

Globalization and Transnational Collective Labour Relations

**International and European
Framework Agreements at
Company Level**

Editor

Roger Blanpain

Author

Stefania Marassi



Wolters Kluwer

Law & Business

BULLETIN FOR COMPARATIVE LABOUR RELATIONS – 90

Globalization and Transnational Collective Labour Relations

International and European Framework Agreements at
Company Level

General Editor

Roger Blanpain

Author

Stefania Marassi



Wolters Kluwer
Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-4748-6

© 2015 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

Globalization and Transnational Collective Labour Relations

Global companies face pressure on their operations from a variety of social actors and from markets themselves. Their reactions vary markedly, but TCAs have emerged as a means by which companies can consider the governance of their global operations in partnership with global, European and national trade unions and workers' representatives.

(International Training Centre of the International Labour Organization, 'Key issues for management to consider with regard to Transnational Company Agreements (TCAs)', December 2010)

List of Abbreviations

BWI	Building and Wood Workers' International
CEC	European Confederation of Executives and Managerial Staff
CSR	Corporate Social Responsibility
EC	European Commission
ESSD	European Sectoral Social Dialogue Committee
EFA	European Framework Agreement
EFBWW	European Federation of Building and Woodworkers
EI	Education International
EIF	European Industry Federation
EMCEF	European Mine, Chemical and Energy Workers' Federation
EMF	European Metalworkers' Federation
EPSU	European Federation of Public Service Unions
EWC	European Works Council
ETF	European Transport Federation
ETUC	European Trade Union Confederation
FECCIA	European Federation of Managerial staff in the Chemical and Allied Industries
FECER	European Federation of Executives in the Sectors of Energy and Research
GATT	General Agreement on Tariffs and Trade
GME	General Motors Europe
GSP	Generalized System of Preferences
GUF	Global Union Federation
HRC	Human Rights Council
IAEI	International Arts and Entertainment Alliance

List of Abbreviations

ICEM	International Federation of Chemical, Energy, Mine and General Workers' Union
ICFTU	International Confederation of Free Trade Unions
IFA	International Framework Agreement
IFBWW	International Federation of Building and Wood Workers
IFC	International Finance Corporation
IFJ	International Federation of Journalists
IFME	International Federation of Mining and Energy
ILO	International Labour Organisation
ILO Tripartite Declaration	ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
ILO Declaration 1998	ILO Declaration on Fundamental Principles and Rights at Work
IMF	International Metalworkers' Federation
ISO	International Organization for Standardization
ITC-ILO	International Training Centre of the International Labour Organization
ITF	International Transport Workers' Federation
ITGLWF	International Textiles Garment and Leather Workers' Federation
ITS	International Trade Secretariat
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association
MNE	Multinational Enterprise
NCP	National Contact Point
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises
PSI	Public Services International
SAI	Social Accountability International
SE	Societas Europaea
TCA	Transnational Company Agreement
TFEU	Treaty on the Functioning of the European Union
UNI	United Global Union (previously known as Union Network International)

Acknowledgements

I would like to thank Professor Roger Blanpain who encouraged and supported me since I started writing my Master thesis at Tilburg University. His lectures on 'Comparative Labour Law' and 'International Labour Law' in 2010 have been a unique source of inspiration. His experience and in depth knowledge on labour law and related topics have shaped my way of understanding and thinking the complexity of labour relations. He guided me in writing this book with his valuable comments and support.

Moreover, I would like to express my deep appreciation to Professor Frank Hendrickx, thanks to whom I discovered the topic of this book. Since he was the first supervisor of my Master thesis, we had interesting conversations and sharing of opinions that have honed my idea about the development of transnational company agreements.

A special thank goes to my colleague Abiola Makinwa, who regularly inquired about the progress of the book and encouraged me to write and continue doing research.

Furthermore, I would like to thank my dearest friend Valentina, who is always very close to me even though the distance that divides us. She taught me to look on the bright side of life and to continue pursuing my dreams.

Last but not least, I would like to thank my mother Maria Grazia, my father Maurizio and my partner Piet. My deepest gratitude goes to them.

My parents gave me the possibility to study abroad and to nurture the dream to study international and European Labour Law at Tilburg University. They have been and they will always be my reference point in life. My mother taught me to never give up and to always believe in myself; my father taught me to put things in perspective.

