



Council of European Employers
of the Metal, Engineering and
Technology-based industries

CEEMET comments on the Commission's "Draft elements for conclusions of DG Employment, Social Affairs and Inclusion" on Transnational Company Agreements of 5 October 2011

CEEMET welcomes the Commission initiative to exchange information and views related to the relatively recent phenomenon of transnational company agreements, TCAs, with different stakeholders and interested parties.

Whereas the presentation of company examples and different studies commissioned by the Commission was an interesting and useful exercise, CEEMET would like to note that the situation and the findings as they were discussed at the final TCA Expert Group (EG) on 11 October 2011, do not significantly differ from those existing at the very first TCA EG meeting in 2009. In addition, TCAs concern a relatively small number of companies and are not at all used in all EU Member States. It should also be noted that many TCAs cover not only EU Member States but also countries that do not belong to the European Union. This means that the EU-level is not sufficient as a regulatory level when it comes to such TCAs.

CEEMET feels that the draft working paper presented by the Commission fails to reflect the fact that no common understanding of a TCA has so far existed. Adding to the confusion, the working papers the Commission provided to the TCA EG listed a mix of European and international framework texts, unilateral and bilateral measures, binding and non-binding declarations, recommendations, texts and agreements. The fact that TCAs differ from each other on these points are very important and in fact one of the most important features of them. Indeed very few TCAs seem to be intended to be legally binding documents. This adaptability is one of the reasons why companies sign them.

TCAs as purely voluntary initiatives

As it is stated in the "draft elements for Commission's conclusion" transnational company agreements stem from purely voluntary initiatives. In our discussions with our 22 member organisations that represent 200 000 companies it has become clear that even though there is lively talk about the TCAs in some countries and on the EU-level, in reality not so many have been signed. Indeed, as it is mentioned in the Commission draft paper, so far only 138 companies have reached TCAs as identified by the Commission.

Social Dialogue/Collective bargaining vs. TCAs

In addition to this, the mixing of TCAs with the notions of European social dialogue and beyond this with collective bargaining seems incorrect. These are completely different concepts and have to be kept strictly separated. Furthermore, we are worried that, whereas the "draft conclusions" rightly



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stress that the European Works Council (EWC) Directive provides for only information and consultation rights and does not stipulate a negotiation mandate, the Commission draft paper states that EWCs play a key role. CEEMET would like to stress that the notions of EWC and TCAs are and have to be separated.

CEEMET would not support the Commission's proposed option to continue to give priority to financing TCAs under at least one EU budget line relating to social dialogue. CEEMET sees some inconsistency in supporting TCAs under social dialogue budget headings, as these two notions have to be separated. European social dialogue takes place between European Union level employer organisations and trade unions, often in connection with Commission initiatives, whereas the parties to TCA's are the management of a given multinational, often international, company and worker representatives, who are not and do not necessarily have to be trade unions.

No need for optional framework / Discussing EU regulation with regard to TCAs is far reaching

In particular the "options" in the Commission draft elements for conclusions document do not at all take into account the fact that none of the companies that have been identified by DG EMPL to present their TCA's has expressed a need or even a wish for a an optional framework at European level. To the contrary companies at the EG expressed the clear view that any framework, even if optional, would reduce the flexibility they need, and thus the willingness of companies to sign TCAs.

In this context we would like to highlight the need to respect the parties' responsibility and autonomy.

Given the fact that the Commission is to take the conclusions as source of inspiration and guidance for possible future initiatives, CEEMET is of the firm view that these need to be well balanced and neutral. The needs of workers and in particular trade union representatives are frequently mentioned by the Commission. CEEMET does not share the views of the Commission on these points as regards TCAs. However to get a more balanced view of the situation, more emphasis should have been given to the needs of companies as well.

CEEMET finds the concrete options very far reaching. This goes in particular for the idea of setting a "reference" that "could be provided either through guidelines or through more prescriptive instruments such as a recommendation, an agreement between European social partners or a Directive". Indeed, prescriptive / binding instruments were never discussed at the TCA EG meetings with regard to TCAs, but only in connection with dispute resolution. Such instruments are unnecessary. As has been concluded by the EG, TCAs can already be made legally binding if the parties so wish.



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Since it is also uncertain what the Commission's role in drafting binding regulation in this field could be, CEEMET believes that it is more realistic that the Commission aims at providing an up-dated database of TCAs (with the consent of parties concerned), organising exchanges of experience and analysis, reviewing the effects produced by TCAs and how norms relate to each other in the Member States and clarifying rules of international private law as regards TCAs (of a legally binding character).

Considering the uncertainties stemming from the absence of a common understanding of the subject to be examined and the fact that so far only a very limited number of companies (138 having reached TCAs identified by the Commission – in comparison with 200,000 represented by CEEMET of which several thousands are multinationals potentially concerned), we consider that TCAs are not an issue for an EU wide initiative. This also follows from the fact that TCAs are mostly internationally in scope and thus have a wider scope than only MS.

The draft conclusions, as presented in the first draft, are biased and do not reflect the experiences and views presented at the meetings of the EG. This is highly troubling and the draft conclusions must be revised to reflect the discussions already held in the EG.

As the draft conclusions were not discussed in depth due to them being sent out so shortly before the meeting, CEEMET does see a need for experts in the group to have an opportunity to comment on the revised conclusions before them being adopted.

In view of the feeble evidence base mentioned before and in the absence of a clear need for an initiative of the European Commission in this area, and even going against the wish expressed by company representatives at the TCA EG, CEEMET is not in favour of setting binding references at European level.

CEEMET looks forward to open and objective discussions on the role TCAs play and should play in the future. However CEEMET underlines that such discussions must be carried out in such a way that they are transparent and that they fully respect the autonomy of the social partners.

Brussels, 20 October 2011