THE AUTNOMOUS AGREEMENTS IN THE EUROPEAN COLLECTIVE BARGAINING SYSTEM

the question about the effectiveness.

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ABSTRACT

Article 155(2) TFEU states that European collective bargaining can result in autonomous agreements between the two sides of industry. Although in general it is perceived as positive that the TFEU recognizes the existence of these agreements, in legal theory as well as in practice, these agreements raises many questions about their legal status and effectiveness. The majority of legal scholars consider them rather weak, since they lack direct effect in individual labour relations. This weakness is based on the presumption that these autonomous agreements need to be transposed in the domestic legal orders of the Member States by further (national) collective bargaining. However, this is not the only opinion; others are also put forward implying that the legal effectiveness of these agreements may be stronger. The aim of this paper is to bring these different visions together in order to analyze their legal effectiveness and assess whether, in theory, they are merely a figurative source of labour law or one that can make a real difference in labour relations.

KEY WORDS: European collective bargaining; autonomous agreements; effectiveness; legal status.

1. Introduction

The legal framework of the so-called European collective bargaining has been already studied by many scholars[1]. It is in article 155.1 TFUE where we can find the possibility that the social partners have to reach agreements at European level[2]. Article 155.2 describes the two options in order to implement these agreements*: "agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member states or, in matters covered by article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission"*[3]

The second option to implement the agreements, this is by a Council decision, results in a Directive. The decision of the Council takes the form of a Directive and consequently it follows the legal rules of these legislative instruments: the agreement reached by the social partners is turned (without changing the content) into a Directive and has from a legal point of view the same characteristics as any other Directive. But it is only the intervention of the Council that makes it possible for the agreements to reach this legal status and it doesn´t come for free: the agreements which pretend to be implemented following this option have to fulfill certain requirements and are controlled and checked in some aspects. This is at the same time a necessary condition to become a Directive (for instance the limit of the competence, only matters covered by article 153 can be regulated by a Directive, since the EU cannot go beyond the competences it has been attributed) and a practical limitation to what kind of agreements the social partners can reach, imposing limitations that are at odds with the tradition of collective autonomy as it interpreted in most of the Member States.

But the focus in the present paper is not in this second option to implement the Union level agreements, but in the first option: the so-called autonomous implementation, which results in autonomous or "weak" agreements[4]. The aim of the paper is to analyze the effectiveness and real impact that this autonomous agreements may have in the European industrial relations, since they have been generally perceived as rather weak instruments lacking direct effect in the individual employment relations. But this is not the only interpretation and is worth to

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[1] See, among many others: CLAUWAERT, S., "European framework agreements: 'nomina nuda tenemos' or what´s in a name? Experiences of the European social dialogue" in SCHÖMANN et al. *Transnational collective bargaining at company level. A new component of European industrial relations?* ETUI, Brussels, 2012. pp 120-121 .AGUILAR GONZÁLVEZ, M.C., *La negociación colectiva en el sistema normativo comunitario.* Lex Nova, 2006; BAYLOS, A., "La autonomía colectiva en el derecho social comunitario", in Baylos Grau, A., (Coord.) *La dimensión europea y transnacional de la autonomía colectiva.* Bomarzo, 2003; DEGRYSE, C., "Historical and Institutional background to the Cross-industry Social Dialogue", in DUFRESNE, A., DEGRYSE, C. y POCHET, P., *The European Sectoral Social Dialogue.* Peter Lang, 2006; GUÈRY, G., "European collective bargaining and the Maastricht Treaty". *International Labour Review,* Vol. 131, 1992, n 6. LO FARO, A., *Reality and Myth of Collective Bargaining in the EC Legal Order.* Hart Publishing, 2000; RODRÍGUEZ FERNÁNDEZ M.L., "La negociación colectiva europea" Manuales de formación continuada CGPJ nº 36/2006.

[2] Art 155.1 TFUE: "should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements".

[3] Art. 155.2 TFUE.

[4] LO FARO, A., *Reality and Myth*…., p. 91. Op. cit. 1.

explore the different theories as well as the practice to explore to what extent these agreements could be stronger as presumed. To do so, I will proceed in three sections.

In a first section, I will try to gain a better understanding on the meaning of the ambiguous expression *in accordance with the procedures and practices specific to management and labour and the Member States* in article 155.2 TFUE. To do so, the different interpretations that the scholars have made about this point will be commented and therefore we will be in position to analyze the different consequences of the subsequent theoretical positions (in terms of the effectiveness of the agreements).

