

# TRANSNATIONAL COLLECTIVE BARGAINING: TOWARDS AN OPTIONAL LEGAL FRAMEWORK?

Sofia, 12/13 March 2015

**Stefano Giubboni (University of Perugia)**  
**Giulia Frosecchi (University of Florence)**

1

# OUTLINE

---

- Supranational legal Context
- The legal framework story
- Open legal questions
- Optional legal framework
- Conclusion

# SUPRANATIONAL LEGAL CONTEXT

---

- ILO
  - Declaration of Philadelphia (1944)
  - Several ILO Conventions + Recommendations
    - Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
    - Collective Bargaining Convention, 1981 (No. 154).
    - Collective Bargaining Recommendation, 1981 (No. 163).
- European Social Charter
  - Article 6, to ensure “the effective exercise of the right to bargain collectively...”
- Charter of Fundamental Rights of the European Union
  - Article 28- Right of collective bargaining and action
  - “Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels...”

# THE LEGAL FRAMEWORK STORY I

## THE COMMISSION INTEREST

---

- 1996- Among the new levels of social dialogue to be considered, the transnational industry level appears.
- 2004
  - “transnational collective bargaining” mentioned
  - EWC role
  - Study on TCB ongoing (=Ales Report)
- 2005- Social Policy Agenda 2006-2010 => also “European Framework” for TCB” is considered
- 2008 – Staff Working Document
  - “transnational collective bargaining” clarified
  - Acknowledgment of the need for a EU legal framework, but attention to national differences
  - Study to Map of transnational texts at company level
  - Commitments (data base; expert group; etc)

# THE LEGAL FRAMEWORK STORY I

## THE COMMISSION (AND EP) INTEREST

---

- 2009-2011 – Expert group
  - several studies, empirical and on legal aspects of TCAs.
    - Rodriguez Report
  - Final outcome: EXPERT GROUP REPORT (published in 2012)
- 2012 – Staff Working Document
  - Key fields identified: e.g. restructuring
  - Differences among the texts highlighted
  - Challenges
  - A EU legal framework?
    - Flexible
    - Optional
    - Collaboration with Social Partners
- 2013- European Parliament resolution on cross-border collective bargaining and transnational social dialogue
  - Pro optional legal framework

# THE LEGAL FRAMEWORK STORY II

---

- **Ales Report** ‘Transnational collective bargaining. Past, present and future’ (2006)
  - Council Directive
  - Legal base: Article 115 TFUE
  - + ETUFs, -EWCs
  - Enforcement through managerial decisions
  - Bipartite collective disputes resolution system
  - Bipartite compliance monitoring system
    - Not welcomed by social partners
- **Rodriguez Report** “Study on the characteristics and legal effects of agreements between companies and workers’ representatives”(2011-expert group)
  - Not a real proposal, but more a set of suggestions
  - Deep analysis
  - Directive
  - Primacy of national legislation interacting with EU level on:
    - Signatory parties, legal effects, ect.

# OPEN LEGAL QUESTIONS

---

- Which **legal basis** for a EU legal framework?
- Which **actors** to be legitimized?
  - management side quite uncontroversial
  - EWCs and/or ETUFs and/or National Trade Unions???
- **Formal requirements**
  - Lack of basic information
  - Title vs. Nature of texts
- **Legal certainty**
  - So far, national framework determines the legal status
- How to ensure **implementation**?
  - Follow-up measures not always existing
  - Conflict between NIRs put implementation at risk
- ..and solve **disputes**?
  - Few TCAs have provisions, but vague!

# OPTIONAL LEGAL FRAMEWORK (2014) I

---

- Legal acts:
    - **Council Decision** (section I, Chapter 2 TFEU, Art. 288.4, 289)
    - Commission intervention (Art. 151, 156 TFEU)
  - Legal basis:
    - **Art. 152 TFEU** (+ Art. 27, 28 Charter)
- ↓
- **Legal certainty**
    - “**Optional**”, but “**legal**”, character of the Decision.
  - **Actors**
    - ETUF or 2 national labour unions
    - EWC considered.
    - Disclosure of the mandate to negotiate.



# OPTIONAL LEGAL FRAMEWORK (2014) II

---

- **Formal requirements**

- Date, venue, expiring date, rules for renewal to be specified .
- Notification to EU Commission, also about main changes (under Member States responsibility)

- to ensure **implementation**

- Disclosure of the mandate to negotiate.
- A non-regression clause should be included in the EFA.
- Responsibilities specified.
- List of subsidiaries covered by the EFA.

- **Disputes**

- An **internal** dispute settlement provided for in the EFA
- Mediation process available for signatories

# CONCLUSION

CAN WE MOVE FROM A LEGAL RECOGNITION OF I&C TO A LEGAL RECOGNITION OF TCB?

---

- Need for political will of EU Commission
- Academic support
- Political pressure from social partners