

## Stabilising Collective Agreements in Continental Europe: How Contract Law Principles Reinforce the Right to Collective Bargaining

ALEXANDRE DE LE COURT\*

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### Abstract

Most continental European legal systems where normative value is conferred on collective bargaining agreements also include a legal mechanism, known as after-effects, whereby the content of such agreements survives after they expire. After-effects can be regulated by specific legislative provisions. Where such provisions are absent, jurisprudential constructions based on the application of general principles of contract law have been applied instead. This comparative study reveals an important convergence between these models, in terms of both the legal techniques adopted and in the objectives pursued. The study also reveals that states share common concerns around maintaining a certain balance between negotiating parties, whether through consolidating the respective models of collective bargaining or via correcting dysfunctions introduced by emergency measures. Those solutions can be embedded in the international definition of the right to collective bargaining, revealing the importance of a holistic vision on regulations underpinning the European collective bargaining model.

### Key words

Collective agreement; after-effects; contract law principles; promotion of collective bargaining

### Resumen

La mayor parte de los ordenamientos jurídicos de Europa que confieren valor normativo a los convenios colectivos incluyen un sistema de supervivencia del contenido de éstos cuando expiran (ultraactividad). En algunos casos, está regulado por disposiciones legislativas específicas; en otros, por construcciones jurisprudenciales. El estudio comparativo muestra una convergencia importante entre los modelos, revelando preocupaciones comunes en el mantenimiento de un cierto equilibrio entre los interlocutores de la negociación colectiva, sea mediante la consolidación de los modelos existentes o mediante la corrección de disfunciones provocadas por medidas de emergencia. Estas soluciones se integran en la definición internacional del derecho a la negociación colectiva, lo que revela la importancia de

\* Lecturer in Labour Law and Social Security Law. Contact details: Universitat Pompeu Fabra, Carrer de Ramon Trias Fargas, 25-27 Barcelona. Email address: [alexandre.delecourt@upf.edu](mailto:alexandre.delecourt@upf.edu); ORCID: <https://orcid.org/0000-0001-9374-5498>



una visión holística de la regulación que sustenta el modelo de negociación colectiva europea.

**Palabras clave**

Convenio colectivo; ultraactividad; principios de derecho de los contratos; fomento de la negociación colectiva

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## 1. Introduction

Most legal systems in continental Europe confer normative value to collective bargaining agreements, such that a collective agreement invalidates, displaces or substitutes contrary provisions contained in other sources, above all those of a contractual origin. These European legal systems also include a mechanism whereby the content of collective agreements, mainly individual employment conditions, survive after the agreements expire. Such surviving elements are generally known as *after-effects*.

In some cases, after-effects are regulated by specific legislative provisions. Where these are absent, regulation is supplied by jurisprudential constructions, based on the application of general principles of contract law and on principles regulating the relationships between sources of law, mainly connected to that idea of normative value. This legal institution, which has developed in different forms, can roughly be described as a contractualisation of employment conditions; or in other words, the incorporation of employment conditions contained in a collective agreement into individual employment contracts.

This comparative study of various cases reveals important convergences between these models, both in the legal techniques they adopt and the objectives they pursue. The study further reveals a common concern by courts in various European states to shelter workers by appealing to the protective function of Labour Law, either via consolidating the respective models of collective bargaining or by correcting dysfunctions introduced by labour law reforms. In the Spanish case, this development has come in response to the disruption of collective bargaining that occurred under supranational pressure in the context of crisis measures. In other states, various solutions have been advanced either in the absence of express legal regulation, or in the more common context of resolving questions of application of existing legal instruments.

This study first analyses models where the question of after-effects is expressly regulated by law. The second section discusses models where the system of after-effects has been constructed by the courts, and where the influence of general contract theory and that of the relationships between legal sources is more explicit. Within the second section, the Spanish case is of particular importance. The jurisprudential construction of after-effects of collective agreements has emerged as a response to recent legal reforms that have created a regulatory void. Moreover, the reasoning of several courts on this matter goes further than the more classical narrative of the protection of individual workers, and provides some insights into the relevance of the proposed solutions for collective bargaining conceptualised as a collective right.

Finally, while in most cases there is no explicit reference to international law, with the exception of Spain the third section of this study shows that the different solutions proposed by jurisprudence are also embedded in the international definition of the right to collective bargaining. This reveals the importance of a holistic vision of the regulations that underpin the European collective bargaining model.

## 2. The legal model: between material protection of working conditions and contractualisation *ex lege*

Germany provides an interesting case study of a state where the after-effects of collective agreements have been regulated simultaneously with the regulation of collective bargaining, not least because this has served as model for other jurisdictions, including Belgium and Austria.

While German regulation of the after-effects of collective agreements (*Nachwirkung*) does not conceptualise the legal mechanism of after-effects as a form of incorporation of working conditions within an individual contract by virtue of the application of civil

law principles, it nevertheless provides for similar results. As with the other cases, this has given rise to similar questions of interpretation and analysis.

Paragraph 5 of § 4 of the German Law on Collective Agreement (Tarifvertragsgesetz)<sup>1</sup> provides that when an agreement expires, its normative provisions remain applicable until they are substituted by another agreement.<sup>2</sup> This “other agreement” can be a new collective agreement, an agreement concluded between a works council and a company, or an individual contract (Müller-Glöge 2012, 357). This does not exclude the unilateral modification of working conditions by the employer, since the German system conceptualises such a mechanism as the formation of a new contract, the proposal of which, if “socially justified”, cannot be refused by workers if they do not wish to give rise to a cause for dismissal (with compensation) [(§ 2 Kündigungsschutzgesetz; Bundesarbeitsgericht judgment of 27 September 2001, 2 AZR 236/00)].

Even if configured as having normative legal effect,<sup>3</sup> collective agreements under the German system only have limited personal effect, as they only apply to their signatories and their affiliates. If both worker and employer are bound, the employer still remains bound by the agreement even if he opts out of its employers’ organisation (§ 3 and 4 Tarifvertragsgesetz).

