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Labour law and social policies: an agenda for transnational research

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1. The changing world of work: inadequate responses

The great economic and social transformations driven by two main factors, globalization and technological innovations, have altered the very basis on which the labor law and welfare systems created in the past decades have been built. The national States are losing power in the global markets, the fordist large companies are changing structure, industrial unions and centralized collective agreements are

weakened, stable subordinate employment, which was the central object of labour law, has given way to a variety of non- standards work arrangements, often informal and in many cases economically dependent even though formally autonomous. General factors, or mega trends, are altering the context in which we operate and our daily life develops: aging of population, climate changes, scarcity of resources. The turbulence of our times has increased the uncertainty of once stable societies.

The responses of policy makers and also of experts and scholars to the challenges posed by these transformations are by and large inadequate. It is our responsibility not only as professionals but as citizens concerned, to intensify the efforts to understand the new questions and to look for solutions. The seriousness of the economic crisis and its dramatic consequences on the world of work are so evident that they do not leave room for hesitation or inertia.

The 'jobs gap' of about 62 million jobs denounced by the ILO ¹ is the dramatic toll that the crisis has taken on employment. In spite of the level of prosperity attained by the world as a whole, too many people are deprived of the fundamental rights as workers and as citizens, recognized by the ILO conventions, and of the opportunities to share the fruit of progress. More than half of the population is not covered by the measures of social protection which have been shaped in the past by many national legislations and which are endorsed by international standards. Even the core ILO principles: freedom of association, non discrimination, prohibition of child and forced labor are far from being respected in some areas of the world.

Moreover, inequalities have increased in the last years among people and among regions and the labor share of GDP has declined significantly. These trends are widely commented but less acted upon.

There is evidence that inequality has significant negative effects on growth because it contributes to reduce personal and collective investments in health and education thereby lowering human capital accumulation social mobility. So promoting equality of conditions and of opportunities is not only an act of justice ,but also an important condition for inclusive and sustainable development .But ,in spite of the concern expressed by many national and international leaders and organizations for the economic and social challenge posed by increasing inequalities, no internationally recognized policy framework has emerged to guide countries wishing to construct a more inclusive economic and social strategy capable of promoting broad-based progress in living standards and wider participation in the benefits of economic growth rather than growth per se.²

The range of innovative measures which might contribute to this strategy covers many policy areas: first and foremost promotion of good educational opportunities for all citizens and support to productive and quality employment, but also broader measures such as those directed to promote active universal welfare, to guarantee basic quality services and infrastructures, dynamic business environment and favorable financial conditions for long term investments etc. Deepening our understanding of these strategies and building consensus for their implementation is a major and urgent challenge for the future.

In fact perceptions of these inequalities and of injustice are among the major causes of instability and of social protest in many countries, including some of those traditionally rich and peaceful. Given the dimensions of these challenges, no minor adjustment is sufficient to restore the role of

¹ Report of the ILO Director general to the 104th Session of the International Labor Conference, *The future of work*, Geneva, 2015.

² See *The inclusive Growth and developement Report 2015*, R. Samans, J. Blake, G. Corsigan, M. Drzeniek, World Econ. Forum, sept. 2015.

social policies and of labor law as key instruments of social justice and progress. A major revision is needed both of the objectives and of the techniques of our discipline.

2. Value of work and sustainable growth

The very focus of labor law and of social policies has to be redefined. They may not be concerned exclusively with protection of workers and even distribution of income, assuming, as in the past, that growth was a self-sustaining mechanism.

We must share the concern for the conditions and for the sustainability of growth. Economic growth is essential, as it is its quality and sustainability. This implies that the economic performance must be evaluated not only according to material and efficiency parameters, even less to short term financial accumulation, but including social and welfare indicators. Some of these have been elaborated by various international and research organizations,³ but still are not taken seriously by policy makers. The pursuance of sustainable growth requires to fight the traditional separation of roles and of rationale between economic and social spheres, and to promote an integration between innovative economic policies, active welfare and effective employment policies.

One major implications of this approach, which is stated eg. in the European Lisbon Treaty (art.9), is that all major economic decisions, at national and international level, should take into account their impact on social and individual welfare. The impact on the quantity and quality of employment should be an important element of all decisions, if our societies want to give effective value to human work as a fundamental aspect of personal dignity, and as an element of social stability and of equitable distribution of wealth.

