Sixth meeting of the Expert Group on transnational company agreements on 11 October 2011

Minutes

1. PRESENCE

In addition to Commission’s representatives, the sixth meeting of the Expert Group on transnational company agreements had 47 Participants: 35 permanent members, 6 permanent observers and 6 speakers and ad-hoc experts in a personal capacity:

- **20 EU and 1 EEA Governmental experts** from AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IT, LT, MT, NO, PL, RO, SE, SI, SK, UK
- **15 Social Partners' experts**: 8 experts from the employers' organisations nominated by BusinessEurope (BDA DE, BusinessEurope, CEEMET, CEEP, CEOE ES, UEAPME), 7 experts of the trade-union organisations nominated by ETUC (DGB DE, EFFAT, EMF, ETUC, Nordic In NORD, NSZZ Solidarnosc PL, UNI Europa)
- **5 Institutional experts** from the European Economic and Social Committee (EESC), the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Parliament (EP) and the International Labour Organisation (ILO)
- **6 Academics and consultants**: Kerstin Ahlberg, Teun Jaspers, Patrick Humblet and Ricardo Rodriguez (Dir. Labour Asociados), Alan Wild and Gin Ngan (Dir. Planet Labor)

The **European Commission** was represented by

- Armindo Silva, Director "Employment and Social legislation, Social dialogue" and Chairman of the Expert Group
- Sabine Boehmert, “international relations” unit, DG EMPL
- Evelyne Pichot, Carina Bjurklint, The-Huong Luong, "Labour law" unit, DG EMPL

2. OPENING

Mr Silva opened the sixth and last meeting of the Expert Group on Transnational company Agreements (TCAs). He welcomed the participants and recalled the main objectives of the meeting. Mr Silva presented the draft agenda which was adopted with the precise timing for
Member States, employers’ organisations and trade unions to present their general views. He presented the draft minutes of the fifth meeting which were approved without comments.

3. DEVELOPMENTS IN THE FIELD OF TRANSNATIONAL COMPANY AGREEMENTS

**Fresh agreements and initiatives:** Mrs Pichot presented the latest developments in the field of TCAs (*See presentation*). Since last May, new agreements have been concluded both with European and global scopes. These include the European agreements on stress at Allianz, on anticipation of change at Axa and on financial participation at EADS as well as the global agreements at Umicore on social responsibility and at Danone on Health, safety, working conditions and stress. With regard to studies and academic work on these issues, she referred to on-going research at universities of Stockholm and Amsterdam and to papers issued by ILO and by IZA for the European Parliament.

Mrs Pichot also drew the audience's attention to the Commission’s fresh activities, notably the launch of the database, the update of the webpage, the support to social partners’ projects under Budget Heading 04.03.03.03 the final report of the study on the characteristics and legal effects of company agreements and the launch of a study on out of court dispute settlement in transnational labour disputes.

**Database on transnational company agreements:** Mr Silva then invited Mr Wild to present the database on transnational company agreement worked out for the European Commission by Planet Labor/ WMP Consult/ Aritake-Wild under the direction of Planet Labor and available on the Commission’s webpage¹. Mr Wild first presented the actions undertaken to collect the texts: compile already known texts, carry out a literature research and contact social partners, companies and European works Councils. The main question here related to the characteristics of the texts to be included in the database. The definition of the Commission was used to guide the choice². International Framework Agreements were included as a subset of transnational company agreements and agreements establishing European Works councils (EWCs) were excluded. However, there were some grey areas, in particular where procedural or even substantive rules in case of restructuring were agreed in form of an annex or a part of the EWC agreement which were excluded so as to not duplicate the existing database of EWC agreements³, but the overall approach was to open the database as much as possible including all texts signed by two parties aimed at having a substantive transnational impact. Mr Wild then presented the analytical steps leading to the production of an analysis grid to file the text into searchable fields and to a profile sheets grid describing each agreement. The proper terms of the agreements were used and quoted as far as possible, so as to avoid any subjective analysis of their objectives and content. He presented the simple and advanced search possibilities and the results page format. In the test phase, feedback was received from social partners and academics. In the production phase, a user guide, a data dictionary, the full list of agreements and further information were added. Mr Wild concluded with the need to keep the database up-to-date (*See presentation*).

