

The ... union in search of "Father lost"^{1}*
- very early draft²⁺ -

by

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Premise

The long and deep crisis of western economies of the last years makes the question the present role that the trade unions regarding the initiatives taken to promote collective actions in the contest of the European Union.

The trade unions have been able of confronting the offensive of capitalism to deal with the current crisis.

The constitutional role of the trade union, of democratic countries, has been put to a difficult test about the remarkable change in the relationship between labor and capital, with the resulting states and, therefore, relegated to the role of partner in the dialogue in an environment dictated unilaterally by employers⁵.

The violation of mutually arrived at contracts and sectorial agreement reached in the structure of the so called "social dialogue", represent the point of departure to analyse the phenomenon of advances and decline of the trade union.

Evidently, the social dialogue has been often interpreted in a manner altogether formal by governments a completely neglected national and european businesses.

1 It would be an allusion to the masterpiece of J. Milton "Paradise Lost", in which Adam and Eve -- like the union (or E.Union) in the perspective of the paper -- are in search of the (their own) Paradise/Father.

2 This draft constitutes the core part of whole research project. First and end parts are yet in a too early stage for presenting right now.

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5 M. BELLOCCI, P. PASSAGLIA, *La tutela dei soggetti deboli come esplicazione dell'istanza solidaristica nella giurisprudenza costituzionale*, in *Forum Quad. Costituz.*, n. II/2012, pag. 60.

On contrast of the social "internal" dialogue of the single member states – that has had a discontinuous and intermittent evolution⁶ – the "european" social dialogue has in any case developed from top to bottom in a consistent manner. And, in fact, the need (or better the effort) to safeguard at the european level forms of social dialogue is above all affirmed in the unifying european act of 1986⁷. Furthermore, the Maastricht treaty of 1992 has extended the powers of the european union in terms of social policies aimed at promoting employment as well as the improvement of living conditions and work and of the appropriate social protection up to the raising of the level of employment⁸.

However, the principle of the free movement of workers expressly expected (required) by the Maastricht treaty, is manipulated by businesses for the purpose of practicing social dumping and undermining the labor conditions and the rights acquired (obtained) among the different european countries. Only with the Amsterdam treaty of 1997 the consultations of the social partners has acquired its obligatory character⁹.

The lack of the juridical acknowledgement of fundamental social rights has forced the community legislator to promulgate also the Charter of the fundamental rights of the european union of 2000¹⁰

6 SCIARRA S., *Manuale di diritto sociale europeo*, Torino, 2010.

7 Art. 118b provides that the Commission «shall endeavor to develop a European-level dialogue between the social partners, which could, if they consider appropriate, in relations based on agreement».

8 Art. 2 of the Treaty provides that the Community has the task of «promoting, by establishing a common market and an economic and monetary union and by implementing policies and actions referred to in Articles 3 and 3A, one harmonious and balanced development of economic activities throughout the Community, sustainable and non-inflationary respecting the environment, a high degree of convergence of economic performance, a high level of employment and social protection, improving the living standards and quality of life, economic and social cohesion and solidarity among Member States».

9 Referred to artt.154-155 (ex artt. 138-139 TEC). The first states that the Commission has the task of «promoting the consultation of the social partners at Union level and shall take any measure to facilitate their dialogue by ensuring balanced support for the part. At this end the Commission, before submitting proposals in social policy, consult the social partners on the possible direction of Union action. If, after such consultation, considers Union action desirable, the Commission shall consult the social partners on any proposal. And labor shall forward to the Commission an opinion or, where appropriate, a recommendation. On the occasion of the consultation referred to in paragraphs 2 and 3, management and labor may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless decide jointly to extend labor concerned and the Commission». The second provision also provides that the dialogue between the social partners at European level «may lead, if they so desire, to contractual relations, including agreements. Agreements concluded at Union level shall be implemented in accordance with the procedures and practices specific to the social partners and Member States or, in matters covered by Article 153, at the joint request of the signatory parties, according to a decision of the Council on a Commission proposal. The European Parliament is informed. The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153, paragraph 2».

10 Art. 27 of the Charter of 2000 states that «workers or their representatives must, at the appropriate levels, information and consultation in good time in the cases and conditions provided for by Community law and national laws and practices». In addition, art.28 of the Charter provides that «workers and

and the subsequent Lisbon Treaty of 2007¹¹. Both texts strengthen the content of previous treaties, confirming the need to give emphasis to the rights of workers and, in particular, to the right of strike.

However, the European Court of Justice, as it expressed itself on the Viking (2007), Laval (2007), Ruffert (2008) and Luxemburg (2008) cases has provoked resistance to the European trade unions movement, from the moment that the orientation became that of giving priority economic freedoms and to commercial interests, rather than the rights of trade unions and labor work this has happened in a moment in which the financial and economic crisis was just on the horizon.

On the other hand, even the sentences of the European Court of Justice on the Koelzsch (2011) and the Vogsgeerd (2011) cases on the prevalence of the regulations of the member states in which the worker performs his usual job in the case of controversies, has been ignored by the European countries.

To apply the breaks in the eventual wrecking of the effectiveness of trade unions action, the European legislator has pointed out to the trade unions organizations and to business organizations of the important role that they have in shaping European policies dealing with social issues following an opposite process with regard to that followed the member countries.

With regard to the later, in fact, it was the strength of the trade unions organizations to gain recognition in the area of collective bargaining, first and process of reaching agreements¹². It goes back, in fact, to 2007, the introduction next to the European Business Councils (EBC) and the European Trade Unions Confederation (ETUC¹³) – of the Paneuropean Trade Unions Council

employers, or their respective organizations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels, and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action».

11 The Treaty introduces the art. 136a to the EC Treaty. That provision states that the Union «recognizes and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue».