Piet shared this journey with me with his constant support. He engaged in conversations that helped me to look at the topic of the book from other perspectives. He took care of me during the long days and evenings of writing by making sure that in the house there were always snacks to keep my energy level and concentration up. He believed in me all throughout the process of writing this book and for this reason I am deeply grateful.

Table of Contents

List of Abbreviations	xi
Acknowledgements	xiii
Introduction	1
[I] Content of the Book	2
[A] Chapter 1	2
[B] Chapter 2	3
[C] Chapter 3	3
CHAPTER 1	
Transnational Collective Labour Relations	5
§1.01 The Impact of Globalization on Transnational Collective Labour Relations	5
[A] Introduction	5
[B] Globalization	5
[C] Corporate Social Responsibility	8
[D] The Development of Public and Private Initiatives to Regulate MNEs' Conduct	11
[E] Publicly-Driven Initiatives: Codes of Conduct and Other Documents	11
[1] Draft UN Code of Conduct on Transnational Corporations	12
[2] OECD Guidelines for Multinational Corporations and ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	12
[3] ILO Declaration on Fundamental Principles and Rights at Work	15
[4] UN Global Compact and Initiatives of the Special Representative for Human Rights and Transnational Corporations and Other Business Enterprises	18

Table of Contents

	[5] North American Agreement of Labour Cooperation	19
[F]	Privately Driven Initiatives	20
	[1] Corporate Codes of Conduct	20
	[2] Transnational Collective Bargaining	22
	[3] Transnational Company Agreements	25
	[a] Transnational Company Agreements versus Corporate Codes of Conduct	30
	[b] The Position of Different Actors towards the Conclusion of Transnational Company Agreements	31
	[i] Trade Unions	31
	[ii] Multinational Enterprises	34
§1.02	International Framework Agreements	36
	[A] Introduction	36
	[B] A General Overview	36
	[1] Global Union Federations	38
	[2] Model International Framework Agreements	40
	[C] Features	41
	[D] Current Practice	44
	[E] International Framework Agreements: From a European to a Global Phenomenon?	48
§1.03	European Framework Agreements at Company Level and Transnational Collective Bargaining at European Level	50
	[A] Introduction	50
	[B] European Social Dialogue	51
	[1] Cross-Industry Social Dialogue	53
	[2] Sectoral Social Dialogue	54
	[C] European Framework Agreements at Company Level	56
	[1] Overview of the Current Practice	56
	[D] European Works Councils and European Framework Agreements at Company Level	59
	[1] Are European Works Councils Entitled to Conclude European Framework Agreements at Company Level?	61
	[2] European Works Councils versus Trade Unions	63
	[E] A Legal Framework for Transnational Collective Bargaining at Company Level: Initiatives towards the Introduction of an Optional European Framework for Transnational Negotiations	64
	[F] European Framework Agreements at Company Level: No Legal Framework but Legal Context within the European Social Dialogue?	66
CHAPTER 2		
A Comparative Analysis between International Framework Agreements and European Framework Agreements at Company Level		69
§2.01	Introduction	69

§2.02	Titles	90
	[A] International Framework Agreements	91
	[B] European Framework Agreements at Company Level	92
§2.03	Signatory Parties on the Employees' Side	93
	[A] International Framework Agreements	93
	[B] European Framework Agreements at Company Level	95
§2.04	Sectors	96
	[A] International Framework Agreements	97
	[B] European Framework Agreements at Company Level	98
§2.05	Content	99
	[A] International Framework Agreements	100
	[B] European Framework Agreements at Company Level	101
§2.06	Addressees	102
	[A] International Framework Agreements	103
	[B] European Framework Agreements at Company Level	107
§2.07	Duration, Renewal, Termination and Revision	111
	[A] International Framework Agreements	111
	[B] European Framework Agreements at Company Level	129
§2.08	Follow-Up Procedures	160
	[A] Dissemination, Implementation, Monitoring and Dispute Settlement in International Framework Agreements	160
	[B] Dissemination, Implementation, Monitoring and Dispute Settlement in European Framework Agreements at Company Level	172
§2.09	Conclusions	185
	[A] Titles	185
	[B] Signatory Parties on the Employees' Side	185
	[C] Sectors	186
	[D] Content	186
	[E] Addressees	186
	[F] Duration, Renewal, Termination and Revision	186
	[G] Follow-Up Procedures	187
CHAPTER 3		
Legal Issues concerning International Framework Agreements and European Framework Agreements at Company Level		189
§3.01	Introduction	189
§3.02	Legal Status	189
	[A] International Framework Agreements and Their Legal Status	192
	[B] European Framework Agreements and Their Legal Status	194
§3.03	Legal Effects: Hard Law or Soft Law?	196
	[A] Binding Effects through the Involvement of National Trade Unions or National Implementation	198
	[1] International Framework Agreements	198
	[2] European Framework Agreements at Company Level	199