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² “An agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers’ organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives” SEC(2008)2155

³ [http://www.ewcdb.eu/](http://www.ewcdb.eu/)
Mr Silva thanked Mr Wild for his presentation and opened the floor for questions. The employer expert of CEEP stressed the need to regularly update the database and asked how the transnational dimension of an agreement was determined. The employer expert of CEEMET asked about the criteria to determine if a text is a TCA and stressed the need to distinguish them from the agreements establishing EWCs. The expert of Eurofound noted the distinction proposed by the Foundation between International Framework Agreements (IFAs) concluded with Global Union Federations and European Framework Agreements (EFAs) concluded with European trade unions or EWCs. The trade union expert of EMF stressed the need for the social partners to help maintain the database and the obligations deriving from it. He stated that the EMF will always send the agreements it signs to the Commission as well as to ETUI. He considered that the social partners should have their own definition of what is a TCA, which should bear the signature of trade unions. However, he agreed with the database being large and providing for information on all kinds of transnational texts. Mr Wild answered that the database included the texts of transnational scope signed by two parties representing employees and management, with the exception of agreements establishing EWCs. The transnational dimension of an agreement was determined by the transnational impact it pursues. The type and level of signatory parties, which could be EWCs or national unions, as well as enforceability issues were left aside. He also stressed the total absence of interpretation of the texts, reference being made to their own provisions. As to the update of the database, Ms Pichot indicated that the maintenance of the database is foreseen and will be subcontracted.

Results of the study on the legal effects of company agreements: Mr Silva then invited Mr Rodriguez to present the final results of the “study on the characteristics and legal effects of agreements between companies and workers’ representatives” carried out under the coordination of Labour Asociados for the European Commission. Mr Rodriguez recalled the objectives of the study, which first results were presented at the May 2011 meeting of the Expert Group: to provide a comprehensive review of the characteristics and legal effects of company agreements under national rules, identify obstacles TCAs are faced with to get legal effects in this context and explore options to overcome them. As the review of the national systems of company agreements was presented and discussed at previous meeting, Mr Rodriguez focused on the latter. He stressed the difference between legal effects and implementation or application of the agreements. As to the methodology, he referred to a bottom-up approach based on what makes a company agreement at national level and to a top-down approach of what would be required to give legal effects to TCAs based on a simulation exercise with real TCA cases. Three main obstacles found for a TCA to have legal effects. The first relates to the legal capacity and competences of the concluding parties under national laws, in particular on workers’ side where the capacity to become obliged may depend on the scope and nature of the contents agreed and be restricted to trade unions or works councils (Austria and Germany) having legal competences under national law. The second obstacle relates to the binding nature and enforceability of an agreement under national law, with the distinction between the normative and obligatory clauses and the path towards incorporation into individual labour contracts to be taken into account, UK and Ireland forming singular cases to this regard and an important aspect being the personal enforceability to all workers or its limitation to members of a signatory trade union. The third obstacle relates to the TCA’s position within the hierarchical structure of collective agreements at national level, which is particularly important in systems where each collective agreement has its own status depending on the scope and the content (Belgium for example) and as regards deviations from the law or from agreements at higher level which are restricted to deviations in melius in many national systems.
Mr Jaspers presented the study results as to the three options examined to overcome the obstacles identified for TCAs to get controlled legal effects. The first option is to provide uniform legal effects to a TCA throughout the Member States. This could be envisaged through uniform application of a TCA by either mandatory application or voluntary acceptance of the parties, involving in any case severe and likely insufficiently justified EU intervention. This could also be envisaged through the framing of national collective agreement systems to recognise the priority of TCAs over national agreements, interfering in the different national systems of industrial relations. The second option is to make the legal effects of a TCA vary according to the will of the parties, implying a procedural framework at EU level dealing with the formal requirements and changes in domestic law enabling a TCA to achieve legal effects. This would be a more flexible intervention leaving room to the autonomy of the parties, but would involve complex issues as to the representativeness of the parties and bring uncertainty in the application of the agreement in the national systems. The third option is to give TCAs the same or equivalent legal effects in Member States as company agreements concluded at national level. A mandating procedure would be followed in this case to ensure the representativeness of the negotiators and concluding parties but would not per se enable to achieve legal effects as the negotiators of a TCA have no capacity at national level. An adhesion agreement at national level would be the way to enable the TCA to get legal effects equivalent to the ones of a company agreement and well adapt to the national systems. The signatory bodies of the adhesion agreement at national level and the consequences of one of these bodies refusing to sign would however to be determined.

