

CONCEPT EXAMPLE OF A POSSIBLE EUROPEAN OPTIONAL LEGAL FRAMEWORK FOR TRANSNATIONAL COMPANY AGREEMENTS

DECISION No [NUMBER] OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF [DATE] [or
alternatively DECISION OF THE EUROPEAN SOCIAL PARTNERS]

on the Optional Legal Framework for Negotiations of Transnational Framework Agreements between
European Trade Union Federations and Cross-Border Undertakings or Cross-Border Groups of
Undertakings.

[The European social partners]

Or

[The European Parliament and the Council]:

Having regard to the Treaty on the European Union and the Treaty on the Functioning of the European
Union,

Having regard to article 6 of the TEU,

Having regard to article 152, article 154 and article 156 of the TFEU,

Having regard to article 290 of the TFEU,

Having regard to the Community Charter of Social Fundamental Rights of Workers and in particular to
articles 12 and 13,

Having regard to the European Social Charter and in particular to article 6,

Having regard to article 28 of the Charter of Fundamental Rights of the European Union,

Having regard to the European Parliament resolution of 12 September 2013 on cross-border collective
bargaining and transnational social dialogue (2012/2292(INI))

Having regard to Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral
Dialogue Committees promoting the Dialogue between the social partners at European level,

(1) Whereas the Union and the Member States ensure that the conditions necessary for the
competitiveness of the Union's industry exist and for that purpose, in accordance with a system of open
and competitive markets, their action shall be aimed at encouraging an environment favourable to
cooperation between undertakings.

(2) Whereas the Union and the Member States have as their objectives the promotion of employment,
improved living and working conditions – so as to enable harmonisation while maintaining improvement

– proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combatting of exclusion.

(3) Whereas such a development will be ensured not only from the functioning of the internal market, which will promote the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.

(4) Whereas the Commission's green paper on restructuring (Com (2012) 7 final) affirms that Transnational Company Agreements (TCAs) are one of the tools available to address the social and economic effects of restructuring in a socially responsible way at company level. Building on the experience of social dialogue at enterprise level, they may contribute to a fair distribution of the costs of adjustment within multinational enterprises and groups in advance or in critical situations and thus help prevent, mitigate or shorten industrial conflict.

(5) Whereas Transnational Company Agreements realise the potential of social dialogue to deal with restructuring, reorganisation and anticipated measures. In addition to the organisation of social dialogue itself, the agreements address specific subjects such as health and safety at work, equality in employment, training and mobility, planning of employment and skills needs, measures to avoid dismissals and accompanying measures in case of restructuring.

(6) Whereas there are problems hampering the smoother development of negotiations at transnational level and such problems mainly concern the identification of the actors involved and transparency of Transnational Company Agreements.

(7) Whereas to realise the benefits of TCAs to build a single market, uncertainties concerning the legal nature of TCAs have to be removed within a set of rules which promote voluntary and autonomous negotiations between management of transnational undertakings or transnational groups of undertakings and their employees.

(8) Whereas more than 280 Transnational Company Agreements have been signed by multinational companies and employees' representatives and all of them are applicable in more than one member state, or cover undertakings registered in at least one member state.

(9) Whereas an optional European legal framework (OLF) for voluntary and autonomous TCAs would be necessary and useful in order to provide greater legal certainty, greater transparency, foreseeable and enforceable effects for agreements following the framework provisions.

(10) Whereas practices relating to TCAs should be encouraged while respecting the contractual autonomy of the contracting parties.

(11) Whereas the bargaining agents should decide autonomously if they wish to negotiate making use of the optional legal framework.

(12) Whereas TCAs should reflect autonomous choices of the bargaining agents, as regards the mutual recognition of their mandate and representativeness.

(13) Whereas the definition of a cross-border undertaking or group of undertakings, other than the fact that it operates in more than one member state, would go beyond the objectives and scope of the promotional aim of the optional legal framework and it is the responsibility of the central management of a cross-border undertaking or the central management of the controlling undertaking of a cross-border group of undertakings to disclose the extent to which its signature incorporates its subsidiaries and controlled undertakings and which subsidiaries or controlled undertakings will be covered by the TCA.

