



5 December 2012

## “Transnational company agreements: realising the potential of social dialogue” – BUSINESSEUROPE reply

### KEY MESSAGES

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- 1** There is no need for an EU policy on Transnational Company Agreements. A possible initiative by the Commission would be blown out of proportion as only 100 Europe-headquartered multinationals have opted for TCAs while more than 53,000 have not. An exchange of experience and practice among companies which have TCAs or consider entering into one can be useful.
- 2** TCAs are entered into at company level when it adds value for both parties. The agreements differ greatly from each other as they need to be adapted to specific needs of the company and its contracting partner and respect different national industrial relations systems in which the company operates. The possibility to develop tailor-made arrangements is regarded as the strength of TCAs.
- 3** The Commission Staff Working Document sets out numerous theoretical problems with conclusion and implementation of TCAs in order to justify the introduction of European standards. There are no problems that would justify policy action at European level. A high proportion of companies which have signed TCAs have positive experience with their agreements.

### WHAT DOES BUSINESSEUROPE AIM FOR?

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- The Commission Staff Working Document concludes that TCAs require policy attention at EU level, but does not provide evidence that action is indeed necessary. With this reply, BUSINESSEUROPE sets out why an EU “framework” or “reference” on TCAs is not needed and would run counter to the purpose of TCAs as a flexible instrument of private parties that conclude an agreement adapted to their specific needs.
- BUSINESSEUROPE also expresses concern about the consultation method chosen by the Commission. Taking into account the contents and the objective of the document, it is not clear to us why a public, rather than social partners’ consultation was launched. We would appreciate a discussion with the Commission on what criteria it uses when deciding on how to consult.



29 November 2012

## **“Transnational company agreements: realising the potential of social dialogue” - BUSINESSEUROPE reply**

### **I. Introduction**

1. It is worth reflecting on the context of the current debate on Transnational Company Agreements. In 2006, the European Commission launched exploratory work on the optional framework for transnational collective bargaining. It sponsored a study by a group of experts led by Professor Ales entitled *Transnational collective bargaining: past, present and future*. The in-depth discussion following the presentation of this study showed that the diversity of national industrial relations systems across Europe would not allow for the development of an optional EU framework for transnational collective bargaining. Moreover, there was no demand from companies for such an instrument.
2. In this context, in 2009 the European Commission decided to set up an Expert Group to monitor developments and exchange information on Transnational Company Agreements and has since conducted further legal studies. Following the publication of the final report of the Expert Group, in September 2012 the European Commission issued Staff Working Document *Transnational company agreements: realising the potential of social dialogue* (SWD(2012) 264), “proposing operational conclusions and outlining options for further initiatives” on TCAs. According to the Commission, the document is “meant to encourage debate”, “in particular among social partners”. With this position paper, BUSINESSEUROPE responds to the Commission’s consultation.

### **II. General comments**

3. The Commission Staff Working Document asks whether “it is justified for the EU to take a policy-related, rather than just an analytical interest” in the issue of TCAs. BUSINESSEUROPE emphasises that there is no need for EU policy on TCAs.
4. BUSINESSEUROPE has been looking into the issue of TCAs for a number of years. Most recently, in 2010 in the framework of a joint project with ITC-ILO, we discussed experiences of a number of multinationals which have signed TCAs and others which have decided not to do so. Each company will have a different experience but these discussions led us to conclude that a high proportion of companies which signed TCAs had positive experiences with their agreements. These experiences are not reflected in the Commission Staff Working Document which is very negative and focuses almost solely on potential perceived problems related to the conclusion and implementation of TCAs. Some challenges of course exist but they are unavoidable given the need to respect the diversity of industrial relations systems across Europe and beyond. A single EU instrument would certainly not fix these issues.



5. It is worth noting that TCAs are entered into when they are believed to add value for both parties. Of about 53,000<sup>1</sup> Europe-headquartered multinationals, only 100<sup>2</sup> have opted to sign a TCA. Businesses which do not sign transnational agreements have reasons for not doing so. Some opt for alternative strategies to achieve similar ends such as codes of conduct, some do not want to tackle social issues in a centralised way and prefer handling them at country level, and others do not need to make additional commitments on top of other policies.
6. BUSINESSEUROPE disputes the Commission's assumption that the lack of EU rules on TCAs is a factor discouraging multinationals from opting for transnational company agreements. On the contrary, it is clear to us that companies are not struggling in the absence of EU policy on TCAs as the existing flexibility and possibility to develop tailor made arrangements is what is preferred.
7. With regard to the Commission's analytical role, we acknowledge that companies that signed TCAs or have been approached to do so may have an interest in obtaining information on TCAs and sharing experiences. BUSINESSEUROPE has contributed to such peer learning process, e.g. through a joint project with ITC-ILO supported by the Commission. This was appreciated by companies and we are ready to continue to engage in similar actions in the future. We also value the tools developed by the Commission such as database on TCAs.
8. Lastly, BUSINESSEUROPE would like to express concern about the consultation method chosen by the Commission - it is not clear to us why the Commission launched a public, rather than social partners' consultation, taking into account the scope and the aim of the Staff Working Document. The document intends to encourage debate "in particular among social partners" and contains a number of suggestions aimed directly at social partners. Therefore, if at all, social partners' consultation would seem more appropriate.
9. BUSINESSEUROPE underlines important role played by social partners in the EU social policy making process. BUSINESSEUROPE is the main horizontal business organisation at EU level. Through our 41 member federations, we stand for more than 20 million small, medium and large companies in 35 countries. We represent the view of all companies, those which decided to sign TCAs and those which opted for other solutions.