However, the German system also provides for the possibility of a declaration of an extension of the agreement (whose scope of application would then include all employers and workers), by means of an administrative decision.<sup>4</sup> In this case, the system of after-effects extends to all workers included in the scope of the agreement.<sup>5</sup>

A collective agreement has no after-effect for workers whose contracts are concluded after its expiration.<sup>6</sup> Based on a literal interpretation of the law, jurisprudence refused to consider that this would entail a violation of harming the right to equal treatment, because the employer’s decision not to apply the condition of the expired agreement would be grounded on legal provisions that permitted this (Bundesarbeitsgericht, judgment of 25 October 2000 – 4 AZR 212/00). Moreover, *new* workers would not be affected by the transitory situation created by the expiration of the collective agreement, nor would they be affected by a possible void in the regulation of their working conditions. In any case, in practice new contracts often contain express clauses that incorporate the provisions of the expired agreement (Houben 2008).

<sup>1</sup> The law only applies to collective agreements concluded between unions and employers or an organisation of employers and excludes from its scope agreements concluded between a company and works councils, which, however, have their own system of after-effects.

<sup>2</sup> The norm has a dispositive character, for which a collective agreement can extend its effects further than its period of validity (Bundesarbeitsgericht, judgment of 3 May 1986 – 5 AZR 319/85).

<sup>3</sup> § 4.1 Tarifvertragsgesetz, which contains the principle of normative effects of the agreement (without the requirement of meeting formal standards other than its written character, and material standards of contractual theory), according to which “the normative provisions of the agreement which regulate the content, conclusion and extinction of employment relations, shall be immediately and imperatively applicable between the parties bound by the agreement which find themselves in its scope of application”.

<sup>4</sup> § 5 Tarifvertragsgesetz. A declaration of extension (or general application) is undertaken when it is “required by public interest” and when the agreement “has acquired a substantial importance for the development of working conditions in its scope of application” or “the declaration of extension is justified to protect the effectiveness of the development of the norms contained in the agreement against the consequences of adverse economic evolutions”.

<sup>5</sup> Bundesarbeitsgericht, Judgment of 25 October 2000 – 4 AZR 212/00, which confirms the jurisprudence based on the argument following which § 4.5 Tarifvertragsgesetz does not exclude expressly the after-effects of agreements with general (*erga omnes*) effects and involves that the after-effects commence upon the expiration of the validity of the agreement.

<sup>6</sup> Bundesarbeitsgericht, Judgment of 5 May 2009 – 10 AZR 1006/08; or Bundesarbeitsgericht, Judgment of 10 December 1997 – 4 AZR 290/97, in which the court argues, against the dominant opinion in the literature, that an employment contract concluded once the period of after-effects has started has to be considered as the “other agreement” referred to in § 4.5 and which replaces the norms of the collective agreement.

It has also been argued that such a system creates tensions with the principle that more favourable contractual norms should prevail in case of conflict with the provisions of a collective agreement, such that any new collective agreement with less favourable norms than the preceding contract could be considered void because of the contractualisation of the former agreement.<sup>7</sup> However, jurisprudence has taken the view that the fact that the system of after-effects contains a material protection of working conditions (as they remain in force and cannot be unilaterally modified by the employer) does not entail that the principle of the more favourable norm applies between the expired agreement and the “other agreement” referred to by the law. Moreover, because collective agreements have normative value, and the case is one of a succession of two collective agreements (even if the first agreement is *weakened*), the rule of temporal collision applies, which derives from the principle of *lex posterior derogat priori* (Bundesarbeitsgericht, judgment of 28 May 1997 – 4 AZR 546/95). Here, the solution to avoid *petrification* of the working conditions defined in a collective agreement as part of the balance of interests between workers and employers is based on the *ex lege specialis* character of the system, as well as on the rejection of the subsidiary application of the civil law idea of contractualisation of working conditions, albeit in an implicit way. Thus, German jurisprudence refuses to conceptualise the system of after-effects from the point of view of the theory of incorporation of working conditions in the contract. This is easily justified by the existence of an ad hoc regulation which is clear and sufficient. However, the effects are almost the same as in the other model, and the solution to possible problems is similarly generated by the system.

The German model has inspired the regulation of the question in other legal orders. For example, § 13 of the Austrian Arbeitsverfassungsgesetz (Nachwirkung) provides that:

The legal effects of the collective agreement, regarding working conditions which applied directly before its expiration, survive after that expiration until the application of a new collective agreement, related to those working conditions, or until a new contract is concluded with the affected workers.

In Belgium, the *travaux préparatoires* to the Law of 5 December 1968 on Collective Agreements and Joint Committees (Loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires) explicitly refer to the German system “as the most justified from the social point of view”, which addresses any imbalance that might be caused by the disappearance of working conditions (Cordier 2008, 46). They refer to the model as a mechanism for the incorporation of working conditions in the contract, though as is shown above this has never been formally recognised as such by German jurisprudence. The Belgian system, however, is legally conceptualised as a system of incorporation (Horion 1969, 113), as Article 23 of the above Law states that:

[The] individual employment contract, implicitly modified by a collective agreement, is maintained in that state when the agreement ceases to have effect, except agreement to the contrary in the collective agreement itself.

As such, it also recognises the normative character of collective agreements via the mechanism of substituting contractual provisions with those of the collective agreement. This reinforces the system, expressed in other parts of the law, whereby contractual clauses are annulled when they are contrary to the applicable collective agreement (Cordier 2008, 55). As the Belgian system of normativity of collective agreement is absolute (there is no regime of more favourable conditions and thus no issues can arise of a previous contract having better incorporated conditions than any new collective agreement) there has not been a great deal of controversy about the

<sup>7</sup> Derived from § 4 Paragraph 3 Tarifvertragsgesetz, according to which contractual provisions contrary to those contained in a collective agreement will only be valid when the collective agreement allows it or when they entail a modification in favour of the worker.

system, as the working conditions of new collective agreements annul and replace any possible contradictory incorporated conditions of previous contracts.

One could say that the outcomes are the same, when contractualisation is read within the context of the extension of normativity and the prevalence of collective autonomy above individual autonomy. The German system does not refer to contractualisation, and as such does not create a clash with the equilibrium between both autonomies. Meanwhile, the Belgian system has no problem in explicitly recognising the mechanism of contractualisation, as it cannot enter into any conflict with the existing hierarchy between both autonomies.

