

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

Study on behalf of the European  
Commission VC/2009/0157

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# Structure of the discussion

1. Characterisation
2. Relationship with EU labour law
3. Applicable law
4. Jurisdiction of the courts
5. Enforcement issues
  1. *ius standi* – standing in court
  2. ADR and industrial action

# 1. Characterisation

- Under national law
- Under private international law
  
- Binding
- Civil and Commercial
- Contract

## 2. Relationship with EU law

- Uniform law
- Private international law rules
  - Choice of law
  - Jurisdiction
  - Mutual recognition
- Relevant connecting factors

## 3 Applicable Law

- Rome I Regulation: applicable law with regard to contracts
- Rome II Regulation: applicable law with regard to non-contractual obligations

# 3. Applicable law: Rome I

- Article 3: party autonomy – choice of law by the parties
  - Non-national systems of law – CFR
  - Depeçage
- Article 4: applicable law in absence of a choice by the parties
  - Characteristic obligation (Article 4 sub 2)
  - Closest connection
    - As a default (Article 4 sub 4)
    - As an exception (Article 4 sub 3)
- NB Article 8 Individual employment contracts

# 3. Applicable law - Conclusions

- Party autonomy as preferred solution
  - A single law for the entire workforce / scope of application?
- Closest connection leads to uncertainty
  - Special rule for TCA's?
  
- NB Choice of law = **obligatory** aspect of the TCA

### 3. Normative effect - private international law aspects

- Effect of TCA on individual labour contracts
  - Statutory
  - Mandate/membership
  - Other
- Normative effects of collective agreements / works council agreements determined by national law: 'reception'
- Mandate national representatives determined by national law of country of origin



### 3. normative effect - conclusions

- Explicit mandate to negotiators at European level
- Implementation at national level according to national rules

# Normative effect - reception

- Can a TCA under law A have normative effect on labour relations governed by law B?
  - Restrictions under law A
  - Overriding mandatory provisions under Rome I
  - Public policy objections under law B
- Conclusion: to a limited extent only (favor) and subject to conditions.

## 4. Jurisdiction

- Non-EU employers v. EU employers
- Exclusive jurisdiction and jurisdiction over individual contracts of employment
- Other:
  - Forum rei
  - Special jurisdiction Article 5
  - Joinder of claims under Article 6
  - Interim and provisional measures Article 31

## 4. Recommendations

- Insert a place of performance for specific obligations in the TCA
- Insert a non-exclusive choice of forum in the TCA

## 5. Enforcement issues

- Availability of and access to alternative dispute resolution mechanisms
- Access to court
- 'Self help' through industrial action

## 6. Ius standi - problems

- Legal entity with full legal capacity? Special position of works councils and unions
- Large variety in national solutions
- No party autonomy

## 6. Ius standi - solutions

- European rule on ius standi (compare Article 10 recast directive)
- European system of mutual recognition
- Avoidance through jurisdiction rules
- Unilateral acceptance of ius standi by the MS