(14) Whereas a precondition for a cross-border undertaking or a cross-border group of undertakings to enter into a TCA is the disclosure of the control mechanisms exercised by central management on the other entities located within and outside the EU.

(15) Whereas the procedures autonomously adopted by the European Trade Union Federations proved to be an efficient procedure to obtain a mandate from employees of cross-border undertaking or a cross-border group of undertakings.

(16) Whereas the signature of the European Trade Union Federation and of the central management should be sufficient to ensure the legal status of the TCA.

(17) Whereas a precondition for a European Trade Union Federation to enter into a TCA is to disclose the agreed mechanism for obtaining a mandate from employees of the cross-border undertaking or cross-border group of undertakings.

(18) Whereas the EWCs - where established and appropriate - should be properly informed about the process and involved in the negotiation, management and implementation of a TCA according to the rules established by the ETUFs and by the TCA itself.

(19) Whereas a cross-border undertaking or a cross-border group of undertakings may operate in more than one sector and more than one ETUF may be concerned. ETUFs should disclose which internal procedure applies to the negotiations at stake.

(20) Whereas a nominative list of all the subsidiaries covered by the TCA should be annexed to the TCA, unless the TCA defines criteria to determine which undertakings, subsidiaries or operations of the cross-border undertaking or of the group of undertakings fall under the TCA scope. The TCA should also specify the applicable procedure for updating the list of undertakings, subsidiaries or operations falling under the TCA scope.

(21) Whereas this decision cannot constitute a reason for reducing labour standards and working conditions established by law or agreed upon at national level.

(22) Whereas a transparency clause should be included in each TCA, determining which clauses prevail in case of conflict between the provisions of a TCA and any other applicable national agreement. In the absence of such a transparency clause, in case of conflicts between provisions of a TCA and a national agreement, the provisions more favourable for the employee shall apply.

(23) Whereas adequate dissemination of the existence of a TCA should be ensured and the mechanisms for registration of a TCA should be delegated to the European Commission which, in agreement with the European social partners, will decide on a registration mechanism for TCAs.

(24) Whereas the signatory parties should jointly commit to monitor, periodically report and assess the effectiveness of enforcement and establish a procedure to this end.

(25) Whereas the TCA should specify the signatory parties' joint responsibility for its implementation and it should also indicate the internal complaint mechanism for an autonomous resolution of disputes, but each of the signatory parties should still have the possibility of reporting the dispute before a mediation structure at European level.

(26) Whereas such a mediation structure should be set up by a delegated act of the European Commission with a view to establishing an extra-judicial dispute resolution mechanism accessible, without any cost, exclusively by the signature parties to the TCAs; the mediators' panel should be composed of a mediator appointed by each of the parties and a third and neutral expert.

(27) Whereas each TCA should include its starting date, expiration date or procedure for renegotiation, termination or renewal of the TCA.

(28) Whereas each TCA should be signed, dated and declare the official language(s) for its interpretation.

(29) Whereas, in opting in to the OLF the signatory parties and the parties they represent should recognise that the TCA will have the same legal status as a company agreement at national level, it will cover the same workforce a company agreement, in the applicable legal system, and it will be enforced in the same manner as a national company agreement.

(30) Whereas national laws and collective agreements apply mutatis mutandis to the implementation of TCAs at national level. The optional legal framework for TCAs is not a reason to modify or reform collective bargaining systems at national level.

HAVE ADOPTED THIS DECISION:

Article 1: Objective

This decision establishes an optional legal framework for European Transnational Company Agreements (hereinafter “TCAs”) signed by one or more European Trade Union Federations, on the one side, and a cross-border undertaking, a cross-border group of undertakings, or two or more undertakings based in at least two different member states, on the other side (hereinafter “the bargaining agents”).

Article 2: Definitions

- a) European Trade Union Federation: organisation representing employees at European level according to article 1 of Decision 500/1998/EC which has also adopted a procedure to obtain the mandate to negotiate and sign a European TCA;
- b) Cross-border undertaking: any undertaking employing staff in at least two member states;
- c) Cross-border group of undertakings: any group of undertakings employing, directly or through a controlled undertaking, staff in at least two member states;
- d) Undertaking: any employer registered as such within a member state;
- e) Transnational Company Agreement: any agreement negotiated and signed according to this optional legal framework which applies in at least two member states of the EU or, if applicable, of the European Economic Area;
- f) Procedure to negotiate and sign a TCA: procedure adopted by the decision-making bodies of a European Trade Union Federation with the specific intent of establishing framework rules for negotiating TCAs.

