Transnational Company Bargaining And The Discourse of the European Commission: A Critical Overview*

Iacopo Senatori (Marco Biagi Foundation, University of Modena and Reggio Emilia)
iacopo.senatori@unimore.it

SUMMARY: 1. Transnational Company Bargaining in a 'Global Law' Perspective. - 2. The First Approach of the European Commission: The Systemic Role of TCB in the European Labour Market. - 3. The Second Approach of the European Commission: Problems and Interests Underlying the Development of TCB. - 4. The Third Approach of the European Commission: The (Changing) Role of the Commission in Support of TCB. - 5. Conclusion. Which Way Forward? - 6. References.

1. Transnational Company Bargaining in a 'Global Law' Perspective.

The purpose of this paper is to investigate the role played by public institutions, particularly the European Commission, in the development – and possibly the further strengthening – of transnational company bargaining (hereinafter TCB) in the European context.

The rise of TCB as a typical form of European social dialogue (Caruso, Alaimo, 2012) has been examined in quantitative and qualitative terms by numerous authors (Ales et alii, 2006; Papadakis, 2008; Perulli, 2000; Schömann et alii, 2012; Scarponi, 2013; Telljohann et alii, 2009). In this respect, the European Commission (hereinafter EC), though formally exalting the spontaneous and voluntary nature of this form of bargaining, has shown a great interest in influencing its development, at least since 2005. At that time, TCB was explicitly included in the Social Agenda as part of a broader intervention in the field of transnational collective bargaining, at both sector and enterprise level (European Commission, 2005).

However, in spite of the ambitious plan originally envisaged by the EC to promote the establishment of a legislative framework "designed to make it possible for the social partners to formalize the nature and results of transnational collective bargaining" (European Commission, 2005), not much seems to have been achieved so far. Rather, the Commission has progressively lowered its sights and shifted the focus to softer tools, whereas TCB, though increasing in quantitative terms, has not been able to move beyond the experimental dimension and achieve stable development (Leonardi, 2012).

Nevertheless, in a recent document on this subject (European Commission, 2012), the EC launched a public debate, inviting the interested parties to share their views on the possible future intervention in the field, including among the different options the development of a framework of regulation, for example in the form of guidelines. This gives rise to a reflection on the extent to which the use of public regulatory power can effectively influence and support developments in European industrial relations.

The issue needs to be addressed in a dual perspective. On the one hand, it should be placed in the context of the classical doctrine that regards law as merely a "secondary force" in labour relations, as "the law is not the principal source of social power", especially in a field that counts the uneven distribution of power among its actors as one of its inherent characteristics (Kahn-Freund, 1979). On the other hand, this classic

* Forthcoming in E. Ales, I. Senatori (eds), *The Transnational Dimension of Labour Relations. A New Order in the Making?* Proceedings of the 11th International Conference in commemoration of Prof Marco Biagi, Giappichelli, Turin.

assumption should be considered in the light of the characteristics that TCB draws from the particular legal space in which it is shaped, that has been referred to as "global law" (Ferrarese, 2012).

The "global law" concept reflects a legal order whose formation is still at an early stage, characterized by empty spaces of regulation and situations that, as far as contractual relationships are concerned, cannot be explained with traditional interpretative tools. In this respect, these hybrid phenomena have been labeled as "tentative law" to emphasize their experimental character, their ambiguous legal foundation and the aspiration to a stronger degree of institutionalization (Ferrarese, 2012).

The notion of "transnationality" mirrors these peculiarities to a significant extent. Some clues in this respect can be found in the customary definition of transnational company agreement adopted by the EC, that considers it 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' organizations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives" (European Commission, 2008a).

However, whereas this definition serves to characterize the scope, bargaining agents and contents of transnational collective agreements, a greater effort is needed to specify the exact nature of this source of regulation and the role it plays in the multifaceted system of global law and industrial relations.

In this respect, it can be argued from the literature that the enfranchisement from any formal linkage to a territory, and hence from an institutional framework, is the ingredient that differentiates transnational bargaining (as well as transnational law in broader terms) from other forms of regulation that go beyond national boundaries, such as the "international" and the "supranational" (Ales, 2013; Ferrarese, 2012).

In other words, transnationality is indicative of the increasingly central role of private actors as rule-makers in multi-level system of governance. This process, which entails a different characterization of the "interactions" (Delmas-Marty, 2009) between public and private sources of law, is deemed to be a constitutive feature of the new "juridification" of labour relations (Sciarra, 2013). However, further elements are needed to provide a complete representation of those characteristics of global law that find their testing ground in transnational labour relations, and in particular collective bargaining.

In this respect, a significant trend has been recognized towards the diversification and shrinking of the traditional target of legal and contractual regulation, which seems to break down into a multitude of "communities" whose boundaries tend to correspond to those of the company (Ales, 2011; Bavaro, 2013). As a result, the universal and prescriptive language of rights is displaced by a multi-faceted and blurred normative discourse that is focused on the interests of the different communities, rather than on society as a whole (Ferrarese, 2012). This represents a peculiar aspect of privatization, consisting not only in the direct co-participation of private actors in rule-making, but also in the influence that private interests exert on public authorities, leading to an erosion of the capacity of public regulators to govern the various interests at stake.

It is important to point out that these changes are not taking place against a neutral background. In fact, the evolution of global law appears to result from a process of re-organization of power relations in society that is driven by capitalist forces under the meta-regulatory shield of competition (Ferrarese, 2012; Papadopoulos, Roumpakis, 2013), thus undermining the capacity of labour to exert a countervailing structural power in the transnational dimension (Guarriello, 2012).

TCB stands at the crossroads of the global developments outlined above. First, it is characterized by a higher level of experimentalism and spontaneity than the more institutionalized forms of European social dialogue at the sectoral level (Lo Faro, 2012; Bercusson, 1992), as confirmed by the high degree of differentiation in the form, actors and contents of such “tools”, not all of them of a contractual nature (European Commission, 2008b). The same may be said of the interest in defending the voluntary nature of TCB, that the European social partners seem to share. On the one hand, the employers’ associations regard TCB as a problem-solving tool that would be jeopardized by recourse to enforcement procedures or other forms of EU supportive action. On the other hand, the trade unions, in spite of a widespread consensus for some kind of public support, consider in general the European company level as a merely integrative and “soft” source of regulation, that should be bound to respect the competences of the national bargaining level by means of non-regression clauses (Expert Group, 2012).