Recognizing the value of work is a condition to promote sustainable growth and to exploit the great opportunities of technological innovations and of the knowledge society. The impact of technological change on jobs is a matter of debate, today more uncertain than in the past. In order to avoid disruptive effects by new technologies, new instruments and investment directions should be directed to promote job growth in both developing and industrialized countries: two commonly identified sources of future employment are the green economy and the care economy.⁴

³ See the “*Declaration of Istanbul*” adopted in 2007 and subscribed by the European Commission, the OECD, the Islamic Conference, the United Nations, the World Bank, the Program of United Nations for Development (UNDP), <http://www.OEDC.org/dataOECD/14/46/38883774>. T. Stiglitz, A. Sen, J.P. Fitoussi, 2009, *Report by the Commission on the measurement of economic performance and Social progress*, Stiglitz, Sen, Fitoussi, FR.

⁴ See for a positive evaluations various contributions in *Sharing in the success of the digital economy*, ITIF, Policy Network, 2015; OECD, Young SME, *Growth and job creation*, 2014. Also for policy implications, ILO, *World of work Report 2014, Developing with job*, Geneva 2014.

Policy choices of this kind, like most future policies, must be projected on a global scale, because the challenges for the future of growth of work and of society are global. But they can hardly proceed if they are not promoted by national governments and by national social actors, particularly in the most powerful states, also because these are important members of the international organizations, beginning with the ILO.

A major role can be played to the same end by these regional institutions and governments such as the European Union and those which have been formed in other regions of the world, with the aim to compensate for the decreasing national authority and of the reduced national resources in the areas of labor and welfare policies.

3. Revision of labour law: diversification of rules and basic common standards

If economic decisions must be revised in order to contribute to social welfare and justice, a parallel recalibration is required in many areas of social and legal policies, so that they can respond to the present scenarios of the economy and society. It is commonly affirmed, also in our meetings, that a new balance must be struck between the imperatives of competitiveness and the welfare needs of people.⁵ Some examples of balance can be found in national experiences, but their actual results are a matter of controversy.

One controversial area has to do with the core of traditional labor law, namely protective legislation. If we agree that employment has greatly diversified, the forms and techniques of protection should also diversify according to the different types of work and needs of the employees. This diversification does not imply adopting a policy of deregulation nor reducing all labor law to soft law. Various measures have been adopted for mitigating the dualism of the labor market and the fragmentation of the different types of work: loosening the criteria for identifying subordination, extending some social protections to non-standard work, using a series of regulatory mechanisms to normalize nonstandard work.⁶

The objective is to tailor legal protections to the different positions of the employees, not only the subordinate workers but also those employees who are not legally subordinate but are economically dependent on one or few principals. Not all the norms which compose the traditional core of imperative labor law can be extended to this grey area of employment. Some protections are less

⁵ *Reconciling labour flexibility with social cohesion. Ideas for political action*, Council of Europe publishing, Strasbourg 2006.

⁶ D. Adams, S. Deakin, *Institutional solutions to precariousness and inequality in labor markets*, BJIR, 2014, p. 779-809.

necessary; others may apply only partially or with adaptations. On the other hand, some traditional norms may lose importance for employees who have acquired great operational independence, even if hired under a contract of dependent employment. This diversification of labor standards should be tested on the ground to suit the actual characters of each type of employment and to avoid both excessive rigidity and lack of protection.

The diversification of employment and of legal norms applicable is due to increase the importance of minimum standard, national and in perspective supranational.

These standards are to be adaptable to the different economic and social conditions of the various countries, as indicated by the ILO (see below paragraph 8). But the essential core of them should be universally respected. This core would include some basic collective rights, e.g. freedom of association and of collective action, and fundamental individual rights, e.g. to personal privacy, to free access to education and to professional training, right to information about the opportunities existing in the labour market, to adequate protection of health and safety. Some of these standards are explicitly included in many national legislation and in the European Charter of fundamental social rights.

The promotion of basic common standard is the core of the international governance of work, pursued in particular by the ILO through the adoption of international conventions. These standards should provide a framework of guidance for member states. Their effectiveness should be pursued and reinforced by all policy makers who seek to combine economic growth with social progress.

4. Static and dynamic security

Flexibility is a another controversial area of policy making in our field.⁷ Its pressure cannot simply be resisted; but regulations and limits are necessary to avoid the pitfalls of precariousness. The need of flexibility has to be balanced with the value of security which is highly priced in time of uncertainty. Here again the ways towards security may differ from those of the past.

⁷ The debate on this issue has been going on in Europe since 1997 when flexicurity was endorsed by the Commission as the major guideline for labor market policies: see among others, T. Wilthagen ed., 2007, *Flexicurity Practices. Expert report for European Commission*; Eurofound, *The second phase of flexicurity*, Dublin, 2013; P. Auer, *Security in labour markets: combining flexicurity with security for decent work*, ILO, Geneva, 2007.

