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Employment, Social Affairs and Inclusion
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First transnational workshop of the project

EURATCA **European Action on Transnational Company** **Agreements**

Salvo Leonardi – IRES-CGIL

Presentazione n. **27/2011**

Paris, 15 - 16 December 2011

The Project and the Workshop

Object:

the Transnational Company Agreements (TCAs)

Type of actions:

- a) to give a “support for European social dialogue”,
- b) to promote “measures to monitor and follow up European social dialogue activities and outcomes: conferences and other initiatives to disseminate and evaluate the results of European social dialogue through European or national events, or through studies, paper or electronic publications”.

Who?

Promoter/coordinator: Italian IRES-CGIL

Partners: ASTREES and IRES F, Fund. 1° de Mayo E, Solidarnosc PL, CITUB/ISTUR BG, Univ. Hamburg D, Univ. Cassino I, IRES Emilia Romagna, Ass. “Bruno Trentin” I, with the external support of ETUC and TCO S.

How?

It will mainly consist in workshops and seminars aiming at an exchange of information and good practices involving employees representatives and concerning TCAs.

What for?

It will enhance the European cooperation and exchange of views in order to encourage and support common positions on transnational tools of social dialogue

Duration: 12 months from 16/06/2011

Aims / Objectives

- To have/share a map of existing TCAs texts (by sector; headquarter; scope; signatory parties; contents; etc.)
- To disseminate the conclusions of the Experts Groups conclusions on TCAs and existing publications on TCAs, in order to increase acknowledgement on TCAs and its enforceability (**transnational workshops/conference**);
- To promote a closer cooperation among European trade unions to move towards a shared view on this topic;
- To better know some concrete experiences of implementation of TCAs in the context of national industrial relations systems (**case studies**);
- To publish (on the websites of the partners, journals and social partners' press) of a **mini-guide** concerning the labour law and industrial relation profiles and practices of TCAs.

The TCAs: “a qualitative new instrument of international industrial relations”

The TCAs represent an highly welcomed innovation, as:

- a new “social praxis” which goes hand in hand with the emergence of TNCs operating in more than one member state,
- a new “bargaining *fora*” for industrial relations at the global level,
- a paradigmatic example of “soft law”, based on *voluntary* and *autonomous* European negotiation, independent from the Commission’s intervention (self-initiated and self-implemented; non-statutory agreements)

The TCAs: an updated map

- 215 agreements
- 138 companies (86 European scope)
- Mostly in the metal and financial sectors
- Geographically concentrated in the core of Continental Europe
- 10 million employees

Expert Group – TCA

‘Draft elements for conclusions of DG Empl.’; Working document (11/10/2011)

Database 2011 (Planet Labour)

<http://ec.europa.eu/social/main.jsp?catId=978&langId=en>

Problems and challenges

But there is currently :

1. no legal framework for TCAs; neither at the company level in Europe nor at the international level.
2. no obligation to transpose it into binding decisions for local management and highly complex application of international private law.
3. a big variety of TCAs (definitions, contents, objective) due a) to the voluntarisms and b) to their complex implementing practices through a number of national negotiations
4. a top-down approach, potentially perceived from social partners as an interference or a threat at national level

The lack of a legal enforceability of the TCAs

The main problem concerns the absence of any EU specific regulation (norms and case law) making the outcomes of transnational bargaining legally enforceable/binding in all the parent company subsidiaries.

TCAs did not come into existence and grew as a direct consequence of any specific piece of EU legislation. They were rather triggered by a series of other factors – interests, pressures, inclinations – which to a large extent have nothing to do with the idea of compliance of the EU law

EWCs are not supposed to conclude agreements whatsoever.

But they are a prominent actor for TCAs, which are certainly a genuine form of EU social dialogue, since the pre-existing norms on information/consultation and EU Treaty itself impose to “facilitate” and “exercise the right to negotiate and conclude collective agreements at the appropriate levels”.

Legal issues we do intend to deepen and discuss through our action.

- ***the actors (who negotiate?)***: the representative parties – on both sides – legitimated to bargain;
- ***the form (how negotiate)***: contents and hierarchy problem between the different levels of existing of collective bargaining;
- ***the implementation***: TCAs follow-up of the national level;
- ***settling disputes***: the procedures and penalties in case of refusal of the implementation of the agreement at national level.

Key questions

- The absence of rules: an incentive to bargain or an obstacle to its effectiveness?
- Is voluntarism sufficient or a EU legal framework is necessary?
- Are there alternatives to it?
- How to safeguard social partners autonomy?
- Are the monitoring and follow-up procedures enough to guarantee effectiveness and enforcability?
- How to shift from experimentation to a stable development?

Abstentionism vs. Interventionsim?

From declaratory texts to binding agreements producing direct legal effects”

How?

- Flexible and optional legal framework (Ales’ Report and Expert Group 2011)
- “Auxiliary legislation” (Sciarra); “Bargaining in the shadow of law” (Bercusson)
- Involving all the negotiations, included the EIFs and national ones (Telljohann et alii), at early stage, through a given clear mandate, either in the negotiation and conclusions
- Where the parties can specify a reference to the binding or non-binding character of the commitments that have been undertaken (Hendricks Report)
- A self-executing clause (the Silica Agreement 2006; Caruso and Alaimo)
- Promoting best practices which observe certain principles, standards and guidelines

Objectives of our workshop

- to verify the actual **effectiveness** of the adopted solutions as they emerge from existing studies and experiences
- to investigate if the **solutions adopted** are consistent with legal constraints imposed by international, European and national laws and practices.
- to deepen the **degree of coordination** among union bargaining actors at all the different levels: IUFs, EIFs, EWCs, national industry federations, national company reps
- to imagine what **kind of regulation** is better fit to cope with the aim of giving the TCAs an opportune dose of legal certainty.