Article 3: Opt-in clause

This Decision applies to all TCAs in which the bargaining agents declare in writing that the agreement is subject to this Decision.

Article 4: Disclosure of mandate

At the beginning of the negotiation process, both parties shall disclose the mandate they have obtained.

Article 5: Scope of the TCAs

The bargaining agents shall define the scope of the TCA by:

- a) Listing the operations, subsidiaries and undertakings that will be covered by the TCAs; or
- b) Setting out control criteria which identify the parent company and controlled subsidiaries or undertakings;

In the case of option a), the parties will also determine procedures to update the list and publicise the changes within the list.

In the case of option b), the organisation acting on behalf of the employees, in a spirit of good faith and fair cooperation with the central management, must be given a position which enables it to regularly assess changes in the composition of the cross-border undertaking or of the cross-border group of undertakings.

Article 6: Content of the agreement

All TCAs should include:

- official name (designation) and signature of the signatory parties;
- location where the agreement was signed;
- date on which the agreement was signed;
- date on which the agreement enters into force;
- expiration date or contract duration or, alternatively, a procedure by which one of the parties can terminate the agreement if its duration is indefinite;
- procedure for termination, renegotiation, renewal of the agreement.

Article 7: Non-regression clause

This decision shall not constitute valid grounds for reducing the general level of protection afforded to workers. This decision shall not prejudice the right of social partners to conclude, at the appropriate level – including the European level – agreements adapting and/or complementing the provisions of this decision in order to take account of particular circumstances.

Article 8: Non-interference clause

In case of conflict between the provisions of a TCA and any other applicable national agreement, the provision more favourable for the employee shall apply.

Article 9: Registration of the agreement

Within 6 months from the entry into force of this Decision, the European Commission will set up a register for disseminating the TCAs. The register shall have the following features:

- A free-access website shall be provided in the form of a database;
- Procedures to submit a new text or relevant changes to the existing texts have to be clearly identified;
- Official texts of the TCAs will be made available and easily accessible;
- A clear indication of the official version(s) to be used for the interpretation of the text, in cases where the TCA exists in several languages.

The registration mechanism meets the need for public accessibility and dissemination of the existing agreements for the benefit of recipients and third parties. Bargaining agents will submit the official text to the European Commission for publication. They may also provide the Commission with the versions in other languages in order to achieve an even wider dissemination of the agreement.

In any case, the registration mechanism does not affect the legal validity of the agreements.

Article 10: Disputes Resolution

Within 9 months from the entry into force of this Decision, the European Commission will, in agreement with the European social partners, set up a mediation structure that shall have the following features:

- Three lists of specialists will be established in order to ensure a balanced representation of employees, employers and neutral mediators;
- Each list will include at least one mediator from each member state;
- A list of settlement agreements reached in the context of TCAs. Once a settlement agreement will be reached, it has to be attached to the TCA itself and included in the database;
- Provisions defining the operation of the mediation structure, including the measure that only the signatory parties of the TCA can appeal to ADR.

Article 11: Protection of the bargaining agents

In the exercise of their functions, members of negotiating delegations – including any members of the European Works Council and employees’ representatives of the multinational company involved in the transnational negotiation – shall enjoy protection and guarantees similar to those provided to employees’ representatives by national legislation and/or practices in force in their country of employment. In the event that national legislation and/or practices in force in the country where the company is headquartered or the country in which the negotiations are taking place are more favourable for the employees, the latter shall apply.

This protection shall apply in particular to attendance at meetings of negotiating bodies or any other meetings within the framework of the agreement resulting from the negotiations themselves, as well as to the payment of wages for members who are in the staff of the transnational undertaking or the transnational group of undertakings for the period of absence necessary for the performance of their duties.

Article 12: Assessment of the optional legal framework

Every two years the European social partners will perform a joint assessment of the functioning of the optional legal framework. Their joint assessment will be transmitted to the European Commission. On the basis of the inputs received from the social partners, the European Commission may take action to enhance the optional legal framework and create an enabling environment for TCAs.