




# „European Works Councils as a platform of support for transnational company agreements (TCAs)"

**Ed.**

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## Introduction

We are presenting a report summarising a research project titled "European Works Councils as a platform of support for transnational company agreements (TCAs)"[1]. TCAs are the focus of our attention in this study. TCAs are specific collective agreements – a specific kind of framework arrangements. Their objective is to establish autonomous (bilateral) regulation of industrial (employment) relations in the age of globalisation and increasingly important role of large multinational corporations. Transnational framework agreements are referred to by several names, usually as transnational company agreements (TCA), European framework agreements (EFA), international framework agreements (IFA) and global framework agreements (GFA). Although this name variation is of more than cosmetic character, it does not involve significant differences in the content of the corresponding types of agreements but relates above all to the territorial scope of such agreements.

According to a special TCA database maintained by the European Commission (EC)[2] there were 282 such agreements in 2015. However, the database was suspended over a year ago, which is why more recent data on the rate of TCA negotiation and conclusion are not available.

The objective of the project was to prepare EWC members from selected industries for tasks enabling efficient creation of favourable conditions in international corporations for:

- initiating negotiations on TCAs
- monitoring the implementation of existing TCAs

and improving the knowledge of more efficient EWC functioning, taking into account the assumptions of the recast Directive on EWCs and the Directives related to employee information, consultation and involvement.

The specific objectives of the project were as follows:

- Broadening the knowledge of TCAs as a new tool of European social dialogue among the members of EWC participating in the project and strengthening their transnational cooperation to actively promote TCAs.
- Providing an expert opinion with a view to analysing whether it is necessary to establish a legal framework for TCAs and procedures of information exchange between EWCs within each industry and for the transfer of information from the European to the national level and vice versa.

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[2] The database can be found at: http://ec.europa.eu/social/main.jsp?catId=978

- Dissemination and promotion of information on TCAs as a tool of social dialogue in European industrial relations among the social partners and other stakeholders from EU countries participating in the project.

Empirical studies into the functioning of TCA in real life were carried out in the framework of the project. 13 case studies were completed in the countries involved in project activities (Croatia, Poland, Romania, United Kingdom, Italy).

This report consists of eleven chapters written by Jan Czarzasty (Chapters 1, 4, 9, 10, 11), Barbara Surdykowska (Chapters 2, 3, 5, 6, 7) and Łukasz Pisarczyk (Chapter 8). Chapter 1 presents a brief overview of the current status and prospects of multinational corporations all over the world. Chapter 2 examines the legal status of transnational corporations. Chapter 3 presents a short history and present directions of development of European Works Councils (EWCs). Chapter 4 contains a short analysis of interdependencies and mutual relationships between European Works Councils (EWCs) and the national systems of industrial relations. Chapter 5 touches upon the activities of trade unions in the framework of European Works Councils. In Chapter 6 the author looks at the problem of the position of transnational company agreements (TCA) in the European social dialogue. Chapter 7 contains an analysis of transnational company agreements (TCA) as an instrument strengthening the mechanism of collective bargaining in Europe. Chapter 8 aims to answer the question whether transnational company agreements (TCA) need a legal framework. Chapter 9 presents a description and analysis of the case studies of transnational company agreements (TCAs) collected by the project partners in the course of empirical research. Chapter 10 contains drafts of two communication procedures intended for the social partners at different levels. Chapter 11 contains a summary and conclusions.

## Chapter 1.
## Multinational corporations in Europe: current state and prospects

When trying to describe the current position of transnational companies and then estimating their prospects for the coming years, one should focus on *how important* the position of great multinational companies is in the global economy, in the individual regions of the global Triad (above all in Europe) and at the national level. A number of important publications have been released in the current decade, indicating the profound and multi-faceted connections between the largest corporations and demonstrating that they constitute a system of global ownership network (Vitali, Glattfelder, Battiston, 2011, 2014) encircling and controlling the world economy.

**Tab.1 Global trade exchange of goods and commercial services, EUR billion., as of 2013**

| Country or global region | Imports | Exports |
|---|---|---|
| EU | 2188 | 2415 |
| USA | 2079 | 1688 |
| China | 1716 | 1817 |
| Japan | 750 | 648 |
| Korea | 468 | 506 |

**Source:** http://ec.europa.eu/trade/policy/eu-position-in-world-trade/, based on Eurostat and WTO data

First of all, it is necessary to define the subject of this chapter. OECD defines multinational enterprises, (MNE) as enterprises that "make foreign direct investments, are the owners of or control assets in two or more countries".

According to UNCTAD:

*A transnational corporation (TNC) is generally regarded as an enterprise comprising entities in more than one country which operate under a system of decision-making that permits coherent policies and a common strategy. The entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the others and, in particular, to share knowledge, resources and responsibilities with the others.*

According to UNCTAD, the ownership relationships within a transnational corporation can be described as follows:

*Transnational corporations (TNCs) are incorporated or unincorporated enterprises consisting of a parent enterprise and its foreign affiliates. A parent enterprise is defined as an enterprise that controls assets of other entities in*

*countries other than its home country, usually by owning a certain equity capital stake.*

The importance of transnational corporations is primarily due to their share in the trade on global markets: 500 largest corporations account for 70% of world trade – a share which has been growing steadily over the last two decades – whereas 40% of the global added value is generated by just 147 corporations (Czarzasty 2014). Transnational corporations are the main actors of the international trade in goods and services, as well as the entities responsible for direct foreign investments (FDI).

There are many widely known and cited classifications of the largest companies in the world. Among the most important ones is the list of the world's largest non-financial companies according to share of foreign assets in their overall assets. That ranking, prepared annually by UNCTAD (UN agency specializing economic development research and promotion), uses the transnationality index (TNI) to represent the level of internationalisation of each enterprise[3]. Although best used in combination with other data on the involvement of business on an international scale (e.g. the number of countries where an undertaking has operations), TNI is a measure that clearly describes level of importance of international markets for the company. Among the top 50 enterprises included in that list 60% (30) are companies from EU Member States (25, including 6 each from Germany and the UK, 5 from France, 2 each from Spain and Italy, 1 each from Belgium, the Netherlands, Ireland and Luxembourg) or the European Economic Area (EEA, 5, of which 4 from Switzerland and 1 from Norway).

If we consider the global prospects of transnational corporations in the coming years, it is worth pointing out the clear turnaround in the discussions on the role of giant companies in the global economy and, in particular, the relationship between corporations and governments after the outbreak of the global financial crisis in 2008 (quickly mutating into a series of economic crises of various nature and range). On the one hand, it became apparent that corporations under threat (primarily representing the financial sector) have no qualms about accepting public aid, and of the other – that governments consider the risk (economic, political and social) arising from possible bankruptcy of big business to be too high to remain passive ("too big to fall"). State interventions using taxpayers' money were regarded with mixed feelings and described in terms of "private profits and f public losses", however without causing social resistance strong enough to block them or force the government to withdraw from them. Another aspect of the interdependence between the state and big capital manifested itself after 2008 in the companies' decisions to relocate or transfer operations within their value

[3] *Transnationality Index* (TNI) is calculated as the average of the three following indices: foreign assets to total assets, share of foreign sales in total sales and employment abroad to total employment.

chains made under the influence of the governments of the individual states. With a view to mitigating the effects of recession (especially on national labour markets), central boards were sometimes persuaded by the government of a corporation's home country (usually using financial arguments) to make choices favourable to its subsidiaries or establishments operating in that country, at the expense of subsidiaries or establishments operating in other countries. One example was Fiat's decision in 2010 to manufacture the new Panda model in the Pomigliano d'Arco facility near Naples, although the previous generation of this model (best-selling Fiat model at that time) had been made in the Polish factory in Tychy (cf. Czarzasty 2013).

The interdependence between transnational corporations and state extends to another plane: relatively many of them are enterprises with a greater or smaller state equity . Although the last decades were marked by a decreasing total number of state-owned enterprises in the world, governments were careful to maintain control in certain (strategic) sectors, such as natural resources or telecommunications, and companies with such ownership structure were successfully expanding into foreign markets (Musacchio, Lazzarini 2014). According to a report published by Global Watch, the state had a controlling interest in 10% (204) of the 2000 largest enterprises in the world, with sales equivalent to 6% of global GDP (Corporate Clout 2013: 12). Although many of these state-owned transnational corporations come from countries where the predominant capitalism model is far from liberal (China, other important East Asian economies, Russia), even the UNCTAD ranking includes companies with (sometimes controlling) state equity, also from the EU (Airbus, Deutsche Telekom, EDF, Enel, Engie – until recently known as GDF Suez, Eni) and EEA (Statoil).

The relations between states and large companies are now the subject of critical scrutiny, which leads to a revaluation of opinions mechanically reproduced by the past decades in the neo-liberal rhetoric: the role of the state in shaping innovations stimulating economic growth is now stressed, which is often accompanied by a sad reflection on "socialisation of risk with privatisation of profit" (Mazzucato 2013).

Regulation of employment relations in transnational corporations is a complex process, mainly because of the diffusion of responsibility arising from the dispersed ownership structure, multi-level intersection of separate, sometimes obviously conflicting interests (above all, the conflict between the shareholder and stakeholder logic) and finally insufficient mobilisation potential (i.e. veto power) on the part of the labour. Traditional forms of employee representation (union and non-union) have similar weaknesses as the state , since in both cases they are tied to specific territories, unlike the mobile capital, which nevertheless (as mentioned above) has or may sometimes have a "nationality". This is not at all in contradiction with the existence of the alleged 'transnational capitalist class' (Sklair 2012), whose collective interest

is in part and occasionally aligned with, and after in part and regularly contradictory to the interests of the collective actors whose identity is defined by the framework of the nation state. As a result of the 2008+ crises the ties between large corporations and the state were strengthened, although not permanently. From today's perspective, it seems that, on the part of capital, that step was part of an opportunistic tactic, which was relatively quickly abandoned.

Capitalism has many facets, as explained by the so-called varieties of capitalism (VoC) school. For our analyses, it is important to point out that the position of transnational corporations in coordinated market economy (CME) countries is different from that in the states with a liberal market economy (LME). The reason is that each of the two aforementioned types of market economy is defined by a different institutional logic (Hall and Soskice 2001).

For the capital–labour relations, the employee position is of primary importance, which is determined by the way of defining interest – individual or collective – characteristic of a particular type of economy. Liberal economies are characterised by the predominance of individualistic orientation, resulting in the decentralisation of collective bargaining, fragmentation of industrial relations and a stronger commodification. In coordinated economies there is a marked community orientation, facilitating aggregation of interests and thereby centralisation of collective bargaining, consolidation of industrial relations and labour decommodification. It should be noted that these two types of market economies are also different in terms of the key sources of capital. Liberal economies are dominated by capital that can be obtained quickly and easily (from stock exchange) – hence the significant role of financial markets and predominance of the logic of a shareholder, whose interest should be secured by offering a quick, short-term return on investment at the cost of long-term planning and interests of other actors, including workers. By contrast, the capital in coordinated economies is mainly obtained from banks, including cooperative banks or municipal financial institutions; it can also be secured by strategic alliances of companies. Although unspectacular in the short term, such investments promise a long-term return. This makes it possible to take into account the interests of a wide spectrum of stakeholders (hence the expression "stakeholder logic"), including employees. The stakeholder logic reinforces the companies' tendency to pursue human resource management (HRM) oriented towards the human capital model (rather than the 'hire and fire'model). The best proof of the coordinated character of the German economy is the agreement made in the automotive industry, which mitigated the effects of the 2009 downturn.[4]

[4] Under that agreement, employers refrained from layoffs, employees approved the reduced working time (*Kurzarbeit*), whereas the state stimulated domestic demand by offering bonuses for scrapping old (9 or more years) cars to replace them with new ones.

Beside the nation state–corporations relations, one should also take into account the relations between corporations and supranational structures, in particular the European Union. Brussels is the capital with the highest number of lobbyists, which often leads to a hasty conclusion that the process of establishment and enforcement of Community law has been subordinated to the big capital in the form of transnational corporations. However, this is not quite confirmed by the facts: we are witnessing activities of the EU authorities (especially the European Commission) targeting corporate practices that are harmful to public interest and involve the abuse of the companies' dominant position in the market (e.g. roaming charges, Google) or tax manipulations (e.g. Apple). Whether such actions and their directions are effective is disputable, but their presence itself contradicts the opinion of the EU's absolute indolence towards global corporations.

## Chapter 2.
## Transnational corporations in international law

### 2.1 The definition problem

There is considerable disagreement between researchers as to the very definition of transnational corporations. In 1960 David E. Liliethal defined transnational corporations as corporations that have their home in one country but operate and live under the laws and customs of other countries (Karski 2009: 330). The definition of transnational corporations according to UNCTAD is provided in Chapter 1. The Tripartite ILO Declaration emphasizes that transnational corporations have or control the production, distribution, services or other facilities outside their domicile country. The OECD Guidelines for Multinational Enterprises indicate that "they may be private or state ownership, or mixed"

This could be jokingly summarised by recalling the famous phrase "I know it when I see it", which originally related to pornography and was formulated by a US Supreme Court judge Potter Stewart in 1964. By the same token, we could assume that only by examining a specific undertaking we could determine whether it is a transnational corporation. It seems appropriate to assume a broad definition stating that a transnational corporation is an enterprise in any legal form which owns, controls or manages operations, alone or in coordination with other companies, in two or more countries (Deva 2004: 6).

### 2.2 Transnational Corporations as subjects of international law

Before presenting the discussion concerning recognition of transnational corporations as subjects of international law, it is necessary to comment briefly on international law subjects other than states. In contemporary doctrine of international law the concept of non-state actors gained a huge popularity (Perkowski 2012). This concept reflects the current stage of development of the theory related to subjects of international law[5]. As indicated in literature, international law was opened to non-state subjects by the breakthrough advisory opinion of the International Court of Justice on the *Reparation*[6] case. This way, the concept of governmental international organisations was formulated. Meanwhile, at the forum of international organisations, individuals and groups of people were seeking self-determination, equality and human rights, which gradually led to the ingress of individuals into the sphere of international

[5] Cf. (Mielnik, 2008) and (Perkowski, 2007: 454 et seq.).
[6] Advisory opinion on compensation for damages incurred in the service of the United Nations, ICJ report 1949, p. 187, 188. As indicated by M. Perkowski, authors of that opinion recognised the United Nations as international law subject *per se*. However, it should be kept in mind that the recognition of the UN as a subject of international law although was idiopathic category classification within the identity of international law, it was based in principle on the state core, as states granted part of their international legal capacity to international organizations, while simultaneously transferring to them the powers that could be more efficiently exercised internationally (Perkowski, 2008).

law. Following this process, natural persons were granted access to international judicial and quasi-judicial institutions (e.g. the European Court of Human Rights), thereby gaining an important attribute of international legal capacity in the form of international capacity to be party to legal proceedings. After World War II the issue of individual responsibility of persons was brought to public attention (e.g. the Nuremberg trials). After a period of stagnation, in the aftermath of the Balkan Wars in the 1990s. and the crimes in Rwanda and Sierra Leone, subsequent *ad hoc* tribunals were established and ultimately – the International Criminal Court[7]. These examples show that parties other than states (government international organizations, individuals) can be international law subjects, so it is now possible to comment on the recognition (or rather lack thereof) of transnational corporations as subjects of international law.

The Polish doctrine of international law recognises the issue of corporations as subjects of international law. Wojciech Goralczyk and Stefan Sawicki emphasise that, in principle, legal persons do not have a *locus stendi* in international law and do not exercise the rights and obligations arising directly from that right. In recent years, there has been a tendency to admit legal persons to the fields of international cooperation governed directly by international law (Goralczyk, Sawicki 2009: 148–149). We could mention, for example, the Operating Agreement on the International Maritime Satellite Organisation, whose signatories may be states and public or private law bodies designated by the states. Another example is the statute of the International Railway Congress Association, parties to whom are states, railway boards and railway organisations. Recently, attempts have been made to assign certain international public companies public and corporate and transnational corporations as international law subjects. There are also attempts to establish the principles applicable to such entities operating on the international arena (Pienkos 2004: 63).

Recognition of corporations as international law subjects would carry far-reaching consequences, primarily in terms of legal responsibility and thus also responsibility for violation of human rights. Hence, it is assumed that corporations should be treated as subjects of national law, although exercising certain rights and obligations under international law (Oleszczuk 2013: 27).

To make matters even more complicated, it may be pointed out that while corporations are not treated as subjects of international law, they are increasingly enjoying the protection provided by international human rights protection standards. It is not necessary to dwell on the subject, but we can refer in detail to three "series" of controversial judgements of the European Court of Human Rights, where corporations were granted protection of the business sphere on

[7] Cf. (Mik, 2003: 68 et seq.).

the basis of the standards concerning their "home"; protection of fully commercial expression on the basis of the regulations on freedom of expression and the right to financial compensation for intangible losses (Emberland 2006). The earliest of the first group of judgements concerns the case *Société Colas Est Sa and Others vs France* (2002), where protection of offices and other facilities used by the enterprise was guaranteed on the basis of Article 8 of the Convention[8]. The Court its judgement emphasised the nature of the Convention as a "living document". One of the second group of judgements, passed in the case *Autronic AG vs Switzerland* (1990), relates to the protection of purely commercial expression under Article 10 of the Convention[9]. In the third group, one of the judgements was delivered in the case *Comingersoll SA vs Portugal* (2001) where the Portuguese company was seeking compensation for violation of the principle laid down in Article 6 paragraph 1 (the right to a public hearing within reasonable time). The Portuguese government argued that compensation in such a situation should be awarded for stress or negative emotions, which by the nature of things can be experienced by an individual rather than a legal person. The Court dismissed that argument, pointing to the "tension" and inconvenience experienced by the management or shareholders of the enterprise as a result of the prolonged trial. There is a visible asymmetry, because a corporation can directly "benefit" from the provisions of an international agreement without being an international law subject.

In summary, the prevailing view in international law doctrine is that international corporations do not have direct obligations arising from international law (Cassese 1986: 103; de Brabandere 2010: 66 i 80; Crawford 2012: 122). There are not many voices pointing to their personality in international law, based on the the *de facto the* essential role played by corporations (Adedayo Ijalaye 1978) or from the progressive privatisation of international law manifesting in investment laws or the standards concerning arbitration (Zambrana Téva 2012).

