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TRANSNATIONAL FRAMEWORK AGREEMENTS: IN SEARCH OF A EUROPEAN LEGAL FRAMEWORK¹

Abstract

This article focuses on the phenomenon of Transnational Company Agreements (TCAs) concluded between the employees' representatives and the employer. This legal embodiment of industrial relations has been gaining noticeable popularity since the 1980s. After that decade, many agreements, both of international and European dimension, have been concluded. The European social dialogue doctrine has adopted TCAs as an instrument promoting collective bargaining. Agreements signed in the absence of legal framework comprise a variety of content and might be signed by several actors. Sometimes agreements undergo a follow-up implementation and then they strongly resemble the national collective agreements. But, in general, TCAs exert variable legal effects depending mostly on their character. Many agreements have been attributed solely with a political character, whereas others do convey strong obligations for the parties. The current question is whether TCAs are in need of creating a legal framework or quite the contrary?

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KEYWORDS

transnational, framework, agreements, social, dialogue, legal, European Union

SŁOWA KLUCZOWE

transnarodowe, ramowe, umowy, społeczne, dialog, prawne, Unia Europejska

1. WHAT ARE TRANSNATIONAL COLLECTIVE AGREEMENTS? OPENING REMARKS

The origins of the Transnational Collective Agreements (TCAs) date back to the 1970s², when they were encompassed by a draft regulation on the *Societas Europaea* (SE) containing three proposals for channels of participation: European collective agreements, European Works Councils, and participation of workers' representatives in the supervisory boards, out of which merely the European Works Councils have been adopted in the European legal system³. Negotiations undertaken in the 1980s at Thompson Grand Public and at BSN-Danone resulted in first contractual commitments within industrial spheres, such as: promotion of relevant social and economic information, professional equality between men and women, training and right of association within the companies making up the group. Within the next eight years, agreements evolved shaping four additional documents concerning equality, information, training, and organisational matters.⁴ Those documents were the milestones of subsequent vast growth of agreements negotiated mainly in Europe, but also outside its borders. The Danone agreement (1988) is usually considered to be the first Transnational Company Agreement (hereinafter as TCA) signed. Names used to describe those social partners arrangements may vary significantly, causing a lot of difficulties in practice. Sometimes they are called International Framework Agreements (hereinafter IFAs) or European Framework Agreements (hereinafter EFAs), sometimes

² T. Jaspers, *Collective bargaining in EU labour law*, (in:) T. Jaspers, F. Pennings, S. Peters (eds.), *European labour Law*, Antwerp 2019, p. 261.

³ B. ter Haar, *The EU and transnational company agreements*, (in:) B. ter Haar, A. Kun (eds.), *EU collective labour law*, Edward Elgar Publishing House 2021, p. 277.

⁴ I. Schömann, *Transnational company agreements: Towards an internationalisation of industrial relations*, (in:) I. Schömann (ed.), *Transnational collective bargaining at company level: A new component of European industrial relations?*, Brussels 2012, p. 199.

Transnational Collective Agreements, other times Global Agreements. Therefore, TCAs definitely cause significant designatory confusions⁵.

At a first glance, TCAs might resemble unilateral codes of conduct adopted by international companies. However, they differ from unilateral acts issued by employers in that they seem to constitute less of political contestation in exchange for an actual solution to the basic problems raised by the workers – company relations. Despite being voluntary documents, TCAs constitute reciprocal commitments, both for the workers and for the employers, as they are a result of bilateral negotiations and not of unilateral perception leading to an easy codification. Usually, European companies tend to sign agreements based on collective negotiation, whereas North American companies prefer to issue unilateral codes of conduct⁶. So, what exactly are the TCAs in terms of their legal nature and content? The answers might of course vary but European Commission 2012 Staff Working Document (hereinafter SWD 2012)⁷ on Transnational Company Agreements defines TCA as:

an agreement comprising reciprocal commitments, the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives⁸.

What tends to be characteristic for those agreements is the diversity of content, parties, negotiation procedures, implementation procedures as well as the legal effects, i.e. whether agreements will be binding *inter partes* or *erga omnes* only. They definitely do not constitute a homogenous group, but trying to establish some common features, one may find more than just the aim of an agreement. Finally, the *essentialia negotii* of most of the current TCAs are following: voluntariness of agreements, partnership of one or more transnational companies⁹ and

⁵ I. Schömann, *op. cit.*, p. 197.

⁶ T. Edwards, P. Marginson, P. Edwards, A. Ferner, O. Tregaskis, *Transnational learning structures in multinational firms: Organizational context and national embeddedness*. Human Relations – HUM RELAT. 63, 2010, pp. 471–499. DOI: 10.1177/0018726709339095; I. Schömann [et al.], (in:) É. Béthoux, *Transnational agreements and texts negotiated or adopted at company level: European developments and perspectives. The case of agreements and texts on anticipating and managing change*, Background document of European Commission – DG Employment, Social Affairs and Equal Opportunities, Invitation to tender No. VT/2008/022, France 2008, p. 13.

⁷ EC Staff Working Document, *Transnational company agreements: Realising the potential of social dialogue*, SWD (2012) 264 final, Brussels 2012.

⁸ European Industrial Relations Dictionary, term: *Transnational company agreement*, <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/transnational-company-agreement> (accessed 23.11.2021).

⁹ See more e.g. B. Surdykowska, *Transnational framework agreements and their environment – basic information*, (in:) Ł. Pisarczyk (ed.), *TCA or about David's negotiation with Goliath*, Gdańsk 2021, p. 24 et seqq.

one or more employees' representatives (as an embodiment of social dialogue within MNCs¹⁰ situated in at least two different states), reciprocal commitments, regulation of issues related to working conditions and employment conditions, trans-border scope of application and, in the end, reference to international labour law standards.

2. THE LEGAL STATUS AND REGULATORY POTENTIAL OF TRANSNATIONAL COLLECTIVE AGREEMENTS: *DE LEGE LATA* REMARKS

Currently, there is no legal framework (either global or regional) that would influence concluding and functioning of the TCAs. The effectiveness of the agreements depends mainly on the position and willingness of the social partners – transnational companies (employers *sensu largo*) and collective bodies representing workers. Transnational companies are composed of a parent company(a holding) and its subsidiaries that are separate units (entities) with legal personality, situated in various countries¹¹. The entire supply chain also covers other contractors that cooperate with the enterprise (suppliers and contractors). TCAs are concluded by the central management usually for all the subsidiaries as well as (in some cases) for suppliers and contractors¹². Workers are represented by various bodies: European Work Councils, trade unions (European industry federations, trade unions from corporate headquarters), but also work councils (elected bodies) from corporate headquarters¹³. In both cases, that of the central management and the workers' representatives, the key problem concerns the source of the mandate to act on behalf of the addressees. As long as the parties to the agreement have not been expressly authorized, it may be disputable whether the agreement is legally binding – especially for subsidiaries that would be burdened by new obligations (while in the case of workers one can assume *a priori* acceptance for more favourable working conditions).

