



FIFTH MEETING OF THE EXPERT GROUP ON **TRANSNATIONAL COMPANY AGREEMENTS**

Study on the characteristics and legal effects of
agreements between companies and workers'
representatives (on-going)

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LABOUR asociados
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- 2. Summary overview of the existing regulation and practice of company agreements at national level**
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I. Objectives of the study

Provide a comprehensive and clear overview of the characteristics and legal effects of company agreements (CA) between management and employee representatives

Identify the practical and legal obstacles to give transnational company agreements certain legal effects, exploring several options to give them:

- uniform legal effects throughout the Member states;
- legal effects vary according to the will of the parties;
- the same or comparable legal effects in MS as company agreements concluded at national level.

Identify and suggest any actions that might be taken to overcome these obstacles.

Some details of the study

Methodology

Working method mainly from the bottom (CA at national level) up (TCA).

Work organisation:

- Steering team members: Ricardo Rodriguez (coord.) , Kerstin Ahlberg, Tomas Davulis, Lionel Fulton, Patrick Humblet, Teun Jaspers, Jose María Miranda, Franz Marhold, Fernando Valdes and Reingard Zimmer.
- A team of national experts in each member state

Time frame: 7 months starting in January 2011; 6 months for delivering a draft final report

Work carried out so far

Collection and first analyses of the CA legal systems and practices through an in-depth questionnaire to national experts

Developing a complementary exercise with the aim to identify obstacles in the implementation of the legal effects of TCA at national level: selection of 16 TCA to carry out a simulation test of implementation

Drafting synthesis reports per subject based on the information collected at national level: actors, negotiation procedures, formal requirements, etc...

Discussing preliminary results and first work hypothesis

II. Overview of national systems of CA

- What makes a company agreement (CA)? Strongly depending on the national Industrial Relations systems...
- Huge diversity between Member states: different models : voluntarism , continental, Nordic countries, South-Europe, Eastern countries.... not easy to group them
- Common key elements making a CA:
 - actors: capacity to negotiate and conclude agreements
 - scope
 - articulation and link with other levels
 - subjects able (allowed) to be agreed
 - procedural formal requirements (registration, publicity,...)in some member states
 - enforceability

Existence of legal definition of CA

Existing Legal definition	Member states		
	By law	By case law-definition/custom	No definition
Definition of company agreement	Austria, Belgium, Czech Republic, Estonia, Finland, Germany, Greece, Lithuania, Malta, The Netherlands, Portugal, Romania, Slovakia, Slovenia, Sweden	Belgium, Hungary and Spain	France*, Ireland, Latvia, Poland, UK**
Definition of group of undertakings agreement	Austria, Belgium, Czech Republic, Estonia, Malta, Romania, Slovakia and Sweden.	Portugal, Spain***	France*, Ireland, Italy, Greece, Germany, Hungary, Latvia, Lithuania, Netherlands, Poland, Slovenia, UK

* No statutory definition, but the French Labour Code clearly determines certain conditions that *make a* company agreement or group agreement

** There is a definition of a collective agreement, but not a separate definition of a company agreement.

*** By case law and literature



Juridical nature and influences

- CA are concluded as a private contract, usually having obligational and normative parts
- In general, national Labour codes are the main source regulating CA
- In some member states also collective agreements contain provisions concerning company agreements e.g. Austria, Belgium, Germany
- Content of CA usually affected by social and labour legislation: pensions , equal treatment, working time, minimum wages, ...
- Often the content of CA is direct or indirectly influenced by other non-labour legislation: taxes; administrative requirements, bankruptcy,...



Relationship with legislation

Usual rule is “what is not prohibited is permitted”: all topics can be regulated by CA as long as it does not violate cogent law.

Usually, a CA or a group of undertakings (company agreement) can deviate from the law if it establishes better work conditions for workers than those established by law (deviation in *melius*)

The principle *in favorem* to workers is applied, although some supplementary rules also apply depending on the nature of law related to the CA provisions (mandatory law, dispositive law rules, ...)

On the contrary, a deviation in *peius* is only possible in cases provided explicitly by law or a higher level collective agreement

In some member states, CA may only regulate topics reserved

Diversity of CA within the member states

Different types of CA depending on the scope , the signatory parties and the level (at group, company or establishment level) conditioning the enforceability of the agreement

Huge diversity and singularities in CA across member states:

AT: necessary; enforceable; voluntary works agreement

BE: CA under Collective Labour Agreements Act; outside of CLAA: concluded with: works council; TU; employees; irregular, ...

DE: co-determined; partially co-determined; voluntary.

UK, a collective agreement can be:

An agreement with union representatives on issues that fall outside the statutory definition of a collective agreement.

An agreement with non-union employee representative bodies (if any exist);

A statement of principle, commitment or aspiration entered into with union and/or non-union representative bodies

Etc..

