EURACTA 2 - European Action on Transnational Company Agreements

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With the financial support of the EU.
Transnational Company Agreements: what are they?

Transnational Company Agreements (TCAs), the scope of which extends to the territory of several States, are agreements voluntarily concluded between management of a multinational company (MNC) on the one hand, and worker representatives on the other. Some TCAs are extended to cover suppliers, too.

Central to TCAs is the bilateral nature of these texts. These differ significantly from unilateral codes of conduct often preferred by MNCs. TCAs take on two forms, they can be:

- **European** (European Framework Agreements, EFA) when signed by European Work Councils (EWC) and/or European trade unions federations (ETUF), and European in scope
- **International** (International Framework Agreements, IFA), when signed by global trade union organisations (GUF), and global in scope.

Factors covered by TCAs are wide-ranging, focusing on issues such as ILO core labour standards (anti-discrimination rights, freedom of associations and collective bargaining, outlawing of child and forced labour), restructuring, equal opportunities, vocational training, health and safety, trade union rights and social dialogue.

TCAs can also be classified as:
- **Procedural** when TCAs set general procedure principles,
- **Substantive** when TCAs set specific rules for management through concrete and binding clauses.

The most advanced TCAs deal with restructuring issues. This involves specifically the «anticipation of change» i.e. measures to avoid compulsory redundancies and/or site closures through retraining, redeployment and other measures.

Why are TCAs important?

The TCAs are increasingly considered an important and innovative tool of industrial relations (IR) at a transnational level. This new social praxis shadows the emergence of MNCs operating as key players in the global economy. This takes into consideration the fact that the number and influence of MNCs is unprecedented, leading to a “governance gap” between the global economy and social regulation.

In such a scenario, transnational collective bargaining opens up new and interesting opportunities for IR actors. TCAs can represent one way to bridge the governance gap between the increasingly global character of capital strategies and the substantially territorialized nature of the unions and workers.
Starting with the European Social Agenda 2005-2010, the European Commission recommended increasing and improving TCAs, recognizing that together with other levels of representation TCAs can play a positive role in social dialogue.

The arrival of TCAs has come at a time when collective bargaining is going through a period of crisis. On the one hand, we can see reinforcement of the right to negotiate collectively in the judgments of courts in developed countries. On the other, we are witnessing the destruction of national collective bargaining systems in some EU countries (for instance through Troika decisions). The emergence of TCAs requires us to comprehensively think through the nature of collective bargaining as a fundamental right.

TCAs provide workers and their representatives the opportunity to:

- Develop spontaneously and from below transnational industrial relations
- Coordinate union action at a transnational level
- Establish common minimum standards in all the subsidiaries and suppliers of an MNC
- Prevent and/or combat forms of social dumping
- Achieve socially responsible restructuring

A map of the TCAs

By the end of 2013 267 TCAs have been signed equally divided between IFAs (140) and EFAs (127). They cover more than 10 million employees worldwide. Most of the signatory MNCs have their headquarters in continental Europe (mainly in Germany and France). They come from the most internationalized sectors (metal and chemical industry, telecommunication, banking etc.). Some IFAs are co-signed by EWCs. In many IFAs, EWCs have a monitoring role.

Most of the EFAs are signed by EWCs (92 of 127); 63 are signed by EWCs alone. In particular German MNCs tend to prefer to negotiate with EWCs. 16 EFAs are signed by ETUFs alone, almost exclusively by French MNCs. Their number has grown since 2006.

Since 2011, a relative slowdown of the EFA dynamics can be observed, in particular regarding

1 We exclude the more than 1300 agreements on the setting up of EWCs (including a few world works councils). See TCA Database of the EC http://ec.europa.eu/social/main.jsp?catId=978&langId=en.
substantive EFAs on restructuring. Ironically, just at a time when the number restructuring cases grew due to the financial crisis. This would seem to indicate that a renationalisation of industrial relations occurred during the crisis.

**A key issue: the unclear legal status of TCAs**

Transnational collective bargaining has developed without a specific legal framework. TCAs are based on voluntary and autonomous negotiations between social partners. They are self-initiated and self-implemented.

The major problem of volunteer and non-binding TCAs concerns their effectiveness and their homogeneous implementation in all the different subsidiaries spread across different countries.