12 V. G. ARRIGO, *Politica sociale comunitaria e direttiva 94/45 CE tra funzioni normative delle parti sociali e ruolo di garanzia del legislatore*, in *Not. Giur. Lav.*, n. 15/1996.

13 ETUC it was introduced in 1973 starting from the SSE and "unions" Christians. Currently part of the CES 85 National trade union confederations from 36 European countries, and 10 Federations European industry, for a total of about 60 million members. The CES also plays a major role in the determination of laws important for European workers. The EU Treaty gives the social partners the right to make its own legislative proposals through inter-sectoral agreements on major issues of social policy. The social partners have already negotiated three agreements at European level, which was applied, later, through important European Directives that secure basic rights for workers on parental leave (1996 - renewed in 2009); part-time work (1997); fixed-term contracts (1999). Since 2002, the CES has further expanded its role in the EU industrial relations, promoting the development of an autonomous social dialogue between representatives of workers and employers. The social partners have concluded agreements "autonomous" on telework (2002); work-related stress (2004); harassment and violence in the workplace (2007); inclusive labor market (2010); a framework for action for the development of skills and qualifications

(PERC¹⁴).

However, such trade unions organizations have asserted themselves in such unequal manner among the member countries and, in particular, the European Business Committees which will be the objective of this paper.

1. The European Business Councils. Critical birth and evolution

The objective of the two directives on the CAE (the first, n. 1994/45/CE and the second n. 2009/38/CE) indicated in the institution of a business organization of European matrix (make up) or – for every business of a determinate size definable as "community" or as «business of over 1000 employees in two or more countries», or «the group that [...] beyond the minimum limit of 1000 employees, must count at least two businesses of the group with headquarters in two different member countries, that might have more than 150 employees in one member country that have similar process for the information and consultation of its employees».

The requirement of the transnationality which criteria of reference for the purpose of the creation of the CAE becomes for the first time defined clarifying that for "transnational questions" are meant those dealing with «the business of communitarian sizes or the range of businesses of communitarian sizes in their totality or at least two businesses or firms of the company or the group located in two different member countries». All this for the purpose of avoiding «irregularities of treatment among the workers (on) whose conditions depend the decisions of a similar business of group of businesses», that could take place in the face of the growing process transnationalization of the business and of the parallel proliferation of group of businesses that have come to be in the last years in the European internal marketplace. Eventhought it might inspire of

throughout life (2002) and a framework for action on equality between men and women (2005). In these agreements is given application by the social partners at company, regional and nazionale. Inoltre the CES participates every year at the Tripartite Social Summits; processes the response of the unions to the proposals of the European Commission; dialogue with a cross-party group of MEPs; coordinates the participation of trade unions in a number of advisory bodies, including the Economic and Social Committee and the EU agencies for vocational training (CEDEFOP), for the Improvement of Living and Working Conditions (Dublin Foundation), and Health and Safety in the workplace (Bilbao).

14 PERC is a body set up in Rome in 2007 within the International Trade Union Confederation (ITUC), following a resolution adopted at the ITUC founding Congress in Vienna, to promote the strategies, priorities and policies of the Confederation of expertise in the region, thus contributing to social development, the consolidation of democracy and respect for human rights and labor. It includes today 89 unions, representing about 90 million members in a huge area, from Portugal to Vladivostok. Participate also federations global industry (Global Union Federations, GUFs) and the European Federations.

«one of the few visible fruits of the communitarian social policy that succeeded in troling of an evolutional course dealing with industrial relations, where many projects of european business had previonsly foiled: introduce moments of partecipation of workers in the decisions dealing with the management of the respective business»¹⁵, the regulatory text has raised since its inception certain doubts of interpretation. The subjects that form the object of the duty of information and of consultation of the EBC are obligatorely foreseen by the directives under examination and that concern «the structure, the economic-financial situation, the probable evolution of the activity, the production and the sales of the business or groups of businesses of communitarian dimensions, situation of employment and its probable evaluation, the investments, the substantial modification with regard to the organization, the introduction of new methods of work or of new productive process, transferment of production, the reduction of dimensions or the closing of businesses, factories or their important parts and collective layoff». The legislator puts in the hands of the central management of business of communitarian dimension (or in the case of a group of businesses of communitarian dimensions or business) the task of «negotiating with the constructive spirit to reach an accord on the ways of carrying out the information and the consultation of workers» of the special delegation of negotiation (SDN) that acts in the role of negotiating representatives of the workers, underscoring the importance of the asknowledged of the «role that the asknowledgement trade unions organizations could undertake in the negotiation or ressegotiation of the agreement of the european business committees in support of the workers representatives that could express their needs». The directive n.38/2009/CE if, on one hand, it contributes to overcome the criticism that emerged upon the implementation of the proceeding directive from 1994, and the betterment of the conditions of the functionality and the efficiency of the businesses trade unions at a european level, simultaneously, however, making evident some regulative lapses¹⁶. On the first place with reference to the negotiating function of the CAE with respect to the directive doesn't take a position on the regulating role that factually it has assumed from the EBC. On second place, the directive demends from the member state the task to forecast «appropriate measures in case of inobservance of the dispositions of the present directives» still, the directive doesn't reduce the time mode available to the SDN for the conclusion of the international agreement that has stood for three years similar to the preceding version, altought the trade unions request to reduce from three years to one year the maximum time foreseen for the conclusion of the agreement and for its application, in the absence, of the necessary prescriptions. Finally, the

15 V. CAGNIN, *I Comitati Aziendali Europei: luci e ombre della nuova Direttiva CAE*, Università degli studi di Verona, ricerche giuridiche, n. I/2010.