Personal enforceability

Provisions of CA are applied to all employees within the scope of the agreement regardless whether they are members of the trade union/signatory to the agreement (**BE, CZ, FR, DE, GR, IT, LU, LT, PL, RO, ES, SE**). But particularities exist:

Austria: implementation might depend on the representative nature of the subject negotiating on behalf of employees; or **Estonia** (*joint collective agreement*)

Germany: work agreements are applied to all workers; however, collective agreements only affect the workers affiliated to the signing union

Sweden: workers who are members of another trade union might be covered by the CA and, even relevant work conditions are applied to non-unionised workers e.g. where legislation allows derogations from statutory provisions through collective agreements.

Personal enforceability (II)

Other member states (e.g. **DK, FI, HU, EE, IE, MT, SL, SE, UK**) CA is applicable to “all workers” affiliated to the unions signing the CA or group agreement. The remaining employees are affected by other means e.g. as application in practice (silent acceptance) or by way of incorporation.

UK: terms that are negotiated collectively do not have a direct applicability.

implementation of the provisions of a CA will take place through a ‘bridging’ term in the individual contract = e.g. wages are determined by reference to a particular named collective agreement.

In the absence of a ‘bridging’ term, incorporation could take place by way of custom of practice (rare).

Personal enforceability (III)

If the bargaining level is horizontal:

- the CA will apply to all workers in a specific profession (ae.g. air traffic controllers ,...) working in the company or the group (**Spain**),
- or all workers in a specific profession who are affiliated to the signing union (**Estonia**).

Other distinctions between group of workers might apply depending on the scope of the CA:

Belgium (blue and white collar)

Sweden: blue, white collar and university graduates

UK: manual and non-manual workers

Managerial staff might be excluded from the scope of the CA

Capacity to negotiate a CA: employers' side

- Not any relevant characteristic: as a rule the single employer is entitled to bargain and conclude a CA.
- The employer can be assisted by representatives of an employers' association (e.g. **Cyprus, Italy, Malta, Spain**).
- In case of multiple group of undertakings, either the employers forming the group will/can bargain or the (headquarters/management of the) mother company.

Capacity to negotiate a CA: workers' side

Quite different scenarios with specific rules:

- (representative) trade unions or its representatives: **BE, CY, CZ, DK, DE, GR, HU, LU, PT, NL, SL, SE**
- (representative) trade unions and/or elected representatives of the workers: **EE, FI, IE, IT, LV, RO, UK**
- trade union *and* the works' council are competent (SI and Spain - but in the case of horizontal CA, negotiation is only possible with trade unions)
- (employees' side of the) works council: **Austria, Germany**
- “waterfall” system: **France, Lithuania** and some extent, **Poland** (body entitled to negotiate is determined by the type of agreement)

Articulation of CA (I)

- Member states where there a clear hierarchical structure, with higher level agreements (those at national and then at industry level) setting standards which can only be improved on in agreements at lower levels (company or in some cases workplace agreements).

Belgium is a clear example with a clear hierarchy descending order of precedence established by Law.

- Member states where there is no hierarchy and where the preference given to a particular collective agreement does not depend on whether they have been concluded at industry or company level.

United Kingdom is an example of no hierarchy and where CA are generally not legally enforceable. Terms and conditions of employment can be regulated either in line with industry level agreements, where these exist, or through company level agreements.

Articulation: vertical hierarchy (II)

Member States giving collective agreements preference at industry level

Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Luxembourg, Poland, Romania, Slovakia, Slovenia, Sweden

- Hierarchy of agreements in **Germany** only relates to the relationship between collective agreements (Tarifverträge) and works agreements (Betriebsvereinbarungen), where there is a division in terms of the topics which can be covered. There is no hierarchy which states that collective agreements signed at industry take precedence over those signed at company level.
- **The Netherlands, Portugal and Spain:** higher level agreements can require lower level (company agreements) to adopt their terms and conditions as a minimum.
- In **Ireland, Malta** and the **UK** there is no vertical hierarchy of agreements,

Articulation: most favourable conditions (III)

The most favourable principle applies in the majority of the member states with a vertical hierarchy of agreements (**Belgium, Czech Republic, Denmark, Finland, Hungary, Poland, Romania, Slovakia and Slovenia, Estonia, Latvia and Lithuania**)

In the case of **Austria** and **Germany**, works agreements deal with a different range of topics and cannot undercut the terms set in industry level agreements.

In 3 member states with a clear hierarchy of agreements, the most favourable principle does not apply. (**Sweden, France** – with exceptions and not in the case of group of agreements - and **Greece**).

In **Italy**, it seems that theoretically CA can set worse terms and conditions than those in industry level agreements. However, in reality, this option has been used very rarely

In **the Netherlands, Portugal** and **Spain**, different approaches are used to deal with conflicts between collective agreements

In **Ireland, Malta** and the **UK** the most favourable principle also does not exist.