Innovative proposals have been advanced – and in part implemented - in order to promote and guarantee a continuous career rather than specific job security.⁸ The results are uneven even in countries like the Europeans which have experimented for years the so called flexicurity. Much depends on the effective balance between the flexibility required from the employees and the safety net of income support and active labor policies available to the unemployed. Keeping the balance has proved to be difficult even in strong countries, during the recent years of economic crisis. More effective policies have been advocated to support both firms and their employees in the periods of transition, which are becoming a recurrent or normal feature of modern labor markets.⁹

The task of public intervention is particularly important in order to ensure that individual employees are supported in the case of economic downturns and in the job changes which characterize the present turbulent economies. The support should include guarantees of income, personalized assistance in the search for work opportunities and by the opportunity to enrich and update their skills according to their personal capacities and the trends of the labour market. Education and services on the labour market are public goods necessary for both economic competitiveness and for personal and social wellbeing.

Certainly replacing static by dynamic security stability is a difficult social goal, whose attainment requires widespread consensus and involvement of the interested parties.¹⁰ Indeed good faith negotiation is necessary in general for building confidence and even stable social innovation.

5. Continued: active welfare measures as social investment

A redefinition of scope and content is necessary not only for the law on employment but also for the law on social protection and of welfare. In many European countries, strong financial constraints are reducing the resources to be devoted to welfare measures. In the newly developed countries which are undergoing a period of growth, public policy is called to develop a welfare system capable of meeting the essential needs of the population, health and safety, old age pensions, protection from unemployment possibly avoiding the pitfalls and the uncontrolled increase of costs

⁸ The most widely discussed set of proposal is by A. Supiot, 2001, *Beyond employment*, Oxford Univ. Press, Oxford.

The forms of implementation differ following national patterns of flexicurity.

⁹ A. Hemerijck, *Changing welfare states*, 2012, Oxford Univ. Press, Oxford, p. 256 ss.; H.P. Blossfeld, S. Bucholz, D. Hofacker, S. Bertoloni, 2012, *Selective flexibilisation and deregulation of the labor market*, Stato e Mercato, 2012, p. 373 ss.

¹⁰ M. Hansenne, *Labour flexibility: the quest for competitiveness versus the need for social protection*, in *Reconciling Labour flexibility*, quoted, p. 27 ss.

which have burdened some national welfare systems. In all cases, even taking into account the different level of economic and institutional development of the various countries, the new global context requires a ‘recalibration’ of the structures and content of the traditional welfare. A more active set of policies is necessary both to reduce the increasing costs of social benefits and to mobilize the capacities of users, in order to promote their personal development and not simply to assist them in case of need.

An opportunity to be caught is to exploit the potentials of individuals, and even of individualism, by supporting personal trajectories in the various life cycles and by investing in the different capacities of people (or to shape their capabilities). In this perspective welfare measures come to be seen more than a cost as a social investment,¹¹ not only compatible but functional to sustainable growth and to competitiveness. This new approach to welfare measures may facilitate their extension beyond the traditional coverage of core employees, to non-standard workers and to the growing number of migrant workers which have been so far excluded from protection and mostly ignored.

New forms of welfare may be necessary to facilitate the inclusion of groups and areas so far not covered, based on group solidarity and mutual support, like the forms of micro finance and insurance experimented in some emerging countries.¹²

An immense task for the future of welfare is to reach the great number ,almost half of the world population, who is working in the informal economy. A few attempts are being made in some countries to allow these irregular workers to emerge gradually, by way of a combined use of incentives and disincentives; with uneven success.

6. Revitalisation of collective actions

The changes in the economic context which stimulate for labour law and welfare reform require a reappraisal of collective bargaining and industrial relations. How to do it is a controversial issue which has received different solutions also by those, governments and social parties who consider collective bargaining and industrial relations an important form of social participation and of employees protection and not an obstacle to the better functioning of the economy. The role of collective bargaining as a major source of regulation and of promotion of employment is being

¹¹ A. Hemerjick, *Changing welfare state*, quoted, p.133 ss.; M. Ferrera, *The boundaries of welfare: European integration and the spatial policies of social protection*, Oxford Univ. Press; E.B. Cantillon, *The paradox of social investment: growth, employment and poverty in the Lisbon era*, Journal of European Social Policy (JESP), 2011, p. 432 ss.

¹² See the *Report of the Committee on Social Security*, Inter. Labour Conference 2001, Point 2, *Extension of social security coverage*.

threatened by many adverse factors, which are weakening its functioning where it is well established and are hindering its development where it is at an early stage.¹³

Public policies are called to redress the balance of power which globalization and the crisis have made unfavorable for the labor side and the unions. Public support for collective action is important, even more than in the past. Now it has some major testing grounds: a) recognition and support of basic individual and collective rights, beginning with full recognition of freedom of association and of collective action; at company level support of workers participation in the organization of work and in enterprise life; b) recognition of the right of employee representatives to participate in the public institutions which provide employment and welfare services.