There are also no common rules concerning the personal scope of the TCAs. Some of them cover all workers (even those engaged outside the employment relationship), some are limited to the employees only. However, at least in some cases, it is not so much the effect of deliberate decision of the social partners, but rather

¹⁰ Abbreviation for “multinational corporations”.

¹¹ Control is exercised by means of legal instruments wielded by the parent company. As a rule, these instruments are organizational and commercial in nature.

¹² Especially important if suppliers and contractors are situated in countries of low level of employment standards.

¹³ Cf. e.g. B. Surdykowska, *op. cit.*, p. 30.

the situation in the country where the agreement has been concluded (where, for example, atypical employment does not occur to a greater extent). Therefore, the wording of the agreements that suggests limiting their subjective scope should not be interpreted restrictively, especially since in the countries where subsidiaries operate, the need for protection may concern, in particular, non-employees. To the contrary, the TCAs may be perceived as a chance to revive the social dialogue for various groups of workers. In the case of typical collective agreements doubts arise concerning the extension of their application scope to the self-employed (due to the conflict with antitrust law)¹⁴. The TCAs, the legal construction of which is more flexible, are not questioned from this perspective.

As regards the agreement content, TCAs were perceived as transnational tools that can be negotiated either at a sectoral or at a company level as an aspect of corporate social responsibility (hereinafter CSR). According to Ales et. al report of 2006 (hereinafter Ales report)¹⁵, the most common spheres regulated by TCAs were ranging from core issues of company performance and employment to topics such as health and safety, equal opportunities and (vocational) training¹⁶. In one of the reports of the European Commission, TCAs have also been deemed tools available to cope with social and economic effects of restructuring the company in a socially responsible way¹⁷ as some of the agreements are drafted for the occasion of restructuring¹⁸, often containing measures avoiding unnecessary redundancies¹⁹. In this context, probable changes might be brought about by the post-coronavirus economic crisis²⁰. Sometimes agreements also cover transnational inter-company mobility (ICT)²¹. SWD 2012 summed up the content of TCAs as documents organizing social dialogue, addressing specific subjects such

¹⁴ See judgment CJ EU of 04.12.2014, C-413/13, *FNV Kunsten Informatie en Media v. Staat der Nederlanden*, EU:C:2014:2411 as well as T. Gyulavári, *Collective rights of platform workers: The role of EU law*, "Maastricht Journal of European and Comparative Law" 2020, Vol. 4 and V. Daskalova, *The competition law framework and collective bargaining agreements for self-employed: Analysing restrictions and mapping exemption opportunities*, (in:) B. Waas, Ch. Hiessl (eds.) *Collective bargaining for self-employed workers in Europe*, Wolters Kluwer 2021.

¹⁵ E. Ales [et al.], *Transnational collective bargaining, past, present and future: Final report*, European Commission Directorate General Employment, Social Affairs and Equal Opportunities Unit D2, 2006.

¹⁶ *Ibidem*, p. 29.

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Towards a job-rich recovery*, COM (2012) 173, Brussels 2012, p. 12.

¹⁸ Those agreements are often called TRAs (Transnational Restructuring Agreements) and tend to be especially widespread in automotive sector.

¹⁹ S. Leonardi (ed.), *European action on transnational company agreements: A stepping stone towards a real internationalisation of industrial relations?* EUROATCA Final report, IRES, Rome 2012, p. 30.

²⁰ See remarks on the pandemic aftermaths underneath.

²¹ S. Leonardi, *op. cit.*, p. 9.

as health and safety at work, equality in employment, training, mobility, planning of employment, and skills needs, measures to avoid dismissal, and accompanying measures in case of restructuring and reorganisation²². As regards the fundamental social rights and references to core ILO standards, they tend to be irrelevant for EFAs, while they do play an outstanding role for IFAs²³. According to Thüsing, the typical content of TCAs consists of minimum labour standards, such as: prohibition of child labour, prohibition of discrimination, equal chances, fair remuneration with due regard to minimum wage and branch wage standards, annual leave, working time, health and safety at work, job qualifications, as well as minimum standards for trade unions and workers' representatives association and subsequent operation²⁴. Certainly, some agreements contain less effective declarations²⁵, whereas others convey strong content for the employees and consist of detailed provisions concerning their conditions of work and remuneration²⁶. Over the course of time, TCAs have evolved from vague provisions to more complex content and reflected a growing potential for collective negotiations within MNCs. Generally, agreements have shown improvement in terms of the type of obligations, less conditional language as well as their clarity²⁷. Finally, thanks to their flexibility, TCAs can be an opportunity to regulate new phenomena, including working on digital platforms or using artificial intelligence. Unfortunately, so far the social partners have not had a clear vision of regulating these matters.

As a rule, there are no transnational standards providing for a direct applicability of the agreements. To be binding for the parties to individual employment contracts (and constitute a legal basis for their claims) they must be implemented according to the rules arising from domestic legal systems²⁸. Otherwise potential claims must be assessed according to civil law rules or even treated as moral obligations of companies²⁹. Consequently, there are no transnational rules relating to the resolution of disputes arising from the agreements. Moreover, in some cases

²² SWD (2012) 264 final, p. 4.

²³ S. Leonardi, *op. cit.*, p. 10.

²⁴ G. Thüsing, International Framework Agreements – Rechtliche Grenzen und praktischer Nutzen, RdA 78, 2010, pp. 7–21.

²⁵ See Brunel Global Framework Agreement on Social Responsibility, *A commitment to social responsibility without borders*, 2007.

²⁶ See e.g. Solvay Global Agreement of March 30, 2018 on Solvay Global Performance Sharing Plan.

²⁷ See B. ter Haar, *The EU and transnational...*, p. 286 *et seqq.*

²⁸ Another solution is to conclude a TCA according to the rules arising from a national law. Such a situation has taken place in some agreements concluded in France and Italy (based on research carried out by A. Boguska).