Closely related to the attribute of voluntarism is the issue of the legal foundation. It is well known that TCB springs from a bottom-up process managed to a large extent by actors such as European Works Councils (hereinafter EWCs) and the European Trade Union Federations (hereinafter ETUFs), whose legitimacy to negotiate on behalf of the workers employed in the related plants is – at least - questionable (Da Costa et alii, 2012). As a result, it is not possible to rely on a sound legal framework in the event of disputes about the effects of the texts, their enforcement and related legal issues (Rodriguez et alii, 2012). Not surprisingly, this has attracted the interest of legal scholars, giving rise to various attempts to increase the degree of legal certainty, either by means of an optional legal framework of European law (Ales et alii, 2006), or by applying the general rules of private international law (van Hoek, Hendrickx, 2009).

Legal scholars have identified in the European Union’s primary legislation several grounds for the legitimization of TCB, such as Article 28 of the Charter of Fundamental Rights of the European Union, that grants workers and employers “the right to negotiate and conclude collective agreements at the appropriate levels”, Article 152 of the Treaty on the Functioning of the European Union (hereinafter TFEU), that acknowledges autonomous contractual relationships between the social partners at European level (Caruso, Alaimo, 2012), and Article 115 TFEU, that provides a legal basis for interventions aimed at “the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market” (Ales et alii, 2006).

Regardless of these attempts, TCB has continued to develop in a legal vacuum, prompted by spontaneous forces driven by power relations, sometimes operating to the advantage of labour,[1] but more often to the benefit of management.[2] Far from being merely incidental, such power asymmetries are deeply embedded in the nature of TCB, and – as argued below – this might explain the enduring reluctance of the EC in this field.

As noted above, the rise of TCB and its “success” over other levels of transnational bargaining – such as the sectoral level – owe much to the growing need of multinational companies (hereinafter MNCs) to develop individualized strategies in response to the rise of globalization and the subsequent economic downturn (Ales, Dufresne, 2012). The steady increase of transnational company texts since 2000 and the predominance of issues

[1] “Instances where power relations are uppermost, with management being pressurised into a European-level negotiation by a demonstrable employee-side capacity to coordinate local negotiations, and if necessary cross-border forms of action” (Marginson, 2012, 108).

[2] In foms such as “minimising the transaction costs potentially entailed in a series of parallel local negotiations” (Marginson, 2012, 107).

related to anticipating change and restructuring in those texts provide evidence of this trend (Dufresne, 2012; Pichot, 2006), thus confirming the theoretical assumptions about the diversification of the "communities of interest" referred to above.

In addition, the nature of the interests at stake in these negotiations accounts for the subordinate position of labour, especially in an economic context where the threat of job losses has dramatically increased. As the European Parliament recently pointed out, this power asymmetry "is negatively impacting the representation of workers' interests and puts workers at risk of being played off against each other and forced to agree to lower wages, worse working conditions and other downwards adjustments" (European Parliament, 2013). As a result, contractual agents on the employees' side, such as EWCs, suffer a double pressure. First, they risk being instrumentalized by management for strategic aims (Köhler, Gonzàles Begega, 2011; Léonard, Sobczak, 2012); second, they are faced with the need to reframe their traditional set of goals, values and practices and to pursue the definition of new collective interests, shaped around a pluralistic notion of solidarity (Sciarra, 2010; Hyman, 2011).

Against this background, as it has been correctly pointed out, interrelations between law and industrial relations cannot be interpreted simply in terms of an alternative between abstention and interventionism. As the power gap between contractual agents is so wide, leaving the countervailing function to the mere action of market forces does not seem to be an option consistent with the goal of moving TCB towards "genuine" collective bargaining (Lo Faro, 2012). Hence, the real issue at stake is arguably the kind of intervention by the public authorities that would best serve the purpose of dealing with the inherent deficiencies of TCB, or, to put it in another way, empowering collective actors (Sciarra, 2011).

In this respect, the model outlined by Sir Otto Kahn-Freund provides a sound theoretical framework, insofar as it distinguishes between the different means by which the law can support collective bargaining. Following this framework, a case can be made for a solution to the problem of TCB to be found in the alternative between measures designed to "promote agreement" and those designed to "promote negotiation". Measures designed to promote agreement consist of legal devices aimed at creating the conditions for the parties to reach a settlement between diverging interests and providing a legal foundation for administering the agreement: they embrace, *inter alia*, arbitration, mediation and enforcement tools. Measures designed to promote negotiation, on the other hand, aim to lay the groundwork to increase the "willingness" of social partners to bargain with each other, i.e. "to induce or compel employers to recognize unions" (Kahn-Freund, 1979). To the extent that this approach entails efforts by the public authorities to orientate bargaining agents towards certain partners and topics rather than others (Id.), it seems the most suitable to modify the original power balance between the actors and arguably represents the most appropriate way to tackle the problems of TCB.

The following diachronic analysis of approaches taken by the EC will examine whether the actions of the Commission aim more at promoting agreement or at promoting negotiation. It will also attempt to evaluate EC policy, taking into consideration legal and realistic constraints, in the light of the present social and political context.

2. The First Approach of the European Commission. The Systemic Role of TCB in the European Labour Market

The EC's interest in transnational collective bargaining arose in the context of the Lisbon Strategy for more and better jobs, with a view to implementing the "partnership for change" approach advocated in the Strategy. The Social Agenda 2005-2010 (European Commission, 2005) included transnational collective bargaining, at enterprise and sectoral level, among the tools aimed at creating "a genuine European labour market".

According to the Commission, employment policies at that time were designed to "remove the remaining direct and indirect barriers and to draw up policies that create the conditions for the players concerned to derive the maximum benefit from the European area". In this framework, still in a perspective of economic expansion, transnational collective bargaining "could support companies and sectors to handle challenges dealing with issues such as work organization, employment, working conditions, training". In addition, it would "provide an innovative tool to adapt to changing circumstances, and provide cost-effective transnational responses".

At a later stage, in light of insights provided by labour law scholars (Ales at alii, 2006), and in the context of a renewed Social Agenda that was faced with the incipient economic downturn and the challenges arising from the global economic scenario, the EC moved its policy target to "promoting anticipation and adaptation to structural change in times of globalization" (European Commission, 2008a). Accordingly, the interest in transnational collective agreements shifted to the company level, that seemed to have greater potential than the increasingly structured sectoral social dialogue and was prompted by the role of MNCs in the forefront of economic development.