In the second section, I will try to put some light with a brief example about what is done in practice: how are the autonomous agreements implemented in practice in different Member States. To do so I will comment briefly how the autonomous framework agreement on work-related stress has been implemented in different Member States.

Finally, in a third section, I will comment some of the problems that are found both in the theoretical positions and in practice. It will be also in this section where I will also try to figure out some conclusions about the effectiveness and real impact these autonomous agreements may have in the European industrial relations.

Section 1: Article 155.2 TFUE and the autonomous option to implement the Union level agreements. Review of the main theoretical approaches.

As it has been said in the introduction, in article 155.2 of the TFUE there is an option to implement the agreements reached by the European social partners which consists in applying these agreements in accordance with the procedures and practices specific to management and labour and the Member States. The question here is: what does this mean and imply?

It is obvious that the expression is ambiguous and rather unclear, and no further explanation is given in the Treaty that could help us to clarify its meaning. Only two documents by the Commission commented something about this issue.

In the 1993 Communication of the Commission[5] it was stated that when the social partners wanted to apply the agreements following the autonomous option, the Declaration of the High Contracting Parts in Maastricht (later Declaration number 27 annexed to the Amsterdam´s Treaty) had to be taken into account. In this Declaration it was said that "the first of the arrangements for the application of the agreements between management and labour at Community level (…) will consist in developing, *by collective bargaining according to the rules of each Member State*, the content of the agreements, and that consequently this arrangement implies no obligation on the Member States to apply the agreements directly or to work out rules for their transposition, nor any obligation to amend national legislation in force to facilitate their implementation" (emphasis added). Even if this Declaration could help

[5] European Commission (1993) Communication from the Commission on the *application of the agreement on social policy,* COM (93) 600 final, 14 December 1993, Brussels.

to interpret article 155.2, the truth is that later, in the following versions of the Treaty, this Declaration disappeared and now is not part of the Treaty are any more.

Apart from this, the only other reference made by the Commission in relation with the effectiveness of those agreements was in the Communication of 2004[6], when, talking about the autonomous agreements, it said that "With regard to the second type of agreement – those implemented in accordance with the procedures and practices specific to management and labour and the Member States - it is the social partners themselves who are responsible for implementing and monitoring these agreements (…)Effective implementation and monitoring is important in the case of agreements of this kind, particularly if they have been negotiated subsequent to a Commission consultation under Article 138 (article 154 TFUE). Article 139(2) (article 155.2 TFUE) states that the Community level agreements *shall be implemented*, which implies that there is an obligation to implement these agreements and for the signatory parties to exercise influence on their members in order to implement the European agreement"

This is the scarce legal framework and the short comments from where the scholars have made their statements regarding the legal position and legal effectiveness of these autonomous agreements. Not surprisingly, scholars are divided when it comes to the interpretation of this point and we can find different doctrinal positions. Obviously, the answer to the previous question will also determine what kind of effectiveness those agreements may have. In this section I will describe the different positions that can be found in the literature and the implications for the effectiveness of the instruments that these positions could have.

The majority of the scholars[7] in what can be considered the mainstreaming position defend that the agreements have some legal value even before their application. This is coherent with the communication of the Commission in 2004 and also with the legal principle *pacta sunt servanda*[8]. This would put at least some obligations bounding the parties (contractual obligations), being a different question the one about what kind of legal effects could have the European agreements in the individual relations of employment.

In this sense, the scholars that can be placed in this position understand that article 155.2 is indirectly recognizing, since the very moment that its content is about ways of application, that the agreements stated in article 155.1 have not direct application[9], but the parties that signed the agreement (and their members) are obliged to implement it.

In order to be applied to the workers and employers the agreements would need to be implemented using one of the two options article 155.2 provides for. The first option, which is the one we are analyzing, would mean that it is necessary to apply the agreements by national

[6] European Commission (2004) Communication from the Commission *Partnership for change in an enlarged Europe –Enhancing the contribution of European social dialogue,* COM (2004) 557 final, p.17, 12 August 2004, Brussels.