²⁹ Compare e.g. G. Orlandini, *Direct legal effects of TCAs. Where are we and what do we want to achieve?*, (in:) *Building an enabling environment for voluntary and autonomous negotiations at transnational level between trade unions and multinational companies*. Final Report issued by ETUC Committee, 2016, hereinafter ETUC report, p. 30 *et seqq.*

(due to the lack of publication and dissemination standards) the entities and workers covered by the TCAs have limited access to their content.

Finally, there are significant differences between the Member States regarding such fundamental issues as the mandate to conduct negotiations, the personal scope (limitation to represented entities, extended effectiveness, universal application – in whole sectors/branches) or binding force of agreements³⁰. European systems may be divided into voluntary (with limited state intervention) and regulatory. As a result, collective bargaining may be perceived from the perspective of either civil or public (state) law. This makes the creation of a cross-border regulation very difficult, especially in the sphere of the legal construction of any collective agreements (including TCAs).

At the same time, the regulatory potential of TCAs has been recognized. First, agreements are concluded by the most powerful economic organizations that have a real impact on working conditions of a large group of workers³¹. The position of international companies (groups of companies) enables, at least partially, the implementation of adopted standards. Second, the development of TCAs must be confronted with the situation of collective bargaining in various countries. Over the recent years there has been a significant increase in coverage by collective agreements. The main reason is a decentralization of collective bargaining, weakening of multi-company negotiations, and increasing role of company-level negotiations. The process began (depending on a country) in the 2nd half of the 20th century. As milestones of the decentralization are treated, *inter alia*, the French reform of 1982 (*loi Auroux*)³² and the German agreement of Pforzheim (1993) concluded for the metal industry and providing so-called opening clauses (*Öffnungsklauseln*) empowering company-level social partners to modify, also to the detriment of workers, employment standards arising from the sectoral collective agreement³³. The decentralization accelerated after the economic crisis in the years 2007–2008. The international institution encouraged or even enforced a shift from branch to company-level bargaining. The decentralization has been achieved by various means (reversing the hierarchy of collective agreements and giving priority to those concluded at a plant level, various opening clauses enabling *in peius* departures from branch-level standards, changing criteria of

³⁰ See e.g. A. Liukkonen, *The role of collective bargaining in labour law regimes: A global approach*, (in:) U. Liukkonen (ed.), *Collective bargaining in labour law regimes: A global perspective*, Springer 2019, p. 2 *et seqq.*

³¹ Compare e.g., R. Blanpain, *European labour law*, Kluwer Law International 2013, p. 66.

³² See e.g. M.A. Glendon, *French labor law reform 1982–1983: The struggle for collective bargaining*, “The American Journal of Comparative Law” 1984, Vol. 32, issue 3, p. 449 *et seqq.*

³³ T. Schulten, R. Bispinck, *Varieties of decentralisation in German collective bargaining*, (in:) R. Pedersini, S. Leonardi (eds.), *Multi-employer bargaining under pressure: Decentralisation trends in five European countries*, ETUI 2018, pp. 110–111.

representativeness, and limiting time application of multi-company agreements)³⁴. The company-level collective bargaining allows a greater possibility in running an enterprise. The employers not bound by higher-level standards may adjust working conditions to changing circumstances (caused by the globalization and changes in the economic situation). However, the decentralization also leads to the fragmentation of the social dialogue and decreasing coverage by collective bargaining³⁵. Due to the lack of collective agreements, the terms of employment of the workers are shaped vis-à-vis the employers. This means there are no collective standards to which an individual contract could be referred to. The result is a wage differentiation and an unequal share of the income distribution (between employers and workers as well as among workers). The vacuum caused by the weakening of multi-company collective bargaining could be filled by the TCAs.

The role of agreements may be important, especially in those countries where employment standards are set up at a low level (e.g. non-European countries where suppliers operate). However, the problem here may be the effectiveness of the agreements. Yet another case are the countries of Central and Eastern Europe (CEE), that have extensive labour legislation and are developing dynamically. At the same time, the level of wages there remains lower than in Western Europe. Moreover, most countries in the region do not have a collective bargaining system. First of all, there are no negotiations at a branch level. Agreements concluded for individual enterprises dominate, but they do not form a comprehensive network. As a result, the level of coverage of the employees by collective agreements is low (with some exceptions, e.g. in Slovenia). The example of Poland, the largest country in the region, is particularly characteristic – only around 1–2% of employees are covered by multi-company agreements, and around 12,5% by company-level agreements³⁶. The main cause of the crisis lies in the current situation of the social partners, including the weakness of the employers' organizations, whose potential remains very limited, and the weakening position of trade unions. The legislation also fails to strengthen the position of the collective bargaining. Therefore, the TCAs are an opportunity to conduct dialogue at the supra-company level. They make it possible to standardize employment conditions in a cross-border dimension. In the long run, they may also contribute to an increase in wages. They can also constitute a specific form of support for the national social partners. However, it can be hypothesized that the lack of a legal framework for TCAs

³⁴ See e.g. S. Laulom, *From decentralisation of collective bargaining to de-collectivisation of industrial relations systems?*, (in:) S. Laulom (ed.), *Collective bargaining developments in times of crisis*, "Bulletin of Comparative Labour Relations" 2019, No. 99.

³⁵ <https://stats.oecd.org/index.aspx?DataSetCode=CBC> (accessed 05.12.2021).

³⁶ <https://www.solidarnosc.org.pl/bbial/solidarnosc/uklady-zbiorowe-pracy-maja-przyszlosc/> (accessed 5.12.2021).

is an obstacle to implement the results of the transnational social dialogue³⁷. This article is intended as an introduction to the analysis of TCAs from the perspective of Central and Eastern European countries.

To summarize, the key elements of the legal status of TCAs (parties and the application scope, the rules of negotiating and concluding agreements, potential claims of workers, dispute resolution mechanism) are of voluntary and autonomous character. Moreover, due to a collective nature of agreements (which affects the situation of third parties) the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) is appropriate only to a limited extent³⁸. Rome I may be used as far as the contractual (not collective) consequences of the agreements are concerned, i.e.: 1) a direct bond between the parties to TCAs; 2) workers' rights based on contractual constructions (e.g. *pactum in favorem tertii*). Of course, even in the absence of the legal framework the TCAs may play an important role as an element of the corporate social responsibility³⁹. It seems, however, that the creation of certain legal mechanisms, even optional and limited, which apply to procedural issues and alternative dispute resolution methods (without determining the legal nature of the agreements⁴⁰), could increase the effectiveness of TCAs and stimulate their creation.