Mr Rodriguez concluded the presentation with the study results as to suggestions and guiding principles in establishing an EU framework for TCAs. This framework would need to be non-invasive, optional and flexible with an interaction between EU and national levels. To get TCAs recognised at national level, it would need to provide for a definition of what makes a TCA. To enable TCAs getting legal effects, it would need to include rules as to the signatory parties referring to the national situations, as to the subjects covered referring to the most favourable norm and as to the transparency and deposit requirements (See presentation).

Mr Silva thanked Mr Rodriguez and Mr Jaspers for this presentation and opened the floor for comments and questions. The employer expert of BusinessEurope expressed his recognition of the efforts provided, but also his scepticism. He noted that the legal approach tends to set the most complicated system as the benchmark, that industrial relations are not a legal discipline and that legal effects are marginal in achieving results and compliance. He thus considered that the report remains theoretical and hypothetical but that it provides for useful information on the different national systems. The employer expert of CEEP stressed the difference between charters and TCAs intended to have an impact on individual labour conditions. He noted that only the latter are concerned by legal effects, which are an issue for national law, eventually framed at European level. He considered that the option of the adhesion agreement was the most interesting but that two issues need to be addressed to avoid any discrimination: the representativeness of trade union organisations and the consequences of the absence of signature of the adhesion agreement. The trade union expert of EMF thanks for the study which he considers to well address concrete issues faced when negotiating TCAs, for example the non-regression clause. He pointed to an aspect missing in the report: the consequences of mergers or acquisitions on the effects of a TCA, the solution followed so far being that the inclusion of new companies or countries in the scope needs to be discussed. As to the mandate, he stressed that it is also an issue for the company side and that the mandating procedure needs to be very clear and compulsory. As to the options, he suggests combining the procedures for mandate and adhesion and making the adhesion agreement in coherence with national procedures (for example by the
works council in Germany and by the trade unions in France). Whereas no obligation should be made to conclude an adhesion agreement in a country, unilateral application of the provisions by management should be avoided where no agreement has been reached. The employer expert of CEEMET considered that the tender pre-supposed that a legal framework was needed to give TCAs legal effects but that no need was felt in reality. He considered that the will of the parties needs to be respected, that flexibility is required, that boundaries between collective agreements and company agreements risk to be blurred and that heavy intervention of the EU should be avoided. The governmental expert of DE noted the important differences between national systems that are described in the report and the related difficulty to find appropriate solutions for a TCA. She indicated looking at the third option with interest, considered that national parties need to give their agreement and asked about what happens if this agreement is not achieved in all MS.

Mr Rodriguez expressed his satisfaction that the study is felt as bringing useful information. He recalled that the report did not intend to provide for one solution but instead consider a wide range of approaches, which could be combined. The mandating procedure in particular should be considered as a part of any solution but would not be sufficient to provide legal effects at national level. As to the impact on individual working conditions, he indicated that eventual problems could be solved by the inclusion of a more favourable clause. As to the integration of new entities, he noted that the adhesion procedure could be used. Mr Jaspers added that the solutions depend on the option chosen and need to take into account the subject addressed in the agreement and the extent to which employees are covered by a company agreement under national rules.