[7] See, among many others, SCHIEK, D., "Autonomous collective agreements as a regulatory device in European labour law: how to read article 139 EC"., *Industrial Law Journal,* vol. 34 n 1. 2005. p. 48; BAYLOS, A., "La autonomía colectiva…" Op.cit, p. 1

[8] LANDO, O., BEALE, H., *The principles of European Contract Law: Parts I and II- Combined and revised.* Kluwer, 2000, pp. 101-102.

[9] In this sense, BAYLOS GRAU, A., "La autonomía colectiva…" p. 47. Op. cit. 1

collective bargaining; this is, to incorporate them into the national agendas of bargaining and to duplicate their content at national level. This would mean that the legal effectiveness of these agreements would depend on the social partners at the national level (following the national regulations on collective bargaining). This interpretation seems consistent with what the Commission said in its Communication in 1993, and also, as we will see in section 2, with the practice of the social partners.

The consequences of this position in relation with the effectiveness of the agreements are that when the European social partners chose for this option cannot be sure about how their agreement is going to be implemented in the different Member States. The implementation and the level of effectiveness would be different in the different systems due to the application of the national regulations of collective bargaining and it wouldn´t be possible to secure a minimum homogenous impact nor even any impact at all in some Member States[10]

Is in this sense that some authors consider this option as unacceptable[11], since there is no guaranty of at least some minimum common level of application of the agreements, raising the question about what is the point of having collective agreements at European level if their application in the different Member States is going to lead to different regulations not achieving what could be considered their *leit motiv,* that is, a common or at least homogenous regulation in Europe, avoiding *social dumping* and regulatory competition.

The core question of the position we are analyzing would be to what extent the national social partners are obliged to implement the agreements reached at the European level, and it is precisely here where no answers are provided by the EU legal framework and where the differences between national regulations make it difficult to find a common answer. It seems that this question is in relation with the representativeness of the European social partners and the legal links they have with their national members. The instrument that could articulate from a legal perspective both levels seems to be no other but the mandate. Unfortunately it is beyond the scope and limits of the present paper to go into detail into the mandate´s theories and to discuss under what conditions it could work between European social partners and their national members and affiliates. But *grosso modo* the idea behind would be as follows: if the organizations at European level involved in an agreement were bargaining using a mandate of their members or affiliates, the results of their bargaining would oblige to those who gave them a mandate to do so[12].

It is in this context where some authors speak about the possibility of these autonomous European agreements having direct effect[13] by means of the application of the international

[10] That was early highlighted by the scholars , see among others APARICIO TOVAR, J.**,** "¿Ha incluido el tratado de Maastricht a la negociación colectiva entre las fuentes del Derecho Comunitario?", *Revista Española de Derecho del Trabajo* nº 68/1994, pp. 917-927.

[11] KELLER, B., "Social dialogues- the state of the art a decade after Maastricht" *Industrial Relations Journal,* vol. 33, n 5, December 2002. pp. 415-416.

[12] AGUILAR GONZÁLVEZ, M, C., *La negociación colectiva…* pp. 247-248. Op.cit. 1.

[13] OJEDA AVILÉS, A., "¿son *meras recomendaciones* los acuerdos colectivos europeos?" *Relaciones Laborales* nº 17/1998. The argument of this author is to consider the European autonomous agreements as international contracts and therefore subject to the rule of International Private Law, from where a direct application would be possible according to the theories of mandate and representation if there is a chain of mandates going from the affiliates at national level to the actors in the European level. The

private law´s rules (this option is not going to be analyzed in this paper) or appealing to the "parallel status" theory, where we can find a second position regarding the interpretation of article 155.2 TFUE.

The "parallel status" [14] theory defends that the autonomous option for the implementation of the agreements should include something else than the mere possibility of applying the agreements reached in the European level by means of national collective bargaining. The central argument here would be that the right to collective bargaining is a fundamental right in the EU system, implying that even when this doesn´t mean the obligation to establish in detail what kind of legal effects the collective agreements need to have when reached at European level, it wouldn´t be possible to come to the conclusion that they don't have any legal effect at all, because this would infringe the right to collective bargaining of the European social partners. So, the question here would be how to achieve that the European agreements would have a direct effect in the different Member States with full respect to the rules of the Treaty.