The adoption of the legal framework seems to be feasible primarily within the European Union which recognizes the role of the social dialogue (also in the transnational dimension)⁴¹ and has appropriate legal instruments (based on primary EU law). The Union recognises and promotes the role of the social partners at the European level, taking into account the diversity of national systems. The Union and their Member States, having in mind fundamental social rights such as those set out in the European Social Charter and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, and the development of human resources with a view to lasting high employment and the combating of exclusion (Art. 151 TFEU). The Union shall facilitate dialogue between the social partners (without references to the European level), respecting their autonomy (Art. 152 TFEU). To achieve the objectives of Article 151 TFEU, the Union shall

³⁷ See e.g. S. Adamczyk, *Some reflections on TCA, trade unions and European works councils... not excluding corporations*, (in:) Ł. Pisarczyk (ed.), *TCA or David's negotiations with Goliath*, Gdańsk 2021, p. 41 *et seqq.* However, the aim of the article is not to analyse agreements from the perspective of national law, which is the subject of separate studies.

³⁸ See e.g. T. Jaspers, *op. cit.*, p. 263.

³⁹ B. ter Haar, *Transnational company agreements as an example of hardening a soft law*, (in:) Ł. Pisarczyk (ed.), *TCA or about David's negotiation with Goliath*, Gdańsk 2021, p. 71 *et seqq.*

⁴⁰ Rather impossible due to a variety of domestic solutions.

⁴¹ For more see e.g. T. Jaspers, *op. cit.*, p. 249 *et seqq.*

support and complement the activities of the Member States, *inter alia*, in the field of representation and collective defence of the interests of the workers and employers. Moreover, Art. 28 ChFR recognizes that workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels. However, Art. 153.5 TFEU excludes from regulatory competences of the Union: the right of association and the right to strike or the right to impose lock-outs. It significantly limits the scope of the future legal action since there is a strong link between the right of association and the rights to bargain collectively (however, both matters can be somehow separated). It should also be emphasized that the legal framework for TCAs can be a factor contributing to the economic and social cohesion of the Union (Art. 174 TFEU).

The European Commission⁴² and the European social partners (especially European Trade Union Confederation) have already launched research on potential legal grounds and possible courses of action⁴³. Searching for a solutions, the authors are willing to present the subject of TCAs and describe the initiatives that have been already undertaken to support and stimulate the cross-border social dialogue. The key questions are: what is the treaty basis of the legal intervention, what legal instruments should be used by the EU to regulate TCAs, and what should be the content of the future legal action. There seems to be no obvious answer to any of these questions at the moment.

As regards the situation of TCAs in Poland, no agreement for companies (group of companies) with central management in Poland has been concluded yet. There are only the Polish subsidiaries (possibly suppliers and contractors) covered by the agreements concluded in other countries. However, they have limited influence on the conclusion and content of the agreements. In some cases Polish trade unions were involved in the bargaining process. Moreover, there are problems with informing about negotiating agreements and their content. Polish law does not recognize the legal nature of TCAs. They are not treated as collective agreements in a strict sense (in the meaning of the Chapter XI of the Labour Code⁴⁴). To be binding for the Polish employers they must be implemented according to the general rules. Possible ways of implementation are, *inter alia*: collective agreement, unilateral acts issued by the employer, and voluntary application by the employer.

⁴² *Ibidem*, p. 262 *et seqq.*

⁴³ See e.g. E. Ales [*et al.*], *op. cit.*; ETUC Final Report 2016.

⁴⁴ The Law of 26 June 1974 Labour Code, Journal of Laws 2020, as amended.

3. STEPS TOWARDS ESTABLISHING A LEGAL FRAMEWORK FOR TCAS – CHOSEN INITIATIVES AT THE EU LEVEL

Since late 1980's, when first IFAs were negotiated and concluded⁴⁵, until now, TCAs grew in number without any legal framework. Whether this was a detriment or a fertiliser to enter into collective bargaining process and conclude TCAs, shall be assessed after the examination of the current legal reality. Together with the institutional support from European Commission in the field of the European social dialogue, TCAs were supposed to become a key factor. Consequently, the ideas of codification, developing a framework for such agreements, have been pursued by the European Commission. They appeared already in the 1990s, as a significant part of development of the new levels of social dialogue. Communication from 1998 on "Adapting and promoting the social dialogue at community level" along with the 2002 Communication on "The European social dialogue, a force for innovation and change" were the starting point within the EU legal dimension⁴⁶. There, the European Commission has noticed the fast-developing social dialogue within multinational companies⁴⁷. At that stage of work, it was rather a matter of recognition of the transnational concept for a social dialogue in the private sphere than achieving any ready-made solutions. Hence, this article will describe the most important initiatives undertaken in order to present the changing concepts on legal framework for TCAs and their current condition.

In 2004 the European Commission issued a Communication, where it considered a need for a framework that would improve social dialogue⁴⁸. Therefore, the Commission decided to consult social partners on constituting a framework for transnational collective bargaining⁴⁹. The Ales report of 2006 confirmed that TCAs still remained non-binding instruments (transnational tools), most often concluded under the umbrella of CSR⁵⁰. At the early stage they were rather a fertiliser for CSR standards and policies than agreements comprising the workers'

⁴⁵ S. Clauwaert, *European framework agreements: 'Nomina nuda tenemus' or what's in a name? Experiences of the European social dialogue*, (in:) *Transnational collective bargaining at company level*, Brussels 2012, p. 120

⁴⁶ Commission Communication, *Adapting and promoting the social dialogue at community level*, COM(1998) 322 final; Communication from the Commission, *The European social dialogue, a force for innovation and change*, COM(2002) 341 final.

⁴⁷ COM(1998) 322 final, p. 22.

⁴⁸ Commission Communication, *Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue*, COM(2004) 557 final, p. 11.

⁴⁹ I. Schömann, *Transnational company...*, p. 201.