16 L. ZOPPOLI, *L'attuazione della Direttiva sui comitati aziendali europei. Un'analisi comparata*, Napoli, 1998.

European legislation has not reduced the necessary threshold for the establishment of a EBC, leaving unprotected a large part of the small sized businesses that still have a relevant weight on the European countries (especially in Italy)¹⁷.

2. The status of the implementation of the directive on the EBC in the member states. Twenty years of the EBC¹⁸

The current state in the various countries of the European Union regarding the obligation of transposition of the new directive on the EBC follows different tendencies. Only Greece, Luxemburg and Holland have not yet taken measures, in a legislative way at the implementation of the directive. The other member states have instead already implemented the directive.

The following table shows in table form some of the data gathered on the status of activities of EBC in the periods between the promulgation of the first directive (1994) and of the successive one of the second directive (2009) up to the present period.

Table 1 – Number of CAE present in the European Union by years 1994-2014

YEARS	CAE NO LONGER EXISTING	CAE STILL ACTIVE
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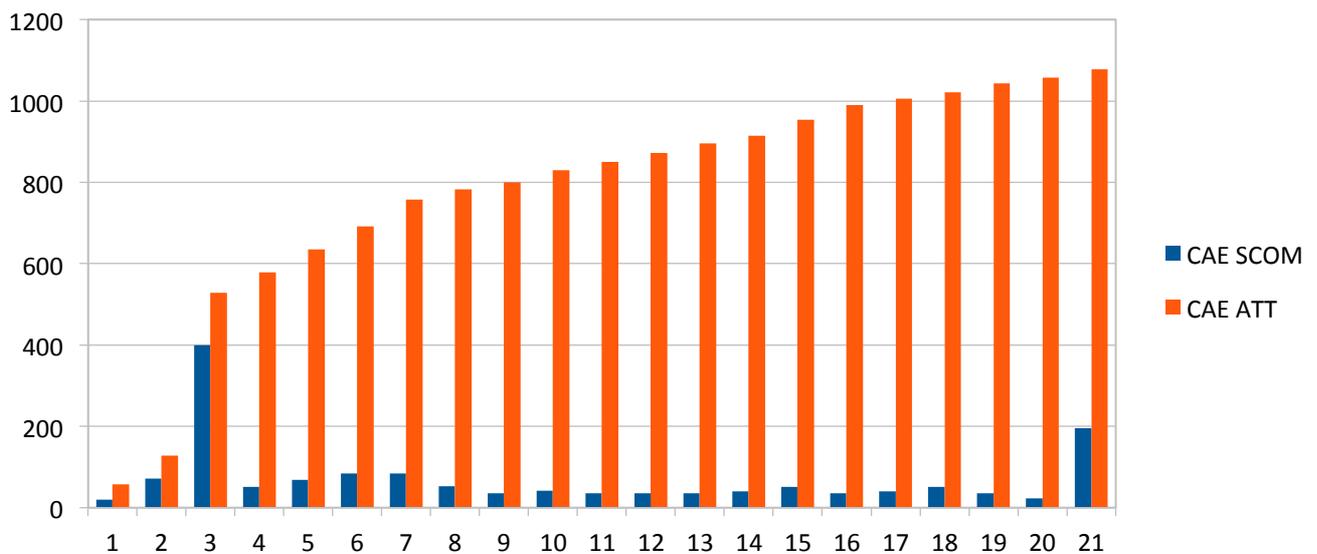
17 F. CARINCI, A. PIZZOFRERATO, *Il diritto del lavoro nell'Unione Europea*, Utet giuridica, 2009.

18 www.sda-asbl.org ; <http://eescopinions.esc.eu.int> ; www.ewcdb.eu www.comitatiaziendalieuropei.it ; <http://www.cae-ewc.eu/>; http://www.ewcdb.eu/statistics_graphs.php; www.eurofound.europa.eu ; <http://www.ireser.it/index.php/it/left-aree-tematiche.html?view=project&task=show&id=13>; <http://www.epsu.org/r/180>; http://ec.europa.eu/index_en.htm; <http://eur-lex.europa.eu>; <http://www.etui.org/>; <http://www.worker-participation.eu/EU-Social-Dialogue/Sectoral-ESD>

1994	19	57
1995	72	128
1996	400	528
1997	51	578
1998	68	635
1999	84	692
2000	84	757
2001	53	783
2002	36	800
2003	41	830
2004	36	850
2005	36	872
2006	36	896
2007	40	914
2008	51	954
2009	36	990
2010	40	1006
2011	51	1022
2012	36	1043
2013	23	1058
2014	195	1078

Fonte: Istituto sindacale europeo (ETUI), bancadati CAE, 12/2014

Graphic 1 – Number of CAE present in the European Union subdivided by years 1994-2014



Respect to the years of the introduction of the directive on the EBC (1994), in 2014 appear to be 1.078 EBC that were established that are still active.

On the total of 17.959 EBC instituted between 1994 and 2014 (more that 80%), appear active, while 1.488 EBC have ceased to exist.

On the period between the first directive on the EBC (1994) and the second (2009), the number of the EBC active in Europe has increased in a significant measure.

At has passed from the almost 60 EBC active in 1994, to around 1000 EBC active in 2009. The same in the successive period (2010-2014) in which the performance of the Europe is on the rise (around 70 EBC and above).

The number of the EBC that have ceased to exist by years follows, instead, a trend not constant with two peaks in 1996 (400 EBC ceased to exist or were dissolved) and in 2014 (195 EBC ceased to exist or were dissolved).

From the table it is shown, further, that soon after the promulgation of the new directive on the EBC, in 2004 the number of active EBC have reached almost the preceding levels.

The number of the active EBC increased by just 16 units. On that period, from among the almost 10 million workers who, in the European Union, had seen acknowledge their to information and consultation of the company's decisions at the European level through their European company committee, only 11 have been the agreement successfully concluded.