The theory of "parallel status" solves this dilemma by saying that the European agreements should have the same direct legal effect as the national agreements have in each legal order of the different Member States; in this sense, the European agreements will follow the rules of the national legal orders in order to be applied. This theory offers the advantage of avoiding the need of a "second wage" of bargaining: the agreements reached at EU level won´t need a further bargaining process at national level by the national social partners in order to be applied. But it doesn´t solve the problem of the unequal application: in some countries they will be applicable *erga omnes* under certain conditions, while in other this will never happen, not achieving the homogenous or minimum common floor in the implementation of the agreement.

However, there are other possible interpretations of article 155.2 TFUE. There is another group of scholars that think about those agreements as if they were just *gentlemen´s agreements*[15]; the parts in the agreement wouldn´t have any legal obligation, but a moral one.

The aforementioned authors understand that these agreements are nothing else as recommendations to the national social partners, being those the ones that will introduce or not the content in the national collective bargaining making it binding what has been agreed in the European level. In this sense, when the European social partners reach an agreement, it wouldn´t have any effect not in the EU legal order, nor in the one of the Member States, and only in a posterior moment they will acquire some legal relevance when they are developed in

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problem here would be twofold; in one hand the complexities deriving of such a chain of mandates for every process of bargaining and those deriving of the application of the rules of international private law in the other hand.

[14] DENIERT, O., "Modes of implementing European Collective Agreements and their impact on collective autonomy" *Industrial Law Journal,* 32 (4), 2003. p. 321.

[15] VALDÉS DAL-RÉ, F., "La contratación colectiva europea: más que un proyecto y menos que una realidad consolidada" *Relaciones Laborales* II, 1997, pp. 63-78. pág 14; ZACHERT, U., "Pactos colectivos, ¿un modelo para el futuro?" *Relaciones Laborales* n 19, 2000. pp 117 y 120; MARGINSON, P., SISSON, K., "Industrial relations at Community and sector levels: a Glass half full as well as half empty?" in MARGINSON, P y SISSON K., (eds.) *European Integration and Industrial Relations.*Palgrave, McMillan, 2004. p. 87.

the different Member States by means of national collective bargaining and only as outcomes of this national collective bargaining, not having any relevance at Union level.

Close to the this ideas we can find Antonio Lo Faro position: the agreements that opt for this autonomous via of implementation are irrelevant for the EU legal order[16], because article 155 TFUE doesn´t establish a framework structure or recognition norm of these agreements in the EU legal order. This no intervention could be understood as respectful with the principle of collective autonomy of the social partners, but, according to Lo Faro, in all the pluralistic systems where this principle is present, there is always at least one way to secure that the outcomes of the collective agreements will have some impact in the legal order, via constitutional recognition or by other means or instruments that could assure this impact.

This is not the case in the EU level, nor is the EU system one that recognizes autonomy to the industrial relations system and at the same time gives legitimacy to it by means of recognition by the legal order of the outcomes of its autonomous regulations, because we cannot find such a recognition rule in the EU system[17].

I will end this section with the interpretation proposed by Schiek[18]. This author defends that it is precisely the diversity of legal traditions in the regulation of collective bargaining thorough Europe the reason that makes it impossible to design a common pattern to secure the normative function of the European collective agreements.

The proposal of Schiek to interpret the autonomous agreements departs from a different reading of article 155.2 TFUE. According to him, this article has been read by the majority of the scholars understanding that the procedures and practices are referred to the social partners *in* the Member States (as we will see in section 2, this is literally how the social partners have interpreted it in their framework agreement on work-related stress). Therefore, in this reading, the European social partners are absent and restricted to the only option, when it comes to the application of the agreements, to do it at national level (as it would be in the already mentioned theories of parallel status and "second wage" of bargaining at national level). It won´t be possible to design a pure European agreement at the European level that could be applicable to the individual employment relation.

Opposite to this reading, Schiek claims that article 155.2 TFUE should be read as it is written: procedures and practices specific to management and labour *and* the Member States (emphasis added). With this reading it would be possible to interpret the reference to the social partners as addressed to the European social partners. They would be the European social partners the ones who will decide how to apply the agreements: is their decision whether to send them to the national partners (second wage of collective bargaining) or to apply them directly.

The reference of the article to the Member States should be then interpreted as imposing a limit to the European social partners in the sense that they couldn´t chose to apply the agreements by a method that would be contrary to the concrete practices of one or more

[16] LO FARO, A., *Reality and Myth…* pp. 92-103. Op. cit., 1.
[17] LO FARO, A., *Reality and Myth…* p. 96. Op. cit., 1.
[18] SCHIEK, D., "Autonomous collective agreements…" Op. cit., p. 4.