⁵⁰ Company level of negotiations had been described as creating trust, a common company culture and developing elements of European HR-policy in the companies with an aim to harmonise social standards.

rights⁵¹. The report observed that the biggest problem of transnational acts is the legal value of the agreements concluded in other Member States, in which the subsidiaries are operating⁵², as the transposed agreement would have a binding effect only within the territory of the original state. In consequence, the problem of common regulation of working conditions in at least two companies operating in different countries by means of one adjusting agreement, would remain unsolved. At that point, in 2006, national collective bargaining seemed an easier instrument that would also provide certainty of legal effects. Moreover, had the employer a mandate to represent all the employees in international subsidiaries, the TCA would still transform into several national acts whose legal effect would vary significantly⁵³. Ultimately, further actions towards the codification within the European dimension have been undertaken.

The SWD 2012⁵⁴ indicated doubts, whether support provided at the EU level for the development of TCAs is justifiable in the light of subsidiarity principle. Although the document admits that there is a necessity to support TCAs legal framework at European level pursuant to provisions 152 and 153 of the Treaty on the Functioning of the European Union⁵⁵ conjointly with Art. 27 and 28 of the Charter of Fundamental Rights of the European Union⁵⁶, the employers' organisations opposed pointing out that no legislative action should be taken. In their opinion any codification would prevent transnational companies from entering into negotiations. On the contrary, trade unions usually support the idea of legal framework for TCAs as an instrument ensuring legal certainty⁵⁷. The report has also indicated certain problems that TCAs need to defeat, such as a need to agree upon procedures before the negotiating process begins, implementing issues, risks arising out of undefined legal effects, and resentment among lower-level workers accruing from top-down imposition of TCAs. Therefore, authors of the document state that European framework for TCAs should be flexible enough to adapt to workers' and companies' needs and that the inception of framework should come from social partners, not from the EU structures themselves to form custom-built

⁵¹ E. Ales [*et al.*], *op. cit.*, p. 21. The report notices also that usually TCAs were also signed by parties bearing no legal capacity to conclude collective agreements.

⁵² E. Ales [*et al.*], *op. cit.*, p. 27.

⁵³ *Ibidem.*

⁵⁴ SWD(2012) 264 final.

⁵⁵ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union – Consolidated version of the Treaty on the Functioning of the European Union – Protocols – Annexes – Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

⁵⁶ Charter of fundamental rights of the European Union, Official Journal 2012/C 326/02.

⁵⁷ S. Sciarra, M. Fuchs, A. Sobczak, *Towards a legal framework for transnational company agreements*, Report to the European Trade Union Confederation, Brussels 2014, hereinafter Sciarra report 2014, pp. 8–11.

agreements adjusted to social partners' needs, along with the ambiance for unconstrained industrial relations and greater transparency⁵⁸.

Subsequently, the confirmation of ever-growing importance of TCAs⁵⁹ was brought to daylight by means of the European Parliament Resolution on cross-border collective bargaining and transnational social dialogue⁶⁰. The question of major importance, posed by the Resolution, was as follows: Is the lack of European and international legal framework for TCAs an underlying cause of fewer agreements being concluded? The imminent response of Parliament was in fact obvious. Such a framework would allow social partners to operate within the scope of Art. 155 TFEU, concluding legally framed agreements mentioned therein. According to the Parliament, TCAs strongly stress the autonomy of social partners, and that is why the Parliament's prominent suggestion was to make a step forward⁶¹. Despite those plans, the Proposal of European Parliament was put aside allegedly due to the divergent standpoints on the need of the optional legal framework⁶².

Another initiative of European Commission towards defining the possible role of TCAs was the EUROATCA report⁶³ (hereinafter EUROATCA). The report mentions the Europeanisation of industrial relations and the role of TCAs therein opening new perspectives for the business made in the world. The authors of the report perceive these agreements as forms of collectively organised interaction at the supranational level and indicate that TCAs could prevent social dumping and wage competition through a progressive approximation of working conditions within the same company⁶⁴. Although there are no legal frames for TCAs both on European and national levels, the authors of EUROATCA report believe that such lack is not an obstacle for the growing development of TCAs. They purport that at a global level, the footing for agreements legitimacy can be sought in ILO conventions instead⁶⁵.

Eventually, the result of the actions undertaken was that the optional legal framework for TCAs is indeed indispensable. But until 2020, no legal framework whatsoever for TCAs has existed, either on international, EU level or in any third country. Schömann named the absence of a specific legal framework a *legal no man's land*⁶⁶.

These assumptions pave the way to declare that discussion concerning the legal value is still ongoing. Once the framework is established, the further development

⁵⁸ SWD(2012) 264 final, pp. 7–9.

⁵⁹ Sciarra report 2014, p. 13.

⁶⁰ European Parliament Resolution on cross-border collective bargaining and transnational social dialogue of 12 September, 2013, No. 2012/2292(INI), P7_TA(2013)0386.

⁶¹ Sciarra report 2014, p. 14.

⁶² B. ter Haar, *The EU and transnational...*, p. 281.

⁶³ S. Leonardi, *op. cit.*

⁶⁴ *Ibidem*, pp. 6–7.

⁶⁵ *Ibidem*, p. 12.

⁶⁶ I. Schömann, *Transnational company...*, p. 197.

of TCAs might be strongly enhanced. Whether any such action would be fruitful or not, is disputable. On the one hand, Ales report states that the lack of European legal instrument jeopardizes developing a reliable and uniform regulation of relevant social issues at transnational level⁶⁷. Therefore, the authors were inclined to create optional legal framework and issued a proposal of EU-TCB system (EU-Transnational Collective Bargaining system) in a form of Council directive providing an optional legal framework⁶⁸. Such system would be a solid ground for concluding legally binding EU-wide TCAs⁶⁹. Also EUROATCA report suggested that contracting parties should simply move from unbinding texts to producing substantial effects⁷⁰. However, on the other hand, the inexistence of legal frames, along with growing number of globalisation processes and take-over operations, might have caused such a noticeable surge of negotiated agreements. As mentioned above, the employers consulted during the preparation of SWD 2012 were in the opposition towards any legal framework for TCAs⁷¹. On the other hand, naturally, trade unions are usually in favour of creating such legal framework.

4. ACTIVITY OF EUROPEAN TRADE UNION CONFEDERATION FOCUSING ON THE TOPIC OF TCAS

Recognising the problem and the potential to strengthen social dialogue, acting parallelly to European Commission initiatives, European Trade Union Confederation (hereinafter ETUC) conducted interviews with social partners resulting in few reports. Several further consultations on the issue of TCAs were organised with a view to reaching an agreement on optional legal framework for TCAs.

