputes relating to collective agreements are concerned. If a TCA can be qualified as a collective agreement this rule applies. This does not apply if a TCA has to be qualified as a works agreement or another agreement on the works level. In this case the competence of the labour courts cannot be excluded.
- **On the side of the workers**
Labour dispute measures between the employer and the works council are generally not permitted. It is contested if this principle applies on the European works council. Arbitration is (besides few exceptions for special groups of workers) not permitted.
- **On the side of third parties**
No information provided.

Hungary

- **On the side of the employer**
The employers (signatory companies and non-signatory companies covered by the agreement) and the employers' organizations are entitled to participate in any procedure aimed at the settlement of collective labour disputes.
- **On the side of the workers**
Trade unions and other employee organizations have access to arbitration with regard to collective agreements, which do not qualify as legal disputes.
- **On the side of third parties**
Third parties have access to commercial arbitration, as opposed to arbitration under the labour code.

Italy

- **On the side of the employer**
 - International employers' associations will not be able to subscribe an arbitration agreement.
 - Signatory companies may comply with arbitration on collective disputes as well as on individual disputes. Some matters of a TCA can be subject to arbitration.
- **On the side of the workers**
 - European and international employees associations may legitimately take on arbitration.
 - The European Works Council could take on arbitration, provided it is voluntary. There are no specific conditions. TCAs could be subject to arbitration.
 - National trade unions: please refer to the European Works Council.
 - Individual employees have access to arbitration. There are no specific conditions. Arbitration is only designed for individual disputes. Formal arbitration should be regulated by a collective agreement.
- **On the side of third parties**
In disputes concerning unfair competition practices, can be brought before an arbitration bench.

The Netherlands

- **On the side of the employer**
See below, next question.
- **On the side of the workers**
See below, next question.
- **On the side of third parties**
See below, next question.

United Kingdom

- **On the side of the employer**
Please see below.
- **On the side of the workers**
Please see below.
- **On the side of third parties**
Please see below.

d. Does the stakeholder have access to Mediation?

Belgium

- **On the side of the employer**
Mediation implies the intervention of a third party, which need not be an institution. A mediator can be anyone accepted by the parties. The mediator need thus not be recognised. Conciliation procedures are defined in collective bargaining agreements or in the procedures for joint committees and their conciliation services. Furthermore, a number of official conciliators have been appointed within the Federal Public Service for Employment, Labour and Social Dialogue, responsible for preventing and conciliating industrial disputes. It is not possible to refer to a conciliator if the dispute goes beyond the national level. Mediation can also be done before a court.
- **On the side of the workers**
See above.
- **On the side of third parties**
See above.

Sweden

- **On the side of the employer**
 - The European and international employers' associations do not have access to Mediation.
 - Signatory companies do not have access to Mediation. However, it was a procedural prerequisite that grievance negotiations had taken place between the parties of the collective agreement before a dispute is brought before the Labour Court.
- **On the side of the workers**
 - With regard to European and international trade, please refer to the signatory parties on the side of the employer.
 - With regard to the European works council, please refer to the signatory parties on the side of the employer.
 - National trade unions do not have access to Mediation.
- **On the side of third parties**
No information provided.

France

- **On the side of the employer**
Judicial mediation can be decided by any court, after consultation of the parties. The court chooses a third party to hear the case and confront the views of the litigants in order to find a solution to the conflict between them.
- **On the side of the workers**
Judicial mediation can be decided by any court, after consultation of the parties. The court chooses a third party to hear the case, confront the views of the litigants in order to find a solution to the conflict between them.
- **On the side of third parties**
Yes.

Germany

- **On the side of the employer**

Alternative dispute resolution (mediation) is possible but it has only little significance in German labour law.

- **On the side of the workers**
 - Labour dispute measures between the employer and the works council are generally not permitted. It is contested if this principle applies on the European works council.
 - Mediation proceedings are possible.
- **On the side of third parties**
No information provided.