In view of the widely recognised "governance gap", since the 1970s some international organizations – ILO, OECD and UN – have sought to create a binding obligations in international law that would apply to corporations. None of these attempts has been fully successful. The following documents are briefly discussed further on: ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, OECD Guidelines for Multinational Enterprises, United Nations activities in the form of Global Compact and the Guiding Principles on Business and Human Rights "Protect, Respect and Remedy" (so-called Ruggie guidelines).

[8] Article 8 paragraph 1: Everyone has the right to respect for his private and family life, his home and his correspondence.
[9] Article 10 paragraph 1: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (...).

All these documents, briefly discussed below, are intended to be non-binding, voluntary commitments. Some authors believe that such soft-law mechanisms are appropriate for the current stage of development and consider them as "preliminaries" to measures imposing binding obligations (Walczak 2010: 643). However, other voice the opinion that such regulations are worse than no regulations (Chesterman 2011: 324).

### 2.3 ILO activities aimed at transnational corporations

The ILO Tripartite Declaration, created in 1977 (and amended in 2000 and 2006) (Cernic 2009) constitutes a set of non-binding principles and guidelines covering such areas as employment promotion, equal opportunities and treatment, employment security, salaries, benefits and working conditions, the minimum employment age, health and safety at work, freedom of association, right to organise, collective bargaining, consultation, complaints hearing and collective dispute resolution. Paragraph 10 thereof provides that multinational companies should take into account the objectives pursued by the states in which they operate. Their activities should be consistent with the development priorities and social aims and structure of the country in which they operate. For this purpose, consultations should be held between multinational enterprises, the government and, wherever appropriate, the national employers' and workers' organisations concerned. Paragraph 46 states that where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organise and bargain collectively. Pursuant to paragraph 53, multinational enterprises, in the context of bona fide negotiations with the workers' representatives, should not threaten to utilise a capacity to transfer the operation to another country. As you can see, the Declaration is addressed both to member states and corporations. The Declaration is not binding, neither does it contain procedures for submission of complaints – it only provides for the possibility to apply to the International Labour Office for interpretation of the Declaration provisions[10].

### 2.4 OECD activities aimed at transnational corporations

One of the earliest instruments relating to corporate social responsibility consists of the .Guidelines for Multinational Enterprises adopted by the Organization for Economic Cooperation and Development (OECD). The guidelines, adopted in 1976 and since then revised several times, formally constitute part of the Declaration on International Investment and Multinational Enterprises of 25 May 2011. The document consists of two parts – the first

[10] Procedure for the examination of disputes arising from the application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy by the interpretation of its provisions, adopted by the Administrative Council of the ILO in March 1986.

including voluntary rules and practices and the second describing the mechanism of implementation of the Guidelines. The mechanism is based on national contact points, the aim of which is to promote and ensure compliance with the guidelines. The national contact points resolve the complaints concerning the infringement of the Guidelines by corporations. In Poland the national contact point at Polska Agencja Informacji i Inwestycji Zagranicznych S.A. has been operating since 2001.

### 2.5 UN activities aimed at transnational corporations *Global Compact*

The UN Global Compact was presented by the then UN Secretary General Kofi Annan in 1999. It is currently considered the greatest framework of business involvement in the goals of sustainable development. To date, it has been joined by more than 10,000 entities from 145 countries. The Global Compact contains 10 principles relating to 4 areas of activity: human rights, protection of the environment, protection of labour rights, fighting corruption.

## Chapter 3.
## European Works Councils: regulations

Directive 94/45 was adopted by the European Council over 20 years ago. That decision was a pioneering attempt to include employees in the globalisation control process and as such was accompanied by many doubts. These uncertainties have not been eliminate to date. What is more, new ones have emerged. Differentiated in their functions and experiencing constant problems with the identification of their own tasks in relation to the company and those which they represent, European Works Councils are being extensively discussed by trade unions, researchers in the field of social sciences or the boards of transnational corporations. The latter have indeed begun to come to terms with the fact there is a new partner in the corporate governance mechanism.

### 3.1 The reasons behind the adoption of the EWC Directive

The draft directive intended to govern the rights of employees of European corporation branches in relation to their central management appeared in 1983, but the Directive was not adopted until 1994, and initially it did not cover the UK.

The characteristic feature of that document was its flexible approach. It involved establishing boundary conditions to achieve its intended purpose: strengthening the right to information and consultation within undertakings of Europe-wide operations. To achieve that purpose, it was possible to create EWCs, but not necessarily – other solutions also were allowed. The Directive organised, to the extent necessary, the logistics of activities, especially important considering the need to align the national systems of employee representation, sometimes widely different. Details of the solutions adopted, also substantive ones, were to be agreed between the parties concerned. To avoid a situation where employers would feel too confident, a security mechanism was created in the form of a supplementary legislation that was to be applied where no agreement could be reached. The Directive also admitted the possibility of refraining from EWC creation provided that employers and employees jointly consider the introduction of European dialogue mechanisms unnecessary. It was a pioneering solution, opening the way for subsequent Community regulations in the social domain – adoption of framework directives with particular emphasis on freedom in the formulation of definitive solutions. However, this turned out to be a double-edged sword. That approach was a source of serious confusion in the application of the EWC Directive.

At this point, it is worth mentioning a solution that was warmly welcomed by employers. Article 13 of the Directive provided for an incentive to anyone wishing to enhance

the quality of dialogue before the entry into force of its provisions. For two years, it was possible to negotiate agreements that did not have to comply with the provisions of the Directive and yet remained valid after 22 September 1996. Some transnational corporations jumped at the opportunity, initiating the negotiation process. In that period, nearly 400 EWCs were created under Article 13 of the Directive. It is worth pointing out that trade unions also readily entered this type of negotiations – they were conducted without unnecessary formalities, without the need to appoint a special negotiating body or keeping to the rigid rules that became obligatory in the later period. As to the quality of this type of agreements, opinions are divided. EWCs of various quality were developed in that period – there were councils "hand-made" by the employers and ones of above-average quality in their relations with concern managements.

### 3.2 Recast Directive

Directive 94/45/EC provided that after 5 years it would be revised and any amendments necessary would be made. However, it turned out to be more difficult than expected. Organisations of EU employers spared no effort to delay any changes. The breakthrough, which did not occur until December 2008, was largely due to the pressure from trade unions and the approach of the French presidency, which attached great importance to a positive result of the debate on the future of EWCs. As a result, the previous directive was recast into Directive 2009/38/EC.

The recast Directive explicitly imposes on EWC members the obligation to forward the information acquired to employees. There are also important provisions enhancing the role of trade federations by expressly indicating the possibility of participation of their representatives in the process of EWC negotiating[11] and the obligation to inform the federation of the commencement of EWC formation process[12].

### 3.3 The present situation of EWCs – overview

The research and monitoring carried out by the European Trade Union Institute make it possible to obtain a relatively accurate picture of the current functioning of EWCs[13].

[11] Article 5 paragraph 4 – for the purpose of negotiations, a special negotiating body may submit a request for the appointment of experts of its choice, who may be the representatives of competent and recognized trade unions operating at Community level. These experts and representatives of trade unions may, at the request of the special negotiating body, participate in the negotiation meetings in a consultative capacity.

[12] Article 5 paragraph 2 item c – central and local management as well as the appropriate European organizations of workers and employers shall be informed of the composition of the special negotiating body and of the start of the negotiations.

[13] Further information on the basis of (de Spiegelaere & Jagodzinski, 2016)

Currently there are about 1071 active EWCs. For the past 5 years, an average of 25 EWCs were established per year. Clearly, the growth of new EWCs has slowed down. Looking at the available estimates of the number of transnational corporations (note that the data are highly indicative and the most recent date from 2005), we can see that EWCs may potentially be established in 2200 entities. With the adoption of the Recast Directive on EWCs (2009/38/EC) in 2009 the opportunity was created to conclude voluntary agreements in 2009–2011 as in the period 1994–96 but this time no dramatic increase in the number of EWCs was observed. 240 company EWCs ceased to exist, the majority of which (74%) resulted from a change in the structure of the company (mergers, acquisitions etc.). 39% of EWCs are established on the basis of Article 13 of the Directive and therefore are not fully covered by its provisions (the Directive does not constitute a minimum standard for these EWCs).

The data show that at least 35% of the operating EWCs have renegotiated their agreements at least once. The majority of the renegotiated agreements consist of the agreements made "before the Directive", as they are the oldest. However, about half of EWCs of this type have not yet renegotiated their agreements, which seems highly questionable in view of the time that elapsed from the time of their conclusion.

The distribution of EWCs by sector is as follows:

- 373 – metal industry
- 239 – services
- 190 – chemical industry
- 95 – food industry, hospitality industry, catering services
- 79 – construction and wood industry
- 37 – transport
- 26 – textile industry
- 20 – public services
- 12 – other/unspecified industries

In other words three quarters of EWCs operate in the metal, chemical and service sectors.

The size of company in terms of the number of employees is an important property of EWC. Most EWCs were established in large transnational enterprises. Over 47% EWCs operate in enterprises with more than 5,000 employees (32% in enterprises employing more than 10,000 workers, 15% – in companies with 5,000–10,000 employees and 35% – below 5,000 employees).

### 3.4 Powers of EWCs

Less than one in ten EWCs has powers extending beyond the information, consultation and issue of opinions. In 40% of the agreements establishing EWCs state expressly that the representatives of European trade federations have the right to attend EWC meetings.

It is rare for an EWC to have the rights extending beyond the right to information and consultation guaranteed directly in the agreement. However, it should be kept in mind that some of the EWCs which do not have the extended scope of competence in practice undertake negotiating activities.

The EWC in Solvay is an example of a body holding formal rights to conduct negotiations. This provision is not only theoretical: since 1999 Solvay has already signed several TCAs concerning health and safety at work and sustainable development. The latter introduced a system allowing employees to benefit from a profit-sharing scheme[14].

Similarly, direct negotiating powers are granted to EWCs under council agreements in such corporations as: Allianz SE[15], Credit Lyonnais, Danone and Danske Bank[16].

Analysis the tests of the agreements establishing EWCs leads to the following observations:

More than 60% of the agreements refer to the following areas:

- - the economic and financial situation of the company
- - employment situation and forecasts related to employment
- - development of marketing and sales activities
- - changes in the work/organisation models

40–60% of include provisions concerning:

- - the company structure
- - the policy in the area of new technologies
- - mergers and takeovers
- - relocations

[14] Solvay is a party to the following TCAs:
- Group's Practices for Subcontracting, 1999 (EWC is a party)
- Group's Practices on the Health and Safety of the Personnel 2002 (EWC is a party)
- Guidelines on Social Policy in Joint Ventures, 2003 (EWC is a party)
- Charter on Sustainable Development and Corporate Social Responsibility, 2008 (EWC is a party)
- Global Corporate Social Responsibility Agreement between Solvay and IndustriAll Global Union, 2013 (IndustriAll Global is a party)

[15] Allianz is a party to the following TCAs:
- Agreement concerning the participation of employees in Allianz SE, 2006 (the special negotiating body is a party)
- Agreement on guidelines concerning work-related stress, 2011, (EWC is a party)
- Agreement on guidelines concerning Lifelong Learning (EWC is a party)

[16] Danske Bank is a party to the following TCA:
- Global Framework Agreement on fundamental labour rights within Danske Bank Group, 2013 (the national trade unions are a party)

- - collective redundancies
- - reorganisation of production

Less than 40% of the agreements refer to:

- - occupational health and safety
- - environmental protection
- - vocational training
- - HR management practices
- - equality
- - R&D policy
- - working time
- - corporate social responsibility.

It should be kept in mind that analysing the content of the agreements does not guarantee the full picture because in practice the issues contained therein in are very often expanded.

The agreements concerning the operation of EWCs include provisions concerning the "excluded areas" in addition to indicating the relevant issues. These are: individual workers' concerns (8%), employment conditions (8%), negotiations (11%), powers related to information and consultation with national authorities (14%), remuneration and other benefits (15%), rights and obligations of the management (16%), collective bargaining (22%).

The majority (70%) of EWCs hold one plenary meeting per year, 23% – two meetings and 3% – three or more meetings.

As regards the content of training courses, among EWCs that are granted such entitlement, it is usually referred to as general "right to training", sometimes an entitlement to language education is also mentioned.

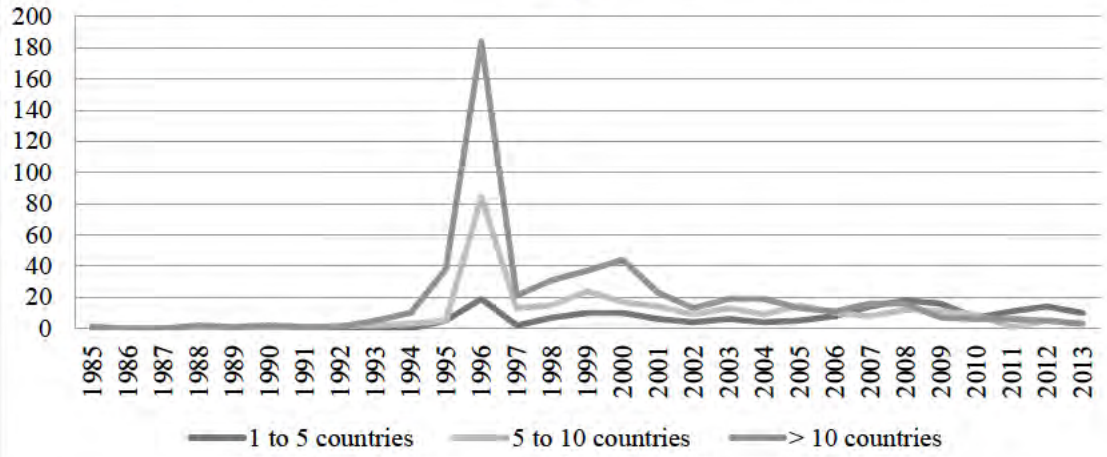
## Chapter 4.
## European Works Councils and national industrial relations

The opinions as to the actual effectiveness and potential of EWCs as a platform for articulating the collective interests of employees of transnational corporations are varied (e.g. Jagodzinski 2011; Mählmeyer, Rampeltshammer and Hertwig 2017). In the years preceding the adoption of Directive 94/45 (1983–1994) and directly thereafter, great hopes were attached to the development of that institution (see Mueller and Platzer 2003, Lecher et al. 2001). These expectations were nevertheless accompanied by sceptical voices, according to which EWCs were at risk of ritualism and domination by employers and at the same time were able to undermine the position of trade unions as employee representation (e.g. Schulten 1996, Streeck 1997).

Over time, facts seemed to confirm the pessimistic position. Summing up the three decades of operation of this institution, researchers pointed to its key weaknesses: difficulties in exercising the information and consultation rights, limited resources at the disposal of the delegates, the scope (programme) of EWC formulated mainly by employers as well as cultural (above all language) barriers impeding the efforts of the employee members (Köhler, Gonzalez Begega 2010). The importance of EWCs for industrial relations tends to be seen in their symbolic rather than actual influence (Waddington 2011). More tangible, however immeasurable accomplishments include the successful launch by EWC of the information and education function, i.e. a learning mechanism through which the delegates can (also informally) exchange knowledge (Czarzasty 2014). Establishing and maintaining such a mechanism, however, requires mutual trust (Timming 2006). That process is impeded not only by cultural (language) barriers, but also cognitive ones (delegates from different countries look at the same phenomena in a different manner, from the perspective of their own national systems of industrial relations) (Whittall 2000; Huzzard, Docherty 2005). There are also the economic and political obstacles (destructive to trans-border labour solidarity, resulting from conflicting particularistic interests within corporations, sometimes intersecting the divisions in industrial relations such as forming coalitions opposing production relocation or efforts to secure new investments in the so-called “beauty contests”) (Banuyls et all. 2008; Pernicka, Glassner, Dittmar 2014). There is a positive correlation between company internationalisation and EWC establishment: more than half of the existing EWCs work in enterprises operating in more than ten countries and more than one quarter – in companies operating in at least 5 countries (Köhler, Gonzalez Begega, Aranea 2015). The rate of formation of new EWCs remained stable for nearly thirty years (Figure 1). The aforementioned authors link the sudden increase in 1994–96 and (less rapid) in 1997–1999 to the legislation opening new areas for

council establishment, respectively, the adoption of Directive 96/45 and extension, by Directive 97/75, of the rights to information and consultation on a European scale to employees of British companies. By contrast, the adoption of the Recast Directive 2009/38 failed to enhance the process of EWC internationalisation.

**Diagram 1.** Newly created EWCs by degree of internationalisation (1985–2013)

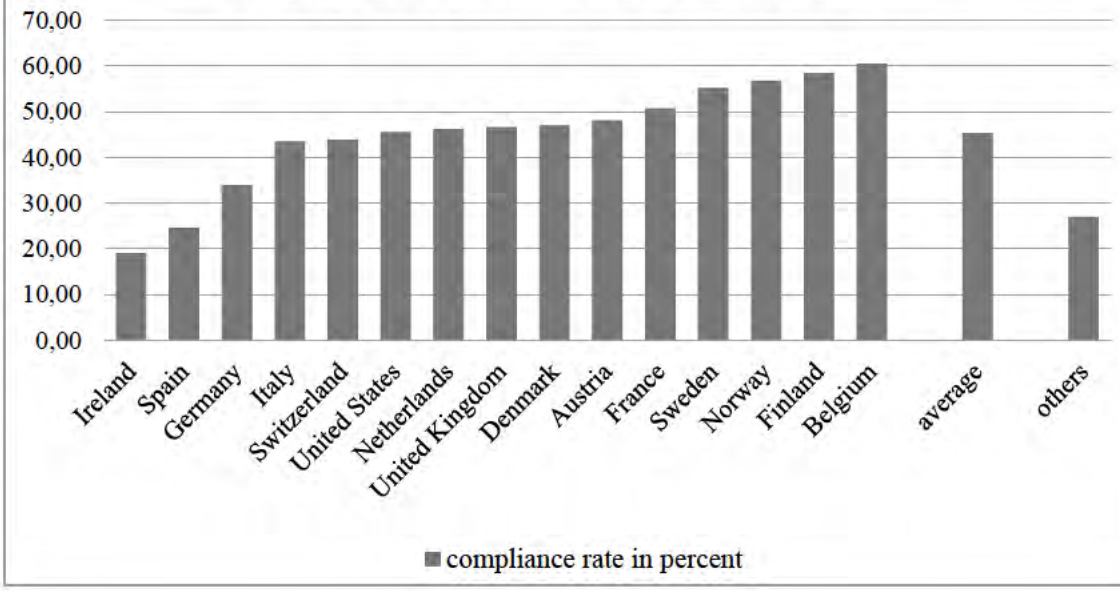



**Source:** Köhler, Gonzalez Begega and Aranea (2015)

The three largest European economies: Germany, United Kingdom and France are the domicile of the highest number of enterprises with EWCs (respectively: 260, 158 and 142, respectively). However, the fourth largest economy – Italy (44) and fifth – Spain (12) rank lower in that classification than countries of a lesser economic potential.