TCB is envisaged in this document as a suitable tool to respond to the "growing need to anticipate developments in terms of employment, flanking measures for restructuring, and managing human resources". This approach assumes that the social partners would manage their relations with a cooperative attitude. In the words of the Commission, "such initiatives help to create a climate of trust and dialogue that allows balanced company policies to be developed through an approach based on partnership, in particular as regards anticipation of, and accompanying measures for change" (European Commission, 2008a).

This cooperative attitude appeared to be a suitable means to achieve a smooth transition for workers in the face of global economic reorganization. In this respect, the EC expressed the opinion, supported by the social partners, that TCB "leads to a shared, overall view of what is at stake, develops anticipation, fosters a relaxed social climate that is favourable to acceptance of change, encourages the search for innovative professional transitions and heightened security for the workers concerned".

These comments disclose two aspects that, at least in the perspective of the Commission, characterize TCB, along with other forms of industrial relations, in the context of European policy: the participatory nature and the underlying corporatist philosophy.

As noted above, the Lisbon Strategy – in which the interest in TCB on the part of the EC was foregrounded – resulted in a radical change in the governance of employment policies, boosting the development of horizontal processes of "deliberative democracy" with the involvement of social partners (Goetschy, 2012; De Schutter, 2010). The strength of this commitment may be disputed, as these authors admit, and as the most recent developments in the framework of Europe 2020 seem to confirm (Conchon et alii, 2011; European Commission, 2013). However, it is important to note that this process tends to accentuate the "integrative negotiation" embodied in European social dialogue,

emphasizing both its participatory bias – i.e. the tendency to pursue a common perspective between the social partners, rather than the confrontation of diverging interests – and its corporatist outcomes, by which the actors "erase any confrontation, in favour of support for the goals set by the Commission", and "abandon their specificity to rally, by consensus, to the Commission's policies" (Didry, Jobert, 2012).

These claims seem to fit well with the approach taken by the EC on the issues relating to transnational collective bargaining, as evident in the documents analyzed above. Like other forms of European collective bargaining, TCB appears to be considered as a kind of regulatory resource (Lo Faro, 1999), useful insofar as it is consistent with general EC policy objectives, and deserving support only to this extent.

Further evidence about the EC's vision comes from the fact that the participatory and corporatist approach to TCB assumes an equality of arms between the bargaining agents, or, at least, does not seem to reflect an awareness of asymmetrical power resources.

The limited attention to this issue is a typical feature of European multi-level governance (Marginson, 2012). However, in the context of TCB, characterized by a significant imbalance of power - as argued above – this lack of attention, though explained in terms of formal respect for the voluntary nature of bargaining, may seem indicative of a functionalist drift in collective bargaining. In a similar vein, it may be argued that the formal consideration for the autonomy of the parties stressed by the EC's reiterated refusal to intervene in the field of representativeness and mutual recognition of bargaining agents (Clauwaert, 2012), and more recently by the widening of the space for autonomous bargaining provided in the TFEU, are to be linked to the institutional interests of the European Union more than to the affirmation of the autonomous interests of the social partners (Caruso, Alaimo, 2012).

To sum up, it may be argued that the functionalist approach to TCB taken by the EC, linked with the limited power at the disposal of organized labour, both at the workplace and at the European institutional level, are likely to foster a process of technocratization of this form of social dialogue, with a focus on the efficient pursuit of public policy and to the detriment of its democratic background (Erne, 2008; Baccaro, 2012), in spite of the formal celebration of its voluntary nature.

In this perspective, to come back to the theoretical framework outlined in the previous section, it follows that the approach of the EC, though compatible with the goal of promoting agreements between the social partners at the transnational company level, is in conflict with the principles that should inspire the promotion of genuine negotiation rooted in the autonomy of the bargaining agents.

The latest documents released by the EC, although influenced by the worsening crisis and the increasing focus placed on restructuring and exit strategies (Sciarra, 2011), follow the same pattern (European Commission, 2012). Increasing attention to TCB and an active role of the EC in favouring its further development is advocated insofar as it is in line with European policies. In this respect the EC emphasizes that transnational collective agreements "serve a useful purpose – to identify and implement feasible negotiated solutions tailored to the structure and circumstances of each company, particularly in the case of large restructuring process. This is consistent with the principles and objectives underpinning the Europe 2020 Strategy". Once again, the role of TCB is seen as coherent with a cooperative approach to industrial relations, as it "may contribute to a fair distribution of the cost of adjustment within multinational enterprises and groups in advance or in critical situations and thus help prevent, mitigate and shorten industrial conflict".

3. The Second Approach of the European Commission. Problems and Interests Underlying the Development of TCB

The early approach of the EC to transnational collective bargaining was arguably driven by its own original interest in developing a purely transnational level of industrial relations, which, added to existing levels, would serve the purposes laid down in the Social Agenda referred to above. At least, this seems to have been the assumption underpinning the first theoretical analysis of the issue, which the EC entrusted to a group of experts whose work laid the groundwork for the following developments.

The final report of the expert group, better known as the Ales Report (Ales et alii, 2006), was prompted by a set of objectives listed by the Commission, including the aim "to identify the practical and legal obstacles to the further development of transnational collective bargaining" and "to provide the Commission with a sound knowledge basis to assess the need for the development of Community framework rules, complementing national collective bargaining and highlighting relevant aspects such rules would have to take into account".

The report stated clearly that the further strengthening of transnational bargaining, including company-level bargaining, required agreements signed at that level to enjoy the status of reliable and standard regulations with legally binding effects. It was argued that as long as the fragmented and heterogeneous experiences carried out in the legal vacuum of the European bargaining arena continued to be conditional on implementation by local actors in highly diversified industrial relations systems, in the shadow of private international law, texts signed at transnational level had no chance of becoming the "common rule" in the traditional sense.

For this purpose, the establishment of an optional legal framework at EU level, based on the recognition of direct regulatory power for transnational bargaining agents, was deemed necessary. It was maintained that: "other options, such as relying on self-regulation by social partners at any level will not be able to solve the problem of the direct effect of decisions bilaterally agreed at transnational level", as they would require either recognition in EU legislation or transposition into one or more local agreements.

Whereas the details of the proposal in the Ales Report are well known, and have been widely discussed in the literature (Ales 2007; Bè, 2008), it is important to highlight the intersection between problems (of a practical and legal nature) and interests emerging from the analysis and the solutions put forward by the group. This early analysis casts light on the issues that have been dealt with in the ensuing debate and reveals, *in nuce*, the reasons for the political deadlock that subsequently blocked all EC initiatives.