The texts tend to reflect the models and practices of the countries where the parent group is based (the so-called "home country effect"). In the lack of defined norms ruling the legal status of these texts and the hierarchical coordination between different actors and levels, the most common result is that they have to be implemented by the local actors, eventually through local or national agreements.

In the case where norms fail to legally define status of these texts and the hierarchical coordination between different actors and levels, the most common result is that they have to be implemented by the local actors, eventually through local or national agreements.

Important issues concern the legitimacy of the negotiating agents, the procedure, the implementation and follow-up at the national level. A transparent mandate represents a matter of democracy and effectiveness.

In order to evolve from declaratory texts to more substantive TCAs, the ETUC and ETUFs have established guidelines and recommendations for negotiation procedures.

According to these guidelines, procedures should ensure:
- a preliminary information and consultation procedure
- a mandate given by the most representative unions concerned: topics, viewpoints, policies, details of how the negotiation process will take place
- a procedure for the approval of the draft agreement which must require at least a two-thirds majority in each country involved
a signature of the agreement by the ETUF on behalf of the national trade unions involved
a commitment on behalf of the trade unions involved to implement the signed agreement
the involvement of the EWC at all stages according to the rules adopted by the ETUF

The EURACTA 2 research findings

In order to address some of these issues, a “European action on TCA” (EURACTA 2) has been conducted by a network of economic and social research institutes, trade unions and universities, from European countries (see back cover). The project has been coordinated by the Italian institute Associazione Bruno Trentin (ABT).

General objectives involve:
- improving the understanding, exchange of experience and expertise among European social partners with regard to the role of the TCAs;
- an in depth and empirical survey of TCAs, specifically their negotiations, issues, implementation and impact in the different local contexts and on national industrial relations.

Beside two international workshops and a final conference, the action consisted of case study fieldwork.

The Companies

Metal industry (4): Volkswagen, Thales, Schneider Electric, SKF
Banking (3): Unicredit, Santander, BNP Paribas

Of these seven MNCs, three are headquartered in France, two in Germany, one each in Italy, Spain and Sweden. In addition, these MNCs have subsidiaries belonging to some of the seven countries of our
network. Their size, in terms of worldwide employees is on average around 160,000, with a max of 560,000 in Volkswagen and a minimum of 48,000 in SKF.

In order to analyze the specific implementation of TCA in the different national/local contexts, the network undertook 14 case studies of TCAs in the parent companies and their subsidiaries in different countries. For instance: Volkswagen (Germany), Bentley (UK), Seat (Spain), Lamborghini (I). Furthermore, all seven MNCs have a EWC, in two cases - SKF and VW - they also have a World Works Council (WWC).

**The TCAs: number, scope, date and name**

In the companies studied we recorded a total number of 18 TCAs. On average each company has 2 texts, whereas VW has signed 5 different texts. Most of these texts have just a European scope (EFA), with 2 exceptions, VW and SKF, which belong to the category of the IFAs. They were signed between 2002 and 2014, with a relative concentration of 6 different TCAs in 2008-09 (2 Unicredit, 2 Santander, VW, Thales). The last ones, in 2014, concerned BNP Paribas and SKF. It’s worth noting that most of these texts were signed during the recent crisis. The word “agreement” only occurs in a certain number of texts, whereas in the majority of the cases terms such as Joint Declarations, Charter and Code are preferred.

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<thead>
<tr>
<th>MNC</th>
<th>Headquarters</th>
<th>TCAs</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Volkswagen</td>
<td>Germany</td>
<td>Social Charter (ILO Conventions)</td>
<td>2002/2012</td>
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<td></td>
<td></td>
<td>Update of the Social Charter</td>
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<td></td>
<td></td>
<td>Health and safety</td>
<td>2004</td>
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<td></td>
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<td>Declaration on sustainability in supplier relations</td>
<td>2006</td>
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<td></td>
<td></td>
<td>Labour Relations Charter</td>
<td>2009</td>
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<td></td>
<td></td>
<td>Temporary agency work (TAW)</td>
<td>2012</td>
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<tr>
<td>Thales</td>
<td>France</td>
<td>Professional development and anticipation (IDEA)</td>
<td>2009</td>
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<td></td>
<td></td>
<td>Developing professional knowledge (TALK; IDEA follow-up)</td>
<td>2010</td>
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Initiators and signatories

In four cases management took the initiative to negotiate the TCA (Schneider, Thales; SKF,BNP), the EWC in one case (Unicredit), 1 the national trade union (Santander), 1 the national works council supported by the national industry federation (VW).