### 3. The jurisprudential model: protection of working conditions through contractualisation

#### 3.1. *The Dutch case: contractualisation based on the relationship between sources of law*

The Dutch system is the oldest jurisprudential model of regulating after-effects. Here, as in the German system, collective agreements are binding upon the organisations that have signed them, as well as upon their members (art. 9 Wet van 24 december 1927 – hereinafter, Wet CAO). Moreover, any contrary contractual provision is considered null and void and substituted by the corresponding provision of the agreement (Art. 12 Wet CAO). Moreover, the agreement completes the contract where the contract does not provide for working conditions (Art. 13 Wet CAO). From these precepts, the courts have construed the theory of the incorporation *ab initio* into the contract of the normative conditions of the collective agreement. Any claim that a worker might have against an employer is based on the individual contract, and the collective agreement serves as a legal base only in reference to provisions that cannot be incorporated in the contract because of their character.<sup>8</sup>

The after-effect (*nawerking*) of the agreements is based on this theory.<sup>9</sup> Upon the expiration of the collective agreement, the provisions incorporated in the individual contract continue to apply until they are modified by individual or collective agreement (except in cases of individual or collective agreement to the contrary).<sup>10</sup> On the other hand, the specific (collective) mechanism of enforcement of these conditions, which are provided by virtue of their inclusion in a collective agreement, cannot be activated, and the only protections granted to them are those recognised by the legal institution of the individual contract.

A particularity of Dutch regulation of collective bargaining is that, if an agreement is only binding upon members of its signatory organisations, bound employers must apply the agreement to any of their employees who do not belong to the signatory unions (Art. 14 Wet CAO). There is, however, no corresponding action for employees, who cannot claim individually for performance, but the signatory unions can activate the mechanisms of protection provided for in the agreement. Even in this case, where there is no contractualisation, jurisprudence has recognised that for the purpose of after-effects, incorporation can occur (Hoge Raad der Nederlanden judgment of 19 June 1987, NJ 1988, 70), on the grounds that contractualisation takes place in application of common law from the moment the employer has executed his

<sup>8</sup> Van Hoek 2003, citing the case of the requirement of written form to agree upon the probationary period provided in the collective agreement, the claiming of which could not be based on the contract because of its specific characteristics, but on the collective agreement itself.

<sup>9</sup> Even if it is based on the provisions of the law on collective agreement, it could be construed in the same way and with the same effects on the basis of the provision of the Civil Code referring to the validity of provisions and the relation between sources; see Houweling and van der Voet 2006, 64.

<sup>10</sup> Judgments of the Hoge Raad der Nederlanden (Court of Cassation) of 10 January 2003 (NJ 2006/516) or of 8 April 2011 (NJ 2011/371). In the latter judgment, the Court decreed the maintenance of the incorporated conditions even after the application of a new collective agreement, to the extent that the new collective agreement was conceptualised as containing minimal conditions, in the absence of agreement to the contrary.

obligation to apply the agreement to non-affiliated employees (Houweling and van der Voet 2006, 63). In practice, employers perform that obligation by including clauses of incorporation in individual contracts, for which contractualisation operates expressly (Jansen 2013, 10).

The government may also extend application of collective agreements to all employees and companies in its scope, by declaring its *erga omnes* effect (Art. 2 Wet van 25 mei 1937, tot het algemeen verbindend en het onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten –hereinafter, AVV-wet) which occurred for half of the branch-level agreements, complementing the mechanism of application of agreements to non-affiliated employees by extending the collective agreements to non-affiliated employers (Jansen 2013, 12). However, jurisprudence has refused to recognise the after-effects of those agreements. The higher courts argued, against the position of some of the literature and the public prosecutor's office, that the content of the law regulating the extension of collective agreements cannot be read in the same way as the law on collective agreements. In application of the former, incorporation can only occur by virtue of an express clause in the contract (Hoge Raad der Nederlanden judgment of 10 January 2013, NJ 2006, 516 and judgment of 18 January 1980, NJ 1980, 348). The reason for the lack of analogy is that the declaration of extension is only of a temporary character and can be cancelled by the government, whereas the binding force under the law on collective agreements is of a more permanent nature. However, the provisions regulating the legal relationship between extended agreements and contracts are similar to those regulating the relationship between *classic* agreements and contracts in the law on collective agreements and, as a matter of fact, similar to the contract law principles applicable to that relation. Against the position of the jurisprudence, the literature argues that provisions granting a temporary character to the extension only relate to the period during which freedom of contract is *frozen*, but do not apply to the way in which the different sources of law relate (Verhulp 2002, 13, Houweling and van der Voet 2006, 69). Moreover, the argument of the lack of will of the parties to consider themselves bound that occurs with the declaration of extension cannot be used in this discussion, since if this argument were to be accepted, the same jurisprudence could not then recognise any after-effect at all to any agreement, given that the expiration of an agreement is a product of the will of the parties who have chosen to no longer be bound (Frenkel 1979, 293, Houweling and van der Voet 2006, 69).

On the other hand, apart from the fact that this jurisprudence is quite controversial (Opinion of Public Prosecution before the Hoge Raad der Nederlanden of 1 October 2015, note 5) courts have recognised certain rights contained in agreements whose extensions have expired, and the content of which a non-affiliated employee or an employee of a non-affiliated employer could not claim on the basis of the incorporation of its provisions. This occurred on the basis of the theory of "acquired rights",<sup>11</sup> or the legitimate expectation of the parties.<sup>12</sup> However, neither the limited applicability of the criteria developed in that doctrine, nor the complexity entailed by the distinction between rights that remain claimable and rights that are not, have convinced those who oppose the lack of after-effects to give up their position that extended agreements should be treated in the same way (Houweling and van der Voet 2006, 55-77, Beltzer 2010).

In conclusion, the Dutch case is paradigmatic in that it explicitly recognises the contractualisation of employment conditions in order to find a solution to the problems created by the absence of express regulation. The arguments it has used,

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<sup>11</sup> Hoge Raad der Nederlanden judgment of 28 January 1994, NJ 1994, 420, in the case of a complement paid by the employer to the temporal invalidity benefit for a duration of maximum of two years, which survives if the agreement has lost its *erga omnes* effects before the end of said duration; Hoge Raad der Nederlanden judgment of 7 June 2002 – NJ 2003, 175, in a similar case.

<sup>12</sup> Hoge Raad der Nederlanden Judgment of 2 April 1993 – NJ 1994, 612, which discusses the right to additional salary for (voluntary) extra hours; see Van Hoek 2003, Houweling and van der Voet 2006, 72-75.



based on principles of contract law, have been repeated (without express reference) in other cases, the most important of which is the recent jurisprudence of the Spanish Tribunal Supremo. However, the jurisprudence of “acquired rights” in the case of extended agreements also echoes the French approach to the problem. An analysis of this more complex jurisprudence is required before examining the more clear-cut position of the Spanish courts.