Mr Silva concluded that the study helps to structure the options to be considered as to the legal effects of TCAs, an issue included in the expert group’s mandate since its establishment. He considered that the report provides for useful information as to measures and provisions existing at national level, which need to be accommodated while integrating TCAs and which had been neglected so far in the course of the expert group. He invited national experts to provide for feedback on their part of the report and thanked the authors for their work.

**ILO publication on international framework agreements:** Mr Silva then invited Mr Papadakis, from Industrial and Employment Relations department of the ILO to present the just issued ILO publication he edited on “Shaping global industrial relations: the impact of international framework agreements”[^4]. Mr Papadakis presented the book co-published with Palgrave MacMillan which will also be available online and comes from a research project undertaken by the department since 2009 with the contribution of 15 researchers, including Eurofound and ETUI. The publication focuses on the impact of IFAs on the promotion of ILO core labour standards, in particular conventions 87 and 98 on freedom of association and collective bargaining and is organised in three parts: mapping the perceptions of management and Global union Federations (GUFs), case studies on the implementation of IFAs on the ground and related initiatives. A database of IFAs is provided in Annex reviewing the parties, content with reference to ILO and other multilateral instruments as well as follow-up procedures in IFAs. Key conclusions are that IFAs do have the capacity to improve the implementation of global labour standards by that there is room for improvement, in particular through the standardisation of mandating procedures, the cross border coordination of trade unions and the involvement of local management and trade unions in the process. He referred to the interest for the signatories

of IFAs to go beyond core labour standards and address issues such as restructuring and anticipation of change. He concluded by thanking the Commission for the possibility to participate as an observer to the expert group, which has provided for a wealth of information on the emerging area of TCAs, and by looking forward to continuing such a fruitful cooperation.

Mr Silva congratulated Mr Papadakis for the publication and opened the floor for questions. The employer expert of ES asked about criteria used and difficulties faced to measure the impact of IFAs on labour relations. Mr Papadakis indicated that a workshop on methodology was organised in 2009 and that perception and data of both management and trade unions, at global and local levels were used. However, each author has used his own methodology. Objective elements related to the content of the agreement, such as the organisation of local workers, were thus used as far as possible and the ILO ensured that all opinions were reflected.

4. RESULTS AND FOLLOW-UP OF THE EXPERT GROUP

Introduction: Mr Silva opened the session dedicated to the discussion of the results of the work of the group of experts. For about 2 years, actors directly involved in TCAs have shared their experience, the Commission has fed the group with the results of studies, information and opinions were exchanged between the experts, knowledge about the phenomena was improved and a database was created which will allow for a systematic capture of TCAs in the future. A number of problems were identified, notably as to the implementation of TCAs, and possible solutions were outlined to deal with them. However, different opinions have been expressed on the solutions amongst social partners and Member States. Also the degree of priority the social partners attach to the problem is not identical. Although such differences of views have to be taken into account, the Commission believes that the time has arrived for drawing conclusions and disseminating the main results of the work by the group.

Drawing conclusions from the work of the expert group is the Commission’s task and responsibility. However, by consulting the members on draft elements for these conclusions, the Commission wants to ensure that it is interpreting correctly the members' views and come as close as possible to conclusions that can be shared. It is DG EMPL' intention to publicise such conclusions by means of a staff working document after involving other services in their discussion. Such a document should be based on a strong analytical background and adopt a holistic approach to address the problems and gather solutions. It could be seen as a contribution to the EU 2020 agenda, in particular its components on flexicurity, restructuring and smart regulation.

Ms Pichot presented the structure of the documents to be examined by the expert group. There are two components: The “draft report of the expert group”, submitted to adoption, is factual and describes the work done between 2009 and 2011. It compiles the working documents produced and minutes of meetings, and it is organised in 5 parts: the first on the expert group itself, the following relating to the activities carried out in the field of TCAs : review of developments, analysis of issues, review of research and examination of company examples.