In 2014 the report commissioned by ETUC was prepared by Sciarra *et al.*⁷² (hereinafter Sciarra report). It focused mostly on the issue of legal background for TCAs. According to this document, the notion of optional legal framework appears self-contradictory⁷³, but only at a first glance. *Optional* means the possibility to enter a legal framework by the decision of autonomous bargaining agents

⁶⁷ E. Ales [*et al.*], *op. cit.*, p. 34.

⁶⁸ *Ibidem*, p. 38.

⁶⁹ According to the Ales report, the bargaining agents shall be enumerated to exclude all the doubts and any legal framework introduced by the directive ought to respect and not diminish in any possible way the already existing national bargaining levels. The potential EU-TCB directive cannot be confused with worker's involvement in the companies (information and consultation related bargaining).

⁷⁰ S. Leonardi, *op. cit.*, p. 14.

⁷¹ SWD(2012) 264 final, p. 9.

⁷² Sciarra report 2014.

⁷³ *Ibidem*, p. 19.

or to refrain from such action, reflecting the freedom of association in its purest form. *Legal* means that the framework must have a legal basis in the Treaty on the Functioning of the European Union and be formally adopted in the shape of a legal act of the EU. Indeed, legal act would entail obligations for Member States and for the bargaining agents, but it would leave no choice to opt-in. Hence, in line with the Sciarra report, law should simply set the scene for TCAs and not create any overburdening legal obligations. To achieve such an effect, a decision based on Art. 288 (4) TFEU of European Commission seems to be the best legal form⁷⁴. It leaves social partners the opt-in possibility with an outcome of TCA, signed as a legal act binding all Member States – an act of a normative value. A European Commission's decision would guarantee most auxiliary method of supporting the collective bargaining process on a transnational level, among all presented above. By means of international customary law, the negotiating and implementing process would develop within European dimension and subsequently transform to national legal order. According to the Sciarra report, the framework must be simultaneously *a promoter and a guardian* of this new transnational voluntary source⁷⁵. As a European instrument, the decision provides all Member States with unified criteria of the framework creating an amicable environment for the conclusion of TCAs.

After the proposal presented by the Sciarra report, next ETUC Executive Committee report⁷⁶ (hereinafter ETUC report) stated rigidly that the continuing lack of a framework of rules has hampered the effective potential of TCAs and created problems of implementation⁷⁷ and enforcement⁷⁸. The Executive Committee also stated that more and better TCAs would need a stronger cross-sector coordination and a roadmap to achieve a framework of rules for transnational negotiations with multinational companies⁷⁹. This is why the report prepared in 2017 by ETUC Executive Committee with the cooperation of European Trade Union Federation (hereinafter ETUF) presented the following possible strategies of invigorating TCAs⁸⁰:

a. non-intervention strategy

Pursuant to this document, optional legal framework not only does not add any costs, but also provides balance return for both parties involved. In the current absence of legal framework, the expenditures caused by the negotiation and

⁷⁴ *Ibidem*, p. 20.

⁷⁵ *Ibidem*, p. 21.

⁷⁶ ETUC Final Report 2016.

⁷⁷ Currently implementation of TCAs is usually dependent solely upon good will of the parties.

⁷⁸ ETUC Final Report 2016, p. 5.

⁷⁹ More and Better European Company Framework Agreements: Enhancing Trade Unions in Transnational Negotiations with Transnational Companies (ETUC Discussion Note) Executive Committee 2012.

⁸⁰ ETUC Final Report 2016, pp. 13–15.

implementation procedures, requiring several meetings to establish the negotiation frames and then the core content of agreements, are not to be overlooked. Therefore, the non-intervention strategy would only strengthen the status quo, that according to the authors of the report, is already troublesome for the actors. Furthermore, they even underline that non-intervention attitude might lead to the decrease in the number of agreements. This reasoning is, in fact, not entirely consistent with the opinions of the employers' representatives which were exactly the opposite⁸¹.

b. soft-law option – legal framework of unbinding character

The initially suggested soft-law option is the most adequate for the purpose of TCAs enabling a favourable environment to more and better TCAs⁸². This strategy would allow social partners to voluntarily exchange good practices. However, once accepted, rules ought to be obeyed by the parties without an opt-out possibility⁸³. Above all, soft-law option seems to be the solution for quality and effectiveness of TCAs and transparency problems emerging around negotiating such agreements.

c. hard-law option 1 – embodied in a European act regulating negotiation and implementation of TCAs

Adversely, the report denies the role of hard-law option in promoting the negotiation and implementation of TCAs within European market. The authors underline that binding regulation of TCAs in European legal dimension could lead to thorough defining of the rights of parties to the agreement, their representativeness, conjointly with the regulation of the relation between national collective agreements and transnational agreements. Such an excessive regulation would impose an obligation to modify the national legal order to fulfil the transpositional duties⁸⁴. At a first glance, this solution seems captivating, taking into account the legal certainty and clear procedures. But, after realising the administrative burdens imposed on Member States and spotting the partial violation of social partners' autonomy, it is impossible to believe that social partners, namely the employers, would be benign with such regulation. At this point in time, hard-law option seems to be too much of a burden for MNCs, if TCAs are deemed to be concluded freely and not an outcome of legal obligation to negotiate on a regular basis.

d. hard-law option 2 – embodied in an optional legal framework to promote more and better TCAs

⁸¹ See SWD(2012) 264 final, p. 7 for the presented opinion of employers' side experts on TCAs.

⁸² ETUC Final Report 2016, p. 14.

⁸³ Czarzasty J. *Final report*, (in:) *European works councils as a platform of support for transnational company agreements (TCAs)*, Project VS/2015/0405, Gdańsk 2017.

⁸⁴ ETUC Final Report 2016, p. 13.

The last possibility combines the already existing practices with establishing of the conduct in one European act that could augment TCAs' development. Such document shall regulate procedures of pre-negotiation stage, the process of negotiating itself, agreements' potential legal effect and last but not the least, the dispute resolution procedure. The optional legal framework in hard-law-shape can be established based on the decision of the Council or as an autonomous agreement of European social partners, or in a decision of the Council enforcing an autonomous agreement of the European social partners⁸⁵. Hard-law option 2 is meant to create less burden and more suggestions on decent negotiation procedures. Without unnecessary detriments such as administrative requirements, the support provided by the optional legal framework would not collide with the principle of the autonomy of social partners. Moreover, this strategy reassures greater legal certainty, as the pre-negotiation stage and the legal effects are clearly defined.