The experience of countries where this participation is widely adopted has shown positive results in employment relations, worker welfare and productivity. This approach however requires a major change of attitude in the culture and practice of the social parties, particularly of the unions most dedicated to conflict and often alien to participation. Moreover, unions are required to be more sensitive to the new needs of the different types of employee, not only to the traditional core of insiders and to become not only wage negotiators but welfare and service organizations, acting as intermediaries between public institutions and employees for full access to the opportunities of the current society. A universal safety net is advocated to support the collective participation of employees and citizens in local institutions which are still decisive even in time of globalization.

7. International projection of social policies: multiple levels of action and different legal techniques

The new directions of policy which have been sketched here have a major testing ground within national states. The outcomes have been different, depending on the economic and social conditions of the countries, but also on the quality of the institutions in charge of public policy making.¹⁴

Given the global dimensions of the present economy, national testing of these policies is insufficient, and cannot be successful unless national social and economic policies can meet the challenge of global markets, which can hardly be done in isolation.

¹³ S. Sciarra, 2009, *Transnational and European ways forward for collective bargaining*, WP C.S.D.L.E. "Massimo D'Antona", INT- 73/2009, in <http://csdle.lex.unict.it/workingpapers.aspx>; J. Visser, *The rise and fall of industrial unionism*, Transfer 2012, I. For a critical view L.Baccaro, C. Howell, *A common neoliberal trajectory: the transformation of industrial relations in advanced capitalism*, in *Politics & Society*, n. 4, 2011, p. 521-563.

¹⁴ See on the importance of institutions and of institutional change, C. Howell and R. Kolins Givan, *Rethinking institutions and institutional change in European Industrial Relations*, BJIR 49, 2011, p. 231 ss.

That is why some kind of international projection of these policies must be promoted at the concerted initiative of national and supranational actors. The present status of supranational actions must be greatly reinforced in order to support a common approach (at least) in the major aspects of social policies, which is essential if we want to promote the social dimension and also the democratic development of globalization.

In order to pursue this objective, public institutions and social actors have to interact, differently from the past, with various levels of governance, at least three, namely national, regional and global.

This multiple fields of action are a further factor which requires innovation of both the merit of policies and of the instruments for their implementation. This is a reason why the quest for transnational responses to our common problems is proceeding slowly, in spite of the efforts of (some) actors.

Innovative research directed to frame these responses is needed by national labor experts and comparative lawyers. The interdependence between different national economic and social spaces has become so tight that the traditional terms of comparison are often blurred and need to be redefined. The national legal and social systems, confronted with this interdependence, are exposed to unprecedented form of regulatory competition which is not (yet) subject to a defined set of supranational rules.

No simple replication of national patterns abroad is feasible. The diversity of national economic, social and public institutions, of the countries of the world, combined with the different stages of development of the various countries, requires a patient exercise of reciprocal understanding and of mutual learning. Exchange of good practices, possibly guided by some form of institutional mediation, may lead to virtuous forms of hybridation of different national models.

The transnational dimension of problems has contributed to diversify and adapt also the forms of regulation. The European Union, which is a relatively homogeneous area regulated by a common, although partial, legal system, has experimented the limits of the traditional rules of hard law and has adopted various forms of soft law, even taking into account the scarce effectiveness and coherence of these forms.

The experience suggests that in order to promote gradual experiments in transnationalism, different instruments may be combined, according to the specific objective to be pursued. Some social matters are hardly suitable to be regulated by rigid norms of law, and are better handled by a complex mix of flexible rules, organizational changes, consistent behaviors of social parties and of

public institutions. This is the case eg. of active labor policies, of welfare to work practices and of the measures directed to promote employability.

On the other hand the various forms of soft regulations can be made more effective by improving the procedures of implementation, the instruments of control and monitoring and the review mechanisms. This possibility is only in part confirmed by the experience of the ILO labor standards and by the European open method of coordination (OMC)¹⁵: in both cases improvements are required.

8. Sustainable development

Transnational actions cannot be promoted simply through legal procedures and not even by distributional measures. More comprehensive economic and social policies are needed to create the structural conditions of a sustainable development for all the areas of the world, and to redress the historical obstacles which have hindered the growth of disadvantaged countries.

The pursuance of such an ambitious goal goes beyond the capacity of individual actors and even of individual states. It requires a long term commitment by national governments and by the international organizations. A coordinated action of the governments of the major world economies have been repeatedly advocated by the major international organizations (ILO, OECD, WORD BANK) and in the international summits of these governments. Detailed agendas of measures have been agreed upon and finalized to promote sustainable development, or, as it is usual to say, to guarantee “stability and growth”. The implementation of these agendas has been at best partial and uneven, in front of the uncertain and turbulent state of the world economy.