The “draft elements for conclusions” is analytical, and presents elements for conclusions by DG EMPL. It presents an analysis of the situation of TCAs, problems and options to be considered, and it is organised in 6 parts corresponding to issues raised regarding TCAs: role and development, actors involved, form and transparency, implementation and links between levels, legal effects and disputes.
**First reactions of the members of the expert group:** Mr Silva then invited Ms Wasowska from the Polish Ministry for Labour and social policy, Ms Hornung-Draus from BusinessEurope and Mr Cilento from ETUC to express their first views on the outcome of the expert group and the draft documents provided.

Ms Wasowska indicated that only general observations could be made at this stage, as more time would have been needed for an in-depth analysis. She thanked the Commission for having arranged the meetings which gave the opportunity to analyse the situation and problems regarding TCAs and in particular to be aware of the different frameworks on company agreements existing at national level. As a conclusion, she suggested emphasising the role of transnational social dialogue and the need to combine it with different national systems of industrial relations. However, she stressed the need to be cautious about legislative options to regulate TCAs. She expressed the belief that agreements should remain voluntary and that parties to a TCA should agree themselves on what is the most appropriate to them, notably as to the scope, enforcement and legal effects. She further noted that the various options proposed by the Commission would need deeper consideration.

Ms Hornung Draus expressed a statement on behalf of BusinessEurope. She recalled that the discussion on TCAs started five years ago with the optional legal framework proposed by the Ales report. She stressed that it is difficult to follow the draft elements for conclusions proposed by DG EMPL, consisting in promotion of best practice, financial support and establishment of a reference. She considered that the draft conclusions as presented by the Commission do not take on board the analysis carried out by employers, in particular the criticism already made by DBA to the Ales report and the outcome of BusinessEurope’s work with the ILO training centre on reasons for engaging or not engaging in TCAs. As a result, she considered that there is a bias in the draft conclusions, as they do not reflect employers’ arguments against signing TCAs, the fact that a very small minority of companies have engaged in TCAs and the absence of need and wish of companies for a framework or reference. She presented a series of arguments against EU action on TCAs: the European level is not pertinent, no European legislation is needed in addition to the EWC Directive, the promotion of good practices discriminates against companies not wishing to engage in TCAs and concluding TCAs is not necessarily a good thing. She added that there is no need for financial support to TCAs, and she saw no link between TCAs and the agendas on EU2020, flexicurity and smart regulation. She stressed that producing legislation at EU level is unrealistic as it is not wanted, it would not solve any problem but instead create important ones. If the Commission’s intentions were to give direct legal effect to TCAs, this would go against the necessary respect of national traditions and create a bureaucratic monster. She considered that it is necessary to further work on the legal effects of the texts concluded as their signatories may not be aware of them; however, no EU action is required to that aim. As a result, she stated that the work in the expert group has been exhaustive, that the draft conclusions should reflect that work in a more balanced way, that no further EU action is needed and that DG EMPL and the Commission should not continue working in this area.

Mr Cilento then expressed the views of ETUC. He thanked the Commission for the good work carried out in the expert group, in particular as it enabled transfers of know how, received the valuable input of studies and achieved concrete results. He considered the draft report presenting a reasonably accurate image of this work but indicated that ETUC would have suggestions for improvements of the draft conclusions, notably as to the respective role of trade unions and EWCs. He considered that spontaneous and voluntary engagement was important and enabled to
free energies toward the conclusions of TCAs. He stressed that we are entering now in a new phase where opportunities of the past should not turn into threats for the future. Considering that TCAs are concluded in the benefit of the parties and a source of innovation, notably in the field of industrial relations, he expressed the ETUC’s wish to help TCAs develop beyond their natural growth. He considered that social partners should take responsibility in relation to actual developments and sit together with a blank paper to agree on concrete procedures and support that would be helpful to those actors wishing to engage in TCAs. He considered that the Commission should assist the social partners in this direction and continue to provide technical support on the file.