Absolute values fail to present the complete picture and must be supplemented with the EWC coverage ratio, which expresses the share of undertakings with established EWCs in the total number of companies subject to the Directive (Diagram 2)

**Diagram 2.** EWC coverage ratio by country, as of 2014



**Source:** Köhler, Gonzalez Begega and Aranea (2015)

The results obtained seem rather surprising at first glance: top liberal market economies (LME): the United Kingdom and the United States show much better coverage (47% and 46%, respectively) than the flagship coordinated market economy (CME), i.e. Germany (34%). Therefore, the second factor – the national industrial relations and their institutional infrastructure – has a decisive influence, but its effect is different from what is expected based on stereotypical image of specific systems of industrial relations. German workers place greater trust in their native workers' representation institutions – works councils – which they consider to be more effective in articulating their interests than EWCs (Whittall, Lücking and Trinczek 2009).

But what about the countries which do not offer such robust (and therefore attractive as a negotiation platform) bodies as German works councils? The added value of EWCs is perceived as greater – hence a stronger motivation to become involved in the Council operation. There are many publications proving that the native country of the enterprise has an impact on the mode of EWC operation. The so-called "country effect" means a distorted perception of employment relations within the company, exaggerating the importance of problems specific to the country of origin at the cost of issues with a relatively greater significance for countries where the subsidiaries are based (Streeck 1997). It also give a privileged position to delegates from the country of origin, which should not be understood as favouring them by the management or displaying ethnocentrism (the concept of a "home-country-oriented structure" used in relation to one of the Councils examined, see: Bicknell 2007) but rather as greater confidence in their relations with the management, due to the absence of language barriers, for example (Gold and Rees 2013). In their analysis of EWCs in Swedish enterprises, Huzzard and Docherty (2005) criticise the role of managements, which transfer patterns of industrial relations developed in the home country to the EWC operation, even if not quite intentionally. Similar tendencies are indicated by e.g. Royle, Cavallini, Gold and Senatori (2016), in their study of Italian enterprises.

EWCs are present in all the countries covered by our survey, in the meaning of participation of authorized employee er representatives in the Councils, whereas in only two cases (Italy and the United Kingdom) can we observe the existence of companies subject to the relevant Directive, in which EWCs were established[17]. There are 158 and 44 EWCs, respectively, with coverage ratios of 47 and 43%. The experience of the functioning of EWCs established in both these countries are documented. Hall, Hoffmann, Marginson, Mueller

[17] As for the other countries covered by the survey (Croatia, Poland, Romania), not a single EWC has been legally registered in any of these states to date. Meanwhile, it is possible to identify enterprises that fulfil the criteria laid down by the Directive and therefore enable the establishment of an EWC (e.g. PKN Orlen).

(2003) claim that they found evidence of the impact EWCs on management decision-making processes, but while EWC activity has a positive effect on management process by improving their internal coherence, in the case of decision-making EWCs' impact is usually limited to their implementation rather than changes to their content. The case of EWCs in British (and American) companies is interesting mainly because it requires in-depth examination of the mechanisms shaping the EWC mode of operation, resisting the temptation to look for simple explanations ("what matters is the country of origin and thus its predominant model of industrial relations").

There are far fewer companies from Italy that have EWCs. The amount of research data and literature devoted to them is also very limited. Other than the above=mentioned article by Royle, Cavallini, Gold and Senatori (2016) analysing the functioning of the EWC the Italian UniCredit, dominated by Italian delegates, and a collection of case studies, including four Italian cases (Telljohann 2011), there are virtually no publications that directly deal with the subject of "exclusively Italian" EWCs. EWCs formed in Italian companies are, however, examined as part of industry-oriented research. One example is FIAT, referred to by Rymkevich (2013) or Da Costa (2015) in the context of the automotive sector.

It is impossible to accurately determine to what extent the national context of industrial relations impacts the mode of operation of EWCs. Undoubtedly, it plays an important role – taking into account the influence of both the home country and the receiving country/countries – but there are also other specific factors concerning the enterprise that have a large impact.

## Chapter 5.
## EWCs and the role of trade unions

Although trade unions were fervent supporters of the idea of creating an institutional representation of employees in transnational corporations, their role in the establishment and functioning of EWCs is not clearly reflected in EU law. It is noteworthy that there was no mention of trade unions in the original Directive 94/45/EC. A reference to them did not appear until a thorough revision (recasting) of the Directive carried outperformed in 2009[18], which was less than warmly welcomed by organisations of EU entrepreneurs. This state of affairs can be explained by looking at the objectives underlying the "European project". The Treaty establishing the European Economic Community (EEC) did not identify freedom of association as one of its fundamental principles, such as the free movement of capital, goods, services and labour and freedom of business creation. There was no assumption that employees were free to organise in trade unions, performing their functions independently of the existing borders of the EEC Member States. The EU legislator did not even consider creating regulations enabling the establishment of European trade unions (as structures separate from the international organisations of trade unions, international federation and confederations) operating on within the entire EU territory (Sanetra 2012: 68).

In its original version, the Treaty did not make any reference to trade unions, except for relatively insignificant Article 118 (Article 156 of the Treaty on the Functioning of the European Union according to the present numbering) stipulating that the role of the Commission is to promote close cooperation between Member States in the field of association and collective disputes between workers and employers [19]. Thus, it did not provide for anything resembling the "freedom of movement of employee representation". Trade unions were not seen as part of the integration, which was presumably a manifestation of profound mistrust resulting from the belief that any reinforcement of trade unions would contradict the extremely liberal perception of the free market, underlying the provisions adopted in the treaty (Sanetra 2012: 67).

As a result the powers granted to trade unions within EWC are not very extensive. And it must be pointed out that the practice of transnational corporations involving continual launching of restructuring programs and the accompanying pressure on increasingly competitive relationships between the individual operation within the same country also has an

[18] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (recast version)

[19] The remaining spheres within which the European Commission is to enhance cooperation between the Member States, as indicated in Article 156 TFEU, include employment, labour law and working conditions, education and further training, social security, protection against accidents and occupational diseases, safety at work.

impact on the relations inside the EWC. As a result, the individual national representatives of workers tend to seek above all the protection of national or local interests (Muller, Rubb 2007: 206). The result is that such a Council no longer serves as a platform for building the European cooperation of trade unions with the aim of protecting employees' interests. Instead, it becomes an instrument supporting the model of competition between local branches of a corporation (Adamczyk, 2011). There are also frequent attempts to build EWCs into the structure of the internal corporate culture as an element validating the implementation of cross-border personnel management strategies. None of these scenarios is beneficial for trade unions. Thus, employee representation in transnational corporations does not always see eye to eye with trade unions. It might be worth quoting Walerian Sanetra, who observed that the EU legislator undermined the position of trade unions at undertaking level by promoting non-union employee representation and supporting the entitlement to consultation and information rather than trade unions as a cornerstone of correctly developed industrial relations (Sanetra 2012: 74).

### 5.1 The role of trade union coordinators

In view of the above, it is clear that the European trade union must develop its own internal tools of impact on EWCs. The decisive role should be played by trade union coordinators appointed by the European trade union federations. Their presence is essential to ensure trade union influence on EWCs. Below is an overview of the rules developed by the European trade union federation IndustriAll, whose sphere of impact includes more than half of the existing EWCs.

The role of the coordinators is to ensure that EWCs gain a truly "European" activity profile, which means making efforts to achieve coherent transnational representation of employees and improve cooperation between the trade unions present in the enterprise. In the event of restructuring, IndustriAll coordinators offer advice and assistance to EWCs in developing a common strategy while ensuring that the interests of workers from all countries are appropriately represented and voiced and that no country pursues its own interests at the expense of another. The coordinators play a particularly significant role in the situation when an initiative to conduct transnational negotiations is launched in the enterprise. In such cases it is important to ensure that the internal IndustriAll procedure concerning such negotiations is applied.

Coordinators are appointed within in the course of a comprehensive consultation process with the involved national unions and EWCs. In principle, a coordinator should come from the country in which the enterprise is headquartered and be a trade union employee with

adequate knowledge of the specific nature of the functioning of a particular company or the sector in which it operates.

If, during the restructuring of the transnational structure, EWCs prove inadequate as regards effective representation of the interests of workers across Europe, affecting the process in the company, IndustriAll Europe can create additional ad hoc coordination groups. Similar rules were adopted in other European trade federations that deal with transnational corporations.

It may appear that the position of trade unions was in some way enhanced by the recast directive 2009/38/EC. However, it should be noted that this legal reference to the role of trade unions applies only to process of EWC creation. The possibility of involving trade unions in the day-to-day functioning of the Councils depends only on the quality of the relations between the EWC itself and the central management.

### 5.2 Results of empirical studies

When writing about the role of trade unions in the context of EWC functioning, one ought to refer to the results of research to show that, what is worrying, a considerable part of EWCs fail to perform the tasks assigned to it by the Directive and the various national legislations implementing it. The research carried out by Waddington at al. (Waddington, Pugliano, Turk, & Swerts, 2016) in 2015 shows that in 72% of the EWCs investigated information related to restructuring was forwarded to the EWC at the time of its transfer to third parties. In 15% of the cases the managers responsible for cooperation with EWCs indicated that the information was submitted to the EWC later than to third parties and only in 13% of the cases EWCs received the information before the strategic decision concerning restructuring was taken. These studies show that in most cases EWCs are only consulted about the process of restructuring rather than about the decision as to its specific form. The conclusions from the aforementioned studies are in line with a survey conducted previously among EWC members (Waddington 2011: 103). Research shows that in the corporations where the EWC was established under Article 6 of the Directive, in contrast to the EWCs formed “before the Directive”, based on Article 13, the central management is more willing to involve the EWC in the process of consultation and decision-making.

These brief conclusions from empirical research referred to herein show that the EWC institution itself needs reinforcement. It seems that one of the possible measures would be to amend the Directive to impose the obligation on all functioning EWCs (including those acting on the basis of Article 13) to adjust their operating standards to its requirements.

It does not suffice to reiterate that EWCs are dynamic institutions operating to a large extent according to their own developed practices (rather than "pure law" contained in the agreement), specific level of trust and ability to build efficient communication tools. Therefore, along with hard legislative changes in the Directive, there is a need for soft measures relating to the exchange of best practice and experience.

Trade unions should listen carefully to the voice of the central management representatives. Research shows that they often point to seemingly minor issues which in fact have a great practical importance; e.g. some argue that the absence of a specific maximum number of terms in office  a person could act as a union representative in the EWC presents a problem. Managers indicate that an excessively long term as a representative leads in some cases to the particular person losing touch with the ongoing activities of the company so that the role is performed only "symbolically".

Another important matter is the development of communication channels between the sectoral social dialogue committees on the one hand and the trade union members of EWC in a particular sector. The available knowledge of the processes taking place in the framework of the European sectoral dialogue can inspire action within an EWC. The research conducted by Waddington shows that the managers of the EWCs investigated were to a large extent unaware of the activities undertaken within the framework of the sectoral social dialogue committees so it was pointless to inquire about the impact of these measures on the  functioning of each EWC.  We fear that while a survey conducted among trade union members of EWCs would presumably demonstrate a greater awareness of the European sectoral social dialogue, it would not be fully satisfactory.

## Chapter 6.
## TCA development and the mechanism of European social dialogue

At present, the transnational agreements signed by management of corporations with EWCs and others entities (European trade union federations and national trade unions) are concluded without a legal basis. In legal terms, one could say that these documents exist in parallel with or separate from the law in force (Jagodzinski, 2011a: 28). In the case of European framework agreements, an important factor is the context in which they are concluded and thus the increasingly visible asymmetry between the economic and social dimension of European integration (Scharpf, 2010: 21). Transnational collective bargaining is becoming one of the instruments with which trade unions are trying to restore the right balance in relations with the corporation managements. However, it is worth pointing out that the EWCs have been involved in the signing of most EFAs identified so far, also signing them without the participation of trade unions (Adamczyk, Surdykowska 2016). Therefore the latter are beginning to voice their concern about the "growing independence" of EWCs.

The question that has been asked repeatedly for a long time is whether the future of TCAs may be regulated within the mechanism of European social dialogue. The answer to is not obvious. Since the beginning of the debate BUSINESSEUROPE, the main European organisation representing private entrepreneurs, has been strongly opposed to the establishment of legal framework for the conclusion of EFAs, even optional ones (Dufresne 2012: 116). Another European organisation, CEEP (The European Centre of Employers and Enterprises providing Public Services), representing employers from the public sector and services of general economic interest, takes a more reserved attitude towards that problem, although not divergent from the position of BUSINESSEUROPE. European employers respond rather unwillingly to all attempts of undertaking more specific talks concerning cross-border negotiations. Representatives of the employers' organisations often express the view that agreements concluded in transnational corporations serve only as an expression of common understanding and articulation of common values and are not meant to have a legally binding nature. This "cool" approach to this issue may bring certain results. A. Dufresne draws attention to the case of the Green Paper on corporate social responsibility, where the Commission initially intended to establish a legal framework for the codes of good practices but, meeting with resistance of the business world, restricted itself to promoting them (Dufresne 2012).

The European social dialogue (both sectoral and cross-sectoral) may act as an incentive or inspiration for the subjects to be brought up in the framework of negotiations with the managements of transnational corporations. For example, in 2004 the European social partners

signed an agreement on work-related stress. That agreement was supplemented in 2007 with the agreement on harassment and violence at work. The issues dealt with therein (psychosocial risks) are also reflected in the existing TCAs. Examples include the agreement signed in Allianz in May 2011 (Agreement on guidelines concerning work related stress) and the agreement signed in Danone in October 2011 (Danone / IUF Agreement on health, safety, working conditions and stress). Undoubtedly, the relationship between the European social dialogue and TCA requires further analysis. It should be stressed, however, that in recent years the European social dialogue has been faced with mounting obstacles. This is evidenced, inter alia, by the absence of agreements which the parties might jointly request to be converted into a directive (Adamczyk, Surdykowska 2014). The last agreement to be transformed into a directive was signed in 2009 and, what is noteworthy, it was a revision of the prior agreement of 1996 (agreement on parental leave).

In conclusion, it seems clear that without pressure from the European Commission there are no chances of any constructive discussion on the future of TCAs in the framework of the European social dialogue. It might be worth reminding that from the very beginning, after the mechanism was created in 1992, European employers flatly refused to enter into discussions on the creation of a legal framework for European Works Councils. This way, they set a boundary concerning negotiation of any issues related to industrial relations, which they have never allowed to cross since then.

## Chapter 7.

## TCA as a tool for enhancing the process of collective bargaining in Europe: between theory and practice

### 7.1 What is the purpose of TCA negotiation?

The negotiations within transnational corporations are in many cases treated as a "foreign" phenomenon by the trade unions, or even threatening their national negotiating position. Critical opinions are often voiced that TCAs part of the process of decentralisation of collective bargaining. This is a serious allegation because historic experience of trade unions shows that the bargaining power is the greatest at sectoral level. Is this allegation substantiated in any way? This is rather doubtful. We have already referred to the spontaneous decentralisation of collective bargaining in one part of the EU and the inability to develop a sectoral level in another. It seems that in this growing corporatist void the development of TCAs could have an invigorating effect on trade unions by showing their ability to adapt to new environment. However, it would require a significant change in the trade union paradigm. What is the current role of TCAs? They are used to establish corporate standards in respect of "soft" issues, such as equality issues, training policy and corporate social responsibility. TCAs are also negotiated as an action aimed at negotiating protective measures during the restructuring process or gain greater workers' acceptance of that process.

The position taken by the European Trade Union Federation (ETUC) concerning TCAs seems to suggest quite clearly that, on the one hand, it recognises the need for the creation of an optional legal framework for their functioning, because the situation of a legal vacuum in which TCAs are operating is unsatisfactory and objectively affects the problems with their implementation. On the other hand, TCAs are not perceived as a tool that should be promoted or in any way encourage member organisations to launch actions that would eventually lead to an agreement with the central management of the corporation. This is due to one fundamental issue. There is a substantial resistance on the part of the trade unions from the old Member States, in particular the Scandinavian countries, against transferring to the transnational level of the negotiations over the "hard" issues constituting the core of classic negotiations conducted by trade unions, such as remuneration, working time or hard protective measures related to the restructuring process (such as the severance pay and other types of measures compensating for redundancies). This attitude seems to arise from two assumptions: of sufficient negotiating power via national sectoral negotiations, which also include transnational corporations, and of the achievement of satisfactory results in these negotiations. The transfer of "core negotiations" to the transnational level would create the risk of "bypassing" the national level by

corporations. It is also emphasised that the union strength (e.g. in the form of the right to effective strike) exists on the national rather than transnational level.

It seems that the expectations of trade unions from the new Member States are much more higher – they wish to include specific issues that are trade unions' core business (such as salaries and working time) in transnational negotiations, so as to achieve approximation of employment standards in the subsidiaries of transnational corporations in the old and new EU Member States (Adamczyk & Surdykowska 2012). This arises from their awareness of the negotiation limitations at national level. At this point, it might be worth quoting the opinion of a Polish trade unionist from a corporation with a well-developed dialogue practice: "It is difficult to negotiate a pay rise locally if strategic decisions are taken in Paris" (Adamczyk, Surdykowska 2012a).

### 7.2. What about TCA implementation?

The fundamental problem is that in many cases the framework agreement are left to themselves. There is no "owner" on the employee side (Adamczyk, Surdykowska 2016). The management achieved its goal – enhancing its image of a socially responsible employer. Trade unions in countries with a strong system of collective bargaining (mostly from the old Member States) made sure that their bargaining autonomy was not compromised and that the TCA does not contain any provisions encroaching on their territory (which means no less than that the provisions are "sufficiently vague"). Meanwhile, it is not the primary role of EWCs to oversee the implementation of such agreements. Trade unions, if any, from corporation branches in the new Member States do not really know how to compel local managements to comply with TCA provisions.

The research discussed in chapter 9 showed that the most challenging issue is the implementation of the agreements. At the same time, it is the most important issue because an implemented may have an indirect effect on a specific place of work and its conditions only after it is implemented.