The signatory parties were, on the side of the employees, differently composed. In 2 cases only by the ETUF (Thales, Schneider Electric), with EWC just in charge of monitoring follow-up; in 2 other cases only by the EWC (Unicredit, Santander). EWC and ETUF signed the EFA at BNP Paribas. Whilst in the case of VW the IFAs were co-signed by GUFs, a different picture emerges concerning SKF where GUF and ETUFs signed the agreement, with the exclusion of the EWC in SKF (although the representative of the ETUF and GUF is EWC and WWC president also); with its inclusion in VW since 2009.

A key role is normally played by the home-country. Factors contributing to the emergence of TCAs

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<th>TCAs</th>
<th>Year</th>
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<tbody>
<tr>
<td>Schneider</td>
<td>France</td>
<td>Anticipation of change European Agreement on Social Commitments in the framework of the take-over of Areva T&amp;D</td>
<td>2007</td>
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<tr>
<td>Electric</td>
<td></td>
<td></td>
<td>2010</td>
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<td></td>
<td></td>
<td></td>
<td>2014</td>
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<tr>
<td>Santander</td>
<td>Spain</td>
<td>Equal treatment of women and men Social Rights and Labour Relations Sustainable financial services</td>
<td>2008</td>
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<td></td>
<td></td>
<td></td>
<td>2009</td>
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<td></td>
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<td>2011</td>
</tr>
<tr>
<td>Unicredit</td>
<td>Italy</td>
<td>Joint declaration on training ,learning and professional development Joint Declaration on equal opportunities and Non-discrimination</td>
<td>2008</td>
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<td></td>
<td></td>
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<td>2009</td>
</tr>
<tr>
<td>BNP Paribas</td>
<td>France</td>
<td>Employment Management Agreement Workplace Equality Agreement</td>
<td>2012</td>
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<tr>
<td></td>
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<td>2014</td>
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have to do with the global management goals to harmonize some standards throughout the group, improving at the same time the company’s reputation in respect to corporate social responsibility. They can also prefer to negotiate with the ETUF, and not with their own national unions which can be quite fragmented, as can often be the case in France.

Employees and their trade union organizations often aim to harmonize minimum working condition standards. A point clearly made by the German workers’ representatives interviewed.

In only a few cases did the ETUF take the initiative, this was due to the fact that these organizations – namely IndustriALL Europe – intend to fully respect the free will and choice of the national and local unions.

**The negotiation process**

The internal ETUFs guidelines on TCAs were formally prominent in the metal sector, especially the French MNCs and Italian metal worker unions (“the only guarantee of transparency and democracy”). In the banking sector, the key actor in the negotiation process was the EWC. At BNP Paribas an ad hoc committee was formed, while feedback from the EWC Select Committee was given between meetings. There was an advisory role for external members and the agreements were signed by all negotiators, as well as validated by EWCs, the ETUF and management.

**Mandate, transparency and communication channels** were, in those “cases”, quite disappointing (see Polish case study of the Schneider TCA). Some national and local unions complained about the lack of proper and exhaustive involvement during the negotiating process. This was certainly the case of the Bulgarian and Polish unions in respect of the bargaining at Santander and Schneider, while a similar exclusion of national unions was deplored at Unicredit in Italy and Germany, too. In some other cases, there was a lack of coordination within the EWC, as in Santander.

One of the most critical junctures concerns the role of EWCs, which do not formally hold a negotiating mandate, but which undoubtedly played a major role in signing many agreements. EWCs have legitimately concluded EFAs in the past years and they will likely continue to do so in the future. However, if the aim is to set a framework for transnational negotiations with MNCs in predefined procedures (or even within an optional set of rules) the current experience demonstrates that EWCs can hardly be a reliable trade union structure for collective bargaining at cross-border level. Concerning EFAs, the ETUC indicates the European industry federations are the primary actors with respect to EWC and national unions must have an essentially complementary function.
Most of the TCAs we have examined belong to the cluster of the procedural agreements. Some texts are joint declarations of common understanding, whereas others are quite detailed and codify concrete measures of implementation.