From the earlier data gathered by the European Labor Unions Institutes for the first trimester from 2015 has emerged that the number of CAE agreements underwritten is equal to 3.056, along with 136 dispositions of national law dealing with promotion of the utilization of the instrument and 105 communitarian juridic dispositions.

The following shows the relative CAE data dealing with the period 1994-2014, subscribed

according to the representatives of the member states.

Table 2 – Number of working of CAE of the representation of the member states

YEARS	CAE INCLUDING ON OR MORE REPRESENTATIVE OF NEW MEMBER STATES
2004	281
2007	77
2013	10
other	35

Fonte: Istituto sindacale europeo (ETUI), bancadati CAE, 12/2014

What emerges from the table, on a total of 1.078 CAE functioning at the present, the 26% deals with the "old" member of EU (Germany, Italy, France, Spain, United Kingdom, Netherlands, Belgium, Luxemburg), while the 7%, is relative to the joining in 2007 of Estonia and Lithuania.

Furthermore, the 3 % (equal to 35 units) of the total deals with one or more of the representatives of countries candidates to be admitted to the EU (Croatia, Macedonia, Turkey) and the 0,9 %, deals with the countries belonging to the European Association of the Free Exchange, ALELE (Ireland, Norway, Auvitzerland and Leichenstein) not to mention non member countries of the EU (or extra UE) such as Russia and Ukraina.

The analysis proceeds with the CAE data subdivided by sectors. Seven sectors of activity have been taken under consideration.

Table 3 – Sectorial distribution of the EBC

SECTOR	N. EBCACTIVE
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Metallurgy	380
Chemical industry	230
food, lading and agriculture	101
Textile	45
ICT, computer and services	45
Transportation	48
Wood construction	80

Fonte: Istituto sindacale europeo (ETUI), bancadati CAE, 12/2014

With regard to the sectorial distribution of the EBC from the data it comes out that the larger member of committes has been constituted in the metallurgical sector (with over 350 units), followed by the chemical sector (over 200) and from the food, lading and from agriculture (a little over 100) and that of construction and lumber (almost 80).

On the other hand, the EBC amount to a law activity in sectors such as chose in textile (45 EBC active), computers and services (45 EBC active) and in transportation (48 EBC active).

Table 4 – Territorial distribution of the EBC

TERRITORIAL AREA	N. EBC ACTIVE
Germany	160
United Kingdom	120
France	112
Italy	40
Spain	10
AELE	5

Fonte: Istituto sindacale europeo (ETUI), bancadati CAE, 12/2014

With regard to the territorial distribution of the EBC, the countries where more CAE operate, having as a point of reference the company's headquarters, are Germany, the United Kingdom and France (respectively around 160 EBC for Germany, 120 EBC for the UK and 112 EBC for France),

while for Italy the active EBC amount to above 40.

The area of the application of regulations on the EBC deals with only 1/3 of the members of the European Union, but it also concerns the countries that are candidates to join the EU (Croatia, Macedonia and Turkey), the countries belonging to ALELE - European Association of the Free Exchange – (Ireland, Auvitzerland and Liechtenstein) whose presence numbers about 5 EBC.

Table 5 – Size of business and CAE

SIZE OF BUSINESS	% OF EBC ACTIVE
Big (>10000 employees)	39%
Middle (between 5000 e 10000 employees)	16%
Small (<5000 employees)	37%
N. unknowns of employees	12%

Fonte: Istituto sindacale europeo (ETUI), bancadati CAE, 12/2014

With reference to the size of the business, on a total of 1.708 EBC, those that are currently active in the so called Economic European Space (SEE), are at 39%, of the big size businesses, at 16 % of the middle size businesses and at 37% of those businesses of small size. A percentage at 12% is in reference to employees whose remain unknown, or whose data are insufficient.

Table 6 - Degree of internationalization of the EBC

COUNTRIES	% OF CAE ACTIVE
More of 10 countries	51%
Between 5 and 10 countries	27%
Less than 5 countries	17%
Insufficient data	5%

Fonte: Istituto sindacale europeo (ETUI), bancadati CAE, 12/2014

With reference to, lastly, to the degree of internationalization of the EBC currently active, more than 51% of them embraces more than 10 countries; the 28% deals with between 5 and 10 countries, and the percentage diminishes to 13% for the EBC that embrace less than 5 countries. The remaining part (5%) is referenced to the data that are insufficient and unknown.

3. A Look at Italy: the best practice Ferrero inc.

In Italy, the introduction of the directives on the EBC took place in three steps. From the starts, with the signing of the interconfederational agreement of the 6 of november 1996, later with the promulgation of the law n. 74 of the 2 april 2002 and, lastly, with the intetconfederational agreement of the 12 april 2011, afterward iserted in the law n. 113 of the 22 june 2012.

The EBC of european stamp, however, distinguish themselves from the original labor unions trade, actually present in Italy and established with the law n. 300 of the 1970 (rsa) or those of the contrattual stamp foreseen from the Protocol of the 23 july 1993 (rsu). Respect at the italian business representation, the european business committee doesn't have any contractual power in the strict sense.

Table 7 – Evolution of the EBC in Italy (1994-2014)

YEAR	N. EBC NON -EXISTING	N. EBC ACTIVE
1994-2009	120	80
2010-2014	858	82

Fonte: CNEL, *Comitati aziendali europei in Italia: analisi e prospettive*, Dossier, maggio, 2014

From 1994, the date of promulgation of the first directive on the EBC, from 2009, date of promulgation of the second directive on the EBC, in Italy, from 200 EBC complessly present, the number of the active EBC is about 80 (the 40%).