It seems that the key issue is to build up highly efficient and open channels of communication from the very beginning – during the initial phase of formulating the need to negotiate TCA, throughout the negotiation process and at the time of taking the decision as to the conclusion of the agreement. By informing all the national trade unions operating in different locations within a corporation makes it possible to create the basis for their active role in the implementation process.

It is important to ensure that the mechanisms of periodic assessment of the progress and correctness of implementation are integrated into the TCA at the time of its conclusion. It

should also oblige the local branch managements to translate the document into the national languages and to communicate the fact of its conclusion. Unfortunately, the case study of Suez Environment shows that even if such an agreement is concluded, the implementation process may non-existent.

### 7.3 TCA vs renationalisation of negotiations

It seems that increasing the importance of TCAs is directly related to any activities which can potentially be undertaken with respect to the power of European trade union federations. It must be enhanced, also financially, by the member organisations. This could create a real opportunity for them to initiate the negotiations and subsequently use the full potential of the TCA. This report contains some suggestions regarding the need for the introduction of certain fixed communication procedures that would broaden the knowledge about the currently negotiated TCAs (and solutions contained therein) as well as the negotiation process itself. It seems essential to strengthen the European trade union federations since most of them are not capable of becoming effectively involved in the processes related to TCAs.

Note that, according to the latest survey conducted among the managers responsible for contacts with EWCs, in the case of corporations where a TCA was not concluded, the main reason indicated by the management was that employee representatives had never requested a TCA. There was no initiative to start negotiations (Waddington, Pulignano, Turk, Swerts 2016). This clearly shows the need to develop knowledge about TCAs, the potential issues which may be included in them and exchange of practices concerning individual provisions and their implementation.

The recent decrease in the number of TCAs concluded should also be thoroughly analysed. That said, it is difficult to evaluate that decline because of the lack of a regularly updated database (the database maintained by the European Commission has ceased to "accept" new entries and for more than a year it has contained historical data only). However, notwithstanding the absence of hard empirical data, certain hypotheses can be ventured as to the present trend. The more conservative theory assumes that we are dealing with a delayed effect of the crisis. The second hypothesis, however, is much more worrying – it suggests the possibility of renationalisation of industrial relations associated with the debate on the future of Europe – and therefore the two-speed EU also in the social area.

It is possible that the European social dialogue will be stimulated under the influence of the European Pillar of Social Rights. It may provide an impulse for the next "wave" of

Europeanisation of industrial relations, nevertheless, this issue currently remains completely open.

### 7.4 The need to change the paradigm towards the European negotiation of wages

Irrespective of whether TCAs present a real possibility of promoting equalisation of the conditions of employment at different locations owned by one transnational corporation, that issue needs to be analysed in a broader perspective. Note that authors of all analyses of the problem of social dumping always reiterate that setting the remuneration level is the responsibility of the individual Member States and as such is excluded from the competence of the European Union. They quote Article 153 paragraph 5 of the Treaty and thus end the considerations. Undoubtedly, article 153 paragraph 1 of the Treaty indicates the areas in which the EU supports and complements the activities of the Member States. In relation to the areas indicated in paragraph 1 of Article 153, items a–i, the European Parliament and the Council may adopt, by means of directives, minimum requirements for gradual implementation with respect to the conditions and technical standards existing in each of the Member States. As indicated in paragraph 5 of Article 153, the provisions of that Article do not apply to the remuneration or, the right of association and the right to strike or the right to lockout.

It seems, however, that the possibility of the use of a "general safety option" contained in Article 352 of the Treaty is not sufficiently carefully considered[20]. Paragraph 1 thereof provides that: "If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament". In accordance with paragraph 3, measures based on that Article must not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation The European Commission decided to take advantage of this loophole because article 352 was intended to be the legal basis for the issue of the so-called Monti II regulation concerning the benefits due to posted workers[21]. If so, it is necessary to consider the possibility of applying it in relation to the harmonisation of the remuneration policy within one transnational corporation. It would be justified to recourse to Article 136 of the Treaty on the functioning of

[20] Cf. remarks concerning Article 352 in the context of the right to strike, (Boto, 2016).
[21] That project caused the launch of the "yellow card procedure" and in contrast to proposals for revision of the Posting of Workers Directive, the Commission decided to withdraw from its proposal.

the European Union (improvement of living and working conditions so as to enable their alignment while maintaining progress) or Article 2 of the Treaty on European Union (the social market economy, social progress).

This is not the place to dwell on this subject, but it seems that demonstrating clearly the possibility of cross-border regulation of important employee issues that appeared to be excluded from EU competence could dramatically improve the position of TCAs as possible negotiation instruments for developing the remuneration policy for employees of transnational corporations. This is especially important if we look at an important provision in ETUC resolution on the Common Strategy with regard to minimum and low wages adopted by that organization 27 March 2017, indicating that "it is necessary to achieve a positive convergence in terms of wages to eliminate the existing differences between … countries of the East and West" ETUC (2017). At the request of NSZZ Solidarność, an important provision was included therein, stating that it applies "in particular to transnational corporations operating in both these areas".

Notwithstanding, a likely alternative to TCAs which has proven themselves viable as a legitimate part of collective bargaining will be expansion of derogation clauses and exemptions from the provisions of sectoral agreements in the West (*concessional bargaining*), accompanied by low (hence, competitive) labour costs in the East.

## Chapter 8.

## Transnational framework agreements. The current status and legislation proposals

The most important institutions of labour law that have emerged and developed in recent decades are, without doubt, transnational framework agreements concluded for companies and groups of companies of a cross-border nature. Their provisions are also often addressed to contractors and suppliers who form a broadly defined network together with the enterprise itself[22]. Most agreements create uniform conditions of employment for persons who perform work in different countries (which, however, may vary widely in terms of standards of employment).

Changes in the economic sphere, including the globalisation processes, are accompanied by changes in the labour law. These are reflected in the regulations created at EU and national level (posted workers, governing law). The social partners also have to adapt to the changing conditions. Employee representative bodies will naturally aim to create uniform solutions for complex organisational structures. These efforts may produce unilateral acts created by companies or company groups (codes of good practice), but above all agreements concluded at the level of the entire enterprise level. In the latter case we could speak of an institution resulting from social dialogue, which may express a compromise between the needs of employers and the expectations of employees. The territorial scope of such agreements will be determined by the area of activity of the undertaking or group of companies. In some cases it may be restricted to the territory of the European Union. Increasingly, however, it will have a legal effect also on the territory of countries other than EU Member States, including non-European countries. In view of the low level of employment standards outside the EU, it is there that framework agreements may play a particularly significant role. The practical importance of the agreements is evidenced by their impressive number – ca. 300 agreements have been concluded to date.

While transnational framework agreements arouse high expectations, they are also a source of practical difficulties concerning their construction. At present, doubts arise e.g. from the lack of regulations governing the conclusion and operation of the agreements. The social partners have no legal instruments that they could use when negotiating an agreement or attempting to resolve conflicts arising from that agreement. This leads to the question whether an attempt should be made to create a legal framework for transnational agreements, what legal structure should be used and what would be the shape of the resulting regulation. This issue

[22] The core of a group of companies consists of the controlling company and subsidiaries linked by corporate relationships. Members within a group cooperate with third parties, such as suppliers. In this respect the relations are of a contractual nature.

was investigated from the viewpoint of labour law doctrine (Ales et. al. 2006; Papadakis 2008; Rodriguez et. al. 2011; Jaspers 2012; Adamczyk, Surdykowska 2012a; Marassi 2016). The result is a few reports containing solution proposals (including the so-called Sciarra Report, Sciarra, Fuchs, Sobczak 2014). The last report, prepared within the framework of a project titled "Building an enabling environment for voluntary and autonomous negotiations at transnational level between trade unions and multinational companies[23]" (ETUC 2016), implemented by the European Trade Union Confederation, contains examples of solutions which could be included in a possible legal regulation concerning a voluntary legal framework for transnational framework agreements[24].

Due to the lack of a uniform legal framework for the functioning of cross-border agreements, the current status can be primarily evaluated by referring to the agreements which have been concluded and are in operation. The disputable point is above all their legal nature (Orlandini 2016). It may vary depending on the circumstances in which an agreement was concluded and further action of parties thereto (and other actors involved). The agreement may have similar legal implications as typical collective agreements; in particular, it may have a normative nature if it was concluded in accordance with the procedure in force in a particular legal order. The aforementioned situation should nevertheless be considered exceptional. In addition, the usual problem will be the lack of a legal basis for extending the effectiveness of the agreement to other jurisdictions. Another option is to transfer the provisions of a framework agreement via collective agreements concluded at national level. Such implementing agreements should be consistent with national standards. The problem is the need to take additional measures – usually at the level of subsidiaries, which are not always interested in improving employment standards[25]. Finally, a typical situation can involve the conclusion of a framework agreement which will constitute an effective agreement between the parties in the absence of an additional legal basis. Its legal nature, and in particular its effect on the situation of employees, will depend on the provisions agreed between the parties. It cannot be excluded, however, that the agreement will constitute a specific declaration of values without providing the basis for individual employee claims[26] (unless the agreement provides

[23] The report constitutes the main basis for the conclusions and proposals presented in this chapter.
[24] The subject of the proposed regulation would be primarily European framework agreements. The draft regulation to some extent refers to the proposals contained in the so-called Sciarra Report.
[25] One should also keep in mind the essential differences as regards the nature of collective agreements in different legal systems. They may have a normative nature and thus provide a direct basis for employee claims (for all employees or only members of the organisation which is a party to the agreement) or, alternatively, constitute contracts that are effective *inter partes*.
[26] From the point of view of a company, a mere allegation of infringement of the Agreement may have serious consequences for the corporate image.

for e.g. a mechanism of dispute settlement)[27]. The absence of express guarantees as to the legal nature of the agreement undoubtedly affects the effectiveness and efficiency of this form of regulation of employment conditions.

The key problem relates to the entities that conclude framework agreements. This applies to both the employee and employer side. On the employee side, one can observe a wide variety of entities entering into such agreements These are not only trade unions, but also European Works Councils (or, although relatively rarely, representative bodies elected at national level). The choice of employee representative body may depend on many factors including the nature of the relationships in a particular enterprise or company group, or the customs in the home country of the controlling company. Finally, one cannot exclude various forms of cooperation between trade unions and non-union representatives. The basic question in the case of elective representations concerns their authorisation to conduct collective bargaining. That is because European Works Councils are primarily established with the aim of participation in information and consultation procedures, while in the case of trade union rights the right to conduct collective bargaining should be considered one of the key elements of the freedom of association. At the same time, it should be borne in mind that the social partners have substantial freedom when entering into framework agreement negotiations, and their participation in negotiations is usually based on mutual recognition. The same goes for the negotiating mandate of trade unions (Zimmer 2016) and the central management, which generally negotiates on behalf of subsidiaries (though not always with formal authorisation). By taking part in negotiations and entering into an agreement, a particular entity declares that it able to guarantee the performance of the agreement. In the case of central management, it may be based on corporate instruments available in relation to the subsidiaries.

As regards the personal scope, an agreement may use an open formula (the agreement is concluded for all the entities within the group, or alternatively for all the employees of the company or group), or list the persons subject to the agreement. The list does not need to include all the entities within a group, which will lead to questions about the reasons for such restrictions. The agreement may also introduce limitations of its territorial (geographical) scope. The most complex issue appears to be the application of employment standards to third parties (business partners). In this case, the agreement may make the commencement of trade relations conditional upon the application of certain working and pay standards (practical verification may, however, be rather difficult). For example, the group companies are to verify policies (standards) applied by potential business partners or commit them to comply with

[27] Another problem is the issue of governing law – it is questionable whether framework agreements should be treated simply as contracts.

those standards. Some agreements only require that business partners learn the standards applicable in the group.

The negotiation procedure, the form of the agreement and its term depend on the parties interested, who may also specify the rules governing the publication and distribution of the content of the agreement and create a mechanism to evaluate its operation. Finally, the parties determine the content of the agreement. The social partners can guarantee compliance with fundamental rights. They can also create various protective mechanisms in relation to transformations conducted in the employer undertaking (restructuring agreements). The parties to the agreement can also define an autonomous mechanism for settlement of possible disputes, arising from e.g. alleged non-compliance with the provisions of the agreement addressed to the employers within the group. Examples include various types of mediation procedures. In all the aforementioned areas, the social partners exercise considerable freedom, which may be limited in the event of a conflict with the provisions of EU law or the need to apply national provisions (e.g. if they are mandatory) in a particular case. On the one hand the freedom enjoyed by the parties negotiating the agreement reflects the nature of the social dialogue and makes it possible to tailor the provisions of the agreement to the circumstances in which it is concluded. On the other hand, this leads to a fundamental differentiation of individual agreements. The level of protection they guarantee is not uniform. Some of them are limited to fairly general (if not vague) provisions. An even more serious problem arises from the lack of effective mechanisms for providing information on the content of the agreements and eliminating any breaches. As a result, not all entities in theory included within the scope of the agreement know its content (this applies especially to third party business partners, but also group companies). Then, there is the question whether, in the event of non-compliance with the agreement, claims may be lodged by the employees interested or only by the parties to the agreement and whether the liability of the breaching party is principally of a moral character (negative impact on the employer's image). Finally, there are no instruments supporting the negotiation process or the application of the agreement.

The above remarks demonstrate that the absence of even a general regulation of transnational framework agreements has had a negative impact on the status and development of this important institution of labour law. The functioning of framework agreements depends primarily on the social partners' good will, who, regrettably, lack conceptual and organisational support. This demonstrates the need to create an appropriate formal framework.

The question that emerges at this point is about the nature of the legal act that would, to some extent, regulate the issues of framework agreements (ETUC 2016: 14-16). A soft-law instrument might be insufficient in view of the suggested aims of regulation. This leaves tools of strictly legal nature, which might introduce solutions that would be binding for partners or

leave them freedom as to taking advantage of the mechanisms and procedures provided. Considering the nature of negotiations conducted at transnational level (high level of autonomy of the social partners), as well as the fact that the primary objective should be seeking to facilitate negotiations leading to the conclusion of framework agreements, it would be advisable to support the latter solution: creation of legal mechanisms which the social partners could use if they consider it beneficial in respect of the conclusion of the agreement and its subsequent operation (voluntary legal framework). However, the decision to apply such mechanisms should be binding, i.e. none of the parties should be able to withdraw from such a legal mechanism thereafter. There are insufficient legal bases for establishing such a legal framework in the form of a regulation or directive. Therefore it is proposed to use the form of a decision that would be binding in its entirety and would not identify the addressees (ETUC 2016: 64; Sciarra, Fuchs, Sobczak 2014). Such a decision would be issued on the basis of Article 152 of the TFEU. While the solution proposed makes it possible to avoid problems related to the use of the technique of regulation or directive, it raises numerous legal doubts.

It is believed that main negotiator of agreements on the employee side should be trade unions, which corresponds to the basic division of competencies between trade union entities and elected representations. However, the role of the latter is also recognised, including their involvement in the negotiation of various types of agreements. It seems that the European Works Councils should be notified about negotiations in which they could also participate to some extent. The Councils would also have a role to play during the operation of agreements (ETUC 2016: 66). With respect to trade unions, the issue of their negotiating mandate remains to be settled. It would have to be stipulated (imposed) in the decision itself. Two solutions are indicated. European trade union federations could receive an authorisation from the member organisations interested to conduct negotiations on a case-by-case basis. The negotiating mandate could also arise from their statutes, providing for their participation in the negotiation of transnational agreements (Zimmer 2016: 18). As to the undertaking or company group that would become a party to the agreement, it should be a transnational enterprise, i.e. one employing staff in at least two Member States. Since we are considering a voluntary framework intended to promote social dialogue, there is no reason for introducing additional criteria concerning the number of employees (as in the case of European Works Councils) or corporate connections. Participation in the negotiations will be based on mutual recognition of the social partners, who should present their mandate at the beginning of negotiations (ETUC 2016: 66-68, 79-80). The central management could negotiate an agreement on behalf of all subsidiaries, then assuming the responsibility for its implementation.

The envisaged regulation should specify the formal requirements for the agreement (date of conclusion, term, renegotiation procedure, changes and termination) (ETUC 2016: 80).

The agreement should be also duly signed. It is necessary to indicate the official language(s), also for the settlement of disputes, if any. However, the future regulation is not planned to affect the substantive content of the agreements. The parties will have sole discretion as to subject matter of the agreements, but it is necessary to ensure guaranteed that they will contribute to the promotion of adequate employment conditions (in accordance with their substance). A stipulation must therefore be included that in the event of a conflict of the provisions with other acts ruling the working conditions, the provisions more favourable for employees should apply. It is doubtful, however, if it is permissible to use clauses which would indicate the provisions applicable in the event of a possible conflict (ETUC 2016: 70-71, 81).

Finally, it is important to determine the scope of application of the agreement (list of subsidiaries to be covered by guarantees) and the mechanism of its verification. The decision could indicate the rules for modification of the list and even create a mechanism for automatic extension of the system to the entities that meet certain conditions (e.g. corporate relationship). The latter solution, nevertheless, seems to be unlikely. Then, at least three potential solutions can be indicated concerning third party business partners. The first option is to leave the decision in this case to the parties to the Agreement. Secondly, the duty may be imposed to inform business partners of the standards prescribed by the agreement (and encourage them to follow these standards). This solution is realistic and ensures concrete results. Thirdly, it is possible to explicitly stipulate that trade relations can be commenced provided that the agreement is respected. However, this kind of mechanism would be difficult to implement and enforce, for example because of the problems entailed in the verification of third party activities.

The widest scope of protection would be guaranteed by recognising that framework agreements have the same legal effects as collective agreements provided for in the internal legal systems. Still, this would mean a fundamental change in the whole system of collective bargaining and even in the sources of law. It would be difficult to accept such far-reaching interference, especially in view of the exemption of the coalition the right of association from the legislative competences of the European Union. A much more likely formula seems to be a memorandum, which in itself does not constitute the basis for individual employee claims, since it requires transposition. Nevertheless, some form of agreement registration seems called for, to increase the transparency of the system by facilitating the distribution of information on the content of the agreements concluded. This will serve to protect both the parties covered by the scope of the agreement and third parties. The registration mechanism could be defined by the European Commission, in coordination with the European social partners. The best solution seems to be a database publicly available via a website. It is necessary to define the procedure for data provision and ensure that they are easily accessible. Another important point is to

introduce the requirement of indicating the official language versions of the agreement. What is significant, the legal effect of the agreement would not be subject to its registration (ETUC 2016: 74, 81).