The employer expert of CEEP considered that no firm conclusions can be drawn at this stage as the discussion is not finalised and that the draft proposed is not balanced enough. He considered that the expert group was useful to learn from experience and discuss the problems. However, he stressed that the small number of companies engaged in TCAs cannot form the basis for the others, that TCAs have not been conceived to have legal effects and that it is unsure whether companies would continue signing agreements if there was a framework.

Mr Silva thanked for the views expressed and indicated that a textual revision of the draft elements for conclusions will be undertaken, in particular to provide for a more balanced text. However, he stressed that the document presented is an analytical paper that should not be mixed up with political conclusions or a consultation of the social partners. He stated that, in his opinion, there is added value for an EU action in the field of TCAs. It is Commission's duty to promote social dialogue at European level, which does not only take place at cross industry or sectoral level but include TCAs as a key component of European social dialogue at company level. What is at stake is the search for the most effective ways to support the actors engaged in that dialogue, legislation being one but not the only option to consider to that aim.

Role and development of TCAs: Mr Silva opened the afternoon session by inviting Ms Pichot to introduce the first item “the role and development of TCAs”. Ms Pichot recalled the work carried out in the expert group on this issue. A meeting was dedicated to TCAs in times of economic and social changes in May 2009, whose results are to be found in chapter II.3 of the draft report of the expert group. Updates on developments, review of research, training and exchanges of experiences as well as examination of company examples were included in all meetings and are to be found in parts II.4, IV and V of the same report. Part I of the draft elements for conclusions addresses this field under the title “recognizing the role of TCAs and contributing to their development. It recalls that TCAs, emerging since the early 2000’s as a result of European integration, HR policies, active EWCs or trade union objectives, have already gained significance as 215 texts concluded in 138 companies with over 10 million employees were already known mid 2011. TCAs present opportunities for companies and society by promoting socially agreed change, responses to the economic crisis and sustainable development. However, the complexity actors wishing to engage in TCAs have presently to face, significant legal risks and disagreements over the actors' legitimacy present challenges for the development of TCAs. As a conclusion, it is proposed to recognize the role of TCAs, address the open questions they raise and provide for an adapted support to their development.

Mr Silva opened the floor for discussion on this topic. The expert of BusinessEurope noted that the document proposed would require improvements but that this meeting was not suited as a drafting session. He indicated that BusinessEurope would give its views by writing at a later stage. The expert of CEEMET regretted the short notice to examine the documents and expressed his concerns as their contents which he considered to form a top down approach imposing
legislation against the wish of social partners and Member States. He considered that social partners should be more involved to get fair and balanced outcomes for the group and asked the Commission for its plans as to next steps and deadlines. Mr Silva suggested giving experts ten days for written comments on the content of the documents and that amended documents would be sent to the members for a new examination. As to the approach of the Commission, Mr Silva stressed that a number of options could be envisaged to answer the open questions, but not all necessarily would involve new legislation.

The expert of EMF stressed that he wished a follow-up to the work on TCAs done in the expert group. As to the draft conclusions, he considered that the distinction between European agreements and IFAs should be made clearer and conclusions limited to European agreements. The trade union expert of PL stressed the factual changes in TCAs since 2006 should be recognized, that a discussion on this subject cannot be avoided and that the same opposition of social partners to Commission’s initiatives in this area should not be repeated. He notably referred to the growing number and importance of TCAs, the positive impact they have on social dialogue in central European Member states such as Poland and the need and right for employees to engage in pan-European agreements. He considered that there is a need for social partners to discuss further about the issues raised by TCAs, in particular as to negotiating parties and legal effects and suggested that the topic forms part of the social partners’ work programme.

The employer expert of ES and of CEEP suggested the statements of the social partners to be annexed to the document and the conclusions to be more balanced and limited to European agreements. Mr Silva answered that there is no problem to accept suggestions and added that the conclusions should clearly indicate that they limit themselves to European agreements. They should better reflect the different views and the options to be considered. He recalled however that the expert group is a body established by the Commission, which involves 27 Member States and the social partners, not a structure of the European social dialogue, and that the conclusions commit the Commission. Whereas the draft conclusions are therefore not a document for social partners’ statements, the reviewed text should enable better integrating the different views of the experts.