Hungary

- **On the side of the employer**
The employer and the organization representing the employer's interest can settle their dispute by way of mediation with regard to collective labour disputes.
- **On the side of the workers**
Trade unions and other employee organizations have access to mediation with regard to collective agreements, which do not qualify as legal disputes.
- **On the side of third parties**
Third parties have access to the mediatory procedure, which cannot fall under the scope of the Labour Code.

Italy

- **On the side of the employer**
 - Occasionally, International employers' associations may be involved in mediation.
 - The mediation on collective disputes is usually held in informal ways, in which the employer can participate. With regard to individual disputes, parties involved must attempt to reach a settlement.
- **On the side of the workers**
 - International employees associations can take part in mediation. The Italian system prefers self-solution mechanisms, rather than legal proceedings. The procedure is mostly written in the collective agreements. Mediation may include TCAs.
 - The European Works Council: please refer to International employees associations.
 - National trade unions: please refer to International employees associations.
 - Individual employees: a compulsory attempt at out-of-court conciliation is a precondition for admissibility before Court. Individual labour disputes are involved. A dispute may relate to a TCA.
- **On the side of third parties**
Third parties have access to mediation.

The Netherlands

- **On the side of the employer**
The collective agreement itself can set out specific bodies of conciliation and mediation (for specific branches of industry or for certain enterprises). The Dutch Code on Civil Procedure provides for regulations on arbitration. This is however not a very current practice in the Netherlands.
- **On the side of the workers**
See above.
- **On the side of third parties**
See above.

United Kingdom

- **On the side of the employer**
Please see below.
 - **On the side of the workers**
Please see below.
 - **On the side of third parties**
Please see below.
- e. **Can the stakeholder involve in industrial action?**

Belgium

- **On the side of the employer**
Belgium does not have a legal definition for industrial disputes. However, Belgian law recognises the existence of such disputes and the need to prevent such conflicts. Industrial actions cannot be prohibited. Under Belgian law, labour and management are encouraged to seek alternative dispute resolution in the event of a conflict. Many alternative dispute resolution mechanisms are defined in CBAs or in the procedures for the joint committees and their conciliation services. Priority is given to voluntary conciliation and mediation (see below). The courts can also intervene where the dispute involves the violation of a clause in a CBA or a fundamental right (such as the right to own property, freedom to work or freedom of movement). Employers generally commence *ex parte* summary proceedings since they cannot prosecute a trade union, which lacks legal personality, and given that the identity of the striking picketers is often unknown.
- **On the side of the workers**
A strike is not a right limited to professional organisations and can be exercised by workers or a group of workers that are not necessarily institutionalised. Furthermore, a strike is independent of collective bargaining. The trade union delegation must be heard by the employer or the latter's representative in the case of impending or existing disputes or strikes. The trade union delegation can seek help from officials if negotiations with the employer fail. In most sectors, labour and management have developed dispute resolution procedures. These are outlined in CBAs or the rules of the joint committees and their conciliation and mediation services. An industrial conflict can relate to a TCA.
- **On the side of third parties**
See above.

Sweden

- **On the side of the employer**
 - The European and international employers' associations cannot be involved in industrial action.
 - Signatory companies may not be involved. If the TCA is considered a collective agreement then the signatory company is under a peace obligation and may involve in industrial action in dispute of rights, that is in order to exert pressure in a dispute over the validity of a collective bargaining agreement, its existence, or its correct interpretation, or in a dispute as to whether a particular action is contrary to the agreement or to this Act
- **On the side of the workers**
 - With regard to European and international trade, please refer to the signatory parties on the side of the employer.
 - European works councils may not resort to industrial action.
 - National trade unions cannot be involved in industrial action.
- **On the side of third parties**
No information provided.

France

- **On the side of the employer**
Not applicable to employers. Lock-out is not a right protected under French labour law.
- **On the side of the workers**
The right to strike belongs to workers. For an action to be protected under the “right to strike”, it needs to be taken by a group of workers. It is not impossible to imagine that workers can go to strike because the employer does not abide by a TCA.
- **On the side of third parties**
No information provided.