Table of Contents

	[B] The Willingness of the Signatory Parties	200
	[1] International Framework Agreements	201
	[2] European Framework Agreements at Company Level	202
§3.04	Relationship between International Framework Agreements/European Framework Agreements at Company Level and Other Norms	203
	[A] International Framework Agreements	203
	[B] European Framework Agreements at Company Level	205
§3.05	Conclusion	207
	Conclusions	209
	Annexes	213
	Bibliography	299

Introduction

The process of globalization has brought about numerous challenges for multinational enterprises (hereinafter: MNEs) as well as for trade unions and workers' representatives. In particular, the emergence of a global market-driven economy has fundamentally altered the context these actors operate in.

The elimination of tariff barriers and the consequent expansion of world trade flows, together with the increased competition in the labour market, have had deep consequences on the business strategies of MNEs. In the words of Thomas Friedman, "[T]he more you let market forces rule (...) the more efficient and flourishing your economy will be (...). [G]lobalization (...) has its own set of economic rules (...) that revolve around opening, deregulating and privatizing your economy."¹

Against this background and in order to remain competitive in the global market, MNEs decided to outsource and delocalize their production to low-wages countries. This in turn has raised general concerns as to the potential negative externalities in the countries where the companies – or even their business partners – operate. At the same time, the bargaining power of trade unions remained mainly limited to the national level, while the conduct of MNEs' operations surpassed national borders and became truly globalized.² The increasing gap in action radius that follows from this forced trade unions to look out for ways to coordinate their activities globally and respond to the internationalization of MNEs' activities.

In response to these evolutions several initiatives were undertaken both by public and private actors to ensure the accountability of MNEs for their conduct in the absence of an international framework that directly regulate their behaviour. Some of these initiatives go back to the 1970s and include the OECD Guidelines for Multinational Enterprises (hereinafter: OECD Guidelines), the ILO Tripartite Declaration of principles

1. Thomas Friedman, *The Lexus and The Olive Tree* (Anchor Books 2000) 8-9.

2. Konstantinos Papadakis, 'Introduction' in Konstantinos Papadakis (ed), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Institute for Labour Studies 2008) 1.

concerning multinational enterprises and social policy (hereinafter: ILO Tripartite Declaration) as well as the development of unilateral corporate codes of conduct.³

Since the end of the 1980s, one can also witness the emergence of transnational company agreements (hereinafter: TCAs) to face the same challenges. These agreements are concluded between MNEs and trade unions (and workers' representatives) and are applicable across all MNEs' operations.⁴

This book focuses on TCAs, a category that encompasses both international framework agreements (hereinafter: IFAs) and European framework agreements at company level (hereinafter: EFAs). In particular, the book intends to identify the similarities and differences between IFAs and EFAs and, more specifically, shed light on how the distinction between these two categories of TCAs is perceived in practice by the signatory parties. The ultimate goal of the research documented in this book is to evaluate if the distinction between IFAs and EFAs can still be drawn.

This book is a revised and updated version of the Master Thesis that the author defended in June 2011 as a conclusion of the LL.M. 'International and European Labour Law' at Tilburg University.⁵

The research is constructed around a comparative analysis of a selected number of IFAs and EFAs. For reasons of both practical feasibility and qualitative selection, the study will be limited to agreements concluded by MNEs with more than 80,000 employees in 2013.