The matter of key importance is the mechanism of resolution of any disputes which may arise from the agreement. Such a mechanism should in some way be independent of the nature of the agreement itself, guaranteeing a certain procedure regardless of whether the system can be regarded as a source of law or only as a contract. These conditions are fulfilled by the mediation procedure. Its form could be defined by the European social partners in coordination with the European Commission. It is proposed to establish three lists of mediators to ensure participation of employee representatives, employer representatives and neutral mediators. Each of these lists would include at least one mediator from each Member State (ETUC 2016: 72-73, 81).

Another issue is the need to provide adequate protection to members of the employee delegations, i.e. the level of protection similar to that guaranteed to the representatives of the employees under the national law, unless a higher level of protection is required by laws of the State where the central management is established or in whose territory the negotiations are conducted. The same applies to the entitlements facilitating the performance of representative's functions (e.g. free time for participation in meetings with the employer) (ETUC 2016: 81-82).

In conclusion, the absence of a legal framework is an obstacle to the development of transnational framework agreements. It is therefore reasonable to propose legal solutions which the social partners would be able to apply both at the negotiation stage and the performance of the agreement. The choice of a legal act which would implement the suggested regulations is a major challenge. At present, the most popular concept is a decision, binding in its entirety and not identifying its addressees. Still, this solution raises considerable legal doubts. As regards the content of the regulation, it is necessary to propose provisions that would facilitate negotiations and notification of the content of the agreement, and also to create a mechanism for resolving potential conflicts. However, there is no need to determine the legal nature of the agreements which, as nowadays, may be concluded in different circumstances and produce different legal effects. The adoption of such an intervention formula would, on the one hand, eliminate some of the problems identified today, and on the other hand, provide a realistic solution, leaving hope for continuation of work.

## Chapter 9.

## Impact of TCAs in selected sectors: service, metal industry and food industry of some EU Member States: analysis of meaningful cases

This chapter presents the results of field research on the functioning of TCAs. The research was conducted by the partner organisations involved in the project. Research methodology included semi-structured interviews with the representatives of the parties to industrial relations (representatives of the management and employee representation) conducted with the use of a questionnaire developed by the Leader. The researchers involved in national case studies[28] selected the cases in three steps: 1) identification, among the TCAs known to the European Commission (according to its final list), of TCAs signed by transnational corporations operating within the territory of a particular country (the home country of a transnational corporations did not matter in this case; it was sufficient that operations were conducted by at least one subsidiary), i.e. the "long list" of TCAs, 2) recognising, among the "long-listed" companies, enterprises representing the three sectors selected for the study (services, metal industry and food industry), i.e. establishing the "short list", and 3) selection of the "short list" of cases deemed optimal by the researchers, on the basis of their expertise, research experience and knowledge of the local environment. Three case studies were produced in each of the countries covered by the survey, each in a different company, with the exception of Croatia, where only one study (in the service sector) was conducted because of the size and structure of the economy, but in that case no fewer than 3 TCAs applicable in one company were analysed. Eventually, the sample was as follows:

**Tab. 4. Case studies by location and industry**

| Country | Case |
|---|---|
| **Croatia** | **UniCredit** |
| **Poland** | **Alstom** |
| | **Pernod Ricard** |
| | **Suez Environment** |
| **Romania** | **ArcelorMittal** |
| | **Carrefour** |
| | **UniCredit** |

[28] The national case studies were completed by: Igor Samardzija (Croatia), Barbara Surdykowska (Poland), Diana Chelaru (Romania), Stephane Portet (UK), Francesco Lauria and Antonio Famiglietti (Italy).

| | |
|---|---|
| **Great Britain** | **EDF** |
| | **Sodexo** |
| | **Unilever**[29] |
| **Italy** | **Ferrero** |
| | **Inditex** |
| | **Whirlpool** |

The case studies are discussed below.

### 9.1 Croatia, Zagrebačka Banka, UniCredit

The Croatian TCAs selected for the study were the three agreements signed in UniCredit Group S.p.A., headquartered in Italy. UniCredit Group operates in 17 countries and employs more than 142,000 staff. The three agreements analysed are:

- A Joint Declaration on training, learning and professional development of 16 December 2008, concluded between the UniCredit European Council and representatives of the HR Department of UniCredit Group.
- A Joint Declaration on equal opportunities and non-discrimination of 14 May 2009, concluded between the UniCredit European Council and representatives of the HR Department of UniCredit Group.
- A Joint Declaration on responsible sales of 27 May 2015, concluded between the UniCredit European Council and representatives of the HR Department of UniCredit Group.

That corporation controls the Croatian bank Zagrebačka with 4100 staff and 27.6% share in the domestic banking market. Zagrebačka also owns UniCredit Bank d.d. Mostar in Bosnia and Herzegovina, which has a 24% market share.

Industrial relations in Zagrebačka are described as good. There is one trade union in the enterprise: Trade Union of Finance and Banking Employees in Croatia (SBF ZABA). SBF is asscciated with the largest Croatian trade union confederation "Nezavisni hrvatski sindikati" and UniFinance. SBF ZABA has 1300 members, which means 31% union density. The collective agreement currently in force in the bank, signed in 2002, is the first of its kind in the

[29] The classification of Unilever as a metal industry enterprise may seem disputable, however, activities connected with that industry can be found within the broad profile of activity of that corporation. The decision to include Unilever in the study was made for practical reasons, since it was difficult to find a more representative enterprise to include in that sector of industry.

Croatian banking sector. The agreement is reviewed on an annual basis. Industrial relations in the banking sector are decentralised, and proceed only at the undertaking level. There is no industry-level collective agreement. SBF ZABA acts as the works' council. The three TCAs in force at UniCredit were concluded in the following circumstances: the party thereto representing the employees is UEWC, i.e. UniCredit's EWC (established under the Italian law and with regard to Directive 94/45/EC in 2007). It consists of 44 members of 22 countries. All the three TCAs were concluded on the initiative of the management. The Joint Declaration on training, learning and professional development (2008) refers to two documents: Joint Declaration of the European social partners in the banking sector on lifelong learning (2003) and Recommendation No 195 of the International Labour Organization (ILO) concerning the development of human resources: education, training and lifelong learning (2004). The Joint Declaration on equal opportunities and non-discrimination (2009) refers to the Joint Declaration of the European social partners in the banking sector concerning the employment and social issues in the European banking sector: selected aspects concerning CSR (2005). The Joint Declaration on responsible sales (2015) was adopted by the steering group of UNI Finance on 9 June 2010.

The subject matter scope of the Joint Declaration on training, learning and professional development is focused around "lifelong learning". The Joint Declaration on equal opportunities and non-discrimination, focusing on diversity management, is intended to "define *common Group guidelines and definitions on Diversity, Equal Opportunities and Non-Discrimination, aimed at directing the Group's corporate culture*". Both declarations are designed as a general, "soft" regulation in line with the Corporate Social Responsibility (CSR) policy. The latest Joint Declaration on responsible sales is more concrete in terms of its subject matter and gravity. It touches upon a real problem tackled by the banking sector, particularly in the retail segment, resulting from the process of financialisation and its adverse socio-economic effects. This document states that "in fast-changing global context, UniCredit and the UEWC Employees' Representatives share the belief that excellent and qualified customer service is crucial for the sustainable and long-term success of the Group". The basic principles set out in the declaration include: customer centricity, employees' professional development, sustainable products, organisational governance and fair and transparent business culture. While the implementation of the two earlier declaration is not subject to systematic observation and assessment, the process of implementation of the Declaration on responsible sales results in the development of detailed autonomous regulations – one example is the adoption, in April 2016 in Italy, of the "Report on social benefits in the workplace and marketing policies" by the trade unions and the management board of UNiCredit S.p.A. It should be emphasised that the trade unions (SBF ZABA) and the department of HR management signed an agreement concerning the

implementation of the Declaration at Zagrebačka in Croatia in April 2017. The negotiation process was limited to two meetings, whose purpose was to tailor the contents of the Declaration to the specific character of the Croatian market. All the employees of Zagrebačka bank have become acquainted with the content of the Agreement and Declaration on responsible sales and are bound to comply with them. The Declaration on responsible sales has also been implemented in UniCredit Bank d.d. Mostar. Unfortunately, the employees are not familiar with content of the two earlier declarations, which is explained by the "lack of commitment from both sides, the financial crisis and changes within UniCredit Group".

### 9.2.1 Poland, Alstom

In Poland, of the three cases selected for the study, the metal industry is represented by Alstom. Alstom has existed in its current form since 2000, after taking over the joint venture with ABB operating under the name ABB Alstom Power. Since then the corporation has developed a more specialised business profile activities by disposing of the shipyard (2006) and energy segment (2015), which was also reflected in a significant reduction of employment.

Alstom appeared in Poland in 1997, when it took over the Konstal establishment in Chorzów, manufacturer of rail vehicles. In 2000 it was expanded by adding Zamech in Elblag and Dolmel in Wroclaw, purchased from the state by ABB at the beginning of the 1990s. Now Alstom employs more than 1 000 workers in Poland – in the factory in Chorzów and Pendolino service centre in Warsaw. Konstal specialises in the manufacture of trams and underground trains.

In general, the industrial relations in the Alstom operations in Poland are described as a satisfactory by trade unionists, though worse than at the entire corporation level, which is an important reference system – both comparative and normative. This is evidenced by the following comments: "Negotiations usually end with a compromise. The success of negotiations at national level is largely influenced by transnational negotiations" (Alstom Konstal trade union Leader), or: "The general climate at corporation level is better than at national level, where the management avoids real negotiations and uses legal tricks to weaken e.g. the provisions of the Collective Agreement" (trade union Leader, Elbląg).

Alstom in Poland has signed the Responsible Business Declaration of the French Chamber of Industry and Commerce members in Poland. Alstom in Poland is also a member of the Global Compact Network Poland.

The subject of the study is the TCA titled "Agreement on the anticipated change or development in Alstom", signed on 24 February 2011 by the Management Board of Alstom and the European Metalworkers' Federation (EMF). The agreement was concluded for a period

of 3 years with the possibility of extension by mutual consent, which did not occur chiefly due to the acquisition of part of the corporation (Alstom Power) by General Electric (GE). The TCA was signed in response to the restructuring and the initiative came from the trade unions. Because of the large scale of restructuring it was important to negotiate an agreement on anticipating the future developments, so as not to present workers with a *fait accompli*. The negotiations were conducted by EMF and the trade union delegation was appointed in accordance with EMF internal rules (the trade union representatives of the states with the largest number of employees of the transnational corporation). The negotiations were composed of approximately 6 meetings.

The aim of the agreement was to ensure:

- the competitiveness of the company and promote the sustainable development of the existing activities;
- continued discussion and dialogue between employers, employees and representatives of the employees and trade unions
- employee competencies, know-how and development are developed in line with the new economie and strategic stakes
- the "employability" of employees.

The primary objective of the agreement is to ensure that every worker, regardless of his position in the structure, has the right to further professional development. The agreement indicates that all local collective agreements or agreements or memoranda take priority when they are more favourable to employees.

The agreement indicates that any restructuring affecting employment should be negotiated with the trade unions in good faith and with the primary purpose of avoiding layoffs. However, there are other measures that could be undertaken:

- Supporting voluntary transfers to other companies located in the proximity (the definition of geographical proximity was to be negotiated at local level).
- Support the voluntary mobility of employees in the different units,
- Favour voluntary departures when possible,
- Support employees' individual projects to create their own companies,
- Support personal projects,
- Train the concerned employees to facilitate their requalification for outside positions,
- Accompany the employees in their search for a new position,
- Support the creation of positions in other companies of the same geographical area (the perimeter of this zone is to be discussed locally), when such creations permit the hi ring of Alstom employees.

The agreement provides (clauses 5.1 and 5.2) that every worker is entitled to an annual meetings with his immediate supervisor to discuss his career, qualification and competence needs as well as the worker's expectations in this respect. At the worker's request, a trade union representative may participate in the meeting. Supervisors are to be trained in the organisation of such meetings. At the meeting, the worker should communicate his conclusions concerning internal mobility.

The trade unions were monitoring the implementation of the agreement until the purchase of Alstom Power by GE. After that acquisition the monitoring stopped due to the fact that GE was not interested in continuing (renegotiation) of the agreement. In the opinion of trade unionists, the agreement was an added value for industrial relations at national level. But it should be noted that the main effort in the dissemination of information about the Agreement was put in by the trade union side. The trade union leader in Elbląg said, "As a member of the EWC, I did the translation myself and distributed it among all the Alstom trade union organisations in Poland". He also comments on the employer's efforts to raise the employees' awareness of the TCA: "Not much was done, I think there was only a message to that effect".

### 9.2.2 Poland, Pernod Ricard

The second case study carried out in Poland focused on the European Agreement on Corporate Social Responsibility (CSR) in Pernod Ricard, signed on 7 January 2014 by the CEO and Vice President of the Management Board of Pernod Ricard, and General Secretary of the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT).

Pernod Ricard, established in 1975, is now the second largest company in the global spirits industry after DIAGEO. It has 101 production facilities in 24 countries (including 11 EU countries), and employs 18,500 people, including 10 271 in the European Economic Area (EEA).

Pernod Ricard appeared on the Polish market in the 1990s, establishing a company distributing its own products. In 1999 it took over Agros Holding, thus acquiring the right to sell abroad most of the Polish liquor brands registered by Agros. In 2001 the company purchased (for the equivalent of ca. EUR 82 million) 80% shares in Wyborowa SA in Poznan. In 2008, due to the acquisition of Swedish V&S, the corporation became the owner of Luksusowa SA in Zielona Gora, where the core of the production was eventually moved in 2013. The third Polish branch is Wyborowa Pernod Ricard Warsaw, which deals with marketing and sales of all international brands of Pernod Ricard Group on the Polish market.

Pernod Ricard emphasises the commitment to social responsibility (CSR) in its annual reports. Every two years the central management commissions an audit to determine the level

of employee satisfaction. According to a 2013 study, 83% of employees are aware of the existence of the S&R model[30], and 90% believe that they work for a socially responsible organization. Since 2003 the corporation has been a signatory to the UN Global Compact. It also stresses commitment to its principles in relations with subcontractors in the framework of the Responsible Procurement Policy.

As to collective labour relations at European level, the trade union contacts are perceived to be weak. As pointed out by the union coordinator of EFFAT, a significant proportion of the members of the European Works Council (EWC) existing since 1999 are not members of trade unions. Industrial relations differ across the Polish subsidiaries. The largest trade union organisation is NSZZ Solidarność in Zielona Góra, composed of around 30% of the 160 staff. About 20% of workers belong to the OPZZ trade union ; there are also 2 small and non-representative trade union organisations in that facility. The plant in Poznań has very few employees (30 at most), which is why trade union structures have ceased to operate there (however, a representative of the workers from that facility is a member of the EWC). In 2001 the restructuring began in at Poznań facility, based on a voluntary resignation programme (PDO), and400 out of 650 workers took part in that programme. In 2005 an attempt to lay off a further 60% of the workforce was made, while simultaneously requesting that the company collective labour agreement be suspended for 3 years. As a result of industrial action (including a hunger strike) redundancies were replaced with an extension of the PDO programme. Currently the centre of gravity in terms of the management of Polish subsidiaries is located in the commercial and distribution centre in Warsaw, employing ca. 150 people. There is no trade union there, but according to the information obtained from EFFAT, the second representative of Polish workers in EWC comes from that subsidiary; she is also a member of the board of "Polska Wódka" Association of Entrepreneurs. Despite the traumatic experiences connected with the conflicts in Poznań, the leader of NSZZ Solidarność in Zielona Gora considers that the current dialogue is conducted by the management in a responsible manner. Trade unions are currently holding negotiations on a collective agreement (January 2017). What is worrying, is that trade union leaders do not know who represents the workers in EWC. It is also unclear how the current representatives have been selected.

The negotiations on the TCA were initiated by the central management of Pernod Ricard, since the topic was in line with the corporate policy of active implementation of CSR. The original invitation to negotiate was extended to the EWC, but the Council did not feel authorised to conduct such talks, inter alia due to the poor trade union representation indicated above, so the role of the negotiator on the employee side was assumed by EFFAT. It is

[30] R&S stands for "responsibility and sustainability".

noteworthy that the federation also fully participated in the negotiations over the agreement on EWC establishment in 1999, which indicates a certain continuity in the open approach adopted by the corporation.

The employee delegation consisted of two people; additional 2 members of the EWC were in attendance as observers. The negotiations were held in three sessions. In addition, there were numerous written consultations. Finally, the agreement was signed by the CEO and the HR Director on behalf of the management, EFFAT General Secretary and one more representative of employees.

The initial draft presented by the management of Pernod Ricard was very long. EFFAT was in favour of producing a much shorter version. The final version of the agreement is still long, but EFFAT has achieved its aim of strengthening the role of the trade unions and workers. In addition, the agreement implementation procedure was precisely defined and agreed upon. The parties to the agreement meet at least once a year to discuss the progress and problems accompanying the implementation of the agreement in the individual European subsidiaries. The agreement was concluded for a period of four years and three months before its expiry the parties should commence the re-negotiation procedure.

The agreement describes a number of actions taken by the corporation such as encouraging the involvement of employees in charity activities, supporting young artists or promoting responsible drinking. It also contains a provision concerning the need to implement programmes aimed at improving the mental well-being of employees.

The agreement precisely describes the principles of its implementation. The management boards of the subsidiaries are required to translate the text and distribute it among the employees. Every year, both the EWC and EFFAT should be informed of the results of implementation at different locations via the annual report. Although the website of the transnational corporation contains a note about the conclusion of TCA, it contains no information about the progress of its implementation in the individual national locations. What is more – the text of the agreement cannot be found on the corporation website, not even in the CSR tab, neither has it been posted on the EFFAT website. It is available only in the database maintained by the European Commission.

According to the EWC trade union coordinator, EFFAT is trying to incite the central management of Pernod Ricard to consult on the issues covered by the TCA. In 2015, this applied to the following issues: information and consultation of workers, collective bargaining, appointment of EWC members, stress at work, employment of young people, life insurance. However, the corporation management was slow to react. In 2016, the first five of these topics were brought up again, as well as issues concerning restructuring and the situation of subcontractors' employees.