Formal requirements after the conclusion of CAs

Registration	Deposit to the Labour Authorities	No mandatory rules
Belgium, Estonia, Germany, Greece, Hungary, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Spain	Czech Republic, France, Luxemburg, The Netherlands, Portugal, Spain, Malta	Austria, Denmark, Finland, Ireland, Italy, Slovenia, Sweden and United Kingdom

In the **Netherlands, Portugal and Spain**, a strict notifying procedure exists: if it is not respected, the agreement can not enter into force

III. Theoretically exploring the legal effects of TCAs

- As a complementary part to the study, we have carried out an exercise to analyse the level of potential legal effects of 16 existing TCAs at national level
- It is aimed to analyse what requirements the selected TCAs are missing in order that they may be legally enforceable in a certain member state, taking into account the way that the texts are agreed and signed.
- An average of 3 TCA are being analysed in every Member State
- It is still on-going; therefore, some preliminary non-detailed findings

Selected existing TCAs

TCA	Member State	Company	Workers	Main subject covered
Econom	BE	Direction	EWC	Social plan
Geopost	DE	CEO	European TU, French TU, German TU	Fundamental Rights and respect of Labour Law
DanskeBank	DK	Vice-President	European TU & National TU	Fundamental Rights / Employment policy
GDF	FR	CEO	European TU & special negotiators	Employment & expertise
Areva	FR	Chair of the Executive Board	European TU	Equal opportunities: m/w & disabled
RWE	DE	Board	EWC	Restructuring
Porr	AT	n.s.	EWC	Data protection
General Electric	NL	n.s.	EWC	Pre-employment screening
AirFrance	FR	n.s.	National TU	Financial participation
Alstom-Schneider	FR	Chief HHRR / Vice-president	European TU	Employment guarantees after transfer
Arcelor-Mittal	LU +	CEO	International & European TU	Health & Safety committees
Club Méditerranée	FR	Dir. HHRR	International & European TU	Fundamental Rights - transnational mobility
Danone	FR	CEO	International TU	Equality
Schneider Electric	FR	Vice-president for HHRR	European TU	Anticipation & adaptation
Starwood	BE	n.s.	EWC	Transnational mobility
Thales	FR	Vice-president for HHRR	European TU	Anticipation & adaptation

First preliminary findings (I)

Signatory parties:

- No relevant problems detected from the employers' side ,except for the validity of 'group of undertakings' as a sphere of negotiation and the lack of legal regulation thereof.

Capacity:

- employers' : in any case, it appears that the TCA could be easily implemented by way of a unilateral decision.
- workers' representatives: more well known problems to implement TCAs depending on those of them signed by:
 - i) the EWC (problems of representation of workers in their company);
 - ii) a European or International Industry Federation;
 - iii) a European federation and one or more national trade unions (in both cases, problems of lack of articulation between national bodies of worker representation (either trade unions or other bodies), although some interesting good practices

First preliminary findings (II)

The content of TCA:

As a general rule, subjects included in TCAs follow similar patterns than national CA

Obstacles in some cases relating to the vague way they are formulated

Applicable provisions in TCA are usually be more favourable than national provisions.

A few obstacles with regard to reserved contents in some Member States

General remarks:

This exercise shows certain major difficulties to acknowledge the legal effects of TCAs selected arising mainly from the non-existence of this TCA figure – with its requirements and legal effects- in national legislations;

A great variety can be observed in the sample texts selected: some TCA would presumably be easier –or less complicated- to be given legal effects than others

IV. Preliminary hypothesis (I)

The possibility of giving **uniform legal effects** to TCAs – one only single solution - seems quite difficult at this stage due to :

- ✓ Extremely different legal systems of collective agreements and in particular company agreements at national level.
- ✓ Some national systems as in IE and the UK based on quite different foundations .
- ✓ Others, as the regimes of the Nordic countries, may be reactive to apply external inputs into their system.
- ✓ Generally speaking, likely difficulty and resistance in all the national regulations and practice to accept the legal effects to TCA

Preliminary hypothesis (II)

The possibility of making the legal effects of TCA **vary according to the will of the parties** offers some alternatives to be further explored:

Pros:

- ✓ Signing parties to agree *of their own will* to give or not legal effects (optional)

Cons:

- Even if the will of the parties exists, it would not probably be in itself sufficient to provide national legal effects (still difficulties in some member states as the UK or IE)

This hypothesis needs further analysis :

- it would require TCAs to be *negotiated and agreed in accordance with minimum indispensable guidelines* : capacity of the parties negotiating and reaching the agreement, subjects agreed, articulation with other levels of negotiation,...
- express will would require specific disposition and premeditation (and preparation) aimed at solving any possible obstacles that could be found in the legislation and practices of the member states affected

Preliminary hypothesis (III)

The possibility of giving TCAs **the same or comparable legal effects** in Member states as company agreements concluded at national level seems more feasible at this stage

Pros:

- ✓ Coherence with national industrial relations systems
- ✓ Close relationship to the will of the parties and consequently to the convenience of developing the legal effects at national level (and controlling the unexpected effects)

Cons:

- applicability of normative provisions seems rather difficult (although it might be not essential)
- applicability would likely needs in some cases a further implementation fact (a new agreement or pact) in order to provide legal effects.

Further analysis is required at national level basically on:

- The actors capacity, particularly with regard the employees 'side : national body able to represent the workers and facilitate the legal effects of the agreement
- Procedural issues

Thank you

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