Fundamental social rights play a predominant role in IFAs. Examples of this approach are the Global Framework Agreement signed at SKF in 2003 and updated in 2014, as well as the VW social charter of 2002 updated in 2012, which both clearly share the same aspiration: to ratify and implement the spirit and duties of the ILO Convention. The global scope of its different 5 IFAs, in the VW case, goes beyond the minimum standards of the International core labour standards. They include issues like health and safety at work (2004), the sustainability in supplier relations (2006), labour relations (2009), temporary agency work (2012).

**EFAs content are more diverse and cover a wide-range of issues.** Restructuring and impact on workers are basically quoted indirectly, in co-relation - where this is the case - with the notion of anticipation of change and lifelong learning. Professional development, learning and training are the core of the two EFAs (2009, 2010), the second follow-up of the first, at Thales. The aim should be to prevent - through individual training plans - the negative effects of restructuring, avoiding collective redundancies. Same subject in the Unicredit joint declaration of 2008, and - in its essential purpose - in the 2007 EFA of Schneider, on the anticipation of change. Summing up, we can say that 4 out of 18 texts analysed are focus on professional development and the anticipation of change.

Another issue which returns in more than one text concerns equal opportunities, diversity and non-discrimination. This is the case of three texts, in particular, in the banking sector: Santander’s 2008 EFA on equal treatment between men and women, Unicredit’s 2009 joint declaration and the recent BNP Paribas EFA (September 2014). BNP is to start negotiations on a new agreement on psychosocial risks soon.

Issues like “Social rights and labour relations” are dealt with within a couple of TCAs, as in the case of Santander and VW. They were both signed in 2009. In the case of the Spanish bank, the contents refer to the international labour standards. In the case of the German automotive producer, they go much further by including enterprises and production sites belonging to the group (global level). These include issues dealing with recognition, information, consultation and co-determination rights, of the German kind, with training for workers’ representatives and the possibility for the local work councils - which have to be democratically elected - to use external experts. Finally, none of the 18 TCAs set common remuneration levels.
Implementation and impact

All the TCA represent voluntary solutions. They do not produce immediate and direct legal effects on all the work units they aim to cover. There isn’t any specific duty for their local implementation, except the internal co-ordination between the different level of the management on one side and workers representatives on the other. This as we know is the main weakness of transnational collective bargaining.

Non regression clauses (the interdiction of worsening of existing National standards) are inserted into several texts, for instance VW, SKF and Unicredit.

TCAs that have the character of a framework agreement require implementation through local level company agreements in order to be binding. With the exception of Thales this often proved to be problematical because of the different IR practices.

Some texts have foreseen follow-up committees in order to monitor the effective implementation of the agreements. The EWC is often the main actor in monitoring the implementation in the different national contexts. This in fact can be one of the items discussed during the ordinary meetings of the EWC. BNP Paribas, Schneider and Thales are example of this kind of monitoring.

Dispute settlement bodies and procedures appear in some texts. In Unicredit there’s an ombudsman in the subsidiary, who could collect all complaints concerning the implementation and he/she is responsible for addressing the complaints to the management, similar procedures exist in SKF and Thales.

The value of TCAs is not always immediate and obvious, like the structures of the EWCs. A pre-requisite of success is a good, exhaustive and timely involvement of all the actors. This is not, unfortunately, always the case. Polish workers at Santander were not informed by the EWC, and were initially excluded. Local management was “surprised” by the existence of these texts, too. Hence, in such situations one should not be surprised to discover that implementation did not take place.

It seems that the Schneider Electric anticipation agreement of 2007 has not met ambitious expectations and its real impact is unclear. The information acquired from IndustriAll Europe shows dissatisfaction of local trade unions. The transfer of production to China took place in the Czech Republic without any replacement by new activities whereas Spanish trade unions have an impression that ‘the anticipation’ lies in dismissing qualified workers by the company and hiring new cheaper ones. What’s more, interviewed Polish trade unionists don’t have accurate knowledge about content of TCA as such. Interestingly, the second agreement signed by Schneider Electric (on Social Commitments in the framework of the take-over of Areva T&D) has been definitely better received by workers’ representatives, who indicated that it gave them an increased feeling of security during the acquisition period.
Information and training about the TCA is also very important. One of the reasons for the broad and positive support for VW agreements, as well as at SKF in Bulgaria, depends - beside their specific contents and objectives - on the time and resources invested by the unions, especially in the case of VW, on the dissemination throughout the Group.