Germany

- **On the side of the employer**
No information provided.
- **On the side of the workers**
Only trade unions are allowed to call to strike. If this agreement is concluded it is unlawful to enforce this existing agreement with measures of industrial actions. Wildcat strikes are not lawful.
- **On the side of third parties**
No information provided.

Hungary

- **On the side of the employer**
No.
- **On the side of the workers**
The right to strike is a collective worker's right, i.e. for trade unions and a community of workers. The right to strike could also include TCA disputes.
- **On the side of third parties**
No.

Italy

- **On the side of the employer**
 - There are few possibilities for European and International employers' associations to call on a strike.
 - The employer may take on a lock out for contractual ends and as a meaning of solidarity.
- **On the side of the workers**
 - International and European employees associations may call for a strike.
 - The European Works Council may call for a strike.
 - Trade unions may call for a strike in order to obtain the enforcement of an agreement, which provides for conciliation procedures that should be observed before a strike. A contractual strike can involve the enforcement of a TCA. The outcome of the strike may be an agreement between the workers and the employer.
 - Individual employees have an individual right to strike.
- **On the side of third parties**
Please refer to the side of the employer.

The Netherlands

- **On the side of the employer**
 - There is no procedure to be followed before a strike. When a strike breaks out, employers usually initiate summary proceedings with a judge of the District Court. They ask the judge to prohibit the unions from supporting the strike, under penalty of a fine. Most strikes are due to dispute of interest. Strikes out of disputes of rights are rare as unions and employees in the Netherlands prefer the judicial means of the resolution of dispute of rights.
 - The subject matters can include TCA disputes, if it is an *ultimum remedium*.
 - If a strike is legal, then this legality has consequences for the legal position of the unions. The unions are for example not committing a tort and they are not responsible for the damage caused by the strike.
- **On the side of the workers**
See above.
- **On the side of third parties**
See above.

United Kingdom

- **On the side of the employer**
Please see below.
- **On the side of the workers**
Please see below.
- **On the side of third parties**
Please see below.

Alternative dispute resolution mechanisms

- a. **Does your national system contain special dispute resolution mechanisms in labour law which could be used to enforce TCA's (e.g. arbitration, conciliation, mediation)?**

Belgium

Belgian law does not provide for special dispute resolution mechanisms which could be used to enforce TCAs, other than those mentioned above.

Sweden

No information provided.

France

- There is no specific mechanism for labour law disputes that could be used to enforce TCAs.
- Arbitration is indeed available to solve dispute between signatories of a TCA. It would require that the parties agree on having their dispute arbitrated. Enforcement would require exequatur by a court. But there is no specific arbitration for labour law disputes.

Germany

If a TCA can be qualified as a collective agreement this rule applies, arbitration is possible. In matters relating to works agreements or similar forms of agreements on the works level arbitration is not permitted.

Hungary

- TCA related disputes can be settled by way of negotiation/mediation/arbitration.

- In order that the TCA may become the subject matter of such disputes, it is necessary that the TCA is a collective agreement under Hungarian law.

Italy

- A compulsory attempt at out-of-court conciliation is a precondition for admissibility of the application to the court. This process applies only to "individual" disputes.
- Arbitration, whether formal or informal, is designed only for individual disputes. External resolution of collective disputes, with referral to a neutral party, is not forbidden provided it is voluntary; compulsory arbitration is not permitted since it is regarded as incompatible with the right to strike.

The Netherlands

No. The enforcement of collective agreements in the Netherlands takes place via the ordinary court system.

United Kingdom

A public body called ACAS (Advisory, Conciliation and Arbitration Service) offers conciliation, mediation and arbitration services for the parties to a collective dispute. The use of ACAS is entirely voluntary so both sides to the dispute would have to agree to involve ACAS.

b. If so, describe for each of those mechanisms:

- 1. Their relationship to court action (.e.g. voluntarily preceding court action, compulsorily preceding court action, replacing court action)**
- 2. Which stakeholders have access to this mechanism?**
- 3. Under which conditions?**
- 4. Which subject matters (or what claims) can be involved?**
- 5. What results could be achieved through the use of the mechanism (specific performance, damages, ...)?**

Belgium

Please refer to answer a).