But beyond the general commitments of these institutions, useful contributions in this direction can come from programs and initiatives implemented in specific sectors and areas by national and regional actors, public and private. Similar initiatives are being taken in great number by way of bilateral and multilateral treaties, which combine mutual regulation of trade with development programs and possibly social clauses.

In fact the possibility to proceed along the path of transnational action and regulation depends on many variables and on a myriad of decisions in the private and public domains, nationally an internationally, with regards to all aspect of policy.

¹⁵ M. Heidenrich, J. Zeitlin (eds), *Changing European employment and welfare regimes. The influence of the open method of coordination on National Reforms*, London NY, Routledge, 2009.

A multiplicity of actors is involved and different vectors may be appropriate according to the issues and to the special dimensions of the specific actions.

9. Multinational enterprises and transnational company agreements

One important actor is the enterprise, which is the key vector of change undergoing itself a process of change. The global dimensions which many companies are acquiring make them a decisive player of transnationalism, in the promotion not only of global trade and international production but also of transnational regulations of employment and of social issues.

The influence of multinationals in these fields may have different impacts. An exhaustive and accountable evaluation of their quality and results is needed, to draw conclusions in the merit, even more so because the role of these companies is a matter of controversy, often more ideological than factual. However the international role of multinationals is already significant and takes different forms:¹⁶ unilateral ad hoc initiatives, stable programs in various economic and social domains, guidelines of corporate social responsibility of variable content and impact, and more recently collective agreements with representative organizations of their employees (works councils and/or national and international unions).

Transnational company -wide agreements can be an important vector of regulation across the borders in many labor and social issues.¹⁷ This type of agreements may have an impact on employment conditions more direct than transnational agreements of wider coverage, concluded between the national or territorial organizations of employees and of employers in the various productive sectors. These latter agreements, according to the present legal regimes, have no legally binding effects on the individual companies and on their employees. The attempts made within the European Union to give an even light legal framework to transnational collective agreements have met with a diffused resistance by the collective organizations of both parties.¹⁸ So the regulatory

¹⁶ILO, *Tripartite declaration of principles concerning multinational enterprises and social policy*, 4th ed., Geneva, 2006. P. Tergeist, *Multinational enterprises and codes of conduct: the OECD guidelines for MNEs in perspective*, in R. Blanpain (ed), *Comparative labor law and industrial relations in industrial market economies*, 2014, W. Kluwer, p. 213 ss.

¹⁷ I. da Costa, U. Rehfeld, *Transnational collective bargaining at company level. Historical developments*, in K. Papadakis (ed), *Cross borders social dialogue and agreements. An emergency global Industrial Relations framework?*, Geneva, ILO, ILLS, 2008.

¹⁸ E. Ales et al., *Transnational collective bargaining. Past, present and future*, Final Report, European Commission, feb. 2006; A. Lo Faro, *Bargaining in the "shadow of" optional framework? The rise of transnational collective agreements and EU Law*, European Journal of Ind. Rel., 2012, 2, p. 153- 165.

impact of these agreements depends essentially on the factual influence that the signing organizations can exert on their national and international constituencies.

The experience shows that the influence of the collective organizations in this domain is reduced with respect to that which they can exert within the national borders. Here they may be helped by friendly governments and the links with their constituencies has been tested by years of common practice. Collective links across the borders are weak because both labor unions and employers associations have never adopted an effective transnational organization, or delegated powers to the international bargainers sufficient to provide them with some kind of legitimation and binding authority on the national and company levels.

The specificity of transnational company agreements, like of national company agreements, is that their regulatory impact on employment conditions depends on the power of the employer to determine these conditions; power which he may exercise on his discretion or according to the terms of the agreement that he has signed with the legitimate representatives of his employees.

This dependence on the power of the employers for the enforcement of company agreements is not irrelevant for the contents of these agreements. They tend to reflect in the first place the priority agenda of the company, which may be more or less influenced by the bargaining power of the employees representatives. The practice of company- wide agreements is likely to grow in line with the general trend towards the decentralization of industrial relations. But it remains to be seen what their impact will be on the general evolutions of industrial relations and collective agreements; whether they will promote bilateral regulations of employment at the level of the enterprise thereby enriching the contents of traditional national bargaining or favour management led practices and (further) reduce the scope of sectorial and territorial collective agreements.

The experience of the agreements signed by some transnational companies with the European works council (EWC) confirms the value of these instruments, which have been an effective vehicles of transnational regulation in many issues of employment and of welfare. In some cases they have promoted good innovative practices of work organization and of workers participation. Often they have managed to regulate matters which have proved intractable at sectorial or territorial levels, in spite of the support given by the European Union to collective bargaining and to social dialogue.