The report highlights in this respect three dimensions or streams of analysis: the actors, the effects and the procedures. With regard to the first of these streams of analysis, the main issue involves worker representation, characterized by a dualism between European Works Councils (EWCs) and sectoral Trade Union Federations at EU level, and the resulting ambiguity.

As a matter of fact, EWCs are the most active agents in TCB on the workers' side, having signed about 80% of the recorded texts, of which nearly 50% as the only signatory party, and having been involved in about one-third of the remainder (Expert Group, 2012). This figure lends credence to the suitability of EWCs as "pure" transnational industrial relations bodies (Ales, Dufresne 2012; Waddington, 2011) playing a leading role in the development of TCB (Müller, Platzer, Rüb, 2013).

However, several objections have been raised as regards the legitimacy of EWCs and their representativeness as bargaining agents. It is well known that their legitimacy is not

explicitly recognized by the original Directive 94/45 EC, nor by the Recast Directive 2009/38. Their representativeness as bargaining agents, as already pointed out, might be adversely affected by several factors such as the 'country of origin' bias, the rules governing the distribution of seats among Member States, and the corporatist attitude that characterizes the activities of EWCs, as shown by the propensity of management to elect these bodies as counterparts in bargaining (Streeck, 1997). In addition, the effectiveness of EWCs in facilitating worker coordination has been questioned in the light of the unequal bargaining outcomes that case studies have disclosed, especially in cases of restructuring and when concessions and "pain-sharing" are at stake (Da Costa et alii, 2011).

Against this background, the response of the ETUFs towards the supremacy of EWCs seems to have been of a reactive kind, accounting for the defense of a dual level of "sovereignty" (Caruso, Alaimo, 2012): the first pertaining to their prerogatives as actors in the bargaining arena, the second relating to strategic choices underpinning the 'Europeanization' of industrial relations.

As for the first level, the unions seem to be driven by a purpose of self-legitimation, especially in systems with a clear-cut distinction between elective bodies with mere consultative powers and trade unions entrusted with bargaining functions, or relying on a single trade union representation channel (Expert Group, 2012, Pichot, 2006), and where as a result unions can claim a stronger mandate to bargain on behalf of employees (Dufresne, 2012).

As for the second level, trade union prerogatives are defended for their capacity to preserve the sectoral coordination of company-level bargaining[3] preventing the risk of a 'race to the bottom' entailed in the individualization of bargaining strategies in the different corporate 'communities' and in the consequent fragmentation of solidarity among workers. (Dufresne, 2012; Gennard, 2009).

A different, though parallel, sovereignty issue involves the local (i.e. national) level, on both sides of the bargaining table. Whereas the national field of competence of local actors is a clear constraint on their participation in transnational bargaining (European Commission, 2008a), the same actors are crucial to the correct implementation of agreements (Sobczak, 2012). However, some surveys have shown that local stakeholders, both management and employee representatives, may suffer from the top-down approach that inspires the practice of TCB – often conceived as a means to disseminate corporate values and to tighten central control over local companies and subsidiaries, interpreting it as an improper appropriation of their functions (Pichot, 2006).

The solutions envisaged by the Ales Report on such issues express a clear, though balanced, choice among the different visions and interests at stake. Primacy is accorded to the actors at the sectoral level, with a monopoly on the initiative to start negotiations under the optional framework provided in the proposal and a pre-eminent role in negotiations to establish the joint negotiation body that will conclude the agreement at company level (Ales et alii, 2006).

The proposal assigns a complementary role to EWCs, as they may give ETUFs input for taking the initiative to bargain at company level. In addition, EWCs can intervene at the bargaining stage with a consultative role.

Local actors enjoy a similar, though weaker, prerogative, since the input to start negotiation can be provided, as an alternative to EWCs, by "at least two National Trade Unions and Employers' Organizations at the same or comparable sectoral level, each of them belonging to a different Member State". The weakness, in comparison with the role

3 Rather than a mere "convergence of topics without coordination" (Alaimo, 2012).

of EWCs, is related to the fact that local unions cannot *per se* participate in the bargaining procedure.

However, a leading role for local actors is envisaged with regard to the implementation of the agreement. This leads to the second stream of analysis, concerning the effects of the agreement.

In order to find a way round the rigidities associated with the allocation of transnational agreements to the framework of private international law, the report proposes that TCB agreements should be transposed into as many managerial decisions as the branches of the company or group. In this way, the implementation of the agreement would be safeguarded by unilateral modification of the individual employment contract, entrusted to local management with binding effect in accordance with the terms of national law and practice.

Complementary to this proposal, coming to the third stream of analysis in the report, is the issue of the enforcement of the agreements. Reflecting an awareness of the unsuitability of "traditional" courtroom procedures for dispute resolution in this connection, for the reasons outlined above with regard to implementation, the establishment of a system is advocated for the enforcement of the agreement autonomously set up and managed by the signatory parties, consisting of actions aimed at promoting compliance, such as bipartite monitoring, and alternative dispute resolution.

As argued above, the interpretation of these issues and the proposals put forward in the report seem to assume (or to aim to delineate) an autonomous interest and a subjective vision on the part of the EC in respect of TCB. However, it may be said that such a project was doomed to come up against technical and – especially – political constraints, as shown by the actions taken by the EC following the report, after further studies and surveys carried out with the involvement of the main stakeholders.

Among the technical constraints, mention should be made of the difficulty of managing and enforcing TCB by means of the traditional private international law instruments. A study released in 2009 in this connection (van Hoeck, Hendrickx, 2009; Expert Group, 2012) confirmed the initial view expressed in the Ales Report of the unsuitability of such instruments, and the need for a special European framework. The study emphasized, *inter alia*, the controversial idea of characterizing transnational company agreements as "contractual in nature" for the purpose of applying the relevant European regulations. Likewise, the report highlighted the inability of the 'choice of law' instrument to safeguard the normative effects of transnational agreements in a uniform manner. This gives rise to the need for the parties to a transnational company agreement to obtain a mandate from all the national bodies and to demand the implementation of the agreement, and leads back, in a vicious circle, to the above-mentioned problems of coordination among the actors at the different levels and the unresolved issue of sovereignty.

A more recent study (Rodriguez et alii, 2012), examining several instruments for the conferral of legal effects to transnational collective agreements against the background of the diverse legal and practical frameworks of national industrial relations systems, showed that any option came up against significant drawbacks, relating to the resistance on the part of Member States to any interference in the prerogatives of their national systems or, alternatively, to the uncertainty arising from solutions that leave too much room for manouevre in implementation at national level. This study made realistically clear that in this context solutions depended "on the political will of the Member States and, markedly, on the social partners, both at national as well as European level".