Member States, working as a security clause that would protect the national collective bargaining from the European one[19].

The reference in article 155.2 TFUE to the procedures and practices specific to management and labour and the Member States should be understood as the procedures and practices of the European social partners which are not opposite to the national traditions of the Member States. In this sense the article will go beyond the contents of the Treaty opening field to a real collective autonomy of the actors.

In this interpretation article 155.2 would work as a recognition norm in the sense that it has already been discussed. It would function as a provision that could make it possible to incorporate to the EU regulation what has been developed in an autonomous framework. So, according to this ideas, an agreement that has been reached autonomously by the social partners need to have a legal relevance in the EU legal order and it is article 155.2 TFUE the provision that makes it possible.

This last interpretation would open the path to the European social partners to establish their own procedures and practices in relation with the effects that the European collective agreements will have in the individual industrial relations. It is not difficult to imagine that ideally this process could lead to a "basic agreement that will replace the legal regulation"[20]

But also with this proposal, even when we avoid some of the biggest problems which can be found in the previous options (dependence of the national partners, non-homogenous application, etc.) some others problems and shortcomings are present: it doesn´t solve the question about the effectiveness and impact of the autonomous agreements *a priori*, being necessary to analyze the content of each agreement and the development of the practical experiences. Nor it is sure that the European social partners are strong enough to develop such an autonomous framework without the involvement of the national level actors or the EU institutions. Finally, even when it is such an interesting interpretation, it doesn´t answer our first question, which continues un-resolved: which is actually the effectiveness and impact of the European collective agreements that are implemented according to the autonomous option? It seems necessary to look into the practical experience we already have.

Section 2: The practical implementation of the autonomous agreements. The case of the framework agreement on work-related stress.

How are the European autonomous agreements implemented in practice? How do the national social partners get involved? What impact do they have on the individual industrial relations?

Before 2002, these questions about the effectiveness and impact of the autonomous agreements were highly theoretical ones, since no autonomous agreements at all had been signed. But in 2002 the European social partners concluded a framework agreement on

[19] SCHIEK, D., "Autonomous collective agreements…" p. 52. Op, cit., p.4.
[20] SCHIEK, D., Idem, p. 54.

telework and decided to implement it autonomously. Since then, some others agreements have been signed and implemented according to the autonomous option.[21]

We have analyzed in the previous section different theoretical opinions about what the legal nature of the European autonomous agreements could be, but we have found that there is no consensus and many questions remain open. In this section we will have an impression of what has been done in practice to implement the autonomous agreements through one example (the implementation of the framework agreement on work-related stress), hoping that this can bring some light to the theoretical debate.

The reason why we are going to focus in just one example is because, unfortunately, it is beyond the scope of this paper to do a systematic and comprehensive analysis of the practical experiences in the implementation of all the agreements in every country. The aim of this section is, therefore, more modest: I will illustrate how one of these European autonomous agreements has been implemented in practice in different Member States.

The source of information for this section comes from the Report by the European Social Partners adopted at the Social Dialogue Committee on 18 June 2008 about the implementation of the European autonomous framework agreement on work-related stress[22].

It is in article 7 of the aforementioned agreement where we find the provisions regarding the implementation and follow-up. It seems that the agreement is directly addressed to the members of the European social partners[23], committing them to implement it in accordance with the procedures and practices specific to management and labour *in* the Member States (emphasis added). The temporal limit to implement the agreement was three years. The Member organizations had to report on the implementation of the agreement to the Social

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[21] European autonomous agreements can be found both at cross-sector *(framework agreement on telework 2002; framework agreement on work-related stress 2004; framework agreement on harassment and violence at work 2007 and framework agreement on inclusive labour markets 2010)* and sector level *(European agreement on vocational training in agriculture 2002; framework agreement on the European license for drivers carrying out a cross-border inter-operability service 2004; framework agreement on worker´s health protection through the good handling and use of crystalline silica and products containing it 2006; framework agreement on the reduction of workers' exposure to the risk of work-related musculo-skeletal disorders in agriculture 2006 and framework agreement on the implementation of European hairdressing certificates 2009).*

[22] Available at http://www.etuc.org/IMG/pdf_Final_Implementation_report.pdf; (last visited 28/05/2013). On 8 October 2004, ETUC, BUSINESSEUROPE, UEAPME and CEEP signed the autonomous framework agreement on work-related stress. In the foreword of the Report, it states that the European social partners opted for the agreement to be implemented directly by their members, in accordance with the procedures and practices specific to management and labour *in* the Member States. It also said that at European and national level, the members of the signatory parties agreed on instruments and procedures for implementation as well as they disseminated, explained and transposed the European framework agreement in their European and national context between 2004 and 2007. Links to concrete implementation and dissemination results (collective agreements, legislative texts, protocols, guidelines, brochures, websites, etc.) are provided in the annexes of the Report.