Soon after the introduction of the directive on the EBC of 2009, in Italy were present 940 EBC constituted on an estimated universe of businesses of 2.200¹⁹.

A virtually defined report that presented itself as equal, if not superior, to that of France and Germany. From 1993 (three years before the instruction of the directive but also a year before its promulgation) to today, shows up as being negotiated and implimated based on the italian legislation, 46 EBC. Particularly, from 1996 to today have been approved for the italian EBC about 80 agreements, many of wich are still in effect and never renegotiated.

¹⁹ CESOS, *Relazioni sindacali in Europa e in Italia*, Rapporto, 2009; CNEL, *Le relazioni sindacali in Italia e in Europa*, Rapporto, 2009-2010.

The only example of dissolution regards the EBC of the company Eridania S.p.A, while a case of continuous postponement of the negotiation, is the one in the banking sector of the group Intesa San Paolo S.p.A.

Still in other cases, the EBC has regularly constituted itself and has begun to function but following the sectorial crisis and/or of the process of restructuring (the example is that of the Cirio corporation). About other EBC, it has been noticed instead – after a certain period of inactivity – a negotiating resumption (Barilla S.p.A, Parmalat S.p.A)²⁰.

On other hypothesis still, it has been constitution of the EBC much before the promulgation of the second directive of the 2009 (Enel S.p.A, Unicredit S.p.A, Italcementi S.p.A).

At still exist as a virtual case the agreement on the EBC submitted by the multinational Ferrero S.p.A. After a first voluntary constitutive of 1996²¹, the EBC has been many times renewed and postponed²².

The last agreement goes back to 2011, the day after the approval of the interconfederational agreement on the italiana adjustment to the new directive on the EBC of 2009.

The EBC of Ferrero Group, even after not having a real negotiating power, over time it has assumed a significant influence of the group's choices.

The first informational organism at a european level goes back to 1991 with the establishment of a coordination of the representative of the group.

Initially there were represented only productive units of Italy, Belgium and Germany, while the representation of France and Ireland only united themselves. At a later time in 1994, following the promulgation of the first EBC directive in the area of the same coordination, it was decided to set up a special negotiating delegation (SDN) with the task to define the constitutional procedures of the EBC.

The aforementioned negotiating organism was composed initially of representatives of the amalgamated central offices of the National Labor Unions to which it was added subsequently a representative (2 for Italy and Germany) for countries.

Notwithstanding the opposition of the labor unions organization of the other countries in which the

20 CNEL, *Le relazioni sindacali in Italia e in Europa*, Rapporto, 2009-2010.

21 Agreement for the establishment of CAE, January 8, 1996 signed in Brussels between the companies of the Ferrero group and representatives of domestic workers, assisted dall'EFFAT (European Federation of nutritionists), and the trade unions of Italy, France, Germany, Belgium and Ireland affiliated to the Federation. As stated in the introduction, this agreement means applied to all companies manufacturing and commercial Group Ferrero which lie in its own right within the European Union, with the aim of achieving a greater exchange of information and opinions between the company management and employee representatives in order to find a joint response to the ongoing internationalization of the Group in the European market.

22 In 17 november 1999; 21 november 2004; 16 november 2007 and least, 13 april 2011.

group is representative, the determination of the Italian labor union forced the DSN to initial the agreement of the constitution of the EBC before the directive n. 94/45/CE might be implemented at the Italian level. The role of primary importance represented by the Italian trade unions made it possible that for the first years the other members of the EBC would not take into consideration the European Institute of Representation as a product of an international understanding but only as an expression of a conviction of the Italian labor unions²³.

The composition of the EBC as expressed in the agreement of 1996, follows the French model in which the management is a full member of the committee.

One of the principal elements that has allowed a good function of the EBC was that to foresee, yearly, but at the times even two years, of the joint formative meetings between representation. At the organization phase the formative courses were financed to clarify which might be the usefulness and function of the European Representational Institute for the purpose of avoiding the rise of attrition and misunderstandings that could have suffocated the importance of the EBC.

In 1998, on the occasion of the integrative labor unions contract it was put before the workers a questionnaire in which one of the questions asked for the expression of one's own view on the evolution regarding the EBC institute.

From the questionnaire what emerged was that the workers are aware of the existence of the EBC but don't understand yet the utility of its function. Even for the promotion of a higher culture on the EBC joined formative events which contribute to the amplifying of the spirit of esteem and reciprocal trust without losing "the spirit of comorality"²⁴.

Table 8 – Points of strength and weakness of the Ferrero EBC (1996)

KEYS ELEMENTS	CRITICAL FACTORS
good climate	linguistic and cultural difficulties
lean structure	different degree of participation
European vision	difficulty of integrating
communication power	different system of information and consultation
national negotiation	no confirmed committee
business culture	lack of pre-established time and procedures

23 D. DAZZI, V. TELLJOHANN, *Il Gruppo Ferrero*, in *I Comitati Aziendali Europei*, V. TELLJOHANN (a cura di), in *IpL*, n.17/2006.

24 D. DAZZI, V. TELLJOHANN, *Il Gruppo Ferrero*, in *I Comitati Aziendali Europei*, V. TELLJOHANN (a cura di), in *IpL*, n.17/2006.

Fonte: Ferrero S.p.A, sito istituzionale

In contrast with such strong points, the agreement poses a series of inconveniences. On the first place, it does not foresee a confirmed committee. On the second place, the agreement of the european directive on the EBC without specifying in what ways and time the same procedures must take place.

Even for such reasons the agreement on the EBC of the Ferrero Group has been renewed many times among the main innovative content of the agreement were inserted the lengthening of the meetings if the EBC by half a days the allowance to the labor unions secretary of the possibility to visit the plants of the group, the introduction of a leadership committee whose purpose is to prepare efficiently the agenda of the day.