This is the case e.g. of issues concerning the restructuring and reorganization of firms or groups of enterprises, the consequent redundancies, and in general the various processes of outsourcing of work, subcontracting and organizations of supply chains¹⁹.

10. International treaties as vectors of transnationalism. The case of TTIP

The diffusion of International treaties in different forms and with different actors has made them a major vehicle of transnationalism. Their relevance to the regulation of employment and social issues is a matter of open discussion. The recent negotiations going on across the Atlantic to conclude the so called TTIP and for the Pacific area to sign a similar mega-treaty (TPP) are a major testing ground. The outcome of these negotiations, given the importance of the areas and of the actors involved, will set an important benchmark for similar treaties in the future. The scope announced for the agreements, I refer specifically to the TTIP which I know better, is so wide ranging that it will influence not only trade regulations, but the most important aspects of the future development of the world and of the lives of its inhabitants.

The presence of social clauses or of social chapters is frequent in international treaties.²⁰ But they have different contents, variable degree of details and of commitments by the signatory parties. The language itself reflects the difficulty of reaching a compromise in defining these commitments, which are often phrased in vague or ambiguous terms.

The application of the various treaties has been uneven, confirming the importance of the clarity of the compromise, but also of the procedures of monitoring and of implementation agreed upon by the parties. The experience accumulated in the years is a sign of vitality of this form of transnational regulations and of the learning capacity of the protagonists, which have been able to expand often these regulations from trade issues to social and employment issues.

The negotiators of the TTIP, in defining a possible social chapter, have to confront, differently from previous negotiators, two continents which are both economically and socially developed, but whose social regimes are different in many respects. Indeed, they are considered to represent two opposite models, the European social market economy and the Atlantic free market capitalism. Both areas maintain Important institutional and socio economical differences which deeply influence

18 M. Carley, M. Hall, *European works councils and transnational restructuring*, Dublin, Eurofound, 2006.

19. L. Compa, *Labor rights and labor standards in transnational trade*, 25 *law and Pol.*, Y. Int. Bus, 165/1993; ID, *Labor rights and labor standards in transnational trade and investment negotiation. An American perspective*, Transatlantic stakeholders forum, W. Papers series, John Hopkins Univ., 2014.

their social policies. Moreover these latter have been only in part harmonized within the two regional areas, by internal regulations (of the European treaties and of NAFTA) and are exposed to divergent trends in the last periods of economic crisis.

Given these conditions, the public opinion particularly in Europe has expressed strong worries that a compromise in the TTIP might contribute to reduce labor and social standards prevailing in Europe (indeed not only these standards but also those relating to safety and quality of food protection, of the environment etc.). To avoid this risk the European institutions (Council and Parliament) have mandated their negotiators on one hand to safeguard these standards, both European and national, and on the other to insert in the treaty guidelines committing both parties to improve these standards, by full acceptance, application and enforcement of the eight major ILO social conventions and of the decent work agenda.²¹

It is also recommended to include guidelines for the Corporate Social Responsibility (CSR) of transatlantic companies. The companies registered according to the European rules are requested to apply to their employees the right to information and consultation granted by the European directives. Further recommendations are directed to promote best policies and practices in various areas. Important for the future of work (active labor policies, quality of work programs, continuous training measures, promotion of social dialogue, etc.).

These instructions confirm the difficult task of the negotiators in both directions. The Europeans negotiators have to defend their social standards vis-à-vis Atlantic companies and actors which are used to apply different or lower standards, concerning both the individual employment contract (e.g. the law of dismissals) and collective labor relations (e.g. the law of conflict and of collective bargaining). A different but equally demanding task for both negotiators is to agree on how to improve their social policies according to the best international standards.

Promotional clauses in this direction can hardly be enforced by traditional instruments of hard law. They will have to be sustained by joint systems of monitoring by periodical reviews, and by appropriate procedures of dispute resolution like those experienced in similar treaties. The mandate to the European negotiators recommends that the social and economic impact of the treaty be subject to systematic evaluations according to the criteria of the European 'sustainability impact' (SIA). A collaborative and efficient use of similar procedures has proved to be the best way to promote an effective application of these international treaties. It has contributed to foster a positive

20 Resolution of the European Parliament, 8 July 2015, Prov. (2015) 0252; European Parliament, Commission for International Commerce, *Lange Report*, 2014/2228.

dialogue between the various actors involved, companies, workers' representatives, public institutions, labor courts and also organizations of civil society.

Similar indications come from other experiences of international labor market regulations and from the guidelines of international organisms .It is due to the commitment of the various actors, national and international, which participate to the process of formation and implementation combined with appropriate review mechanisms, that labor standards are increasingly recognized across the borders and have promoted a sort of 'incremental transnationalism' useful to sustain regional and sub regional integration processes.