Furthermore, some national unions do not perceive any real added value to be gained from TCAs as they assume to already possess equal or major recognition in their national setting. This was often the case concerning the home country unions, German and French unions especially felt that their strong domestic rights protected workers. For them, the real meaning of the TCAs signed in their national MNC mainly relies just in exporting some minimum standards to preserve the national standards through a non-regression clause. Their objective is in fact to contrast the risks of social dumping. On the other hand from the perspective specifically of Polish and Bulgarian employee representatives TCAs are a new and promising but underdeveloped tool.

We have also to notice some cases which show how TCAs can have a positive effects also on the high-standard home countries. The VW TCA on temporary agency work (TAW), signed in 2012, was positively received in Germany, where its adoption represented an improvement, by limiting the widespread use of TAWs.

The VW Charter on Labour Relations was well received in Britain (Bentley), Italy (Lamborghini), Spain (Seat) and even in Germany. TCAs establish a fundamental benchmark or reference point for discussions and lead to a greater synchronisation of labour issues as part of an overall formal and informal process of international labour co-ordination. In BNP, the TCA represented a trigger for European social dialogue at the Group level, which led the creation of national IR bodies and the initiation of negotiations at the national level.

Factors of success in negotiating TCAs:
- strong industrial relations within the home country, a high unionisation rate as well as well established mechanisms for employee representation
- personal trust relations (with the workforce, within the EWC and with management)
- a functioning and ambitious EWC, made up mainly of trade union members
- a functioning EWC select committee,
- an initiative of the EWC leader towards Europeanization of industrial relations
- the coordination between the EWC and the unions (at national and European level)
Guidelines for the negotiation of TCAs

Drawing on lessons learned we now offer a list of recommendations for future negotiators. Some of them correspond closely with the Resolution adopted by the ETUC in 2014, a resolution based on a document proposed by a team of labour lawyers (Sciarra, Fuchs, Sobczak, Towards a Legal Framework for Transnational Company Agreements, 2013) arguing for an Optional Legal Framework. A decision (art. 288 TFUE) is considered necessary in order to guarantee Member States ensure effectiveness and enforceability of TCAs.

a) Negotiation and signatory parties of the TCA

TCAs shall be negotiated and signed by representative European trade union federations. EWCs and national union representatives should be fully involved in the negotiations. The preference given to European trade union federations is motivated by the fact that they can ensure a democratic mandate from national trade unions and only they represent recognized national trade unions. On the employers’ side, we suggest that the legal representative in the MNC’s headquarter should sign the TCA in the name of all subsidiaries.

b) Disclosure of the mandate

Disclosure of the mandate on the workers’ side is an essential element required to legitimize the collective character of the agreement as well to ensure that all collective interests are represented. However, rules to operate the mandate - majority voting, cross-industry representation, homogeneity of the rules across all sectors; vetoing powers - should be left to unions’ self-regulation.
c) **Scope of application of the TCA and changes in the composition of the MNC**

The TCA should clearly specify the scope of its application and determine whether the agreement covers suppliers. **We recommend that the TCA contain an appendix with a nominative list subsidiaries and countries covered by the TCA.** The TCA should also specify the applicable procedure in the case of a subsidiary leaving the MNC or whenever a new one enters into it.

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**d) Non-regression clause**

It is advisable to include a non-regression clause. TCAs cannot impose pejorative changes of labour standards and working conditions agreed upon at national level, be it sector or company level.

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**e) Internal dispute settlement**

The TCA should specify the signatory parties’ common responsibility in its implementation. It should also indicate the internal complaint mechanisms for workers covered by the text. If cases where they cannot reach an agreement, the parties may decide to access external mediation procedures.

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**f) Date and place of the signature**

The TCA should specify the date and venue of signature.

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**g) Expiry date and rules to promote renewal**

The TCA should specify whether it is signed for a definite or indefinite period of time. The agreement should determine procedures to challenge the agreement from one of the signatory parties.

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**h) Notification**

The European Commission should be informed of any signed agreement in order to place it in the Commission’s database on TCAs.
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