On conclusion, the italian experience on the ECB (has it has emerged from the Ferrero case study) here briefly considered, follows the same positive evolution that is presented at the european level starting in 2006.

4. More on the EBC: internationalization, delocalization and social dumping. The role of the Transnational Company Agreements (TCA)

By "internationalization" of industrial relations we mean that «grouping of assets and procedures of supranational governance, whose development has assumed that form of information of businesses of european dimensions, if not noticeable degree of influence on international and european policies on issues of work and labor unions rights and the denial of supranational agreements of sector and groups»²⁵.

This process is the result of a complex system of factors among which the strategies of restructuring that is spread along a chain of values of multinational concerns, increasingly, fragmented and organized beyond the borders (outsourcing, subcontracts and dislocations), and taking the "financialization" as a main logic around which reevaluate is direct foreign investments and the strategies of offshoring, create a difference in governance and a gap between economy and politics bargaining about, in the last analysis, a serious risk of social dumping²⁶.

25 SCIARRA S., FUCHS M., SOBCZAK A., *Verso un quadro giuridico per accordi societari stipulati tra imprese transnazionali*, Rapporto Confederazione europea dei sindacati, 2013.

26 S. LEONARDI, *Executive summary. Transnational company agreements: a stepping stone towards a real internationalization of industrial relations?*, Rapporto finale, IRES, n.2/2012.

And so, the retributive differentials and the different regulations to safeguard work inside of the EU, constitute a temptation for businesses and searching, in this manner, for a solution to the competitive challenger that with an always increasing force reach the emerging economies.

Just to avoid the legal risks tied to emergence of forms more or less serious, of social dumping, and thanks to the entrepreneurship of some of the EBC and the European Sectorial Confederation (ECS), have been introduced transnational business agreements, with which it has been tried to establish some common standards treatment for all the employees of international companies. They involve more or less all sectors even if they appear more frequently in that of metalmechanics (like the automobile industry), chemical-energy and in financial services²⁷.

Such agreements have a bilateral nature, and are the first of a negotiating process which different than in the case of unilateral adoption of codes of conduct and other forms of social responsibility of businesses (CSR) – is concluded following by a precise phase of consultation.

The contents of these texts covers a vast gamma of subjects, from the respect of the fundamental rights, and of the regulations ILO on the dignity of work, to the restructuring, up to measures of support, and to the policies dealing with human resources, to the social dialogue and to the rights of labor unions.

Mainly between the subject treated longely by agreements stands out. Beyond the prevision of obligations deal at the business and branches level in a joint fashion between management and the national labor unions organizations. The acknowledgement of specific prerogatives at the head of the union trades and of the workers representatives – the expansion of the clauses destined for the management of the restructurations of the companies and of the relocation of part of production often joined to the strategy of outsourcing, which implies the reduction of personnel for the fact to the closing of the industrial plants²⁸.

The TCA can be underwritten either at the European level (European Framework Agreements EFA), at the international level (International Framework Agreements IFA) or at the global level (Global Union Federation GUF).

Thanks to the introduction of the TFAs, an effort has been made to favor a coordination based on negotiational policies and a more efficient contrasting action to those forms of social dumping which, practiced at a global scale, don't overlook the European dimension.

27 ALES E., ENGBLOM S., JASPERS T., LAULOM S., SCIARRA S., SOBCZAK A., VALDE'S DAL-RE F., *Transnational collective bargaining: past, present and future*, Commissione Europea, 2006.

28 SCARPONI S., *Gli accordi-quadro internazionali ed europei stipulati con le imprese transnazionali: quale efficacia?*, atti del Convegno *Nuovi assetti delle fonti del diritto del lavoro*, CASPUR-CIBER, 2012.

They represent a recent phenomenon in the landscape to the birth of the CAE. However, analogically to the CAE, the regulations on the TCA – taking into account the narrow field of application of regulation dealing with collective business contracts whether at the European as well as the international level – could result in the lack of applicability in the various national judicial systems and of the assigning of an adequate European judicial power for the purpose of increasing the recognition and the executive power of the TCA²⁹.

Such a problem is tied to the will for reaching a common position on transnational contracting in behalf of the total European labor union movement, achieved through an analysis of the establishing of the TCA in the content of the national industrial relations.

In 2013, on a total of 150 businesses, the TCA that were subscribed were about 260 among which about 50% were at the European level (127 TCA) and the rest 50% were at the international level (140 TCA). From this number, are excluded 1300 agreements approved instead by the CAE.

Some international agreements see the co-participation also between the EBC and the word labor union. More in detail, on the total of agreements approved (260 TCA), 97 out of 127 (related to the EFA) foresee the approval of the EBC. The remaining agreements (16 TCA), bear the exclusive signatures of one or more of the European labor unions federations.

In 2014, on the total of 144 businesses, are included 224 TCA among such agreements, only 20 have been approved by the European labor unions federations (*European Industry Federations – EIF*)³⁰. The automobile industry sector is the one which has up to now more oriented in this sense, as an example, in case of crisis like those that in these years have dealt with DaimlerChrysler, Renault, PSA, Ford Europe, GM Europe, Volkswagen. No agreement of this type has been subscribed by Fiat³¹.

On the global scale there operate about 65.000 multinationals. However, the TCA have had up to now a very limited real impact. Presently, there are approved 8 sottoscritti only 54 global agreements.

With regard to future legitimization of negotiational subject, it needs to be brought to light that, in absence of a clear picture of responsibility at the head of the interested parties, that which is happening is that the TCA are initiated by a series of participants, that is the TCA, the European

29 V. G. ARRIGO, *Politica sociale comunitaria e direttiva 94/45 CE tra funzioni normative delle parti sociali e ruolo di garanzia del legislatore*, in *Not. Giur. Lav.*, n. 15/1996

30 Dati disponibili sul sito istituzionale sui TFA, <http://www.worker-participation.eu/EU-Social-Dialogue/Sectoral-ESD>.