Taking into account that the report was issued by European Trade Union Confederation, makes it clear that, on the one hand, the outcome of this report must correspond with the employees' representatives (trade union) interests, but on the other hand, solutions proffered therein must be discussed by actors of TCAs themselves, giving certain hope that the most important aspects of agreements have been thoroughly examined – by both sides, including the employer.

As nothing has changed in the regard of legal framework for TCAs, in November 2018, ETUC and BusinessEurope⁸⁶ issued the newest report (hereinafter ETUC and BusinessEurope report) shedding some light on the current situation. The report was drafted with a view to identify solutions to support bargaining agents based on current practices and answer why it is worth to negotiate TCAs from employer's perspective. The results of the report are that the leverage of TCAs over simple unilateral policies is that the commitments in TCAs are more rigid for the employer. The report created also a list of underlying causes for negotiation of TCAs⁸⁷. The employers' representatives stated that they value highly the concept of being challenged as to whether they obey the TCAs provisions or not. They also stressed that TCAs allow social partners to conjointly work on the successful implementation of the agreement. Besides, TCAs are an instrument of response for market challenges of business expansion or transformation, as the impact of change is crucial for both parties⁸⁸. Furthermore, TCAs allow to set common company goals, that in case of TCAs are tailor-made and support joint work on their achievement. The social partners underlined that the complete lack

⁸⁵ *Ibidem*, p. 14.

⁸⁶ *A win-win approach to transnational industrial relations in multinational companies*, Final Report of ETUC and BusinessEurope, Brussels 2018, hereinafter ETUC and BusinessEurope report 2018, p. 4.

⁸⁷ *Ibidem*, p. 6.

⁸⁸ See agreements e.g. of Enel, Engie, and Schneider Electric.

of obligatory issues that TCAs need to deal with, namely no legal framework and the tailor-made provisions of agreements, makes these agreements much harder to reach. Therefore, both parties negotiating see the need to establish a basic framework⁸⁹, quite contrary to what was presented in the SWD 2012⁹⁰. But this report did not focus on finding an appropriate legal solution but rather concentrated upon TCAs role for the MNCs. It has been raised that TCAs could enable the MNCs to adjust collective bargaining agreements to their specific value chains⁹¹.

Additionally, transnational agreements might become an instrument reinvigorating company's reputation by creating a set of common values or improving the employer-branding sphere. It is especially important for the companies that operate in many countries in which the labour standards differ. TCAs might then become an instrument unifying the working standards. Such actions undertaken on the international level may subsequently lead to the development of bargaining at a local level, as social partners often undertake national legal instruments to implement the TCA locally⁹². Conclusions of the authors of this report are that being able to make use of the social partners autonomy leads to a situation, where parties may find a collaborative, win-win solution, paving the way towards better business development strategies. One of the biggest achievements of this bargaining instrument is, according to the authors of this report, the possible inclusion of all stakeholders – employers, trade unions, and workers themselves on all possible levels⁹³.

5. CONCLUSIONS – CAN TCAS BECOME FERTILISERS OF DEEPER INTEGRATION AND SOCIAL DIALOGUE IN EUROPE?

However, despite far-reaching discussions, working group efforts, and reports issued in the subject, that were described above, no firm decision has so far been made. Even the voices from employers' side did not lead to any legislative steps. As stated in the ETUC report, TCAs are supposed to be a way of enhancing the Single Market of the EU throughout a deeper integration⁹⁴. But still, over the years nothing has happened in the area of codification of TCAs. EU took the initiative

⁸⁹ ETUC and BusinessEurope report 2018, p. 6.

⁹⁰ SWD(2012) 264 final, p. 7.

⁹¹ B. ter Haar, *The EU and transnational...*, p. 283.

⁹² ETUC and BusinessEurope report 2018, p. 19.

⁹³ *Ibidem*, p. 20.

⁹⁴ European Commission, *Completing Europe's Economic and Monetary Union*, (in:) ETUC Final Report 2016, p. 9.

of creating a database⁹⁵ that is being updated continuously. The last documents uploaded in the database were registered in 2018⁹⁶. Agreements are still being concluded in Europe, as well as outside of it, and although the strong focus of this article is directed towards the EFAs, there are still many TCAs concluded by MNCs from outside Europe. Nevertheless, the article focuses on EFAs due to the European Union institutional support for the matter, or maybe, to be more precise, attempts to provide such support.

Nevertheless, there was and is still a plethora of interests to be compromised upon, such as: an excess of negotiating actors, discrepancy between legal effects of TCAs considered to be collective agreements and of those ineffective – signed by actors other than trade unions and, last but not the least, *modus operandi* for dispute settlement. Scandinavian unions remain sceptical about the idea of TCAs because of the shift of collective bargaining sovereignty to supranational level⁹⁷.

As far as the social impact of TCAs is concerned, they are being concluded prevailingly in multinational companies. Unfortunately, there are no reliable statistics on the number of employees working for MNCs⁹⁸. In SWD 2012, when it was issued in September 2012, 224 such agreements had been recorded in 144 companies, mostly with its registered seat in Europe, covering over 10 million employees⁹⁹. The ETUC Business Europe report published in November 2018 speaks of around 280 TCAs¹⁰⁰. The ETUC Action Programme suffices a number of more than 330 agreements and mentions that there were around 28 newest agreements concluded throughout the last 5 years¹⁰¹. Albeit, the actual assessment of TCAs' social impact is possible by using the database created by the European Commission when choosing a criterion of the size of an employer based on the number of employees (over 300.000 employees), and the outcome is that there are merely 13 such companies registered in the database. According to COM 2012 (173) final, the coverage amounted to more than 10 million employees¹⁰². But the actual employee coverage is fluctuating and only of estimated value. Naturally, there may be much more TCAs, especially of those concluded outside the

⁹⁵ The database is a result of the cooperation between the International Labour Organisation and the European Commission, <https://ec.europa.eu/social/main.jsp?catId=978&langId=en> (accessed 24.11.2021).

⁹⁶ TCAs signed in 2018 came from following MNCs: EDF, Essity, Schreiber, Solvay (2 agreements) and Stora Enso. Those agreements come from following countries: France, Sweden, USA, Belgium and Finland.

⁹⁷ S. Leonardi, *op. cit.*, p. 15.

⁹⁸ P. Marginson, G. Meardi, *Multinational companies and collective bargaining*, report by EuroFound, Dublin 2009, p. 3, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/multinational-companies-and-collective-bargaining> (accessed 24.11.2021).