This latter statement highlights what may be interpreted, *a posteriori*, as one of the crucial insights offered by the theoretical analyses by legal scholars in support of the EC's effort to

intervene in the field of TCB. It can be argued that on closer examination the optimistic proposal put forward in the Social Agenda, for which the Ales Report provided a sound technical framework, revealed the need to rely on a strong political consensus more than on fine technical solutions.

In a similar fashion, it has been argued that the solution to certain problems, such as the implementation of the agreements, should be pursued by means of soft 'consensus-building' strategies adopted voluntarily in each bargaining unit rather than by authoritative inputs by third parties. By way of example, the current mainstream thinking among scholars and stakeholders is that enforcement of transnational company agreements is a matter of "collective ownership", requiring a strategy of dissemination among the beneficiaries of the agreement permeated by a co-operative attitude (Expert Group, 2012). To put it in another way, it has been argued that in order to promote the effectiveness of the agreements, central management should "develop innovative processes aimed at involving local management and workers' representatives", conceiving the agreement as "the starting point of an organizational learning process" (Sobczak, 2012).

In this respect, the debate ensuing from the actions of the EC among the stakeholders, especially trade unions and employers' associations, has shown a deep, and arguably permanent, rift as to the meaning, goals and future of TCB. On the one hand, the institutional view expressed by the main employers' association, Businesseurope, and seemingly endorsed by a significant percentage of managers and employers, is that agreements should be seen at most as a 'soft' source of regulation, no more than a gentlemen's agreement, alien to a logic of rights, reflecting voluntary schemes of corporate social responsibility based on the free will of the partners rather than an external authority (Dufresne, 2012; Pichot, 2006). Based on this position, Businesseurope stated in one of the most recent surveys promoted by the EC that there is no need on the part of companies for a framework of reference on TCB, as even a soft promotional tool would be equivalent to discrimination against companies who do not wish to engage in transnational negotiation (Expert Group, 2012).

On the other hand, the labour side is firmly committed to strengthening the effects of transnational agreements, and to increasing their legal certainty and enforceability. At the same time, the labour side is also marked by an internal struggle among different actors with regard to their respective strategies and competencies (Dufresne, 2012). In this respect the European Trade Union Federation, encouraged by the positive outcomes of autonomous bargaining procedures of the kind worked out by the European Metalworking Federation (Da Costa et alii, 2012), seems to be aiming at consolidating the trade unions' position against possible internal competition, for instance by claiming that the "social partners should take responsibility in relation to actual developments and sit together with a blank paper to agree on concrete procedures and support that would be helpful for those actors wishing to engage in transnational company agreements" (Expert Group, 2012).

Against this background, which appears to be highly unfavourable to the achievement of a common understanding based on the voluntary action of the social partners, the EC seems to lack the capacity to mediate among conflicting interests and mobilize consensus around a policy agenda of its own.

The EC has not followed up on its original intention of issuing a Communication, that would have initiated the legislative process under Article 154 TFEU, but rather adopted a dilatory strategy, or, in the wording of the EC Staff Working Document of 2008, a "step-by-step approach" (European Commission, 2008a).

The main policy outcome that can be ascribed to this document, that was released following a round of debate started off by the Ales Report and carried forward by means

of background studies and consultations with the social partners, is that it narrowed down the policy focus to the transnational company level, considered to have the strongest development potential. In addition, it limited itself to summarizing the issues arising from the above-mentioned streams of analysis, in order to "lay sound foundations for further consideration by the stakeholders". Far from putting forward further proposals, it announced the EC's willingness to "support initiatives to conclude transnational company agreements" and, to that end, to set up another expert group entrusted with the mission of monitoring developments and exchanging information on how to support the process under way.

With the conclusion of the work of the expert group, a second Staff Working Document was released in 2012, to "propose operational conclusions and outline options for further initiatives". This document was clearly influenced, especially in a policy perspective, by the divergence of strategies and interests among the social partners.

As far as technical matters are concerned, it elaborated a little more on the streams of analysis originally laid down. Along with the traditional issues of actors and effects, it emphasized those to which attention has recently shifted such as transparency, dissemination and "collective ownership" of agreements, as highlighted above.

As for the policy perspective, on the one hand the document reiterated the intention to dedicate attention to the development of TCB and repeatedly put forward the idea that an EC-made framework of action might entail a set of potentialities, outlining the feasible contents of such action.[4] On the other hand, it acknowledged that "the area of transnational company agreements pertains to social dialogue and therefore requires as far as possible convergence, consensus and joint initiatives of the social partners". As a result, no clear policy options were envisaged in the document: instead, the EC initiated a new consultation, that was "meant to encourage debate, in particular between the social partners, on the support to be provided at EU level that could contribute to the development of transnational company agreements in the European area".

To sum up, and coming back to the theoretical framework outlined at the beginning of this paper, it seems that, having progressively stepped back from – or at least weakened to a significant extent – any responsibility to mediate among the diverging interests of the social partners, the EC is facilitating the development of spontaneous bargaining relations characterized by a strong power imbalance, as mentioned above. This outcome, on the one hand, appears to be completely unsuitable for the aim of *promoting negotiation*, insofar as this would require a more intense effort to act as a countervailing force to market forces, keeping the parties at arm's length to the greatest possible extent (Kahn-Freund, 1979). On the other hand, the EC's approach seems to be moving away from the idea of *promoting agreement*, which includes the mediation of interests among its distinctive characteristics, as noted above.

4. The Third Approach of the European Commission. The (Changing) Role of the Commission in Support of TCB

The proposal put forward by the Ales Report was that the EC should take the initiative to start a legislative process for the establishment of an optional framework of regulation for transnational collective bargaining, creating the conditions for TCB to acquire legally binding effects. The instrument envisaged to this end was a Council directive grounded on Article 94 TEC (now Article 115 TFEU). As a result, the proposal adopted a concept of

4 For further analysis see next section.

harmonization. It was argued that "harmonization is still an objective to be pursued in taking measures which affect both the economic and the social sphere" (Ales et alii, 2006).

However, this proposal failed to achieve a consensus among the social partners. Although it was made clear that the harmonization of the legal framework was not meant to result in a harmonization of industrial relations systems, but rather to create an additional bargaining level, both employers' and workers' representatives, despite their diverging vision about functions and values underpinning transnational collective bargaining (as emphasized above) expressed an aversion to external intervention of a 'hard' nature in the field.