### 3.2. *The French case: limited contractualisation as a consequence of the prevalence of more favourable contractual provisions*

The French system of after-effects only applies to collective agreements of an indeterminate duration (Pélissier *et al.* 2010, 1271).<sup>13</sup> Once denounced, their validity is extended until the conclusion of a new agreement, with a maximum period of one year and without prejudice of another agreement on this point (*période de survie d’effets*) [Arts. L2261-10 and 2261-11 of the Code du Travail].<sup>14</sup>

Collective agreements are applicable to those organisations of employees and employers that have signed or adhered to them, as well as to their affiliates (Arts. L2262-1 and L2262-2 Code du Travail). However, their provisions apply to all employees of employers bound by the agreements, without consideration for the employees’ affiliation. This is the same as the Dutch case, but with a direct, normative effect (Art. L2254-1 Code du Travail).

The relation between the individual contract and the collective agreement is governed to some extent by the principle of the prevalence of individual autonomy. Even if the collective agreement is considered as an imperative, *reglementary norm* (i.e. having a normative effect) and so *displaces* contrary provision in the working contract (Pélissier *et al.* 2010, 1271), contrary provisions are only invalid if they are less favourable than those of the collective agreement. This is due to the general application of the most favourable norm principle (*principe de faveur*) as a solution to clashes between sources of labour law (with exceptions in cases of relations between collective agreements of different levels,<sup>15</sup> above all since the latest reform of September 2017) [Art. L2254-1 Code du Travail].<sup>16</sup>

It is for this reason that courts have consistently refused the theory of automatic incorporation, or contractualisation, of the working conditions regulated in the collective agreement (Mazars and Géa 2012). However, this does not mean that a situation of rupture in the reciprocal relations between the parties is created. Upon the expiration of the period of “normative” after-effects, and in absence of a new agreement, workers maintain the “individual advantages [rights] which they have acquired in application of the agreement” (Art. L 2261-13 Code du Travail). The Cour de Cassation understands “individual right” to mean “the right which, at the moment of the notice of expiration of the collective agreement, granted the employee a remuneration or a right of which she benefited at personal title” (level and composition of salary, supplementary rest days when the normal rest day coincides with a public holiday, without including however rights related to working time when they affect a group of employees, like a paid rest of 45 minutes considered as working time);<sup>17</sup> and “acquired right” to mean “that which, at the moment of the notice of

<sup>13</sup> The only rule providing for some protection after expiration is the obligation of the signatory parties to agree upon the forms and the time periods within which the agreement can be renewed or revised.

<sup>14</sup> It is important to specify that in case of denunciation (notice) only by one party the collective agreement will remain in force for the parties that did not give notice, and the period of after-effects will apply to the parties which did.

<sup>15</sup> With the gradual introduction of exceptions to the principle of more favourable norm for the company-level agreement and for some sectorial agreements.

<sup>16</sup> It is also curious that, in application of those principles, a worker cannot be bound by obligations contained in a collective agreement which entered into force after the start of her contract, even if the jurisprudence seems to distinguish between types of obligations; see Pélissier *et al.* 2010, 1275.

<sup>17</sup> In the latter case, the Court considered that the maintenance of that right was incompatible with the respect by the workers of the collective organisation of work, because it would have allowed them to work 45 minutes less than the fixed working time (Antonmattei 2015).

expiration of the collective agreement (...) corresponded to a right which had already been exercised and not only exercisable *in abstracto* (as such, rights acquired during the period of after-effects, compensation for dismissal or retirement, and the rules of revalorisation of the salary are excluded)" [Ysàs Molinero 2014, 115-118].

In the context of the debate about possible unequal treatment of newly-hired workers, the Cour de Cassation declared that the objective of the system is to compensate for any prejudice caused by the loss of the rights of the agreement (Cour de Cassation, chambre sociale Judgment of 11 January 2005, 02-45.608; Radé 2013, 567).

If the French system of survival of employment conditions seems limited and strictly interpreted by the courts, it should be borne in mind that it is inscribed in a legal order in which an agreement does not have an imperative effect on more favourable contractual conditions (this is in contrast to other legal systems, with the exception of Germany, where special legal regulation of the matter allows for circumvention of the problem). This is because admitting a *generous* system of incorporation could have significant consequences, since it would entail that successive collective agreements could only be made if each successive agreement improved upon the previous agreement. Moreover, French labour law is characterised by an important use of state norms that reduce the role of collective agreements in the regulation of employment conditions, whereby voids in the articulation of collective agreements do not have the same consequences as in legal systems where greater room is given to collective autonomy, as in the Spanish case (Ysàs Molinero 2014, 109).

### *3.3. The Spanish case: how contract law principles mitigates disruption of collective bargaining*

First, it is important to note that Spanish developments on the question of after-effects should be read in the context of decentralisation and dislocation of collective bargaining models in southern Europe under formal or informal pressure from EU institutions. In Greece, for example, in application of the Memorandum of Understanding of 2012, the indefinite duration of collective agreements was abolished, giving way to periods of validity of one to three years with a three-month period for survival of normative value in case of expiration, after which only basic conditions on salary would remain applicable. In Portugal, in line with the program of structural reforms [European Council Recommendation COM(2014) 423 final], the period within which a new agreement could be negotiated following notice of expiration has been reduced, as has as the survival of the normative value in case of unsuccessful negotiation within that first period (from 18 months to one year) [Eurofound 2015, 31].

In Spain, prior to the 2012 labour law reform that was introduced by urgent governmental legislative decree (and confirmed six months later by the Spanish conservative absolute majority) under informal pressure from European Union and international institutions, the system of after-effects of collective agreement had been based on the principle of the continuation of the normative effects of collective agreements after their expiration until the conclusion of a new collective agreement. This principle could be altered by agreement between the negotiating or concluding parties.