The expert of ETUC expressed the willingness of ETUC to contribute to the content of the draft conclusions so as to better reflect the work done. He considered that the work in the expert group allowed to learn a lot and also showed that there are a number of areas on which a discussion between social partners could improve the situation. He expressed the wish to avoid freezing or opposing positions at this stage to leave it open for dialogue.

The expert of DE considered that the analysis in the draft conclusions is correct and welcomed the integration of the national perspectives by the Commission. She noted that the options are too vague at this stage for positions to be taken and asked whether the Commission has already defined a direction for future action.

The expert of BusinessEurope expressed the acceptance of employers to renew the discussion on what to do on TCAs but stressed that employers do not see a problem to be solved, and do not wish to promote TCAs against the wish of companies. He indicated his agreement with the procedure proposed by Mr Silva.

Mr Silva thanked for the interventions and recalled that the aim is to produce an analytical document to describe the phenomenon, identify problems and list options in terms that could reach the largest possible acceptance.
**Actors involved in TCAs:** Ms Pichot introduced the second item “actors involved in TCAs” by recalling the work carried out in the expert group on this issue. A meeting was dedicated to actors involved in TCAs in May 2009, whose results are to be found in chapter III.5 of the draft report of the expert group. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part II of the draft elements for conclusions addresses this field under the title “supporting the actors in TCAs and clarifying their role”. It recalls that different categories of actors are involved in TCAs: different levels of management on company side and EWCs, European, international and national trade union organisations on employee side. The problem identified is that these actors face problems of legitimacy and capacity which hamper the conclusion and implementation of TCAs and produce interferences with national systems of industrial relations. The options considered include the provision of a reference, actions to ensure the legitimacy and capacity of the negotiating and signatory parties as well as financial support to the actors. Mr Silva opened the floor for discussion on this topic.

The expert of Eurofound referred to the research carried out at the Foundation on the impact of national industrial relations systems on TCAs. Clusters of TCAs could be defined (DE, FR, NL, Nordic) and it was observed that consensual industrial relations at national level seem to favour TCAs in companies of that country. The expert of EMF noted that IFAs should not be referred to in this part of the draft conclusions and that the question of legitimacy is also an issue for management side. He indicated that he could live with the options presented, even if some of them are not the ones he would support. The expert of CEEP repeated that it is too early for conclusions and asked about the intentions of the Commission. The employer expert of ES agreed that the document should not support a specific proposal and that the objective was to get the analytical information needed to assess the situation and to consider all options even if there is not a full consensus on them.

Mr Silva recalled that that the objective is to list options independently of future choices between them, including the status quo, where company actors are able to find solutions themselves. Future choices will need the involvement of other Commission's services and the consultation of social partners.

**Form and transparency in TCAs:** Ms Pichot introduced the third item “form and transparency in TCAs”. She recalled the work carried out in the expert group on this issue. A meeting was dedicated to form and transparency in TCAs as well as to the discussion on the future database on TCAs in May 2010, whose results are to be found in chapter III.7 of the draft report of the expert group. The establishment of the database was further discussed at following meetings. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part III of the draft elements for conclusions addresses this field under the title “promoting transparency in TCAs”. It recalls that there is a variety in the form adopted by transnational texts and in their dissemination. The problem identified is the lack of clarity and respect of the rights of the affected persons. The options considered include actions to support best practices as to the title and the drafting of the agreements, to ensure information of the affected persons and to favour public disclosure of the texts, notably by maintaining the database on TCAs. Mr Silva opened the floor for discussion on this topic.

The expert of EFFAT expressed his wish that European social partners provided guidance and support on practical issues such as the ones highlighted in this chapter. He considered that it would be an enormous shame if the work done in the expert group and the monitoring were lost because cross industry social partners would not go forward. He expressed hope that we are at an
early stage of a dynamic process and that European federations and competent employers' organisations will take over on this issue.