The Zielona Góra trade unions leaders interviewed said that they did not know of the existence of TCA and consequently had not yet discussed it in their talks with the local management. In the assessment of the trade unions, the local management (in Zielona Góra) had not taken any measures to raise the employees' awareness of the agreement.

The trade union leaders find it necessary to strengthen the national trade organisations, which – if affiliated at European level – have more influence on the EWC members from their own country, even non-union members by communicating with the trade union coordinators of EWC, which is regarded as a matter of particular importance, because in the course of the preparation of the case study EWC members from the Warsaw branch did not respond to the questions addressed to them. Neither responded the HR Department.

### 9.2.3 Poland, Suez Environment

The third case study completed in Poland concerns the "Group Agreement on Gender Equality in the Workplace" concluded in Suez Environment on 31 March 2015. It was signed by the CEO for Suez Environment and representatives of EPSU and IndustriAll on behalf of the employees.

Suez Environment provides public services, in particular management of drinking water supply to the public and comprehensive household and industrial waste management. Employs over 80,000 people all over the world, of which 37.3% in Europe (excluding France), and 42.2% in France (together with its overseas departments).

The Group has been operating under its present since 2003, when it was separated from the conglomerate *SUEZ Lyonnaise des Eaux*, originally established in 1858 (when the Suez Canal construction company was created by Ferdinand de Lesseps). Until 2015 Suez Environment had operated in over 70 countries under 40 different brands (SITA in Poland). Currently it operates solely under its own name. The Group conducts its operations primarily in Europe (35% of revenue) and in France (34% of revenue).

The corporation appeared in Poland in 1992, taking over the privatised municipal services companies offering waste collection and greenery services in cities and municipalities or creating joint ventures with local governments. Initially it operated under the brand names ASMA and ASMABEL, later SITA and now it uses its own name. It is the leading operator in the municipal, industrial and hazardous waste management market and provides cleaning services in 22 cities in Poland. Since 2000 the group has been investing substantially in activities relating to industrial waste management. Overall, it employs more than 2,600 people in Poland[31].

[31] http://www.sitapolska.pl/fakty-i-liczby.html

In the opinion of EPSU, the corporation conducts dialogue with trade unions at European level. In 2007–2014 in Suez and later in GDF Suez, 11 TCAs were signed on a variety of topics. Almost immediately after the separation of Suez Environment from the parent conglomerate, a separate EWC was created there in 2013. Representatives of Polish workers were invited to participate in the Council according to a flexible procedure, favourable for trade unions. This is particularly important in view of the fact that the Polish operations of the corporation have relatively few employees – in most cases several dozen people – which causes poor development of trade union representation (there are no full-time union leaders) – it exists in few subsidiaries and does not have organised structures at multi-site level.

The negotiation of the agreement was a joint initiative of the central management and EPSU and was a consequence of signing a similar TCA in GDF Suez in 2012 and the wish to preserve the same standards in the now independent Suez Environment.

The subject matter of the "Group Agreement on Gender Equality in the Workplace" is:

- equal opportunities for women and men;
- pay equity between women and men, including all aspects of pay under identical working conditions;
- a better work-life balance for both male and female employees.

The agreement also indicates the benchmarks to be achieved:

Until the end of 2018 women should account for at least 25% of people hired every year on the basis of a contract for an indefinite period of time. Establishments which have already achieved this recruitment objective should ensure that their rate rises by 5 % in the period indicated.Until the end of 2018 women employed in executive positions should account for at least 25% of permanent Executive positions (including in the Senior Executive category). The parties directly refer to the French labour code regarding the ability to terminate the agreement (Article 18); the agreement itself was deposited in the office of the labour court in Nanterre.

The agreement has not been implemented in Poland. There is no information on the process of its implementation. Similarly, there is no information concerning notification of workers of the content of the agreement by local employers. No information about the agreement has been posted on SITA Polska website. The EWC has not summed up its implementation, either, as confirmed by the head of the employee representation.

According to the Polish representatives in EWC ,,the employer has not taken any measures to inform workers of the conclusion of the agreement or its content. In the assessment of the persons interviewed, the agreement is only known to trade unions, as long as they were directly involved in its negotiation. According to the interviewees, there was no implementation measures had been undertaken, although in accordance clause 3.1. Group companies

employing more than 150 employees are required to summarise the activities carried out in the field of gender equality training within 15 months of signing of the Agreement. The interviewees pointed out that it is unfeasible to increase the employment of women in operational activities (due to the nature of the job). They also noted that the trade unions, with a majority of male members, do not treat gender equality as a priority.

### 9.3.1 Romania, ArcelorMittal Galati

Metal sector in Romania is illustrated with the TCA concluded in the steel corporation ArcelorMittal. The document discussed here is an agreement titled "Managing and anticipating change at ArcelorMittal", signed on 9 November 2009 by the members of the general management board (GMB) of ArcelorMittal and Deputy General Secretary of the European Metalworkers' Federation (EMF).

ArcelorMittal is the largest steel producer in the world. Operating in 60 countries, it employs more than 310,000 people on four continents and manufactures around 10% of world's steel production. The corporation was created in 2006 as a result of the acquisition of Arcelor by Mittal Steel; the cost of that operation was estimated at USD 33 billion. ArcelorMittal is headquartered in Luxembourg. In Romania alone there are six ArcelorMitta production plants, employing a total of approximately 10,000 people.

The main production plant (production capacity of approximately 3 million tons of steel) is ArcelorMittal Galati steelworks, which employs approximately 7,000 people. That said, the employment level has been falling steadily since 2011 (by more than a quarter until 2015).

There is no industry-level collective agreement in the Romanian steel industry, but each of the plants owned by ArcelorMittal has its own agreement, negotiated by the representative trade unions. Although each agreement was negotiated separately and differs from others in content, the provisions relating to health and safety have been standardised to a certain extent. The current ArcelorMittal Galati agreement, effective until the end of 2017, was signed by the representative (50% +1 workers in the establishment) trade union named Siderurgist A.M.G. The agreement was signed in 2016 for two years (although the law generally allows a one-year duration) with a view to stabilise the internal situation in the enterprise facing difficulties in the local and global economic environment. Under that agreement, employees are granted pay rises and a service bonus of 25% of the basic salary. Apart from Siderurgist A.M.G, there are two non-representative trade unions in the establishment: Metalworkers' Trade Union in ArcelorMittal and Trade Union Forum ArcelorMittal Galati.

In 2007 an EWC was established in the company. The Agreement on the establishment of EWC was extended in 2015 for a four-year period. At the end of 2009, on the initiative of the management board, which had earlier warned about the necessary downsizing due to the economic crisis and declining orders, after three months of negotiations the TCA was signed, under the title "Managing & Anticipating Change at ArcelorMittal". The agreement was signed by EMF on behalf of the employees. The TCA covered only the Group's European undertakings. It is a restructuring agreement, aiming to adjust to the new company operating conditions during crisis, prepare for future changes and raise its competitiveness as well as the potential and improve the employability of workers.

The agreement defines a set of minimum CSR obligation, clearly presents the company's intention to maintain the employment level, technical equipment and production facilities. The company agreed to introduce reduced working hours and provide training to workers affected by the consequences of the crisis in order to avoid layoffs as far as possible. If redundancies proved inevitable, the company undertook to make efforts to minimise their consequences for workers. What is more, company promised not to shut down any of the establishments, and ensure that any production downtime would only be temporary. The agreement established a special body with the aim of supervising the performance of the provisions of TCA, named the European Social Dialogue Group (ESDG). Beside ongoing monitoring, ESDG was to anticipate any possible changes, but primarily serve as a permanent mechanism of institutional dialogue between the management and employees. ESDG was supposed to meet three to four times a year and the first meeting was held in January 2010. At facility level, an ESDG branch was established at each European site with the aim of promoting the TCA and monitoring its implementation. ESDG was composed of representatives of the employees of the 10 largest countries (in terms of employment) – one representative per country – and three representatives of the management, including one person assigned from the European HR Department. Negotiations over the Agreement were also participated by three representatives of IndustriAll.

The TCA concluded in ArcelorMittal provides for the following:

- Maintaining machineris and equipment in good working order and efforts to improve them; maintaining and adjusting the critical skills of workers to market demand;
- During periods of inactivity, reducing working time through temporary layoffs and implementing staff training programs;
- Avoiding forced redundancies, if staff reductions are necessary; mutual commitment from the management and the trade unions that, in such

circumstances, solutions are reached through negotiations and are adapted to the peculiarities of each subsidiary;

- Finding solutions for maintaining employees' purchasing power; limiting wage losses in case of working time reduction;
- Proper information on the company's strategy and major directions of development in order to identify appropriate staff training needs;
- Developing an active training policy that is accessible to all employees; for each subsidiary, this should include annual training plans, to be negotiated with the unions;
- Defining minimum standards for social dialogue, applicable to all subsidiaries, to ensure appropriate content and frequency for meetings between management and union representatives; these standards can be improved upon locally and must be reviewed annually;
- The recognition and strengthening of the role of the European Works Council and of workers' representative structures in all subsidiaries; coordination of information and consultation at group and local levels;
- Setting up a committee tasked with analysing the economic and social activities of the company at the European level and monitoring the implementation of the agreement; The Committee consists of 12 management representatives and 12 trade union representatives; the establishing of equivalent committees at the national level;
- Potential conflicts regarding the implementation of the agreement are to be settled by a special committee made up of representatives from each side;
- Communicating the content of the agreement to all employees of ArcelorMittal, in accordance with procedures in each subsidiary;
- Indefinite duration of the agreement and procedures for its modification or revocation.

In 2012 the management board, with the approval of the IndustriAll, suspended the activities of ESDG in connection with the local negotiations over the closure of establishments in Florange (France) and Liège (Belgium) and the inevitable mass job cuts in these two locations.

After the conclusion of the talks in Florange (France) and Liège, the management board and IndustriAll attempted to reactivate the ESDG in autumn 2014. Despite the differences between the parties arising from conflicting interpretations of the provisions of the Agreement, it was decided to keep the body in existence with the aim of continuing the social dialog. However, according to the trade unions, there were more and more departures from TCA provisions over time, in particular in such key areas as maintenance of facilities, employment protection and training. According to the representatives of the management board and Deputy General Secretary of the EMF, the most important provisions of the Agreement were complied with before February 2010: none of the establishments were shut

down, there were no compulsory redundancies, and what is more, the company gradually reopened its plants and informed that most losses in production had been restored (75% in Europe and 80% globally). The parties to the TCA intend to enter talks over resuming production in temporarily suspended operations and in particular discuss the principles and conditions of employment. In the opinion of the respondents, ArcelorMittal in Romania decided to pursue the strategy of adaptation to crisis conditions through a systematic reduction in employment and shifting away from the unprofitable segments of production, while maintaining its investment.

### 9.3.2 Romania, Carrefour

The second case study completed in Romania concerns the agreement concluded by Carrefour, a retailer domiciled in France, titled "International Agreement for the Promotion of Social Dialogue and Diversity and Respect for Basic Employees' Rights". The agreement was signed in October 2015 by the central management of Carrefour and UNI Global on behalf of employees, in the presence of Guy Ryder, Director General of the ILO. The agreement was concluded at the initiative of UNI Global.

Carrefour is among the world's leading retail chains, with a turnover of EUR 100.5 billion and 38,000 employees in 2015. In has had operations in Romania since 2001; currently it has 281 stores (under its own name, as well as Artima and Billa), employing nearly 8,000 people in total. After a period of stagnation associated with a low consumption dynamics due to economic crisis, there has been a visible recovery since 2015, which in the case of Carrefour manifests itself in sales and employment increase (by nearly 1,300 people since 2013, after a period of decline in 2011–2013).

According to the trade union member who participated in the survey, industrial relations in the Romanian Carrefour are very good but still need improvement. Carrefour brand stores are covered by a collective agreement ( Artima and Billa stores have separate trade union organisations and their own collective agreements, but they closely cooperate with the trade unions in Carrefour). The union membership rate in Carrefour is no less than 70%. There is no industry collective agreement in retail, which is the result of the abolishment of a centralised system of collective bargaining in Romania in 2011. Its absence, like the absence of a countrywide agreement, are indicated as one of the causes of the increasing precarisation of employment in retail.

The TCA analysed is not the first one at Carrefour. In 2001 UNI Global Union and the management of Carrefour signed the so-called Global Framework Agreement (GFA) – very brief (one page) and limited to the declaration of compliance with the provisions of ILO

Convention No 87, 98 and 135. The corporation boasts a long cross-border dialogue tradition: the European Information and Consultation Committee (CICE in French) was established as early as 1996. CICE currently include trade union representatives from six European countries (Belgium, France, Spain, Poland, Romania, Italy). The agreement establishing the EWC has been revised to meet the provisions of the Recast Directive of 2009. In 2015 UNI Global and Carrefour signed a new, 16-page GFA, which is the subject of this study. It was developed on the basis of an earlier agreement of a highly general nature. It covers the following issues: promotion of social dialogue, freedom of association, respect for diversity and the fundamental rights of workers. The parties agreed to meet twice a year in order to monitor the implementation of GFA, introduced specific procedures to resolve conflicts and differences of opinion (according to the trade unionists surveyed they are functional and applied). Furthermore, the parties established detailed rules for the creation of trade union organisations at the local level within the group, such as a guarantee of trade unions' entry to the establishment and presenting the benefits of trade union membership to employees, including newly-hired ones, employer's non-interference in the organised trade union meetings (according to the trade unionists surveyed, these rules are respected). It should be stressed that the GFA also extends beyond. Carrefour's own operations, covering suppliers, subcontractors and franchisees. It was agreed that the representatives of Carrefour and UNI Global Union would meet once a year to review the behaviour of franchisees outside the EU in respect of labour rights and human rights. Carrefour has committed itself to exert influence on its major suppliers and subcontractors to promote human rights and fundamental ILO regulations. This commitment is reflected in joint monitoring of suppliers and subcontractors' compliance with the provisions of the GFA performed by UNI Global, IndustriALL and the International Union of Foodworkers (IUF), the last two federations representing workers of Carrefour's supply chain. So far, no steps have been taken in this area in Romania. Also, the GFA contains provisions concerning health and safety at work, non-discrimination and promotion of diversity (especially in terms of gender equality at work, which is particularly important in the case of the Romanian subsidiary, where 66% of workers are women). It should be noted that in Romania a majority of top- and middle-level managers are women.

### 9.3.3 Romania, UniCredit □iriac Bank SA.

The third case study completed in Romania focuses on the Joint Declaration on training, learning and professional development of 16 December 2008, concluded between the UniCredit European Council and representatives of the HR Department of UniCredit Group. We also refer briefly to the other two TCAs signed in the Group i.e. Joint Declaration on equal

opportunities and non-discrimination (2009) and the Joint Declaration on responsible sales (2015). Thus, the focus of our analysis is the same as in the case of Croatia.

UniCredit Group S.p.A. entered the Romanian market in 2001, acquiring a subsidiary of the Turkish Demirbank. On 1 June 2007 UniCredit Romania merged with HVB□iriac, as a result of which□iriac UniCredit Bank SA was established. In August 2013 UniCredit Romania and RBS Romania announced the transfer of part of the operations (retail and private banking) of RBS Romania to UniCredit and UniCredit Consumer Financing IFN. UniCredit is one of the five largest banks in Romania, with 208 branches and approximately 3,500 employees. At the end of 2015 the bank had approximately 600,000 active customers. In 2016 the management announced its intention to reduce employment.

UniCredit Romania has a trade union membership rate of 47%, but in the light of the Romanian law it is not sufficient for UniCredit Romania Trade Union to acquire the representative status (a threshold of 50% + 1 employee), which therefore cannot initiate collective bargaining. As a consequence, there is no collective agreement in the company at present. UniCredit Romania Trade Union is a member of the Federation of Trade Unions of Insurance and Banking (FSAB), affiliated with Global UNI. Meanwhile, Unicredit Business Integrated Solutions Romania, a branch of UniCredit Tiriac Bank, has a representative trade union – U.P.A Romania. It is the only trade union organisation in that undertaking. The current collective agreement was signed there in March 2017.

The EWC in UniCredit Group S.p.A. operating under the name UEWC (UniCredit's EWC), was founded in 2007 under the Italian law, with reference to Directive 94/45/EC. It includes 44 members from 22 countries. In December 2008 UEWC was the signatory, on behalf of the employees, of the GFA titled “Joint Declaration on training, learning and professional development”. It was also UEWC that put forward the proposal concerning conclusion of the agreement.

What is important, in 2009 a transnational trade union platform was formed in the Group, called UniCredit Trade Union Alliance.

The Declaration on training was concluded for an indefinite period of time. It aims to provide employees with training in the workplace, in principle organised during the working hours. Its implementation is to be monitored periodically as part of routine UEWC meetings. Romania is a special example illustrating the positive impact of transnational autonomous regulation at national level because it served as a model when the collective agreement concluded for UniCredit Tiriac in 2009 was supplemented with provisions concerning vocational training.

Declaration on equal opportunities and non-discrimination expressly states that equal treatment must be guaranteed to workers of various nationalities, various religions, and the

disabled, but it does not mention gender equality. According to the representatives of the employees in the UEWC, gender equality should be stipulated explicitly, but this causes – in the opinion of the delegates – resistance of the management board.

All the three Declarations have been translated into the national languages of the countries where this was found to be advisable. The content of the Declarations was made available to workers on the intranet: it was also communicated to organisations in the individual countries, which are expected to oversee the implementation of the Declarations. UEWC members are also encouraged to look at the progress in the implementation of the Declarations. None of the Declarations is binding, which is sometimes the subject of dispute among members of the UEWC. On the one hand, the optional nature makes these agreements flexible (their content can be amended relatively easily), but their implementation requires the parties to show good will at all times, as the provisions are impossible to enforce using legal instruments. Trade unions would prefer to include certain provisions, such as those concerning training on equal opportunities, in collective agreements, which would render them legally enforceable.

### 9.4.1. United Kingdom, EDF

Of the three British cases selected for the study, the service industry is represented by the energy company EDF and its Agreement on EDF Group Corporate Social Responsibility. The agreement was concluded on 25 January 2009 by the CEO representing the management and , on behalf of the employees, by representatives of trade unions active in individual countries and regions in which EDF has operations: FNME-CGT, FCE - CFDT, FNEM- FO, CFE-CGC, CFTC-CMTE (France); GMB, Unison, Prospect and Unite-Amicus (UK); EVDSZ (Hungary), NSZZ "Solidarność" (Poland); SOZE (Slovakia); ICEM (International Confederation of Energy, Mining & General Workers Unions), PSI (Public Services International), IFME (International Federation of Mining & Energy) and selected delegates of the Asia Pacific Consultation Committee (APCC).