One of the important aspects of the 2012 reform (which had begun with a previous collective bargaining reform in 2010) was the decentralisation of collective bargaining. Company-level agreements were given absolute preference above higher-level agreements concerning certain employment conditions (level of wages, some aspects of working time, etc.). Further, under the reform, higher-level collective agreements can be temporarily suspended in cases where certain conditions related to the economic situation, organisation or production of the

company are met.<sup>18</sup> The system of after-effects was also altered, such that the continuation with full effects of collective agreements after their expiration was limited to one year, except where there is agreement to the contrary, after which the “superior collective agreement” would regulate employment conditions. However, this urgent modification of the Estatuto de los Trabajadores (Real Decreto Legislativo 2/2015) which regulates individual and collective aspects of labour relations, left open questions and legal voids.

The question of determining a *superior agreement* is a difficult one, given that the structure of collective bargaining is mainly left open to collective autonomy and does not provide for exhaustive coverage, at different levels, of the various economic sectors. Different collective agreements at different levels, all applicable to a company, regulate different matters, and are not necessarily complementary. Also, the reference to the *superior* character of an agreement is not only a question of territorial scope but also of functional, or material, scope. This leaves the possibility that, even if a *superior agreement* could be identified, which is not always the case, it may not have the same material scope as the expired agreement or may not regulate the same working conditions. In the absence of collective agreements, the only source regulating employment conditions, apart from the contract, is the law, mainly the provisions of the Estatuto de los Trabajadores in terms of working hours, minimum wage, etc. It is also important to stress that the law does not regulate all aspects of individual or collective work relations, and in some cases even effectively refers to collective bargaining as a necessary source. Moreover, collective agreements do not regulate only employment conditions, but also contain important provision related to the organisation of work (professional classification, flexibility measures and so on) or to collective relations between management and labour, the disappearance of which could jeopardise the productive organisation of companies.

The new regulation of after-effects gave rise to some companies deciding, once the one-year period of after-effects had ended, to unilaterally modify various employment conditions, generally to the detriment of employees. The reasoning was that, in the absence of a superior agreement, only the minimal conditions of the Estatuto de los Trabajadores, or the minimum wage, would apply.

In this context, courts broadly began to adopt two different positions. The first, dubbed the *rupturist* approach, was based on a literal construction of the new Article 86.3, which stated that after the one-year period the collective agreement ceased to have effects (“pierde su vigencia”). The negative consequences of this could only be remediated through intervention of the legislator, and only in case of special circumstances<sup>19</sup> could employees claim some aspects of the employment conditions as regulated in the expired agreement.

The other position, dubbed *conservationist*, argued for the continued application of the collective agreement, in spite of the wording of Article 63 of the Estatuto de los Trabajadores. Several appeal courts argued for this solution, basing themselves above all on “negative” arguments in the sense that, if the *rupturist* thesis were to be applied, it would gravely affect the balance between the parties negotiating the new collective agreement, because it would create a situation of *tabula rasa*. This would go against the principle of the promotion of collective bargaining and freedom of association as enshrined in the Spanish Constitution as well as in international

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<sup>18</sup> For an exhaustive view of the 2012 reform in terms of collective labour rights, see Rodríguez-Piñero 2019. For a general analysis of the 2012 reform, its context and its relations with the multilevel context, see López *et al.* 2014.

<sup>19</sup> The dissenting opinion of magistrate Sempere-Navarro to the judgment of the Tribunal Supremo of 12 December 2014 cites legal circumstances such as harming employees’ dignity, unjust enrichment, bad faith in negotiations on part of the employer –all circumstances which, due to their indeterminate character, are difficult for an employee to claim–.

law,<sup>20</sup> and would also hamper the need to favour productivity and social peace, above all in times of crisis.<sup>21</sup> In addition, other courts constructed their arguments on contractual law principles, stating that the content of the applicable collective agreement at the moment of the conclusion of an employment contract is an essential element of the will of the parties (above all that of the employee), in application of Article 1274 of the Spanish Civil Code, an element that would disappear if employment conditions were altered. The imbalance introduced in the contract by such a disappearance would also make the contract economically nonviable because of circumstances not attributable to the employee. The same decisions concluded that, upon expiration of the collective agreement, employment conditions were to be considered as being incorporated in the employment contract and would survive in that legal form, since the employment contract had been signed taking these conditions into account and its modification could not be left to the discretion of the employer in application of Article 1256 of the Spanish Civil Code.<sup>22</sup>

The Spanish Tribunal Supremo, in its landmark decision of 22 December 2014, unified Spanish jurisprudence on this point, adopting explicitly the theory of the contractualisation (or incorporation) of the provision of the collective agreement in the contract and stating specifically that this contractualisation takes place at the moment an employment contract is signed, or when an applicable collective agreement is concluded. As well as repeating the “negative” arguments of the lower courts (the rupture of the equilibrium between labour and management and its negative consequences for the promotion of collective bargaining), this decision was based on the theory of contractualisation or incorporation, not only because employment conditions agreed in a collective agreement are essential to the individual contract, but also because of the question of the relationship between the agreement and the contract as sources of law. In this, it follows the same line as Dutch jurisprudence, without however referring to it. Basing itself on Articles 3 and 9.1 of the Estatuto de los Trabajadores (which contain, respectively, a list of the sources of labour law and the mechanism of substitution of the invalid provision of the contract by those provisions that it violates) the court identified the individual employment contract as the main source of regulation of employment conditions, which during its validity is successively *purified* and completed by legal norms and those of normative collective agreements. Therefore also, contractualisation does not only operate at the expiration of the one-year period of after-effects but from the moment that the legal employment relation is created, i.e. the moment from which employment conditions are subject to the corresponding evolution.

It is important to note that this decision has been controversial, given the numerous dissenting opinions that have been formulated by members of the Court. Most of these opinions do not accept the idea of contractualisation, because of the problems this would create for the interpretation of other legal institutions connected with the relations between labour law sources, such as that of the “more favourable condition” (“condición más beneficiosa”). This implies that a more favourable condition that results from an individual agreement between an employee and an employer (or, under certain circumstances, a particular conduct of the employer) are not to be considered nullified by an applicable collective agreement. Contractualisation would thus result in the *petrification* of employment conditions, despite the application of a new agreement. However, it is easy to distinguish between the “more favourable” condition, the origin of which is an individual agreement or conduct, and the contractualised condition whose origin is in the collective agreement –which is a

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<sup>20</sup> Mainly art. 4 of ILO Convention 98, and art. 5 of ILO Convention 154 and art. 11.1 of the European Charter of Fundamental Rights (2000/C 364/01), and the obligation of promotion of voluntary negotiations they contain.