31 S. LEONARDI, *European Action on Transnational Company Agreements: a stepping stone towards a real internationalisation of industrial relations?*, Rapporto finale IRES, n. 02/2012

trade unions of each category, the global labor trade union and, in some cases, by the national businesses committees.

Often, the transnational contracting system has been run by constituted ad hoc by a dominant labor unions of the mother firms. In other cases the negotiations were carried out by ad hoc committees³². Generally this solution is carried out by a high level participant such as the labor unions of the mother firms, or in some cases, even by the common itself. This solution doesn't guarantee an adequate result, not favoring the necessary european mediation between interested position³³. The global labor union (GUF) complain the very often marginal role that such procedures these organizations play in the face of a framework that reflects a eurocentric reconrd on the side of the major negotiational subject³⁴.

Consequently, one of the most thorny questions are those that regard the difficult the specific role of the CAE. Because of this they don't have available a formal power to negotiate or finalize collective agreement. Nothing however, prevent this from happening in case the company is in agreement.

The limitations of these organism that deal with CAE resides in the fact that not only all of the CAE present a adequate internal composition "existing in many cases, in wich the representatition not only of the labor unions but even of accepting suspicious data" especially dealing with the reality of central and eastern Europe³⁵. The european trade unions and the CES have already developed an internal orientation for this type of agreement, with the aim of achieving a major and better expansion of the TCA.

However, the lack of a determinate judicial statute has not been an constraint to the development and diffusion of the TCA. In the european contest, the role and functions that the right of the european union recognices the collective autonomy and the social interest groups are very significant. This qualifies the "european social model" to similar rights of information, consultation and participation of the social dialogue of the european business committees (EBC).

Even in the absence of specific dispositions, european legal rights offer many starting points allowing the TCA to find a sufficient degree of juridical legitimization.

32 A. ALAIMO, *Il coinvolgimento dei lavoratori nell'impresa: informazione, consultazione e partecipazione*, in S. SCIARRA, B. CARUSO (a cura di), *Il lavoro subordinato*, Torino: Giappichelli, 2009.

33 S. SCARPONI, *Gli accordi-quadro internazionali ed europei stipulati con le imprese transnazionali: quale efficacia?*, atti del Convegno *Nuovi assetti delle fonti del diritto del lavoro*, CASPUR-CIBER, 2012.

34 A. LYON-CAEN, *A proposito del dumping sociale*, in LD, 2011.

35 S. LEONARDI, *European Action on Transnational Company Agreements: a stepping stone towards a real internationalisation of industrial relations?*, Rapporto finale IRES, n. 02/2012.

Evidently, the European Social Charter (or ECHR³⁶) of 1964 and Workers Fundamental Rights Charter of 1989³⁷ include the labor unions right to negotiate collectively on acceptable levels.

And so, notwithstanding the persistent differences between the formal institutional models and the national regulation bases and problem of juridical uncertainty, together with the weakening of labor union power in many member states, the EU is moving towards appreciation of the importance of collective bargaining even in the sectors and territorial zones discovered earlier³⁸. However, it will be decisive understanding in what way the industrial relations will develop in an environment of a new reality of production towards which, in the last years, there has been a strong tendency of production delocalization from the of firms with origin and historic installations in countries whose labor law traditions are stronger. In such instances the phenomenon of social dumping instead of decreasing it might increase substantially³⁹.

5. Closing observations

Many problems posed by the experience of the EBC are attributable to the «process of the labor unions supranational relations and to the difficulties to render them relevant with respect to the decisional procedures. Even before the regulatory needs, there existed a noticeable international litigiousness and a lasting nationalistic approaches»⁴⁰. In Europe exist representational structure at business level very different from one another. Evidently, the austrian business representative is different than the german, both types of workers representation could only be partially assimilated, for example, the italian representative (RSU). Almost every european country has its own type of business or labor union representation with different laws and different skills different internal structures and different traditions.

To this it can be added the lack of cohesion among the workers representatives and the differences between EBC located in the proximity of the company's general headquarter and periferical EBC. In other words, there exists an objective difficulty in giving life to a collective subject that might the

36 The ECHR, art. 6, provides that the exercise of the rights of association and assembly as well as to participation in the formation of trade unions - «can not be subject to such limitations as are prescribed by law and are necessary in a democratic society in the national security, public safety, the prevention of disorder and crime prevention, the protection of health or morals or for the protection of the rights and freedoms of others».

37 Art.11 of the Charter confirms the content of art. 6 of the ECHR.

38 S. SCIARRA, *Collective Exit Strategy: New Ideas in Transnational Labour Law*, in W.P Jean Monnet, n. 4/2010.

39 M. FICHTER, K. HELFEN, K. SCHIEDERING, *Si può organizzare la solidarietà internazionale a livello aziendale? La prospettiva degli International Framework Agreements (Ifa)*, in *Lavoro e partecipazione - Sociologia del lavoro*, n. 123/2011.

40 L. ZOPPOLI, *Rappresentanza collettiva dei lavoratori e diritti di partecipazione alla gestione delle imprese*, Atti di studio, AIDLASS, 2005.

able to represent in specific situation, the workers interests, achieving acceptable synthesis between different nationalities⁴¹.

Therefore, the EBC pose a double questions. On one hand that of the european businesses representation; on the other, the creation of a new subject of participation on the side of the workers⁴².