[23] It says "in the context of article 139 of the Treaty (today 155 article TFUE, this voluntary European framework agreement commits the members of UNICE/UEAPME, CEEP and ETUC to implement it in accordance with the procedures and practices specific to management and labour in the Member States"

Dialogue Committee, which had to prepare a full report on the implementation action[24]. If requested by one of them, the signatory parts shall evaluate and review the agreement after the fifth year of the signature. Finally, the implementation of the agreement did not constitute valid grounds to reduce the general level of protection afforded to workers and did not prejudice the right of social partners to conclude, at the appropriate level, including the European level, agreements adapting or complementing the agreement.

Those are the rules about the implementation that we can find in the agreement itself. The first thing that seems clear is that the signatories have interpreted article 155 TFUE as the majority of the scholars did, that is, understanding that it is necessarily the social partners at the national level the ones who must apply the contents of the agreement (second wage of negotiation). It seems clear at the same time that there is an obligation to do so, as far as the agreement appeal directly to the national members of the European organization to implement the agreement.

The second aspect that is highlighted in the implementation report is that the process of implementation is complex, with different actions and phases, and highly different in each of the Member States, as the scholars thought it was going to be.

The first and more immediate activities in order to implement the agreement were dissemination activities such as translation of the agreement to the local languages and national and trans-national dissemination activities (seminars, conferences, round-tables, etc.)

Even in this point differences between countries were present: in some countries (Finland) there were joint seminars by the social partners to raise awareness in workplaces and the media; in others (Germany) they jointly and separately organized and or participated in high-level national and international conferences presenting the European framework agreements to a diverse public; in others (Spain) national trade unions edited guides and trade union journals, etc.

Also the European interprofessional social partners conducted themselves several activities. They considered that, as signatory parties, their role goes beyond the negotiation and includes also assistance to their member organizations in the implementation of the agreements and the design of activities to raise awareness about the agreement. In this sense they conducted several activities such as mentoring programs, translation and diffusion via websites. Of special interest were the seminars involving confederations from the new Member States with the aim of further develop the skills and knowledge of trade unionists from those States in order to help them to effectively implement the agreements at national level.

The second step was the implementation of the agreement itself, and here we find striking differences between countries, especially in the choice of instruments to do so. The first thing to take into account is that there is not information available about the implementation process in all the Member States, because joint reports from some countries (Bulgaria, Estonia,

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[24] This is the implementation report we have referred supra.

Greece, Iceland, Italy and Lithuania) were not received. In the rest of the countries differences were found reflecting the different approaches of Member States and social partners[25].

The instruments chosen to implement the agreement varied among countries, but most of them used social partner agreements. This doesn´t mean much, since not all the social partner agreements, which were dependent on the different industrial relations systems in the Member States, had the same legal status, differing also in terms of their obligations to the signatory parties and on the bargaining partners at lower levels.

In many Member States the European framework agreement on work-related stress was implemented through guidelines jointly agreed by the employers and trade unions: in Sweden, joint agreements were signed in the private as well as in the public sector, being used as pure guidelines allowing flexibility in the sense that the social partners were left free choice on how to implement (collective agreements, plans of action, educational programs). In Finland it adopted the form of a joint recommendation on preventing and managing work-related stress whose aim is to increase understanding and awareness about this topic and to provide methods for identifying and managing work-related stress. In the Czech Republic, the CES affiliates included the issue of work-related stress into the recommendations to negotiators for collective bargaining. In Spain the European framework agreement was incorporated into the ANC, which is a large intersectoral agreement signed by the most representative trade unions and employers' organizations at national level and that serves to inform and recommend actions to the social partners at lower bargain levels, who can insert them into sectoral or company level collective agreements.