### **III. Specific comments**

10. In the Staff Working Document *Transnational company agreements: realising the potential of social dialogue* the Commission points out a number of difficulties in negotiating, concluding and implementing transnational company agreements and suggests that these problems need to be addressed at EU level. BUSINESSEUROPE would like to offer comments on some of the issues raised in the Staff Working Document.

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<sup>1</sup> UNCTAD, 2010 [http://unctad.org/sections/dite\\_dir/docs/WIR11\\_web%20tab%2034.pdf](http://unctad.org/sections/dite_dir/docs/WIR11_web%20tab%2034.pdf)

<sup>2</sup> Commission Staff Working Document *Transnational company agreements: realising the potential of social dialogue*, page 5



- a) Lack of clear capacity and/or legitimacy of the signatories
  - 11. The Commission argues that actors signing the TCAs face problems of legitimacy and capacity and thus action is needed to support them and clarify their role.
  - 12. The strength of a TCA is that it can be adapted according to the business model and employee engagement strategy of each organisation. BUSINESSEUROPE agrees that diverse actors are involved in negotiating and signing TCAs, both on the employers' side (CEO, chairman of the board, HR manager, managers of the group's subsidiaries) and on the employees' side (global, European and national trade unions, European and national works councils). Many agreements are signed by a combination of parties according to the company involved and depending on the scope, coverage, character and purpose of the agreement, etc. Therefore, there should not be a uniform model for TCAs or rules as regards to which actors should be involved in concluding TCAs. Those involved in the negotiations are best placed to identify the right signatories to achieve the outcomes they want from an agreement.
- b) Lack of consistency in the implementation of TCAs between countries
  - 13. The Commission argues that there is need for EU action to enhance the implementation of TCAs. However, the Staff Working Document does not present sufficient evidence to justify action at EU level. BUSINESSEUROPE is not aware of difficulties with implementation. Follow-up provisions are included in many texts, and they usually provide for some form of monitoring mechanisms. Different arrangements are chosen in line with particular needs of companies involved.
  - 14. The Commission also claims that the current process of implementation of transnational company agreements by local agreements is too complex. BUSINESSEUROPE believes that as in the EU cross-industry and sectoral social dialogue, the diversity of national industrial relations systems should be respected when TCAs are implemented. If transnational company agreements are to produce effects at national level, they need to be transposed in the countries concerned by the agreement. We understand that this process can be time-consuming but this is unavoidable given the need to respect and involve diverse industrial relations systems across Europe and beyond.
- c) Uncertainty as to the legal effects of TCAs
  - 15. The Commission indicates that uncertainty with regard to legal effects of TCAs exists and thus EU action is needed to improve legal certainty.
  - 16. First of all, BUSINESSEUROPE would like to emphasise that most businesses do not enter into TCAs with the intention of the agreements becoming legally binding texts to be enforced by labour courts or the European Court of Justice. Many companies see them rather as declarations of intent reflecting the overall company policy or providing a platform for dialogue with workers' representatives. In fact, a



number of agreements expressly state that they are not regarded as legally binding. The Commission should thus not try to confer direct legal effects to TCAs.

17. BUSINESSEUROPE underlines that companies which do wish to give clear legal value to TCAs can rely on the national procedures and rules for their implementation (as described in point b) ). We are therefore convinced that there is no need for a “mechanism aiming at clarifying legal effects” of TCAs. Moreover, there could be significant difficulties in doing this in practice, in terms of conflicts with national laws.

d) Disagreements between parties

18. The Commission argues that disagreements between parties are one of the difficulties related to TCAs and suggest EU action is needed to “enable better prevention and settlement of disputes”. BUSINESSEUROPE does not agree with this conclusion.
19. Experiences of companies indicate that while some TCAs provide for internal informal mechanisms for resolving conflicts, disagreements are rare. In fact, even the Commission Staff Working document admits that “no party to a transnational company agreement (...) seems to have brought a dispute before the courts or before an out-of-court dispute resolution body”. There is thus no evidence which would justify actions to support prevention of disputes.

#### IV. Concluding remarks

20. BUSINESSEUROPE continues to oppose the idea to develop EU “framework” or “reference” for Transnational Company Agreements.
21. An EU “framework” or “reference” would be counterproductive as companies need to tailor the agreements to their specific situation and to the legislative and industrial relations frameworks in which they operate.
22. Lastly, as about half of the agreements cover non-EU countries instruments developed at international level are more likely to serve as guidance or good practice than instruments limited to the European sphere.