⁹⁹ SWD(2012) 264 final, p. 2.

¹⁰⁰ ETUC and BusinessEurope report 2018, p. 4.

¹⁰¹ ETUC Action Programme 2019–2023, Vienna 2019, p. 57.

¹⁰² COM(2012) 173 final, p. 12.

territories of European Union, but that does not make them less important. Since there are no legal frames for concluding TCAs, there is also no obligation of notification about such conclusion, not to mention an obligation to register such a transnational agreement. Therefore, we can rely on the data collected by the EU database, however, bearing in mind that the results might not reflect the reality to the greatest extent. Many agreements fall within the TCAs definition, but simply they are not notified to the Commission.

Moreover, MNCs are referred to in the Sciarra report in a broad context, namely as economic actors performing in the global legal system, including the EU. The fact that they operate as non-state actors does not diminish their role as subjects empowered with very specific duties and obligations¹⁰³. Furthermore, the fact of utmost importance is that TCAs are still being negotiated and concluded by the biggest players in the global market, such as Air France, KLM, Bosch, General Electric, Siemens, Sodexo, Volkswagen etc. As regards the descent, most of the companies originate from France and Germany, few come from the Scandinavian countries, Belgium or from the USA¹⁰⁴. Yet, there are almost no records of TCAs concluded in Central and Eastern European countries (CEE countries).

Recently, a new trend has been spotted among MNCs, namely a tendency to create international labour standards and common company culture using common bargaining structures, not necessarily shaped by national legal orders in particular countries. This is effectuated by issuance of global guidelines and standards that are subsequently implemented on national levels. The so-called *normative integration*, where implemented national standards deviate from centrally established ones, is one possible scenario¹⁰⁵. Nevertheless, in several cases of MNCs, host country legal solutions might be transferred to subsidiaries in other countries contributing to previously existing standards and positively influencing the local HR practices¹⁰⁶. All in all, the above-mentioned activities increase the importance of social dialogue on transnational levels paving the way for new TCAs in a form of bottom-up movement and not a disadvantageous top-down imposition.

¹⁰³ Sciarra report 2014, p. 16.

¹⁰⁴ The full list of countries in which TCAs were concluded is as follows: Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Indonesia, Italy, Japan, Luxembourg, Malaysia, the Netherlands, New Zealand, Norway, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, UK, and USA.

¹⁰⁵ C. Williams, *Subsidiary manager socio-political interaction: The impact of host country culture*, (in:) C. Dörrenbächer, M. Geppert (eds.) *Politics and power in the multinational corporation*, Cambridge 2011.

¹⁰⁶ S. Demetriades, I. Biletta, A. From, *Win-win arrangements: Innovative measures through social dialogue at company level*, Eurofound, Luxembourg 2016, <https://www.eurofound.europa.eu/pl/publications/report/2016/industrial-relations/win-win-arrangements-innovative-measures-through-social-dialogue-at-company-level> (accessed 24.11.2021).

Speaking of the territorial divergence, of course, the ambience for legal framework for TCAs is undisputedly divergent in the Western and CEE countries. When the discussion in the European Commission has started, there were several ideas how to develop this instrument of social dialogue in the old European countries, whereas the Middle-Eastern Europe was at the very beginning of acquiring the corporate system by way of foreign direct investments made by multinational companies and that process was intertwined with a fertile soil for TCAs development.

The European Commission Background document on Transnational agreements noticed the so-called *spill-over effect* of TCAs¹⁰⁷, meaning that conclusion of the first agreement leads to the conclusion of next arrangements within the same company or sector. Such examples are very popular in automotive sector, e.g. Daimler and Ford, but also in Danone and Siemens. The ETUC and BusinessEurope report also mentions situations in which TCAs are being renegotiated¹⁰⁸. Perhaps the understanding of *spill-over effect* could be widened in a way that the existence of TCAs in some companies would raise the bar, especially in the CSR areas, leading to rising number of TCAs signed. Therefore, the last recommendations of ETUC Action Programme 2019–2023 are that social partners shall conclude a Tripartite Framework Agreement on Transnational Company Agreements, taking into account the work endeavoured to date on TCAs and especially the internal decision-making procedures of the ETUFs, naturally, taking into account the national regulations¹⁰⁹. This Framework would meet the ETUFs expectations, as regards granting them a status of main negotiators of TCAs in the future¹¹⁰.

However, there might exist one more factor influencing the robust surge in the number of TCAs being signed, namely the post-pandemic crisis. A growing tendency in concluding TCAs has been spotted directly after 2008 economic crisis¹¹¹. Based on that considerations a new perspective awaits TCAs in the context of worldwide economic downturn caused by COVID-19 pandemic. The impact that coronavirus spread has exerted on the global economy and global supply chains is undisputable. Nevertheless, the size of the aftermaths of pandemic is quite undefinable in the current moment. It seems likely though, that TCAs might emerge from the shadow they have currently been in. This is a chance for both, employers and employees' representatives, to negotiate flexible crisis arrangements replacing

¹⁰⁷ European Commission Invitation to tender No. VT/2008/022..., p. 24.

¹⁰⁸ ETUC and BusinessEurope report 2018, p. 5.

¹⁰⁹ ETUC Action Programme 2019–2023, Vienna 2019, pp. 63–64.

¹¹⁰ The ETUC Action Programme also involved plans to develop a database of TCAs concluded only by ETUFs to exclude "pseudo-agreements".

¹¹¹ According to the database, while in 2006 there have been 11 agreements registered, in 2007 – 17 agreements, but in 2008 already 30 agreements have been noted, in 2009 – 14 agreements, and in 2010 – 25 agreements.

the traditionally negotiated collective agreements. Joint Statement on COVID-19 by International Organisation of Employers and International Trade Union Confederation underlined the role of social partners in coordinating the crisis in the workplace and beyond¹¹². General deregulatory attempts and tendencies to lower labour standards are in fact acting as an incitement to negotiate entirely informal TCAs. With a view towards an entirely unknown, rapidly changing economic reality, when employers are uncertain about the continuity of their activities, TCAs become a luring opportunity. Perhaps the lack of existing legal framework for TCAs could act as a stimulator of their robust surge in number.

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¹¹² Joint Statement on COVID-19 by International Organisation of Employers and International Trade Union Confederation, https://www.ilo.org/actrav/events/WCMS_739522/lang--en/index.htm (accessed 24.11.2021).

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