EDF Group is one of the largest energy companies in the world, with the total employment of over 159,000 of which more than 13,000 in the UK (2016). The company enjoys a strong position in the British market with a 20% share of the electricity market and is the main producer in the nuclear energy segment. In the UK, EDF Group operates as EDF Energy Customers, whose sole owner is the state-owned French EDF (Électricité de France). The company was established in 2002 following a series of mergers and acquisitions of companies such as SEEBOARD Plc (formerly the South Eastern Electricity Board), London Electricity Plc (formerly the London Electricity Board or LEB), SWEB Energy Plc (formerly

the South Western Electricity Board) and two coal-fired power plants and a gas power plant. In 2009 EDF Energy, having repurchased shares from the state, took over British Energy, producer of nuclear energy, thus becoming a major actor in that energy subsector. The distribution company EDF Energy Networks was sold at the end of 2010 to the Hong Kong company Cheung Kong Group (CKG) and renamed into UK Power Networks.

EDF Energy Customers is a company with a high trade union membership rate; its representative organisations are: Unite, Prospect and GMB. The social dialogue is described as "rather strong", which can be explained by the origins of the company (former British state-owned enterprises), specific character of the parent company (currently a state-owned company) and the sector (large establishments). It includes innovative features, such as "Hinkley Point C Civil Engineering Sector Agreement and Common Framework Agreement" of 2013, signed by UCATT, Unite and GMB, EDF Energy and the general contractor Bouygues Laing O'Rourke for managing the industrial relations during the construction of a new plant.

Collective bargaining is highly centralised – held between the management board and representatives of the national structures of representative trade unions. They have produced a block of collective agreements currently in effect. Trade unions are given sufficient access to information; they may also use the services of external experts at the cost of the employer. The main area of dispute are pay issues, but they have never led to a collapse of negotiations. Nevertheless, the company keeps rejecting the trade union demands for profit-sharing bonuses, although this type of measure was provided for in the Agreement discussed here.

The agreement is not the first CSR-oriented TCA concluded in EDF – it was preceded by the 2005 "Agreement on EDF Group Social Responsibility" and the Code of Ethics issued in 2003. In 2009 the TCA was renegotiated on the initiative of the employer, wishing to enhance the image a socially responsible enterprise. While in 2005 the trade union negotiating team was based on national level organisation, in 2009 an important role was played by transnational structures (PSI and Industriall Global). The EWC in EDF had not participated in the negotiation of the TCA in institutional terms, but its members were involved in the discussions. Furthermore, the EWC is guaranteed one place in the body involved in the monitoring of the Agreement – Consultation Committee on EDF Group Corporate Social Responsibility (CCSR).

Aware that the employer wishes to maintain the TCA, the trade unions tried to push through their own proposals, which is reflected in the content of the current Agreement. Its main subject matter areas are as follows:

- Respect for human rights and international labour standards defined in the ILO conventions, the OECD Guidelines for Multinational Enterprises, Global Compact

etc., with particular regard to freedom of association, the prohibition of the use of forced and child labour and non-discrimination;

- Occupational health and safety;
- Adaptability of employees during professional careers: training, mobility;
- Social benefits, in particular regarding maternity, coverage of workplace accidents, illness and retirement
- Fight against discrimination, in particular by ensuring equal opportunities for women and men, integration of disabled workers, non-discrimination on the grounds of social status (origin), participation in trade unions;
- Anticipation and guidance in industrial restructuring processes, in particular, in the event of inevitable layoffs, provisions that are more favourable than the legal minimum required should be guaranteed;
- Employee profit-sharing system, the intention to introduce such solutions in each Group company;
- Relations with suppliers and subcontractors in the area of legal compliance, health and safety, ethical behaviour with customers and respect for the environment required of the suppliers and subcontractors;
- Sharing of reliable, comprehensive and updated information to the stakeholders (including employees);
- Industrial relations, in particular respecting the autonomy and independence of trade union organisations, employee's right to join the labour organisation of his/her choice, to elect and be elected for representative functions and to enjoy recognised rights of workers association, preference for social dialogue as a method for addressing issues affecting the interests of the company and its employees and the settling of disputes.

Implementation of TCA provisions is monitored by the Consultation Committee on EDF Group Corporate Social Responsibility (CCSR). It consists of representatives of the signatories of the Agreement and a representative of the EWC, whose meetings may in be attended by the CCSR coordinator. The Committee is presided by the Chairman and CEO of EDF. CCSR office provides ongoing administrative support. The Committee is expected to meet once a year. At the local level, the conditions for monitoring are specific to each company concerned. However, at a minimum they must be based on an annual written review, forwarded to the employee representatives in charge of monitoring of the Agreement, before being integrated in the internal annual review on the implementation of the Agreement at the Group level (which is in fact a compilation of the local reviews). The annual review is translated into the native languages of all the members of the CCSR. The signatories are responsible for

notifying employees, plant managers and suppliers/subcontractors.. The text of the agreement is available online. The majority of EWC and trade union members are aware of the existence of the Agreement. Its provisions are communicated by both the management board and trade unionists, whereas the employer emphasises the benefits of the TCA, and the employee representatives explain what CSR is and why it is important for employees. The trade unions tried to use a solution "borrowed" from the Polish EDF, namely designate a trade union representative to provide information to colleagues at the establishment, but this solution did not work in establishments where there is no or little social dialogue and communication channels do not work.

The document itself is unique since it includes a comprehensive list of commitments undertaken by the company as well as precisely designed solutions for the process implementation and supervision of this process, which is the task of CCSR enjoying full financial security provided by the company and the administrative facilities in the form of the Office. The Office performs the duties of the Committee in the periods between its sessions. Furthermore, CCSR is strongly linked to EWC at personnel level, as the majority of the Committee members are also members of EWC. The CCSR Secretary has always been a representative of one of the French trade unions, which contributes to good relations with the parent company. The persons exercising this function have been involved in the EWC. EWC members in the United Kingdom actively seek full, not partial as is the case, implementation of the TCA provisions.

Unfortunately, TCA has a limited influence on the labour relations in the Group. While the measures described in Article 6 (change anticipation), there is no evidence of implementation of Article 7 (profit sharing). The principles of socially responsible restructuring had already been established previously, as had Article 8 (emphasis on socially responsible behaviour in the supply chain). Article 1 has been implemented. Articles 18–20 were disregarded outside China. Articles 10 and 11 (access to energy) are promoted by the trade unions in cooperation with NGOs (e.g. Electricians Without Borders), but with limited effects. The agreement has helped to strengthen local trade unions. In China, largely due to the Agreement, the company was able to conclude a collective agreement, one of the few authentic collective agreements in that country. In 2009 CCSR criticised the failure to implement the Agreement at the local level (the restructuring in Poland was mentioned, inter alia). Trade union delegates disapproved of the tendency to treat the TCA as a PR tool only. They stressed the poor awareness of the TCA at the local level, particularly in Asia. There is a visible correlation between the strong promotion of TCA by EDF and its dynamic international expansion. Currently, this process has slowed and the company is less keen to implement the Agreement, at least when it becomes an obstacle to the realisation of profits. TCA and its

monitoring is no longer a priority, as evidenced by cutting the spending on CCSR. One example is the two-year wait before approving the application of the (former) Committee Secretary for a business trip to China. The lack of real budget means CCSR's reliance on the good will of the management. The company further announced that it did not intend to extend the Agreement and would prefer to replace it with a new, 'lean' TCA. This is motivated by non-implementation of the provisions of the current TCA by more than half of the subsidiaries. Trade unions at national level are opposed to the new agreement being negotiated by international federations, encouraged by the management board. The Chinese collective agreement, for some time a source of pride, was not respected and thus will be terminated. The trade unionist interviewed for the purpose of this study, commented: "This shows how easy it is to negotiate but how hard it is to implement an international agreement…. ".

### 9.4.2. United Kingdom, Sodexo

The second British case study is the agreement concluded in Sodexo, titled "Sodexo – IUF" International Framework Agreement of 12 December 2011. The parties to that TCA are the Sodexo management represented by the CEO and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Employees' Associations and all of its affiliated unions (IUF), represented by its General Secretary.

Sodexo employs 425,000 workers globally, of which approximately 35,000 in 2,300 establishments within the UK (2016). Founded in 1966, Sodexo is an outsourcing company, operating in 80 countries across the world and providing a wide range of outsourcing services. Over 86% of Sodexo revenues are generated outside France and the United Kingdom is one of its most important markets.

In the United Kingdom the company has a high trade union membership rate, with representative trade unions: Unite and Unison.

The TCA was signed above all to allow the company to avoid bad publicity with trade unions whose recommendations are often of critical importance for securing contracts by Sodexo. This was in fact a defensive move against an intensive campaign mounted against Sodexo in 2009 in the USA, chiefly by the Service Employees International Union (SEIU). That campaign criticised the company for the use of unethical practices in employment, anti-union procedures and low salaries. The TCA was signed with the aim of strengthening the relations between the company and 'traditional' trade unions, which agreed: "not [to] initiate or support any international boycotts, adverse publicity, corporate campaign or other similar adverse activity against "Sodexo", as long as dialogue on the questions at stake is pursued under this agreement".

The TCA confirms that Sodexo Group recognises the fundamental rights of workers, i.e. rights to freedom of association and collective bargaining. What is important, the Sodexo TCA was the first agreement in that industry. One year before the conclusion of the TCA, Sodexo CEO for Great Britain and Ireland signed the national collective agreement in the industry with the most important trade unions: Unite, Unison and GMB.

The TCA contains numerous declaration concerning respect of human rights, workers' rights, including freedom of association and collective bargaining, promotion of constructive social dialogue at local and international level (interestingly, "without impairing "Sodexos" 's competiveness and growth"), equal treatment (also concerning salary), counteracting discrimination on all grounds, and health and safety at work. Sodexo agreed to comply with the provisions of the Global Compact, the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work of 1998, as well as the OECD Guidelines for Multinational Enterprises. The provisions of the Agreement are to be implemented at the cost of the company, with cooperation between Sodexo and IUF in the form of "regular contact between Sodexo HR Department and the IUF Secretariat, annual meeting with the participation of representatives of top-level managers, human resources leadership at Sodexo and IUF delegation, as well as local visits by representatives of HR management and IUF. It is emphasised that the annual meeting must not be in the form of collective bargaining. Its purpose may be to resolve any disputes arising in the implementation of the Agreement.

The trade unionists at Sodexo report that the monitoring of the TCA is purely formal, the Agreement is not more widely known among employees and there has been no cooperation with the EWC on the implementation of the Agreement.

### 9.4.3. United Kingdom, Unilever

The third case study completed in the UK focuses on the Agreement on Responsible Restructuring signed in 2001 by the management of Unilever and the EWC.

Unilever is a Dutch-British company with headquarters in Rotterdam and London. It is one of the oldest multinational enterprises in the world. The company employs almost 170,000 people, of which nearly 8,000 in Great Britain and Ireland. Although formally established in 1929, the company dates back to the 19th century, when the company Lever and Co. started operating in the UK.

The British part of the company has a high trade union membership rate, with representative trade unions: Unite GMB and USDAW.

The TCA analysed here dates back to the period of intensive restructuring at the turn of the century, resulting in a number of solutions unfavorable for workers: restructuring, closure of plants, layoffs and social benefit cuts. In 2001 the EWC managed to negotiate the so-called Barcelona agenda, which sets out a strategy for sustainable employment in Europe, indicating the following areas of activity: sustainable training, health, diversity, general rules and employment security.

The document concerning 'responsible restructuring' of 2001 was quite vague and it is not entirely certain whether it met the formal requirements to be considered a TCA (bilateral declaration) or if it was only a statement issued unilaterally by the management and consulted with the EWC. In 2004 the 'Joint Statement' of the management and EWC was issued on the protection of personal data of employees and finally, in 2014, the parties renegotiated the 2001 document, which thus gained the status of an Agreement and therefore a TCA.

The subject matter scope of the TCA is as follows:

Avoiding layoffs: mobility on the internal job market and support in the form of outplacement; in the event of a plant closure: sale and reindustrialisation; in the case of disposal or outsourcing: a guarantee of respecting the rules and conditions of employment compatible with Unilever standards.

On the procedural side, the implementation of TCA is to be monitored as follows: review every five years, ongoing notification of the EWC, restructuring carried out at local level in accordance with the local law and collective agreements, the agreement should contain reference to the agreement on TCA establishment.

In the opinion of the respondents from trade unions the TCA is little known. It is not known whether the five-year review provided for has ever been completed. The participation of trade unions in EWC efforts is described by them as 'peripheral'; the trade union coordinator responsible for contacts between EWC members and European trade federations such as European Mine, Chemical and Energy Workers (EMCEF) or European Federation of Trade Unions in the Food, Agriculture and Tourism (EFFAT) shows no commitment.

### 9.5.1. Italy, Ferrero

The first case from Italy is unusual because does not relate to a TCA *per se*, but to an agreement on the establishment of the EWC. However, the document in question has many features in common with transnational framework agreements. It is the most advanced EWC agreement in terms of the content so far identified in the Italian food sector, based on the foundations of joint training for the management and representatives of workers as well as extensive socially responsible business policy. The Agreement on the establishment of EWC

was concluded on 7 October 2015 by the European Companies of Ferrero Group and plant-level representatives of employees with the participation of EFFAT and the following trade union organizations: NGG, CSC and FGTB, CFR-CGC[32] Agro and CSFV-CFTC[33], SIPTU, Fai-Flai-Uila.

Ferrero is a rare example of a multinational company, which still remains a family business. One of the world's leading food companies operated only in Europe until the end of the 20th century, later to expand into non-European markets e.g. South America, Canada, Russia, Turkey, and China. Ferrero also engages in the social economy in the Global South (establishing cooperatives in Cameroon, India or South Africa). Due to the specific nature of the production, the company's global expansion is due not so much to the desire to minimise labour costs as to the aim to 'settle down' in a particular market: the company sells 'fresh' food products, which should be produced locally. At the end of 2015 Ferrero had 33,000 employees; 40,000 including other types of workforce. The largest employment per country is in Italy (7,439), followed by Germany (5,369), India (4,560), Great Britain (3,239) and Poland (2,777).

Despite the relatively low trade union membership rate in Italy (30%), the labour relations are quite conflict-free there. The family character of the company translates into a consensual nature of industrial relations, which is reflected e.g. in the existence of the Steering Committee of the Council of Workers (*Esecutivo della RSU*) originally proposed by the management, including representatives of the three trade unions operating in the enterprise, intended to prevent competition between those trade unions. What also makes social dialog easier is the fact that the company has never had to cut jobs. Social dialogue has led to the establishment of a network of institutions seated at the company home in the town of Alba: the Joint Project Groups of the Management and Employees for Training and Skills , the Joint Committee for Performance-Related Pay, the Joint Committee for Safety and the Joint Committee for Occupational Welfare.

In the 1990s, on the initiative of CISL, the company started organising meetings of employee representatives from the various European Ferrero facilities. These efforts later led to the establishment of EWC, to which the company remained initially quite reserved (until 1996, when the Italian act was adopted, providing a legal basis for EWC operation). The Agreement on the establishment of EWC was concluded for the first time in 1996 in Brussels, to be extended in 1999, 2004 and 2007. The new agreement analysed here was eventually signed in 2015. Joint integration measures taken many years before formed the basis for the culture of dialogue in the enterprise founded on trust that is not abused by the management, which engages in social entrepreneurship, avoiding layoffs or focus on maximising profits.

[32] Confédération générale des cadres.
[33] Fédération *CFTC* des commerces, du service et de la force de vente.

The EWC chairman is nominated by the management board (currently that position is held by the Head of HR of Ferrero Italy), whereas the Secretary of EWC is nominated by the employees. The number of seats in the Council depends only on the volume of employment . Thus, there are four delegates each from Germany and Italy, two each from Belgium, France and Poland and one delegate from Ireland. There are routine EWC meetings once a year, including technical workshops on "Social Dialogue and Systems of Industrial Relations", "Health and Safety at Work", "CSR and Sustainable Development Policy" and "Competitive Scenarios Relevant for Ferrero Group". The costs are be borne by the company, and translation into five languages is provided.

The social dialogue in Ferrero Group shows the effect of spillover of dialogue culture and model with from the core i.e. the Alba facilities.

One of the functions within the EWC is the 'delegate for communication', whose duties include "disseminating experiences from EWC efforts at local level", and editing the newsletter titled "Euronotes" concerned with EWC activities and "subjects of European importance". The newsletter is translated into five languages and available for all employees.

### 9.5.2. Italy, Inditex

The second case from Italy concerns the Spanish company Inditex (owner of the famous Zara brand) and the Global Agreement between Inditex (Inditex Industria de Diseno Textil) and UNI Global Union for Implementation of Fundamental Labour Rights and Decent Work concluded on 2 October 2009. The Agreement was signed by the vice-president and CEO of Inditex and the General Secretary of Global UNI. It was renewed in 2013. Inditex is a multi-industry enterprise that includes the sales, production and distribution divisions. What is noteworthy, since 2007 the corporation has been a party to another TCA, concluded for the production and distribution divisions between the management board, the trade unions of the Spanish manufacturing sector and the International Textile, Garment and Leather Workers' Federation. In 2014 the agreement was renewed and signed by the management board and IndustriAll Global Union[34].

Inditex dates back to 1963, when it was established as a small tailoring shop that has grown to the size of a global corporation with over 7,000 stores all over the world and over 150,000 employees, of which approximately 4,000 thousand work in Italy (2016). The first Zara store opened in 1975. Today the company also owns a number of brands, such as Pull&Bear, Massimo Dutti, Bershka, Stradivarius, Oysho, Zara Home and Uterqüe.

[34] The text of the agreements can be viewed at: http://www.uniglobalunion.org/news/uni-and-inditex-reconfirm-global-agreement;
http://www.industriall-union.org/inditex

The enterprise follows a centralised strategy, focused around customer expectations, which has an impact on the organizational structure as well as environmental and sustainable development policy of the business, which in turn were reflected in the content of the TCA.

The industrial relations in Inditex Italia have improved – after seven-year negotiations a collective agreement has finally been signed, although without any influence of the TCA. After years of preparation, the negotiations over the appointment of EWC began in spring 2017. The Council is expected to start operation at the end of 2017.