Throughout the european social dialogue, the social interest groups have developed an important body of non-binding tools among which are voluntary agreements. The later contribute to the improving labor regulations and have a direct and tangible impact on the working conditions of millions of workers within the EU.

The elaboration of such practices is apposed, however, by the fact that the large part of companies tend to be against the adoption of a regulation that could have a deleterious effects to their competitiveness⁴³.

Furthermore, the slouving of the activity in the creation of the EBC in two years between the adoption and the implimentation of the directives of 2009-2010, is a sympton of a diversity and different impact on the labor unions role and the collective bargaining in the different member states of EU. In Italy and in the other european states, the collective bargaining has different trends. In Danmark, for example, the collective agreement constitutes the corner stone in putting together of the labor standards, at the opposite sides, England in wich instead the collective contract is notjng more than a gentleman's agreement, restricted only if it is incorporated in an individual work contract.

In the middle are located countries like Belgium, France and Germany, in wich the law confers efficiency erga omnes to collective agreements⁴⁴.

The remedy for such situation is synthesizable in the need of reorganizing the labor force on a global plane to increase the level of balance power in favor of the workers and to increase the ability of the labor unions throughout EU.

With the aim to improve on the front of participation and involvement of workers, have been advanced different proposals for the modification of the appropriate directives, already the center of

41 V. CAGNIN, *I comitati aziendali europei: luci e ombre della nuova Direttiva sui CAE*, in *Ric.Giur.*, n. 1/2012.

42 S. SCARPONI, *Gli accordi-quadro internazionali ed europei stipulati con le imprese transnazionali: quale efficacia?*, atti del Convegno *Nuovi assetti delle fonti del diritto del lavoro*, CASPUR-CIBER, 2012.

43 M. FICHTER, K. HELFEN, K. SCHIEDERING, *Si può organizzare la solidarietà internazionale a livello aziendale? La prospettiva degli International Framework Agreements (Ifa)*, in *Lavoro e partecipazione - Sociologia del lavoro*, n. 123/2011.

44 L. ZOPPOLI, *L'attuazione della Direttiva sui comitati aziendali europei. Un'analisi comparata*, Napoli, 1998.

the voluminous communitarian intervention⁴⁵.

Next to the proposal on the EBS, advanced by the CES and by the European Parliament - afterward substantially included in the directive of 2009 that deals with reduction of the threshold established for the identification businesses of communitarian dimensions -

rank the many resolutions of the European Parliament dealing with collective bargaining and social dialogue were established.

In a resolution of 2000⁴⁶ the growing importance of the EBC and of the TCA is underscored while in the absence of a regulative european and international structure. With the motion the European Commission decided to evaluate if a related optional european and international structure of TCA could show itself helpful for the purpose of a greater level of transparency.

The subsequent resolution of the European Parliament⁴⁷ confirm such direction and suggests – for the purpose of the establishment of an "optional" juridical structure – a series of regulatory criteria among which the optionality for social interest groups; the full participation of the EBC in the negotiations with the european labor unions federations; the full respect of the standing national collective bargaining with the inclusion of the clause of the favor laboratorum and of no back sliding and the necessity of procedures for the resolution of controversies. To such resolution the Commission responded with a communique⁴⁸ wishing for the adoption of tools (non binding) in order to monitor the restructuring activities and the process dealing with anticipation of change in the interior of the companies.

45 On the issue of participation, they remember the Directive 75/29/EEC of 17 February 1975 on collective layoff, as amended by Directives 92/56/EC and 2001/23/EC of 12 March 2001 on the maintenance of workers' rights in event of transfers of undertakings, businesses or parts of undertakings or businesses; Directive 2002/14 / EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, which sets common minimum requirements for national provisions on the protection of workers' right to be informed and consulted on the economic and employment situation affecting their workplace; Directive 2004/25/EC of 21 April 2004 on takeover bids, pursuant to which employees of the companies concerned, or their representatives, should be given the opportunity to express their views on the foreseeable effects of a that purchase on employment; also apply to the usual rules on information and consultation of workers; Directive 2011/35/EU of 5 April 2011 concerning mergers of public limited companies (which codifies and repeals Directive 78/855/EEC), under which the employees of companies involved in a merger are protected with the same rules laid down in the Directive on the transfer of businesses; Directive 2001/86/EC of 8 October 2001 supplementing the Statute for European companies regarding the involvement of employees; Directive 2003/72 / EC of 22 July 2003, which supplements the regulations of cooperative societies in Europe (Council Regulation (EC) no. 1435/2003) with regard to the involvement of employees; Directive 2005/56 / EC of 26 October 2005 on cross-border mergers of limited liability companies: also contains provisions on the determination of the system of worker participation to be applied to the company to be merged.

46 EUROPEAN PARLIAMENT, Resolution of 5 August 2001.

47 EUROPEAN PARLIAMENT, Resolutions of 15 January 2013 and 13 December 2013.

48 EUROPEAN COMMISSION, Communication 2013/0882, introducing an «EU framework for quality in anticipation of change and restructuring (QFR)».

Nel 2014⁴⁹ the European Parliament has reassumed the support of the participation of employees and has invited the Commission and the member states to take into consideration appropriate measures to encourage businesses on a voluntary basis, to develop and offer plans of workers financial participation opened to all employees.

In the same years, the European Parliament⁵⁰ had confirmed its request to adopt a juridical decree to guarantee the adoption of the UE, to be implemented in a responsible manner under the economic and social profile, in such a way to maintain the workers rights without introducing excessively burdensome regulations on businesses particularly on the small/middle enterprise.

At the beginning of 2015⁵¹ the European Commission announced its intention to undertake the first phase of consultation of social interest groups, on the possibility of fonder, in a unique text, the three directives on the CAE and TCA. Probably this initiative will be the prelude of a new charter in the history of european labor unions relations.

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