11. Direct forms of transnational action: the use of European Funds

Different and more direct forms of transnational regulation and action have developed within those regional areas which have set up common institutions and legal regimes. In the European Union these institutions have been charged, more or less formally, to regulate not only economic and financial matters, but also a whole range of social issues, which have acquired in many decade a series of common traits. The history of 'social Europe ' confirms the variety of techniques adopted to promote common rules and policies in the social sphere. It shows positive results but also setbacks due to various obstacles: weak recognition and legitimation of community action in these matters, specially vis-à-vis the prior commitments to financial integration, lately the pressure of centrifugal forces and of resurgent nationalisms. The instruments of hard law such as the directives have given way to the OMC and to loose guidelines, which, as indicated above, share the value and the limits of other forms of soft law.

Other types of transnational action have been developed in the Union not by way of legislation nor of formal guidelines but through common European funds and resources to be used by member states and social actors for agreed upon social and economic objectives.²² Among the most important are the social fund for education and training, for the promotion of employment, the fund for regional development, more recently the fund for the 'adjustment to globalization', which is a first transnational measure to counteract the negative effects of globalization on national enterprises and their employees. A major investment program directly financed by Union resources has been

²² On the use of European Fund, see the *Social investment package*, Communication of the Commission (COM 2913), 83, M. Heidenreich, 2009, quoted, p. 22.

announced by the president of the European Union with the aim of sustaining improving the weak performance of the European economies.

Proposals have been advanced to establish a common system of unemployment benefits for European workers financed with European funds. Such a fund would be an important sign of cross border solidarity and would also function as an automatic economic stabilizer for the recurrent periods of crisis: a much needed forms of transnational action.

Similar funds which could be experimented in other regional areas, by way of bilateral or multilateral agreements, to extend across the borders selected forms of welfare, to sustain national welfare systems. Welfare measures need transnational solidarity particularly where they are in an early phase of development and in fields where they mostly suffer the consequences of economic crisis and underdevelopment: fight against poverty, guarantee of minimum levels of income, promotion of young employment, but also special programs to support basic education.

12. Proposals for international research

The scenario sketched here confirms my belief that innovative and common research is necessary to deepen our understanding of the future of work, so as to make contributions to innovative policy making in our field.

The members of the International society for labor law and social security have the intellectual and professional resources to support comprehensive research in this direction. They combine direct experience and knowledge of different national systems with the capacity to evaluate the national traits in an international and comparative perspective.

Here is a tentative list of research areas which seem particularly important in the light of the above presentation and of recent meetings held within the international society.

I - Informal and irregular work

Most of the world's workers are in the informal sector. In many emerging economies, over 75 percent of the labor force is composed of informal businesses and workers (ILO data). As a consequence, labor law studies should focus more specifically on the informal sector.

Major objectives of this research group should be

- to deepen our understanding of the multifaceted aspects of informal and irregular work as they exist in different national and territorial contexts.

- to evaluate the different policy approaches and best practices in labor law and social security adopted by public institutions and by social actors, having regard to the various aspects of informal work and taking into account the regulations most frequently disregarded in the various situations.
- to investigate the possible techniques and policy measures (incentives, disincentives, private and public controls, development programs etc.) useful for promoting the opportunities of informal work to emerge and to be stably accepted in the formal economy.
- to discuss whether and to what extent labor unions and employers, by ensuring collective agreements application, also within SME, may help to fight irregular work, and promote the access of informal workers to the essential protections and benefits of professional training, of labour law and of social security.

II - Migrant workers

Many factors have given new and dramatic dimensions to people migrations: economic globalization, divergent conditions of work and life among different areas of the world, political and civil conflicts in many regions which force entire groups to expatriate. The pressure of various forms of migrations is hitting in different degree many national states and communities.

Some progress has been made in the definition of the legal status of migrants, setting forth the general obligations to respect basic human rights. Nevertheless, more intense attention has to be paid also considering the expansion of this trend, to factors as the high rate of unemployment, the risk of exploitation, trafficking and social segregation, the lack of adequate social protection which makes migrant workers more vulnerable than others employees.

Such vulnerability and distortion determines, among other effects, human labor trafficking. This has attracted a renewed interest due to changing trends in migration flows and the globalization of labor.

- The research group should give priority to some aspects of migratory trends, in particular of workers.
- How to find new measures, national and international, to regulate the flow of migrants workers across national and continental borders in a socially sustainable way.
- How to combine controls and security checks necessary to guarantee social acceptance of migrants with measures to promote their integration in the civil communities and in the labor markets.

- Which specific provisions are effective to protect migrant workers against labor exploitation and to favor their employability in the formal economy?

III. Global trade and labour

International trade has been promoted and regulated in recent years through various regional and international agreements.