Other instruments used to implement the framework agreement were the national, sectoral and company level collective agreements. This is the case in Belgium, where already in 1999 the social partners concluded and national collective agreement on management and prevention of work-related stress, which is considered by the Belgian interprofessional social partners as being in conformity with the European framework agreement. In Romania the interprofessional social partners agreed in 2006 upon a collective agreement at national level which tackles specifically with work-related stress. In France, the interprofessional social partners concluded on 2 July 2008 a collective agreement which transposes the European framework agreement. The Swedish social partners in the municipal sector signed a collective agreement in April 2005 in which the implementation of the European framework agreement was included as an issue for future commitment. In Spain, several collective agreements (with provincial or regional scope) were concluded dealing with the topic work-related stress. In Germany, Sweden and Portugal examples of company level agreements can be found[26]. It is necessary to remark that these different collective agreements in the different countries have different legal value and impact, scope of application, etc.

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[25] The report acknowledges these differences with a positive attitude: "the fact that employers and workers, and/or their representatives in different Member States have employed different strategies in implementing the European agreement is testament to their different history, national social settings, and communication style and structure. Every Member State has naturally used its own methods and instruments to implement the European agreement". *Implementation of the European autonomous framework agreement on work-related stress report.* p. 18.

[26] Fastigo in Sweden; Daimler AG, Gothaer Versicherungen and Debeka Versicherungen in Germany; EDP Produçao, Montepio Geral and Caminhos-de-ferro Portugueses in Portugal.

Other option was the implementation through national legislation. The Norwegian Working Environment Act covers in a general way the content of the European agreement and therefore, according to social partners, gives a satisfactory legal foundation for focusing on work-related stress. In a similar way in Denmark the social partners of the private sector considered that the European framework agreement was already implemented by means of the existing rules and regulations. In Belgium, Royal Decree of May 2007 concerning the prevention of psychosocial burdens caused at work extended the application of the already mentioned 1999 interprofessional collective agreement on management and prevention of the work-related stress to the public sector. In the Czech Republic the content of the agreement was integrated via amendments into the new labour code. In Latvia, implementation of the agreement led to new provisions in labour law in particular on the determination and evaluation of work environment factors.

Finally, also tripartite activities as well as complementary initiatives were carried out in order to implement the framework agreement. Activities in cooperation or with the support of public authorities such as labour inspectorates, public institutes, ministries, etc. were developed in some countries. In the UK the social partners formed a working group facilitated by the (then) Department of Trade and Industry to oversee the implementation of the agreement. In Luxembourg tripartite discussions in the Economic and Social Committee led to the adoption of a report in June 2006. In the Netherlands, the interprofessional social partners developed in cooperation with the Ministry of Social Affairs and Employment a new-based risk-assessment which also deals with work-related stress. The complementary activities range from tripartite, bipartite or individual social partner training activities to assessment tools.

Section 3: The effectiveness of the European autonomous agreements. Obstacles and challenges and some concluding remarks.

To conclude this paper, in this section I will try to summarize the findings of the previous two, highlighting the obstacles and problems that the autonomous agreements find during their implementation. Also the challenges they have to face to become a component of the European industrial relations with some real impact.

The autonomous option for the implementation of the European agreements remains rather ambiguous, since there is no a clear legal framework at European level that answer some of the questions it opens. We have seen that only with the content of article 155.2 TFUE, that is, the application in accordance with the procedures and practices specific to management and labour and the Member States, different interpretations are possible, each of them presenting different problems and shortcomings. I have decided not to go into some of the biggest problems or unresolved questions of every system of collective bargaining (such as the questions about representativeness or the question about the mandates) that have not been commented in this paper due to the scope and limits of it. But even then, some problems regarding the implementation of the agreements remain crucial.

The lack of direct effect in the individual relations makes the agreements dependent on further developments and actions at the national level (by the national social partners). There are theories, as we have seen, that defend the possibility of a direct effect: some of them by

means of the application of international private law[27], others through theoretical constructions such as the theory of “parallel status”[28] or proposing a different understanding of article 155.2 TFUE in the sense that it has to be read in such a way that allows the autonomous agreements reached at European level being recognized as legally binding by the EU-legal system[29]. But even in those cases we will find some important problems such as the unequal application of the agreements in the different Member States (since they will depend on the national legal framework) in the case of the parallel status theory or the unresolved question about what would be the legal nature of the agreements reached autonomously and later recognized by the system and their legal effects in the case of the proposal by Schiek.