Sweden

No information provided.

France

Please refer to answer a).

Germany

- The arbitration is only permitted in a dispute between the signatories of the collective agreement. .
- There are different forms of conciliation but they play no role in disputes relating to the enforcement of an existing TCA.
- Alternative dispute resolution mechanisms have except for conciliation settlement only little significance in employment and labour disputes.

Hungary

- As regards negotiation/mediation/arbitration in cases of collective labour disputes, only the employer, the employer's interest representation organization and the trade union(s) may participate in such procedures.
- The institution of conciliation aims at the amicable settlement of labour related legal disputes. The mediatory procedure aims at the amicable settlement of civil law legal disputes.

Italy

- In case of conciliation or mediation, the parties are involved directly or indirectly in settling the dispute (the "parties" being the trade union organisations or representative structures and the employer organisations or individual firms). The external resolution modes consist essentially of arbitration, though this is not used in collective disputes.
- The local or central government authorities (mayors, prefects, regional chief executives, central government ministers) may in practice conciliate and/or mediate in labour disputes.
- It's usually the national stakeholders that may resort to alternative way to settle the disputes. Because such ways are informal and voluntary, international or European unions that might have subscribed TCA, might – just might – have a limited access to them.

The Netherlands

Please refer to answer a).

United Kingdom

- Where the collective agreement is not legally enforceable, no court action is possible anyway.
- Groups of workers, unions, employers, employers' associations have access to this mechanism. Technically, ACAS only has power to offer conciliation or arbitration where a 'trade dispute exists or is apprehended'.
- Any matters in dispute can be involved.

Collective action

To what extent could a TCA be the object of a collective action:

a. aiming at enforcing legal obligations stemming from the TCA?

Belgium

Collective actions, such as the strikes, can be used to enforce a TCA.

Sweden

If the TCA is regarded a collective agreement according to Swedish law, a collective action is possible due to the peace obligation following from collective agreements.

France

Strikes aiming at forcing the employer to abide by provisions of a TCA would be lawful. These actions are limited whenever the strike restricts economic freedoms granted to companies by the EC treaty.

Germany

- If a TCA contains binding legal obligations, it is unlawful to enforce them by industrial action. In this case the competence of the labor courts is strictly priority.
- If a non-binding commitment made at international level should be implemented at the national level, an industrial action is generally permitted if the implementation should take place by a collective agreement. If the international non-binding commitment shall be implemented by a works agreement, an industrial action is not permitted.

Hungary

- It does not seem to be likely that TCA could be the object of a collective action.
- Strikes are unlawful against individual measures, or default (omission) of the employer, for the altering of which a decision lies in the competence of courts.

Italy

Collective actions, such as the strikes, might be used so as to enforce a TCA.

The Netherlands

See answers under question 5.

United Kingdom

- The lawfulness of collective action in English law does not really depend on collective agreements. Furthermore, it is necessary to consider the exercise of the union's right to strike is a proportionate restriction on the employer's rights under Community law.
- Those involved in the collective action must be acting 'in contemplation or furtherance of a trade dispute'. A trade dispute can have an international dimension provided that UK workers will themselves be affected. Furthermore, workers cannot lawfully engage in sympathy strikes in relation to workers in other countries.

b. aiming at the national level the implementation of a non-binding commitment made at international level?

Belgium

Please refer to answer a).

Sweden

Collective action taken by national trade unions would be lawful.

France

As long as workers claims concern their situation at work (employment and working condition, broadly conceived), their right to strike is protected.

Germany

Please refer to answer a).

Hungary

- A strike action can probably also include TCA as the object aiming at the implementation of a non-binding commitment made even on the international level.
- However, in these cases one should also keep in mind today the judgements made by the ECJ according to the Viking and Laval cases.

Italy

Please refer to answer a).

The Netherlands

Please refer to the answers above.

United Kingdom

Please refer to answer a).