Mr Silva stressed that the kind of problems highlighted on this topic can be addressed in a way that does not require legislative support. He agreed that joint work of social partners on guidance and practical support tools to be used on a voluntary basis are likely to produce positive results.

**Implementation of TCAs and links between levels:** Ms Pichot introduced the fourth item “implementation and links between the levels”. She recalled the work carried out in the expert group on this issue. A meeting was dedicated to implementation and disputes in TCAs in November 2009 and another to links between levels, with the discussion of study results, in October 2010, whose outcomes are to be found in chapter III.6 and III.8 of the draft report of the expert group respectively. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part IV of the draft elements for conclusions addresses this field under the title “enhancing the implementation of TCAs and the links with other levels of social dialogue”. It recalls the diversity in implementing practices and the fact that initiatives to link TCAs to other levels of social dialogue (European, national,...) exist but are not systematic nor integrated. Problems are identified in the implementation of TCAs and in the incoherence or conflicts between different outcomes of social dialogue. The options considered include support to procedures and a reference for the implementation of TCAs and actions aiming at promoting coherence between levels of social dialogue. No comments were expressed on this particular issue.

**Legal effects of TCAs:** Ms Pichot introduced the fifth item "legal effects of TCAs". She recalled the work carried out in the expert group on this issue. A meeting was dedicated to the legal effects of TCAs in May 2011, with the discussion of study results in May and October 2011, whose outcomes are to be found in chapter III.9 of the draft report of the expert group. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part V of the draft elements for conclusions addresses this field under the title “Improving legal certainty in the effects of TCAs”. It recalls that the present legal status of TCAs is unclear and varies across Member States. The legal risks associated with TCAs and the absence of correspondence between wished and actual legal effects of TCAs are identified as problems. The options considered include promoting the observance of rules where a TCA is intended to produce legal effects and working on a mechanism aiming to give controlled legal effects to TCAs where parties so wish. No comments were expressed on this particular issue.

**Disputes in TCAs:** Ms Pichot introduced the sixth item “disputes in TCAs". She recalled the work carried out in the expert group on this issue. A meeting was dedicated to implementation and disputes relating to TCAs in November 2009, with the discussion of study results in November 2009 and May 2010, whose outcomes are to be found in chapter III.6 of the draft report of the expert group. Examination of company examples was included in all meetings and is to be found in part V of the same report. Part VI of the draft elements for conclusions addresses this field under the title “Enable preventing and settling disputes". It recalls that few mechanisms are in place to handle disputes on TCAs. It identifies as a problem the lack of awareness, the complexity and difficulties to settle disputes in or out of court. The options considered include information about the content of international private law and data protection rules, actions to prevent disputes and to favour out of court dispute settlement.

Mr Silva opened the floor for discussion on this topic. The expert of EMF expressed his interest for first level dispute settlement and external mediation and asked for clarification as to a
reference to applicable law and competent jurisdiction in the agreement. Ms Pichot clarified that the situation to this regards differ between the obligatory and the normative parts of the agreement. The expert of CEEP considered that a collective agreement could not be brought before a European court.

**Follow-up of the meeting:** Mr Silva opened the last part of the meeting dedicated to concluding the work of the expert group. He recalled that the options considered have different addressees: the actors at company level, the Commission as facilitator, source of information and support, the Commission as initiator of law and the European social partners. The options also envisage different instruments. These different addressees and instruments should be better highlighted in the revised document. The baseline scenario (status quo) should also be added to the options and the financial support left aside. Mr Silva expressed his confidence that, with the observations collected at the meeting and further written comments, the new document should better reflect the diversity of views.

Mr Silva concluded by thanking all participants for their contribution to the work of the expert group. He considered that, with the help of actors on the ground, academics, Eurofound, ILO, social partners and Member States, it was possible to go a long way to understand the phenomenon, analyse the problems and explore possible solutions regarding TCAs.