<sup>21</sup> See, amongst others, Judgment of the Tribunal Superior de Justicia del País Vasco of 19 November 2013 (case 37/2013), or Judgment of the Tribunal Superior de Justicia de las Islas Baleares 520/2013 of 20 December 2013.

<sup>22</sup> See, for example, Judgment of the Tribunal Superior de Justicia de Cataluña 4316/2014 of 13 June 2014.

normative, and not contractual, legal instrument. In other words, a “more favourable” condition is a contractualised condition, but not all contractualised conditions are “more favourable” conditions. Therefore, a contractualised condition that does not constitute a “more favourable” condition can be replaced by the provisions of a new collective agreement with normative value. This argument is raised here since the reasoning behind it is similar to the doubt created by the prevalence of more favourable contractual provisions over a collective agreement in Germany, even if in that case the operation of after-effects is founded strictly on special legal provisions, and not on general contractual theory, as is the case here.

#### **4. Elements of definition of the regulation of the after-effects of collective agreements in the multilevel legal order**

There are no explicit sources of international law that refer to regulation of after-effects of collective agreements or the legal status of employment conditions as defined in those agreements.

In Spain, the survival of employment conditions has been justified by the need to avoid severing the prevailing balance between the parties negotiating new agreements that are purported to succeed the expired agreement. This approach has been linked to the principle of the promotion of collective bargaining. This principle, which implies a positive obligation on part of the state, is enshrined in Articles 7, 9.2, 28.1 and 37.1 of the Spanish Constitution. Those articles contain, respectively, a definition of the constitutional function of unions;<sup>23</sup> the obligation of the state to promote effective equality (as opposed to formal equality); the fundamental right to freedom of association (which includes the right of unions to collectively bargain); and the right to collective bargaining *per se*. However, the same principle also derives from Article 4 of ILO Convention 98 and Article 5 of ILO Convention 154.

The idea that employment conditions defined in an expired collective agreement should not disappear abruptly can also be found to be contained in Article 6-2 of the European Social Charter, according to which:

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake: (...) 2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

This connection between the survival of employment conditions upon the termination of a collective agreement and the promotion of collective bargaining is confirmed by the European Committee on Social Rights, which takes that aspect into consideration when supervising the compliance of Member States with Article 6-2 of the Charter. More specifically, the Committee verifies that there has been no void in the regulation of employment conditions when a collective agreement is not renewed, or in the period between the expiration of a collective agreement and the conclusion of a new one (European Committee of Social Rights, Conclusions 2006, XVIII-1 and Conclusions 2014).

A similar perspective can also be found in the judgment of the European Court of Justice of 11 September 2014 (Case C-328/13, *Österreichischer Gewerkschaftsbund*) on the application of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. The Court recognised that under Austrian law, which provides for a form of contractualisation of employment conditions at the expiration of a collective agreement, “maintaining the effects of a collective agreement (...) is intended, in the interests of the employees, to avoid a sudden rupture of the standard framework of the agreement governing the employment relationship”, without

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<sup>23</sup> To promote and defend the interests of workers.

hindering the employer (in this case, the transferee of the undertaking) from making “the adjustments and changes necessary to carry on its operations”. Therefore, it can be said that the function of the regulation of after-effects coincides with the Directive’s goal of maintaining employees’ rights in case of transfers of undertaking, since the protection of employees’ rights does not end with the expiration of the collective agreement as a formal instrument. In this, the court followed the conclusions of the Advocate General, according to which:

where national law provides that those rights and obligations are to continue to be observed, albeit in the weaker, temporary form (...), in order to prevent a legal vacuum (...), in line with Chapter II of Directive 2001/23, the continued observation of those rights and obligations must be interpreted as a natural extension of the rights and obligations previously acquired by the employee. The primary objective of continuing effect is that of a guarantee; it simply maintains the status quo in the interests of legal certainty.

Another point of attachment can be found in Article 151 of the Treaty of the Functioning of the European Union:

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 21 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

Among other objective, this Article sets out the idea that European social policy, as developed by the European Union and Member States, should improve employment conditions. Against this backdrop, a disappearance of the employment conditions defined in a collective agreement can be seen to hamper such improvement, as any new collective agreement would be negotiated on a *tabula rasa*, instead of being based on a certain level of conditions guaranteed by the previous agreement. Further, the reference to the promotion of dialogue between management and labour echoes the obligation of the promotion of collective bargaining under other international instruments, something which a total disruption of employment conditions would make difficult and which would reinforce the bargaining position of management.

## 5. Conclusions

This examination of different cases in several Member States has shown that, when dealing with employment conditions regulated in a collective agreement following the expiration of that agreement, recourse is made to legal institutions that regulate individual autonomy and the relations between sources of labour law. In the absence of explicit rules governing the situation after the expiration of a collective agreement, or as an aid to interpretation, contract law is used as a form of protection of the weakest party in the employment relationship. In cases where the law regulates this matter specifically, similar solutions are adopted. This is in contrast to the fact that, in principle, labour law is rooted in the need to intervene in those same rules governing individual autonomy. However, what might seem a contradiction is easily resolved by taking into account the main purpose of labour law – its protective function – which legitimises the use of institutions that do not belong directly to its normative corpus. It also shows that labour law is not a system that is totally autonomous from contract law. Most continental European civil codes, for example, proclaim the principle of subsidiarity of the application of civil law rules compared to other branches of law. In this sense, as a general observation, in the context of *de-regulative* reforms of labour laws, one should not forget that the norms of contractual law play an important role in the regulation of general contract law theory, to be read within the principle of protection that constitutes the genetics of the employment contract (López López 2015, 32-33).

Further, all of the systems examined in this study have found a balance between protecting employees and the need to avoid hampering the outcome of processes within the sphere of collective autonomy. In continental Europe, one of the guarantees of those outcomes is the normative character of the collective agreement, which also reinforces the collective agreement as an instrument of governance. This is in line with the function of labour law as a system permitting the integration of conflict and the transformation of regulatory outcomes. This normativity can also be read as an expression of the prevalence of collective autonomy above individual autonomy, with nuances between systems in different Member States. This can be explained by the greater degree with which conditions that are more favourable for the employee are protected; or, in other words, by a greater protection of individual employees, not just from the employer directly, but also indirectly through collective autonomy. As such, the different theories of incorporation or contractualisation in application of civil law rules, or specific laws, have never diverted from the logic behind the normativity of collective agreements, despite the concerns of those who oppose them.