Businesseurope, in one of its recent statements, declared that "producing legislation at EU level is unrealistic as it is not wanted, it would not solve any problems but instead create important ones", adding that giving direct legal effect to transnational company agreements "would go against the necessary respect of national traditions and create a bureaucratic monster", concluding that "the Commission should not continue working in this area" (Expert Group, 2012).

This view is consistent with the position taken by the employers from the very beginning of discussions on the issue, and mirrors widespread – though not unanimous – managerial understandings of TCB as a 'soft' tool of a mainly unilateral kind designed to promote commitment, adhesion to corporate values and acceptance of change among the workforce (Pichot, 2006; Egels-Zànden, 2009).

On the other hand, the ETUC, although moving from opposite assumptions, and particularly paying attention to the issue of 'sovereignty' as regards the identity of the actors and the levels of negotiation (whereas Businesseurope concentrates on the problem of legal effects (Ales, Dufresne, 2012)) shared with the employers' association an interest in safeguarding the social partners' autonomy, proposing that the EC should limit itself to an ancillary role. Whereas in 2006 it stated that European and national unions should "have the prime responsibility for the definition of the rules and the process for the negotiation and management of these agreements", and that those rules and procedures should apply beyond the Commission initiative (Dufresne, 2012), more recently it maintained that "the Commission should assist the social partners in this direction and continue to provide technical support on the file" (Expert Group, 2012).

As a result of the positions taken by the social partners, the EC changed its approach to TCB. Two different kinds of instruments were envisaged, that might be characterized respectively as "operational" and "soft-regulatory". With regard to operational instruments, apart from the insights provided by the preparatory studies and surveys, mention should be made of the database of transnational company agreements created in 2011 in a special section on the Commission's website. Such tools can be considered to be "operational" insofar as they are conceived as a means to disseminate knowledge – and arguably to promote consensus – among the stakeholders on TCB, and to promote best practices that might facilitate autonomous bargaining.

The 'soft-regulatory' tools, that have been outlined but not yet implemented, consist of a set of standard rules, possibly laid down in the form of guidelines, that social partners might draw on when intending to start negotiations, in order to overcome the problems that parties commonly face when they taking part in bargaining at transnational level. These instruments might be said to have a 'reflexive' nature, insofar as they are intended to be developed in agreement with the social partners, and set aside by them in case they turn out to be unsuitable. In the words of the EC, such support would need to be:

> flexible, adapted to the needs of the companies and workers concerned;
> designed in close cooperation with the European social partners, or better still i*nitiated by them*;

> optional, as companies and workers should be able to innovate and operate outside any instrument intended to support transnational company agreements; *parties should be free to negotiate and conclude agreements that are custom-built to their needs and to a specific situation* (European Commission, 2012, emphasis added).

Such a devolution of responsibility to the social partners might be interpreted as reflecting a general trend towards an increase in autonomy in European industrial relations, boosted by Article 152 TFEU (Caruso, Alaimo, 2012). However, such instruments do not seem to take into account the issue of the imbalance of power. In addition, their soft and subsidiary character does not allow them to exert a countervailing force in the bargaining process. For this reason, they cannot be considered as the appropriate tool to facilitate the formation of a process of collective autonomy. As a result, they can hardly be characterized as tools that are capable of promoting agreement in a broad sense, and they also seem to be unsuitable for promoting negotiation.

5. Conclusion. Which Way Forward?

It should be clear from the arguments put forward so far that this paper supports a critical assessment of the action carried out by the EC. The EC approaches, analyzed from different points of view – the systemic role conceived for TCB, the attitude towards the different interests at stake, and the instruments that have been activated or envisaged – appear to be inappropriate to support the establishment of a structured system of collective bargaining at the transnational (company) level based on the genuine integration of the partners' mutual will. In fact, the EC seems to be driven by a *laissez-faire* philosophy, that, far from promoting the empowerment of the weaker parties, aims at supporting the conclusion of agreements regardless of the conditions.

The question of whether there is an alternative to such an outcome is a matter for further research, the shape of which can only be outlined in this paper. The debate in the literature and among institutions may provide some ideas in this respect.

First, it may be interesting to note, broadening the view to the wider European institutional scenario, that despite the apparent withdrawal on the part of the EC, a recent Resolution of the European Parliament has urged the Commission to reconsider the issue of establishing an optional legal framework for transnational company agreements, for the purpose of enhancing "legal security, greater transparency and foreseeable and enforceable legal effects" (European Parliament, 2013). The European Parliament, bringing to mind the early spirit of the Social Agenda, advocates that such a framework should recognize the contractual autonomy of the parties, respect existing differences among business and corporate cultures, and assign the legitimation to bargain to European Trade Union Federations, as "only they can be given a democratic mandate by national trade unions". On the other hand, it should grant EWCs the authority to "initiate the process and pave the way for negotiations, and help in ensuring the transparency and dissemination of information concerning the agreements to the workers involved".

Other proposals put forward in the literature maintain that the focus of regulation should be moved one step back, in order to create the preconditions for diverging interests represented in the bargaining arena to negotiate at arm's length. The most suitable targets of such regulation are deemed to be the 'functional equivalents' to the legal enforcement of collective agreements, such as cross-border protest, mobilization and industrial action (Papadakis, 2012; more dubious, Lo Faro, 2012). Overall, the regulation of representativeness at EU level is advocated as a necessary step "to develop real processes of social deliberation and reduce the democratic deficit" (Negrelli, 2012; in a similar vein Alaimo, 2012; Verrecchia, 2013).

Nonetheless, as these authors seem to admit, the general policy trends at EU level seem

to be unfavourable to a resurgence of regulatory action in the social field. Taking as an example the rulings handed down by the Court of Justice of the European Union in the *Laval* Quartet, it is argued that the dominant legal culture within the European institutions is inconsistent with any concept of collective autonomy (Lo Faro, 2012), as the foundations of the legal reasoning reject the core rationales of collective bargaining, leading to the conclusion that "there are political limits to the European project which militate against what could be a genuine 'counter-movement' to mitigate the expansion of the market or to prevent the commodification of labour" (Ashiagbor, 2013). Therefore, the possibility of EU regulation of TCB and its complementarities seems to be remote.