The initiator of the TCA was UNI Global, assisted by two important Spanish union federations The main provisions of the TCA are as follows:

- CSR Policies: sustainable and solidarity-base social development criteria;
- Common interest in the growth and sustainability of the Company and in development of best practices in the area of industrial relations;
- Cooperation framework for the effective implementation of fundamental labour rights and decent work in the Group;
- Fundamental rights: Ilo Convention N°105; 100 and 111; 138 and 182; 87 and 98;
- Working hours: Ilo Convention N°1 and 47 Recommendation N°116
- Occupational health and safety: Ilo Convention N°155
- Joint action: in order to verify freedom of association and collective bargaining, joint training programs for employees and local management of the contents and implementation of TCA, common information and shared solutions in case of non-respect of TCA
- Uni representatives has right to hacw "reasonable access to the workplaces (Ilo Convention N°135)
- Agreement covers only the "minimum rights" in the Company.
- At least yearly meeting about the application of the Agreement
- Translation of the TCA will be provided by the company in all the languages necessary.
- Agreement is valid for an indeterminate period

The OECD Guidelines for Multinational Enterprises are not included in the TCA.

UniGlobal appointed the UNI INDITEX Global Union Alliance, whose task is to meet once a year in order to assess the progress made in implementing the TCA and the status of industrial relations. There were occasions when representatives of the management were invited to the Alliance meetings to participate in discussion on the implementation of the TCA (e.g. meeting on 25–26 September 2014 in La Coruña). The TCA is not widely known – only trade unions, but not employees, are aware of its existence. Inditex does not treat the dissemination of TCA as a priority.

### 9.5.3. Italy, Whirlpool

The third case from Italy is Whirlpool, well-known producer of household equipment and its Framework Agreement for the new Whirlpool European Employee Committee signed on 18 March 2016. The signatories to the Agreement are: the central Whirlpool management IndustriAll Global and IndustriAll Europe on behalf of the employees. The territorial scope of the Agreement covers EMEA, i.e. Europe, the Middle East and Africa.

Founded at the beginning of the 20th century, the company has its headquarters in the USA. It employs 93,000 people, of which 24,000 in EMEA, in 15 plants located in eight countries. Whirlpool has special ties with Italy because in 2014 it took over Indesit, another well-known producer of household equipment.

The industrial relations in the Italian company show the effects of the merger of previously independent companies which had their own models of relations between workers and employers. The trade union membership rate is high (50%); collective agreements are in place.

The Agreement was signed in the following circumstances: the owner of Indesit (Merloni) paid much attention to social responsibility: in 2002 it signed one of the early IFAs and established the EWC at the request of the trade unions before the entry into force of the Directive. Representatives of the employees of the establishments outside the EU (Russia, Turkey and Poland) were also invited to take part in the EWC operation. In 2013 the Indesit EWC was transformed into the International Works Committee, (IWC). The representatives of employees from Russia and Turkey were included therein on the same terms as the representatives from EU countries (Italy, France, the United Kingdom and Poland).

After the acquisition of Indesit by Whirlpool in 2014, the unions decided to merge IWC Indesit with the Whirlpool Europe Employee Committee (established in 1996). The process took place under the agreement analysed in this study. The new Whirlpool European Employee Committee includes 25 representatives from EU Member States (Italy, Poland, France, Slovakia, Germany), three from Russia, and one each from Turkey and South Africa. The agreement is not a TCA or IFA in the strict sense. IndustriAll Global informally requested Whirlpool Corporation to prepare a global TCA, but met with a resistance of the enterprise whose American plants have a low trade union membership rate. However, Whirlpool EMEA got the green light to negotiate a new agreement on EWC, taking into account the best practices developed in Indesit, including: participation of representatives from countries outside the EU, simultaneous translation into all languages, organisation of EWC annual meetings in different countries.

While it is difficult to evaluate the immediate impact of the current Agreement on the shape of labour relations, the previous Agreement and EWC in Indesit had some achievements, e.g. with respect to Poland, where they helped NSZZ "Solidarność" to enter the Indesit establishments.

In terms of communication, the idea of an EWC was proposed at some point, but still has not been implemented.

This case study focuses on the situation resulting from the merger of two major undertakings. The possibility of signing a new agreement resembling a TCA was examined by IndustriAll Global, but was hampered by the absence of trade unions in Whirlpool's US establishments. Admittedly, Whirlpool issued documents entitled "Global Labour and Employment Guidelines" and the "Code of Ethics for the Supplier Supplier Code of Conduct", but they were unilateral acts.

## Chapter 10.

## Streamlining communications with the aim of enhancing position of EWCs, their impact on industrial relations and the effectiveness of social dialogue in the European context.

Analysis of the content of the individual case studies shows that one of the frequently highlighted problems faced by stakeholders in the implementation of TCA provisions is the absence of effective communication between the individual structures involved directly or indirectly in the processes of negotiations and monitoring. As a result, the regulatory potential of TCAs is not fully utilised.

The general objectives of the project are strongly focused on issues related to communication, including:

- Preparation of EWC members for new challenges related to TCAs as a still developing part of the EU social dialogue;
- Improving communication and information exchange between EWCs within each industry;
- Facilitating the flow of information from the EWC to the national level and vice versa;
- Encouraging EWC members to maintain active contacts with European industry structures (the main TCA negotiators);
- Improving EWC members' knowledge of EU recommendations contained in EC documents and Directives related to the functioning of EWCs.

Apart from its descriptive and analytical function, this project also has an application objective, which is to design the communication procedures for channelling the flow of information. These universal procedures (for use by all EWC members) create the added value of the project. The following solutions are meant to serve as a ready-to-use model or reference system for the creation of original solutions for the exchange of information between the employee representatives in multinational enterprises with TCAs in place at the local and global level as well as with their immediate surroundings, i.e. trade union structures from the European level and within individual industries.

### 10.1. Communication procedure for EWCs within the industry

The first of these procedures applies to the exchange of information between multiple EWCs within the industry. This procedure is as follows:

- **Method –** using Facebook as a widely available and hugely popular communication platform, which makes it possible to create a closed group ("by invitation"). This

group would eventually include all delegates being members of the EWC within a particular sector and its administrator (moderator) would be the person responsible for EWC matters in the sector (from the European trade federation).

- **Group members –** the Moderator, national-level industry union federations, EWC members;
- **Starting and running a group –** the day-to-day functioning of the group should be based on the interaction of parallel communication processes, initiated centrally and developed on the bottom-up basis; the activities of the group would be initiated by the Moderator, sending group invitations to national industry trade union federations; these in turn would submit the list of identified trade unionist EWC members to the Moderator. In the next step, the Moderator would send invitation to those persons, while the European trade federation and industry trade federations should seek to determine whether there are EWC with no trade union participation within the industry, who is the employee representative – after an individual assessment of each case and analysing the profile of the non-union delegate – to undertake efforts to establish communication with such persons and ultimately include them in the group;
- **The collection of information** – after each EWC meeting the delegates should prepare a summary, using the standard reporting form (Appendix No ….). The same form should be used to prepare an annual activity report based on the information collected over the reporting period;
- **Information distribution mode** – national level trade federations should distribute the information collected concerning the activities of EWCs in their organizational structures present in or in contact with the companies that formally can join (assign a representative) to an existing EWC or take measures to appoint a new one.
- **Group's primary areas of interest** – the Facebook group is primarily intended to search for the best practices used in EWCs, with particular attention to those associated with the negotiation of TCAs, no matter on whose initiative (the management's or the employees'); the persons responsible for the functioning of the group (with the Moderator in the first place) should clearly and legibly inform the members that the group focuses only on matters relating to the activities of EWCs, rather than economic issues, disclosure of which outside the forum of a particular EWC could have undesirable effects due to the confidentiality clause binding upon delegates.

**Information collection tools**

- **Reporting form to be completed after EWC meeting:**
- Corporation name;
- Date of EWC meeting;
- The main points of the meeting;
- Is there a TCA currently in effect or being negotiated? If so, provide detailed information;
- Comment on the main processes at national level: collective bargaining, wage bargaining, its results etc. The scope and level of detail to be decided by the author of the report

**2) Annual report**

- EWC main points of focus during the year;
- The assessment of adequacy of EWC operating principles for the current conditions.
- Has any good practice worth popularising emerged during the year?
- Has there been any situation or event causing concern during the year – e.g. failure to provide information, lack of consultation, EWC ritualisation, tension between delegates from different countries etc.?

**3) Alert on opening, conducting and closing of negotiations over the TCA**

- On whose initiative was the negotiation started?
- What was its subject?
- What was the composition of the negotiating team representing the employees?
- What are the main problems that occurred?
- What will be the monitoring and implementation procedure?
- TCA content

### 10.2. Communication procedure linking the EU level with the national level

The second procedure presented here applies to the exchange of information between European trade federations and the national structures within the industry. The national structures may be located at the plant, industry or territorial level depending on the model of trade union operation in a particular country.

This procedure is as follows:

- **Method** - the use of the aforementioned closed group ("by invitation") on Facebook as a source of information, then distributed by a newsletter to be prepared by the person

responsible for communication with EWC (Editor) in a particular European trade federation, sent out to the EWC coordinators from a particular sector. The editor will publish in the newsletter the information obtained from the Moderator, posted by EWC members belonging to the group (bottom-up communication), and provide the information from the EU level (top-bottom communication).

- **Content:** in addition to 'standard' content relating to EWCs (i.e. EWC news, establishment of new EWCs etc.), the newsletter should also contain information on issues such as:

- What TCAs are currently being negotiated?
- How does the negotiation proceed?
- Ifthe negotiations are successful, what is their effect (TCA content)?
- Tips and hints concerning negotiation areas based on the experience of European Social Dialogue Committees.

To ensure success of the process of implementation of this communication procedure and make it a truly functional solution, it is necessary to provide systematic translation of the newsletter into the national languages by member organisations. Failure to provide the translation will mean copying one of the fundamental mistakes made too often in processes of cross-border communication both between and within the employee representative bodies in the European Union.

## Chapter 11.
## Summary and conclusions

The thirteen TCA cases collected in the course of this study and described in the report provide empirical data on the functioningof the specific model of autonomous regulation of labour relations in the global context, dominated by multinational corporations. The sample examined is large and diverse enough, both in terms of national (five countries) and sectoral terms (three industries) to allow formulating a number of conclusions on the basis of the data obtained.

Analysis of the case studies presented above should be preceded by the selection of a procedure to follow. They can be divided by subject in accordance with the classification used in the TCA database maintained by the European Commission. There are the following categories of agreements, classified according to the area of focus:

1. Career and skills development
2. Equal opportunities, diversity and antidiscrimination;
3. Fundamental rights, trade unions;
4. H&S and working environment;
5. Mobility;
6. Protection of personal data and Internet policy;
7. Recruitment/hiring policy;
8. Restructuring/impact on workforce
9. Social dialogue, employee involvement and governance;
10. Sustainability, governance and ethics;
11. Transfer, subcontracting and outsourcing;
12. Wages and Benefits.

TCAs can also be divided into procedural and substantial. The former consist of general clauses, to be applied in situations anticipated to arise in the future. They are more declarative in nature, confirming the intentions and willingness of the parties to proceed in a particular manner. The latter consist of provisions with much more precisely and categorically expressed content, having the nature of solutions to specific problems.

Although the division originally related to a specific type of agreements classified by subject, i.e. restructuring agreements (Rehfledt 2015: 35), but there are no reasons why it should not be extended to cover other TCA categories.

The thirteen cases TCA analysed in this report (fifteen, if we take into account the two agreements in the background of the Croatian case study), include:

1. Joint Declaration on training, learning and professional development in UniCredit Group (RO, HR)
2. Joint Declaration on equal opportunities and non-discrimination in UniCredit Group (HR)
3. Joint Declaration on responsible sales in UniCredit Group (HR)
4. Agreement on the anticipated changes or development in Alstom (PL)
5. European Agreement on Corporate Social Responsibility (CSR) in Pernod Ricard, (PL)
6. Group Agreement on Gender Equality in the Workplace in Suez Environment (PL)
7. "Managing & Anticipating Change" Agreement in ArcelorMittal (RO)
8. International Agreement for the Promotion of Social Dialogue and Diversity and Respect for Basic Employees' Rights in Carrefour (RO)
9. EDF Group Agreement on Corporate Social Responsibility (CSR) (UK)
10. International Framework Agreement between Sodexo and IUF (UK)
11. Agreement on Responsible Restructuring in Unilever (UK)
12. Agreement on the establishment of EWC in Ferrero Group (IT)
13. Agreement for Implementation of Fundamental Labour Rights and Decent Work in Inditex (IT)
14. Framework Agreement for the new Whirlpool European Employee Committee (IT).

Three agreements are in line with the principles of CSR (Declaration on responsible sales in UniCredit, Pernod Ricard, EDF), three are concerned with restructuring (Alstom, ArcelorMittal, Unilever), two fall within the scope of equal opportunities, diversity and anti-discrimination (Declaration on equal opportunities and non-discrimination in UniCredit and Suez Environment), one each in the fields of: training, learning and professional development (Unicredit), fundamental rights and trade unions (Inditex). One agreement contains components relating to equal opportunities, diversity and anti-discrimination, fundamental rights and trade unions, social dialogue and employee participation and management, transfers, subcontracting and outsourcing (Carrefour). Three agreements do not fit the classification used here, but contain elements found in TCAs.

By analysing the aspect of implementation of TCA provisions on the basis of the studies carried out at national level (it should be kept in mind that the conclusions are formulated in relation to the situation in a specific subsidiary of a particular transnational corporation), it is possible to identify above all the problems encountered in the process. In this respect, particularly revealing are the cases of two agreements (EDF and Suez Environment) – formally innovative and guaranteeing far-reaching contractual rights to the employees. In reality, their provisions are performed only to a small extent. In the first case the overwhelming impression is that the central management treated the negotiations leading to the conclusion of

the TCA in an opportunistic and instrumental way (the agreement was needed in the phase of intensive international expansion of the company by acquisitions and ceased to be useful when the expansion declined). The second case is peculiar, because it involves an agreement with a great potential but poorly adjusted to the specific character of the company (male-dominated employment structure). There are more TCAs treated instrumentally, as suggested by the data collected – they may include the agreements concluded at Sodexo, Pernod Ricard, possibly also Inditex.

However, there are also positive examples of TCAs that seem to produce an authentic added value in labour relations – these include the agreements concluded in Carrefour, ArcelorMittal, and to a certain extent also those in Alstom and Unilever. What remains to be evaluated is the newly-adopted declaration on responsible sales in UniCredit – innovative and relating to a serious problem of fair and ethical attitude of companies towards customers. The Ferrero case is exceptionally interesting (although, for formal reasons, placed on the sidelines of the analysis), showing apparently highly effective combination of paternalism typical for a family business and employee participation, promoted by the concluded agreement.

Most of the TCAs investigated were adopted as a result of the negotiations undertaken on the initiative of the management. That was the case for all the three agreements in UniCredit, in Pernod Ricard, in ArcelorMittal in EDF and in Sodexo. Trade unions (European trade union federations) initiated negotiations in the following cases: Alstom, Carrefour, Inditex, Whirlpool (in part). The EWC was the initiator of the negotiations in the case of Unilever, although the origin of the resulting document itself is quite a complex matter. Sometimes the agreement was signed following the joint efforts of the parties – e.g. in Suez Environment, where the central management and EPSU together put forward the proposal for the conclusion of the Agreement.

The most challenging area of collective bargaining leading to the agreements herein consists of their implementation and supervision (monitoring) of that process. It is also a sensitive area, generating more or less serious (depending on the case in question) difficulties and tensions that cast a shadow over the general evaluation of the significance of these agreements for everyday industrial relations in the individual companies at national level . In most cases we can observe the dominant position of the employer, whose good will or lack thereof directly affects the progress of implementation of the provisions, whereas the social partners – whether the trade unions or EWC – lack the leverage to overcome the indifference or avoidance strategy used by the management board.

The effectiveness of EWCs largely depends on their own practices (rather than “pure law” contained in the agreement), specific level of trust and ability to build efficient

communication tools. Therefore, along with hard legislative changes in the Directive, there is a need for soft measures relating to the exchange of best practices and experience.

The managements of transnational corporations enjoy great freedom in the choice of their commitments and their selective fulfilment. This is largely due to the indefinite, blurred legal, capital and organisational status of corporations and consequently the multiplicity of opinion as to their legal identity, as pointed out by Barbara Surdykowska, who writes that "there is no agreement among researchers as to the very definition of transnational corporations" (this volume: 13). But does this mean that one should only resort to soft-law regulations, or that despite the doubts and obstacles strive towards the establishment of an objective, hard standards? We cannot offer an unequivocal answer. However, taking into account all the circumstances identified during the investigation, it might be worth asking whether TCAs do need a legal framework or maybe the negotiations leading to their conclusion should be left to the discretion of the parties concerned. It seems counterproductive to maintain the status quo. As Łukasz Pisarczyk concludes, "absence of a legal framework is an obstacle to the development of transnational framework agreements" (this volume: 58). The question concerning the choice of form of the legal framework is highly sensitive. At present, the most popular concept of a decision, binding in its entirety and not identifying its addressees, may raise certain doubts. In regard of the content of the regulation, it is necessary to propose provisions that would facilitate negotiations and communication of the content of the agreement, and also to create a mechanism for resolving potential conflicts. The legal nature of the agreements does not have to be strictly defined.

While the choice of the form of the legal framework contemplated is a delicate matter, the postulate itself should be articulated by the employee side, above all trade unions, as well as European trade federations, because the functioning of the TCA in practice depends mainly on the good will of the social partners, who now have to cope without the conceptual and organizational support.

What can undoubtedly contribute to more efficient use of the tools of influence provided by TCAs is streamlining the information exchange system. Construction of efficient and open channels of communication is required at the stage of identification of the need to negotiate the TCA, the negotiation process and decision to sign the agreement. By distributing information to all the national trade unions in the corporation, it is possible to include them in the implementation process. Better availability of knowledge about the processes of the European industry dialogue can surely be helpful. Waddington et al. (2016) showed that the managers of the EWCs surveyed in most cases were unaware of the activities of sectoral social dialogue committees.

A serious obstacle which slows down the information flow arises from language differences. EWCs can rightly demand that translation be provided by the employers in the widest possible extent – both in the course of the talks and of the resulting documents – into languages known to the representatives of the employees. Nevertheless, the employee side should maximise its efforts to improve communication. This can be achieved with the help of the procedures designed as part of the project and described in this report.

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