Within this context, the Spanish case is particularly interesting, not only because the jurisprudence explicitly links and resumes these different elements, but also because another important aspect of the debate is discussed and clarified. In Spain, the application of individual contract law principles has been justified as a way to guarantee a favourable development and the operation of collective bargaining as a process. The Spanish courts referred explicitly to the principles of promotion of voluntary negotiations, inscribed in the labour law constitution (Dukes 2014) and sanctioned by several international law instruments. In other legal orders, the reasons behind the institution of after-effects seem more to be grounded in a labour law narrative that protects the employee during transition periods. This is also reflected in the observable EU approach, which is however limited by the subject matter of the regulation of transfers of undertakings. However, in Spain, explicit reference is made to the necessity of maintaining a balance between the parties negotiating a new collective agreement. In the absence of after-effects of collective agreements unions would be obliged to negotiate from scratch, which would place them in a weaker bargaining position and thus upset the balance necessary to ensure that the process of collective bargaining can fulfil its functions.

In this light, it is interesting to observe how contract law principles come to the aid not only of individual labour relations, but also of the dynamic of collective labour relations. These principles ultimately reinforce the position of unions in promoting employees' interests as well as the stability of the process of collective bargaining as a mode of collective action (López López 2019), not only in its role of defending employees' interests, but also in integrating labour conflicts in favour of productivity and the organisation of work.

## References

- Antonmattei, P.H., 2015. Avantages individuels acquis. *Droit Social*, n° 1, 95-96.
- Beltzer, R.M., 2010. De wenselijkheid van nawerking van algemeen verbindend verklaarde caobepalingen in het licht van het juridische systeem. *ARBAC* [online], Oktober-December. Available from: <https://dx.doi.org/10.5553/ARBAC/.000006> [Accessed 5 July 2018].
- Cordier, J.P., 2008. La théorie de l'incorporation des dispositions normatives individuelles dans le contrat de travail. In: J.P. Cordier, ed., *Les 40 ans de la loi du 5 décembre 1968 sur les conventions collectives du travail*. Brussels: Bruylant, 46.
- Dukes, R., 2014. *The Labour Constitution: The Enduring Idea of Labour Law*. Oxford University Press.

- Eurofound, 2015. *Collective bargaining in Europe in the 21st century* [online]. Luxembourg: Publication Office of the European Union. Available from: <https://dx.doi.org/10.2806/135652> [Accessed 5 July 2018].
- Frenkel, B.S., 1979. De nawerking van de collectieve arbeidsovereenkomst. *Sociaal Maandblad Arbeid*, p. 293.
- Horion, P., 1969. Syndicats, Conventions collectives de travail, Organes paritaires. *Annuaire de la Faculté de Droit de Liège*, p. 113.
- Houben, C.A., 2008. Nachbindung und Nachwirkung im Tarifrecht – Zu Struktur und Anwendungsbereich von §§ 3 III und 4 V TVG. *Neue Juristische Online-Zeitschrift*, Heft 30, 2170-2182.
- Houweling, A.R., and van der Voet, G.W., 2006. Het leerstuk nawerking van collectieve arbeidsvoorwaarden op de helling. *Arbeidsrechtelijke Annotaties* [online], n° 3. Available from: [http://www.openaccessadvocate.nl/tijdschrift/arbeidsrechtelijkeannotaties/2006/03/ArA\\_2006\\_006\\_003\\_002](http://www.openaccessadvocate.nl/tijdschrift/arbeidsrechtelijkeannotaties/2006/03/ArA_2006_006_003_002) [Accessed 5 July 2018].
- Jansen, J., 2013. *De automatische doorwerking van de cao-arbeidsvoorwaarden op ongeorganiseerde werknemers bekeken vanuit rechtsvergelijkend perspectief* [online]. Afstudeerscriptie Rechtsgeleerdheid. Universiteit Tilburg, 16 September. Available from: <http://arno.uvt.nl/show.cgi?fid=133443> [Accessed 5 July 2018].
- López López, J., 2015. *La extinción del contrato como última ratio: los mecanismos de protección del contrato de trabajo*. Albacete: Bomarzo.
- López López, J., ed., 2019. *Collective Bargaining and Collective Action: Labour Agency and Governance in the 21st Century?* Oxford: Hart.
- López, J., de le Court, A., and Canalda, S., 2014. Breaking the Equilibrium between Flexibility and Security. *European Labour Law Journal*, 5(1), 18-42. First published [online] 1 March 2014. Available from: <https://doi.org/10.1177%2F201395251400500104> [Accessed 5 July 2018].
- Mazars, M.F., and Géa, F., 2012. Contrat de travail et norme collective. *Bulletin d'information de la Cour de Cassation* [online], n° 13, 40. Available from: [https://www.courdecassation.fr/IMG/pdf/Bicc\\_768.pdf](https://www.courdecassation.fr/IMG/pdf/Bicc_768.pdf) [Accessed 5 July 2018].
- Müller-Glöge, R., 2012. BGB § 611 Vertragstypische Pflichten beim Dienstvertrag. *Münchener Kommentar zum Bürgerlichen Gesetzbuch: BGB*, Band. 6. Munich: C.H. Beck.
- Pélissier, J., Auzero, G., and Dockès, E., 2010. *Droit du Travail*. 25<sup>th</sup> ed. Paris: Dalloz.
- Radé, C., 2013. Statut collectif et égalité de traitement: l'employeur peut harmoniser « par le haut ». *Droit Social*, n° 6, 567.
- Rodríguez-Piñero, M., 2019. Collective Bargaining in the Renewed Spanish Labour Law: a New Tool for Economic Policy? *Oñati Socio-legal Series* [online], 9(1-this issue). Available from: <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1009> [Accessed 6 May 2019].
- Van Hoek, A.A.H., 2003. Collective Agreements and Individual Contracts in Labour Law – the Netherlands. In: M. Sewerynski, ed., *Collective Agreements and Individual Contracts in Labour Law*. Zuidpoolsingel: Kluwer Law International.
- Verhulp, E., 2002. Nawerking: het volle pond graag! *Arbeidsrecht*, n° 10, 13.
- Ysàs Molinero, H., 2014. La pérdida de vigencia de los convenios colectivos en Francia: ultra-actividad y derechos adquiridos. In: N. Pumar Beltrán, ed., *La*



*flexibilidad interna y los despidos colectivos en el sistema español de relaciones laborales*. Barcelona: Huygens.