As a result, the only viable alternative seems to be self-activation on the part of the labour side, with a view to designing a framework of action that, building on the current debate on the transformation of the concept of solidarity, and with a structural reorganization and an enlarged network of alliances (Bieler, Lindberg, 2011), would efficiently support the formation of a critical mass at transnational level, for instance by means of the enhancement of the intrafirm dimension (Erne, 2008) or by pursuing solidarity in the sense of "mutuality despite difference" (Hyman, 2011) within each community of interest rather than by means of a rigid common identity among workers.

6. References

ALAIMO A., 2012, *Transnational Company Agreements and Sectoral Social Dialogue: parallel lines, no convergence?*, in IRES, EUROACTA Final Report, n° 2, 54-67.

ALES E., 2007, *La contrattazione collettiva transnazionale tra passato, presente e futuro*, in DLRI, 115.

ALES E., 2011, *Dal «caso Fiat» al «caso Italia». Il diritto del lavoro «di prossimità», le sue scaturigini e i suoi limiti costituzionali*, in DRI, 4.

ALES E., 2013, *La dimensione poliedrica ed emergente delle relazioni di lavoro*, in QRS, XIV, 3, 183.

ALES E., ENGBLOM S., JASPERS T., LAULOM S., SCIARRA S., SOBCZAK A., VALDÈS DAL-RÈ F., 2006, *Transnational Collective Bargaining. Past, Present and Future*, Brussels, European Commission, Directorate General Employment, Social Affairs and Equal Opportunities.

ALES E., DUFRESNE A., 2012, *Transnational collective bargaining: Another (problematic) fragment of the European multi-level industrial relations system*, in European Journal of Industrial Relations, 95-105.

ASHIAGBOR D., 2013, *Unravelling the Embedded Liberal Bargain: Labour and Social Welfare Law in the Context of EU Market Integration*, in European Law Journal, 303-324.

BACCARO L., 2012, *Is Civil Dialogue Deliberative?*, in De Munck J, Didry C., Ferreras I., Jobert A. (eds), *Renewing Democratic Deliberation in Europe. The Challenge of Social and Civil Dialogue*, Brussels, Peter Lang, 201-218.

BAVARO V., 2013, *L'aziendalizzazione nell'ordine giuridico-politico del lavoro*, in LD, 2013, 213-242.

BÈ D., 2008, *A report on the European Commission initiative for a European framework for transnational collective bargaining*, in Papadakis K. (ed.), *Cross-border Social Dialogue and Agreements: An emerging global industrial relations framework?*, Geneva, International Institute for Labour Studies, 221-236.

BERCUSSON B., 1992, *Maastricht: a Fundamental Change in European Labour Law*, in IRJ, 23.

BIELER A., LINDBERG I., 2011, *Globalisation and the new challenges for transnational solidarity: an introduction*, in Bieler A., Lindberg I. (eds.), *Global Restructuring, Labour Solidarity and the Challenges for Transnational Solidarity*, London-New York, Routledge, 3-15.

CARUSO B., ALAIMO A., 2012, *Dialogo sociale e negoziazione collettiva nell'ordinamento europeo (Parte I)*, in ADL, 1123-1165.

CLAUWAERT S., 2012, *European framework agreements: 'nomina nuda tenemus' or what's in a name? Experiences of the European social dialogue*, in Schömann I., Jagodzinski R., Boni G., Clauwaert S., Glassner V., Jaspers T. (eds), 2012, *Transnational collective bargaining at company level. A new component of European industrial relations?*, Brussels, ETUI, 117-156.
CONCHON A., CLAUWAERT S., JAGODZINSKI R., SCHÖMANN I., STOLLT M., VANDAELE K., VITOLS S., 2011, *Social dialogue and worker representation in EU2020: underappreciated and underplayed*, in ETUC-ETUI, *Benchmarking working Europe 2011*, Brussels, ETUI, 82-100.
DA COSTA I., PULIGNANO V., REHFELD U., TELLJOHANN V., 2011, *Transnational Negotiations on Employment: Successes and Failures of EWC-Union Coordinated Strategies*, in Baglioni M., Brandl B. (eds.), *Changing Labour Relations. Between Path Dependency and Global Trends*, Berlin, Peter Lang, 193-214.
DA COSTA I., PULIGNANO V., REHFELD U., TELLJOHANN V., 2012, *Transnational negotiations and the Europeanization of industrial relations: Potentials and obstacles*, in European Journal of Industrial Relations, 123-137.
DE SCHUTTER O., 2010, *The Democratic Experimentalist Approach to Governance: Protecting Social Rights in the European Union*, in De Schutter O., Lenoble J. (eds), *Reflexive Governance. Redifining the Public Interest in a Pluralistic World*, Oxford-Portland, Hart.
DELMAS-MARTY M., 2009, *Ordering Pluralism: A Conceptual Framework for Understanding the Transnational Legal World*, Oxford-Portland, Hart.
DIDRY C., JOBERT A., 2012, *Deliberation. A New Dimension in European Industrial Relations*, in De Munck J, Didry C., Ferreras I., Jobert A. (eds), *Renewing Democratic Deliberation in Europe. The Challenge of Social and Civil Dialogue*, Berlin, Peter Lang, 171-187.
DUFRESNE A., 2012, *Trade union support and political blockage: The actors' viewpoint*, in European Journal of Industrial Relations, 1-15.
EGELS-ZÀNDEN N., 2009, *TNC Motives for Signing International Framework Agreements: A Continuous Bargaining Model of Stakeholder Pressure, in Journal of Business Ethics*, 529-547.
ERNE R., 2008, *European Unions. Labor's Quest for a Transnational Democracy*, Ithaca-London, Cornell University Press.
EUROPEAN COMMISSION, 2005, *The Social Agenda 2005-2010. A Social Europe in the Global Economy. Jobs and Opportunities for All*, Brussels.
EUROPEAN COMMISSION, 2008a, *The role of transnational company agreements in the context of increasing international integration*, Commission Staff Working Document, SEC(2008) 2155, Brussels.
EUROPEAN COMMISSION, 2008b, Mapping of transnational texts negotiated at corporate level, EMPL F2 EP/bp 2008 (D) 14511, Brussels.
EUROPEAN COMMISSION, 2012, *Transnational Company Agreements: Realising the Potential of Social Dialogue*, Commission staff working document, SWD(2012) 264 final, Brussels.
EUROPEAN COMMISSION, 2013, *Strengthening The Social Dimension of Economic and Monetary Union*, Communication from the Commission to the European Parliament and the Council, COM(2013) 690 provisoire, Brussels.
EUROPEAN PARLIAMENT, 2013, *Report on cross-border collective bargaining and transnational social dialogue*, A7-0258/2013.
EXPERT GROUP, 2012, Transnational Company Agreements. Report, Brussels, European Commission.
FERRARESE M. R., 2012, *Prima lezione di diritto globale*, Rome-Bari, Laterza.
GENNARD J., 2009, *Development of transnational collective bargaining in Europe*, in Employee Relations, 341-346.
GOETSCHY J., 2012, The Lisbon Strategy, industrial relations and Social Europe: an assessment of theoretical frameworks and policy developments, in Smisman S. (ed.), *The*