[I] CONTENT OF THE BOOK

[A] Chapter 1

Chapter 1 is divided into three sections. The first section is devoted to outline the phenomenon of globalization and the initiatives that have been undertaken by public and private actors to regulate the conduct of MNEs. Amongst other topics, it examines the concept of corporate social responsibility (hereinafter: CSR), corporate codes of conduct, transnational collective bargaining (hereinafter: TCB) and TCAs. In addition, it investigates the reasons that lead MNEs and trade unions to conclude TCAs.

The second section introduces the origin, development and current practice of concluding IFAs. The pace that has characterized the conclusion of IFAs since the late 1980s (the first IFAs was concluded in 1988) is analysed as well as the possibility to regard IFAs as an emerging form of global social dialogue.

3. *Ibid.*, 5. See also Isabelle Schömann, 'Transnational Company Agreements: Towards an Internationalisation of Industrial Relations' in Isabelle Schömann et al., *Transnational Collective Bargaining at Company Level – A New Component of European Industrial Relations?* (ETUI aisbl 2012) 198. Romuald Jagodzinski, 'Transnational collective bargaining: a literature overview' in Isabelle Schömann et al., *Transnational Collective Bargaining at Company Level – A New Component of European Industrial Relations?* (ETUI aisbl 2012) 21-22.

4. Arturo Bronstein, *International and Comparative Labour Law: Current Challenges* (Palgrave Macmillan 2009) 115.

5. Stefania Marassi, *A legal Assessment on International Framework Agreements and European Framework Agreements* (Tilburg 2011).

The third section studies the origin, evolution and current practice of concluding EFAs. It also takes a closer look at three key issues related to these agreements. First, it examines the initiatives undertaken by the European Commission to formalize this emerging mode of governance. Second, it analyses the role of European Works Councils (hereinafter: EWCs) in initiating, negotiating and concluding EFAs as well as their respective relationship with trade unions. Third, it outlines the possibility to include these agreements within the current legal framework of European social dialogue.

[B] Chapter 2

Chapter 2 is devoted to a detailed comparative analysis of the texts of IFAs and EFAs concluded by MNEs with more than 80,000 employees in 2013. In order to identify which are – if there are – the similarities and differences between IFAs and EFAs, the analysis therefore takes the following characteristic aspects of these agreements into consideration: titles, signatory parties, sectors involved, content, addressees, duration, revision, renewal, termination and follow-up procedures.

[C] Chapter 3

Chapter 3 analyses three legal issues concerning IFAs and EFAs: first, the legal status of these agreements; second, their legal effects; third and last, the relationship between these texts and other norms. A comparative analysis will be carried on the texts of IFAs and EFAs that meet the requirements set in Chapter 2.

This chapter pays particular attention to the possibility to qualify IFAs and EFAs as national collective agreements. Moreover, it is questioned whether these agreements fall within the concept of soft law or hard law and, therefore, if they have legally binding effects. In addition, this chapter sheds light on the relationship between the agreements at issue and other norms, especially national laws, local laws and collective agreements.

CHAPTER 1

Transnational Collective Labour Relations

§1.01 THE IMPACT OF GLOBALIZATION ON TRANSNATIONAL COLLECTIVE LABOUR RELATIONS

[A] Introduction

Chapter 1, §1.01 of the present book will examine the main features of globalization and its potential adverse impact on the living and working conditions of workers in MNEs and throughout the global supply chain. Moreover, it will analyse the different endeavours undertaken by public and private actors to ensure that MNEs are accountable for their conduct and respect internationally recognized labour rights in their business operations.

[B] Globalization

The World Commission on the Social Dimension of Globalization has described the phenomenon of globalization by saying that “[g]lobalization has set in motion a process of far-reaching change that is affecting everyone. New technology, supported by more open policies, has created a world more interconnected than ever before. This spans not only growing interdependence in economic relations – trade, investment, finance and the organization of production globally – but also social and political interaction among organizations and individuals across the world”.⁶

The elimination of tariff barriers has led MNEs to increase their activities beyond national borders. This trend has then fuelled a rapid expansion of international commerce around the globe. The World Trade Report 2013 indicates that a rapid

6. World Commission on the Social Dimension of Globalization, ‘A Fair Globalization: Creating Opportunities for All’ (2004) X <www.ilo.org/public/english/wcsdg/docs/report.pdf> accessed 20 February 2014.