*Case law*

France

Cour de Cassation, chambre sociale, judgment of 11 January 2005 – 02-45.608.

Germany

Bundesarbeitsgericht judgment of 3 May 1986 – 5 AZR 319/85.

Bundesarbeitsgericht judgment of 28 May 1997 – 4 AZR 546/95.

Bundesarbeitsgericht judgment of 10 December 1997 – 4 AZR 290/97.

Bundesarbeitsgericht judgment of 25 October 2000 – 4 AZR 212/00.

Bundesarbeitsgericht judgment of 27 September 2001 – 2 AZR 236/00.

Bundesarbeitsgericht judgment of 5 May 2009 – 10 AZR 1006/08.

Netherlands

Hoge Raad der Nederlanden judgment of 18 January 1980 – NJ 1980, 348.

Hoge Raad der Nederlanden judgment of 19 June 1987 – NJ 1988, 70.

Hoge Raad der Nederlanden judgment of 2 April 1993 – NJ 1994, 612.

Hoge Raad der Nederlanden judgment of 28 January 1994 – NJ 1994, 420.

Hoge Raad der Nederlanden judgment of 7 June 2002 – NJ 2003, 175.

Hoge Raad der Nederlanden judgment of 10 January 2003 – NJ 2006, 516.

Hoge Raad der Nederlanden judgment of 8 April 2011 – NJ 2011, 371.

Opinion of Public Prosecution before the Hoge Raad der Nederlanden of 1 October 2015, note 5 (ECLI:NL:PHR:2015:2086) [online]. Available from: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:PHR:2015:2086> [Accessed 5 July 2018].

Spain

Tribunal Superior de Justicia de Cataluña Judgment 4316/2014 of 13 June 2014.

Tribunal Superior de Justicia de las Islas Baleares Judgment 520/2013 of 20 December 2013.

Tribunal Superior de Justicia del País Vasco Judgment of 19 November 2013 (case 37/2013).

Tribunal Supremo Judgment of 22 December 2014 (appeal 264/2014).

European Union

Court of Justice of the European Union, Judgment of 11 September 2014 (Case C-328/13, Österreichischer Gewerkschaftsbund).

International

European Committee of Social Rights Conclusions XVIII-1 (Poland), art. 6-2; (Croatia), art. 6-2.

European Committee of Social Rights Conclusions 2006 (Moldavia), art. 6-2.

European Committee of Social Rights Conclusions 2014 (Moldavia), art. 6-2; (Portugal), art. 6-2.

*Legal sources*

## Austria

§ 13 Arbeitsverfassungsgesetz (Nachwirkung) [online]. Available from: <https://www.jusline.at/gesetz/arbvg/paragraf/13> [Accessed 5 July 2018].

## Belgium

Loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires [online]. Available from : [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiEugewh4jcAhUEzRQKHegqAI0QFggoMAA&url=http%3A%2F%2Fwww.emploi.belgique.be%2FDownloadAsset.aspx%3Fid%3D10610&usq=AOvVaw3ab93ooJbHY\\_ZHUOkcFnqI](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiEugewh4jcAhUEzRQKHegqAI0QFggoMAA&url=http%3A%2F%2Fwww.emploi.belgique.be%2FDownloadAsset.aspx%3Fid%3D10610&usq=AOvVaw3ab93ooJbHY_ZHUOkcFnqI) [Accessed 5 July 2018].

## France

Code du Travail. Version consolidée au 1 juillet 2018 [online]. Available from: <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072050> [Accessed 5 July 2018].

## Germany

Kündigungsschutzgesetz in der Fassung der Bekanntmachung vom 25. August 1969 (BGBl. I S. 1317), das zuletzt durch Artikel 4 des Gesetzes vom 17. Juli 2017 (BGBl. I S. 2509) geändert worden ist [Law on Protection against Dismissal] (online). Available from: <https://www.gesetze-im-internet.de/kschg/BJNR004990951.html> [Accessed 5 July 2018].

Tarifvertragsgesetz (TVG) in der Fassung der Bekanntmachung vom 25. August 1969 (BGBl. I S. 1323), das zuletzt durch Artikel 1 des Gesetzes vom 3. Juli 2015 (BGBl. I S. 1130) geändert worden ist [Law on Collective Agreement] (online). Available from: <https://www.gesetze-im-internet.de/tvg/BJNR700550949.html> [Accessed 5 July 2018].

## Netherlands

Wet van 24 december 1927, houdende nadere regeling van de Collectieve Arbeidsovereenkomst (Wet CAO) [Law of 24 December 1927 on the specific regulation of collective agreements] (online). Available from: <http://wetten.overheid.nl/BWBR0001937/2007-01-01> [Accessed 5 July 2018].

Wet van 25 mei 1937, tot het algemeen verbindend en het onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten (AVV-wet) [online]. Available from: <http://wetten.overheid.nl/BWBR0001987/2018-01-01> [Accessed 5 July 2018].

## Spain

Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil [Spanish Civil Code] (online). Available from: <https://www.boe.es/buscar/doc.php?id=BOE-A-1889-4763> [Accessed 5 July 2018].

Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores [online]. Available from: <https://www.boe.es/buscar/doc.php?id=BOE-A-2015-11430> [Accessed 5 July 2018].

## European Union

Charter of Fundamental Rights of the European Union (2000/C 364/01). *Official Journal of the European Communities* [online], C 364/1, of 18 December 2000. Available from: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) [Accessed 5 July 2018].

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal* [online], C 326, of 26 October 2012. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012E/TXT&from=EN> [Accessed 5 July 2018]. Council of Europe

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. *Official Journal* [online], L 082, of 22 March. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0023> [Accessed 5 July 2018].

*Council Recommendation on Portugal's 2014 national reform programme and delivering a Council opinion on Portugal's 2014 stability programme* (COM(2014) 423 final) [online]. 2 June. Available from: <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-423-EN-F1-1.Pdf> [Accessed 5 July 2018].

#### International

*International Labour Organization Collective Bargaining Convention, 1981 (no. 154)* [online]. Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312299](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312299) [Accessed 5 July 2018].

*International Labour Organization Right to Organise and Collective Bargaining Convention, 1949 (no. 98)* [online]. Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312243](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243) [Accessed 5 July 2018].