European Union and industrial relations. New procedures, new context, Manchester, Manchester University Press, 190-205.
GUARRIELLO F., 2012, *I diritti di contrattazione collettiva in un'economia globalizzata*, in DLRI, 341-360.
HYMAN R., 2011, Trade unions, global competition and options for solidarity, in Bieler A., Lindberg I. (eds), *Global Restructuring, Labour Solidarity and the Challenges for Transnational Solidarity*, London-New York, Routledge, 16-30.
KAHN-FREUND O., 1979, *Labour and the Law*, Second Edition, London, Stevens.
KÖHLER H.-D., GONZÀLES BEGEGA S., 2011, *The European Works Councils as a Multidimensional Contested Terrain*, in Baglioni M., Brandl B. (eds), *Changing Labour Relations. Between Path Dependency and Global Trends*, Berlin, Peter Lang, 143-170.
LÉONARD E., SOBCZAK A., 2012, *European social dialogue and transnational company agreements*, in Smisman S. (ed.), *The European Union and Industrial Relations. New Procedures, New Context*, Manchester, Manchester University Press, 78-100.
LEONARDI S., 2012, *Transnational company agreements: a stepping stone towards a real internationalization of industrial relations?*, in IRES, EUROACTA Final Report, n° 2/2012, 20-35.
LO FARO A., 1999, *Funzioni e finzioni della contrattazione collettiva comunitaria: la contrattazione collettiva come risorsa dell'ordinamento giuridico comunitario*, Milan, Giuffrè.
LO FARO A., 2012, *Bargaining in the shadow of 'optional frameworks'? The rise of transnational collective agreements and EU law*, in European Journal of Industrial Relations, 153-165.
MARGINSON P., 2012, *The Challenges of Multi-level Governance. The Case of European Social Dialogue*, in De Munck J, Didry C., Ferreras I., Jobert A. (eds), *Renewing Democratic Deliberation in Europe. The Challenge of Social and Civil Dialogue*, Berlin, Peter Lang, 97-112.
MÜLLER T., PLATZER H.-W., RÜB S., 2013, *Transnational company agreements and the role of European Works Councils in negotiations. A quantitative analysis in the metalworking sector*, in European Trade Union Institute, Report n° 127, Brussels.
NEGRELLI S., 2012, Remarks on Deliberative Democracy, Social, and Civil Dialogue, in De Munck J, Didry C., Ferreras I., Jobert A. (eds), *Renewing Democratic Deliberation in Europe. The Challenge of Social and Civil Dialogue*, Berlin, Peter Lang, 187-200.
PAPADAKIS K. (ed.), 2008, *Cross-border Social Dialogue and Agreements: An emerging global industrial relations framework?*, Geneva, International Institute for Labour Studies.
PAPADAKIS K., 2012, *Global Framework Agreements. Bridging Social Dialogue and Civil Dialogue?*, in De Munck J, Didry C., Ferreras I., Jobert A. (eds), *Renewing Democratic Deliberation in Europe. The Challenge of Social and Civil Dialogue*, Berlin, Peter Lang, 127-146.
PAPADOPOULOS T., ROUMPAKIS A., 2013, *The meta-regulation of European industrial relations: Power shifts, institutional dynamics and the emergence of regulatory competition*, in International Labour Review, 255-274.
PERULLI A., 2000, *Contrattazione transnazionale nell'impresa europea e Cae: spunti di riflessione*, in DRI, 187.
PICHOT E., 2006, *The development of transnational agreements*, Brussels, European Commission, Background paper.
RODRIGUEZ R., AHLBERG K., DAVULIS T., FULTON L., GYULAVÁRI T., HUMBLET P., JASPERS T., MIRANDA J. M., MARHOLD F., VALDÉS F. , ZIMMER R., 2012, *Study on the Characteristics and Legal Effects of Agreements between Companies and Workers' Representatives*, Brussels, European Commission.
SCARPONI S., 2013, *Accordi sindacali transnazionali e modello sociale europeo*, in F. Basenghi, L. E. Golzio (eds), *Regole, politiche e metodo. L'eredità di Marco Biagi nelle relazioni di lavoro di oggi*, Turin, Giappichelli.

SCHÖMANN I., JAGODZINSKI R., BONI G., CLAUWAERT S., GLASSNER V., JASPERS T. (eds), 2012, *Transnational collective bargaining at company level. A new component of European industrial relations?*, Brussels, ETUI.
SCIARRA S., 2010, *Notions of Solidarity in Times of Economic Uncertainty*, in ILJ, 223-243.
SCIARRA S., 2011, *Collective Exit Strategies: New Ideas in Transnational Labour Law*, in Davidov G., Langille B. (eds), *The Idea of Labour Law*, Oxford, Oxford University Press, 405-419.
SCIARRA S., 2013, *L'Europa e il lavoro. Solidarietà e conflitto in tempi di crisi*, Rome-Bari, Laterza.
SOBCZAK A., 2012, Ensuring the effective implementation of transnational company agreements, in European Journal of Industrial Relations, 139-151.
STREECK W., 1997, *Neither European nor Works Councils. A Reply to Paul Knutsen*, in Economic and Industrial Democracy, 325-337.
TELLJOHANN V., DA COSTA I., MÜLLER T., REHFELD U., ZIMMER R, 2009, *European and international framework agreements: new tools of transnational industrial relations*, in Transfer, 505-525.
VAN HOEK A., HENDRICKX F., 2009, *International private law aspects and dispute settlement related to transnational company agreements*, Study undertaken on behalf of the European Commission, final report.
VERRECCHIA G., 2013, *La necessità di una rappresentanza collettiva dei lavoratori nell'ordinamento giuridico comunitario*, in QRS, XIV, 3, 257-276.
WADDINGTON J., 2011, *European Works Councils. A Transnational Industrial Relations Institution in the Making*, London, Routledge.