Assuming nevertheless the mainstreaming interpretation of the lack of direct effect of the agreements and the need of a second wave of collective bargaining at national level, we find that the legal effectiveness of these agreements would depend on the social partners at the national level. This will lead again to the unequal implementation thorough the EU territory that has been considered unacceptable by some[30], since it would be inconsistent with the final rational of having a European level of collective bargaining. Furthermore, the parties cannot be sure about how their agreement is going to be implemented, because it is not clear the legal nature of the obligation (if there is any) of the national social partners to implement the agreement.

Finally those positions that defend the European agreements as merely gentlemen´s agreements solve nothing but exacerbate the previous problems.

The European social partners themselves, from their experience in the implementation have identified some problems. Their members in the national level have found problems when dealing with the European framework agreements. Some of these problems were specific from the Eastern European members, like the lack of experience with autonomous social partner negotiations and not fully developed social dialogue structures. Some others where more closely related with the specific content, work-related stress, which was not present before in some of the national systems, like in the case of Portugal.

When asked about the added value of the European agreements, the social partners defend that the agreement was a catalyst for action and awareness and they don´t seem to much worried by the differences among countries in the implementation process[31]. They believe that the existence of the European agreement and the obligation to implement it “clearly created momentum to step up efforts and make progress towards the establishment of (more)

[27] OJEDA AVILÉS, A., “¿son *meras recomendaciones…* Op. cit.
[28] DENIERT, O., “Modes of implementing European Collective Agreements… Op.cit.
[29] SCHIEK, D., “Autonomous collective agreements…” Op. cit.,
[30] KELLER, B., “Social dialogues- the state of the art…” Op. cit.,
[31] “The fact that different member states have employed different strategies for implementation is a positive element. A common understanding of (work-related) stress is very difficult and in this sense the European agreement has added value in terms of enabling social partners to discuss the topic and find solutions that benefit workers and employers, as well as fitting the national situation”. *Implementation of the European autonomous framework agreement on work-related stress report.* p. 38.

appropriate rules and mechanisms to identify, prevent and manage problems of work-related stress"[32].

But even when some of the mentioned problems could be solved with the practice, by means of autonomous procedural arrangements, and when in some topics to have a common regulation is not so crucial, some other problems cannot be solved so easily, specifically the problems about the legal nature and effectiveness of the autonomous agreements.

In this sense, the lack of a more complete legal framework seems of the utmost importance. And it seems that a further development of those autonomous agreements won´t be easy if at least some of these problems are not overcome. The fact that the impact on working conditions of such agreements is ambiguous and depends on the action of the social partners at the national level is maybe one of those. As it was stated in Ales report[33], such a situation can hamper the development of a European level of collective bargaining in the view of: guaranteeing a direct and homogeneous impact of the agreements on working conditions and introducing in the bargaining agenda other topics. In this sense some authors have spoken about the combination of the missing framework and the structural and cultural differences between national systems as the main brake for a further development[34]

Consequently, the most defined proposal to solve such kind of legal problems would consist on the development of a European framework for the European collective bargaining[35]. Unfortunately again, it there is no possibility in this paper to discuss about this point and the many challenges that it impose.

We can finalize this paper with some concluding sentences. It has been shown that there are different theoretical positions that explain us what kind of agreements are those agreed at European level and implemented autonomously. Those positions reach different conclusions about what kind of legal obligations do they impose, what kind of effectiveness do they have and what impact can we expect they may have in the individual labour relations. From a more pragmatic point of view we have seen how one of those agreements was implemented and by which means in different Member States. We can conclude that there is neither a single nor a simple answer to the questions we have asked in this paper and that the European collective agreements in the autonomous form have to face many challenges in the present as well as in the future to become an important part of the European industrial relations. Maybe some of the problems they´re facing could be solved by practice and by the autonomous arrangements that the social partners themselves could develop at European and national level. But to solve others, specially the legal ones, maybe further legal regulation is needed.

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[32] Idem, p. 38.

[33] ALES, E., et al. *Transnational collective bargaining: past, present and future.* 2006. p. 15.

[34] JAGODZINSKI, R., "Transnational collective bargaining: a literature review" in *Transnational collective bargaining…* p. 54. Op., cit.

[35] This is exactly the aim of the Ales report.