The analysis of the agreements of various dimensions (bilateral, regional or continental) should be focused on their impact not only on economic growth but also on employment and on working conditions and workers' rights. In this respect the group should investigate:

- Possible contents of social clauses, and the technologies which they adopt in order to guarantee international labour standards to the individuals and groups affected by trade agreements.
- The role of the law and social actors in implementing and enforcing social clauses.
- The increasing legal relations between foreign direct investments, multilateral trade agreements, domestic labor law regimes.
- International trade agreement effects, in the name of free trade on national measures addressing inequality such as minimum wages, prevailing wage requirements, unemployment benefits, affirmative action for historically excluded groups and other social protections.
- The compliance of recent international trade agreements with the ILO standards.
- A special focus will be placed on ISDS clauses.

IV - Organization, productivity and well-being at work

In the last years the role played by Trade Unions and collective bargaining at national and international level has decreased in importance, while, as a consequence of decentralization processes, a central role is played by collective bargaining at enterprise and at plant level.

Enterprise collective bargaining is regarded as a possible way of fostering workplace flexibility/productivity, efficiency and workers' well-being. Also individual negotiation appears to be a possible tool to regulate working conditions, to increase the individual worker's productivity and, at the same time, his/her satisfaction about wages and other benefits.

For this group research project will focus on

- The role of collective and individual negotiation in the regulation of wages and working conditions.
- The role of enterprise level collective bargaining in fostering workplace flexibility/productivity and workers' well-being.
- The role of enterprise collective bargaining in the regulatory competition.
- The role of corporate social responsibility
- National reforms concerning enterprise collective bargaining in a comparative perspective.
- Best practices of high involvement and team work systems, and of innovative use of technology in work organization (e.g. remote and smart working) in respect to their impact on firms performance and on employees wellbeing.
- Role of management initiatives and of collective agreements in promoting new forms of welfare, such as supplementary pension funds, supplementary health insurance, flexible benefits of various contents.

V. Transnational collective agreements

With the internationalization of the economy and increasing competitive pressures, collective bargaining is developing in new directions. The growing number of transnational companies has introduced new actors and different strategies for collective action, on both the employees and the employers side: Transnational collective bargaining is a response to this challenge.

The transnational dimension acquired by collective bargaining addresses new questions to be investigated by labour law research:

- New and old social actors involved. Is unionism suited for a transnational action?
- New and old issues negotiated at transnational levels: distinguish firm level and sectoral collective agreements.
- The link between the agreements signed by transnational firms and the governance of these firms.
- The role of national governments.
- The role of international organizations.
- The legal and practical effects on labor relations, national and local: distinguish firm level and sectoral collective agreements
- Relations between firm- level agreements and corporate social responsibility.

VI. New forms of social security

The social security systems of most countries, developed and developing, are facing new and pressing problems.

Suitable social security models need to address the challenge of widespread precariousness in work as well as the low wages often provided for precarious workers. While often benefits are conferred according to the length and the status of employment relationship, new types of employment based on a low and fragmented income are spreading and are increasing the number of working poor for which the States must provide means of support. A wider scenario of social exclusion is present in less developed countries, but also in some areas of Europe.

The research project of this group should analyse:

- The challenges to sustainability of the national social security system.
- The possible response to these challenges by public institutions and social actors, at national and international level;
- The role and domains of private and collective forms of supplementary social security and welfare benefits.
- The possibility to extend social security schemes to non-standard employees.
- The ways to strengthen social security systems through minimum income or other inclusion measures and how to activate the beneficiaries.

VII. The role of the State and industrial relations

The globalization of markets is changing the traditional power relations among countries and among their institutions. To what extent it is altering the role and power of the national states it is an open question. The question is of particular importance with respect to industrial relations because the national states have played in most countries a major role in the foundation and development of collective labour relations and institutions.

This research group will analyse in particular -the impact of globalization on the national regulations of the various aspects of industrial relations: rights and representativeness of the social actors, collective bargaining structure and effects, strike action and other adversarial activities.

-the old and new forms of state intervention in Industrial relations :legislation, soft law guidelines, mediation and conciliation, promotion of social pacts, etc. - national reactions to global trade agreements :social clauses and other measures to prevent social dumping, promotion of fair trade practices ,support to transnational collective bargaining, conditions to foreign investments and to

labour mobility, etc. - cooperation among national states and institutions to monitor the effects of interstate commerce and to guarantee the enforcement of transnational agreements.

This is a tentative proposal to be discussed and possibly amended.

Each area of research should be promoted by a study group formed on a voluntary basis, composed of a limited number of international experts selected for their specific field of interest.

Each group should be coordinated by one or two members and will decide the method of work, the duration of research programs and the possible publication of results.