



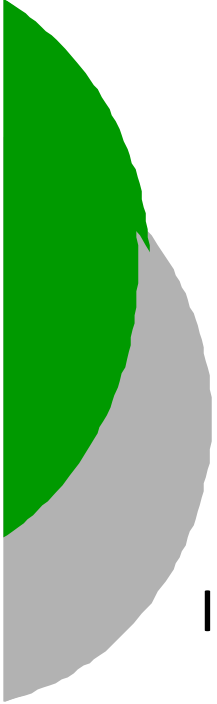
FINAL MEETING OF THE EXPERT GROUP ON
TRANSNATIONAL COMPANY AGREEMENTS

**Main results from the study on the characteristics
and legal effects of agreements between
companies and workers' representatives**

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LABOUR asociados
consultores

Background 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.

Main activities carried out

Exhaustive analysis of what a company agreement (CA) does and what makes it have legal effects, by means of specific questionnaires on a network of national experts

Identification and understanding of the relevant obstacles that exist in national legislations and practices to provide legal effects to CA  bottom-up approach

A theoretical contrast exercise: research what would be required for a selection of real TCA to achieve legal effects in every member state  top down approach

Discussion, establishment of hypotheses and drafting options

Main obstacles found for an agreement to have legal effects

1. Competences of the concluding parties in an agreement:

a) Workers' side:

The capacity to become obliged (workers' representation), related to the scope, compulsory nature of the contents agreed.

Legal competences, in accordance with legislation.

Different schemes: strict obligation that signing is carried out only by works council (AT or eventually, DE) or only trade unions (or a mixture of both).

b) Employers' side: in some MS, certain restrictions to the capacity of subsidiary companies to become obliged (IT, NL)

Not the only obstacle, but the most frequently mentioned: the agreement must be signed by workers' representatives or unions with legal competences, obliging them.

Binding nature and enforceability

The ultimate objective of providing legal effects is that the agreement is enforceable, and claimed at instances for the peaceful settlement of disputes or in court

Some variables to be taken into account:

- normative and binding, obligatory clauses
- enforceability in the case of voluntary unilateral implementation by the employer / or custom
- the path towards incorporation into individual work contracts

Singular cases: UK and Ireland



Agreement's position within the hierarchy of the collective agreement system

Rigid systems: an agreement has its own status depending on the scope intended by the signing parties and the contents agreed.

Hence, the position of a “new” agreement regulating new aspects should be clear prior to signing it so that it doesn't concur or collide, totally or partially, with other existing agreements

Subjects agreed: usual rules/principles are

- what is not prohibited is permitted: freedom

- deviation from the law is allowed if it establishes better work conditions for workers than those established by law (in melius)

Options examined



1. Uniform legal effects throughout the MS

Direct application in any MS, regardless of where subsidiaries of the multinational company are located

2. Legal effects varying according to the will of the parties

Facilitate the development of the will of the parties, i.e. Through giving formal and procedural way to achieve the objective (of the parties)

3. Enjoying the same or comparable legal effects in MS as company agreements concluded at national level.

Procedures to achieve the objective:

- representative mandate
- adhesion

1. Providing uniform legal effects: two variants

a. Uniform application

Mandatory application

- Amending national legislation (including national systems of CA), establishing a new category (TCA) and making it compulsory to have legal effect

Optional legal framework

- voluntary acceptance of a binding TCA by the signatory parties. In doing so, they are bound by it and will have legal effect.

b. Framing national collective agreements systems

- National legal systems have to be adapted in a way that domestic law provides for a uniform application of TCA, likely through giving them hierarchical superiority with respect to other national CA
- However, other legal national solutions might be found to achieve the objective

1. Providing uniform legal effects: two variants

Uniform application

Pros:

“Flat” action and directly applicable: coffee for all.

Cons:

- involves serious EU intervention
- uncertain legislative capacity of the EU on this issue and with such high intensity
- unwelcome effects (TCA that don't wish to be enforceable in all MS)

Framing national collective agreements systems

Less severe EU legal intervention than the other one, although it still notably interferes in the national legal systems of the member states

2. Varying following the will of the parties

- EU procedural legal framework dealing with formal requirements and conditions (capacity of the signatories, etc...)
- Domestic law provides the requirements for enabling a TCA to achieve legal effects (as a company agreement)
- Two possibilities:
 - mandatory legislation, covering every TCA when signed
 - optional nature: parties agree to use the procedural framework which would come into force through its incorporation into the national laws of the MS

2. Legal effects varying according to the will of the parties

Pros

A more flexible intervention since it is restricted to some formal, procedural issues.

It leaves room for a more autonomous approach following the wishes of the parties

Cons

One problem could be the issue of representativity in some MS

Signatory parties might vary the scope and content of it according to their will, thereby influencing the legal effect of the TCA in relation to domestic arrangements

3. Mechanisms to achieve the same or equivalent legal effects for TCAs than CAs

a. Mandate

It is been used to enable the representativity of the negotiators or concluding parties of TCA

However, beyond the commitment on behalf the mandate holder, there is no formal way to achieve legal effects: EU negotiators have not capacity at national level

b. Adhesion agreement

Produce in the adhering parties' company the legal effects attributed by every legal system to CA. i.e. the legal effects shall be applicable to the TCA from the moment in which it becomes valid, with the adhering parties having met the established requirements

3.b Adhesion agreement

Pros

Plurality of the legal effects conferred to TCA due to it entails the recognition of a number of enforceability regimes equivalents

Widely known concept in European legal systems

Adhesion to a existing TCA global or comprehensive; partial adhesions not being envisaged.

Cons

- Some difficulties may arise when determining the signatory body of the adhesion agreement
- What happens in case of refusal to negotiate or sign?

Suggestion on EU principles aimed at establishing an EU optional legal framework

- Create an EU reference legislation for those TCA interested in obtaining legal security and control over the legal effects of the implementation at national level.
- Flexibility approach aimed at achieving the objective pursued, meaning the combined application of different to make easier alternatives to overcome the hurdles
- Referral at national level regarding the selection of the most suitable form of overcoming obstacles
- Respecting social dialogue as autonomous phenomenon
- A reduced, non-invasive content
- Two complementary levels, EU and national, mutually interacting

Content of the EU optional framework

- Sets out a definition of what makes a TCA: subject of negotiation, parties, territorial element
- Capacity of concluding parties: rules refer to the national situation – and different schemes - in order to ensure the fulfilment of the objective that the TCA is given legal effects
- Identification of the subjects covered must be referred to the will of the parties, who must resolve in accordance with the achievement of legal effects at national level – assuming the application of the principle of the most favourable norm
- Transparency: it would be convenient to establish the deposit or registration of the TCA at EU level making it available for public access

Defining what makes a TCA

SIGNATORY/CONCLUDING PARTIES

SUBJECTS COVERED

ARTICULATION RULES

TRANSPARENCY DISSEMINATION

Most favourable norm principle

Deposit TCA in Commission

EU LEVEL

WORKERS REPS.
Diverse alternative and/or complementary forms of achieving capacity:
- National decision on how to be represented in negotiations (flexibility of forms): mandate, etc
- Ratification of concluded TCA
- Other forms

LOCAL MANAGERS:
Company law issues

NATIONAL ARTICULATION RULES

MS REQUESTING ESSENTIAL FORMAL REQUIREMENTS

Non regression clause

NATIONAL LEVEL

LEGAL EFFECTS AT NATIONAL LEVEL (AS A NATIONAL COMPANY AGREEMENT)

Thank you

Ricardo Rodriguez

rrodriguez@labour-asociados.com

LABOUR asociados
consultores