Global Framework Agreements

A Response to Urgent Global Labour Concerns

Avelar Pereira, Fabiana

2021

Document Version:
Publisher's PDF, also known as Version of record

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FABIANA AVELAR PEREIRA
BUSINESS LAW | SCHOOL OF ECONOMICS AND MANAGEMENT | LUND UNIVERSITY

Global Framework Agreements

Collective agreements emerged in a regulatory vacuum, without any legally binding framework. This setting has evidently changed over time, with countries regulating in a more detailed manner the topics of collective bargaining and the resulting collective agreements. Similarly, global collective agreements have developed in the absence of a legal framework, which is currently inexistent at the international level. Based on the idea of legal pluralism and the recognition of a gap between the reality of industrial relations at the international level and the existing regulatory mechanisms, global collective agreements have materialised as a response to global urgent concerns and the lack of effective responses. This dissertation departs from the easily identified commonalities between the converging national concepts of collective agreement and the definition provided by Recommendation No. 91. These commonalties are analysed through a deeper approach, which is complemented by an empirical component. The empirical work facilitated an understanding regarding the practical functioning of global collective agreements and these agreements' features that are akin to collective agreements. The conclusions unveil a use of these instruments that goes beyond the formally instituted mechanisms. Nevertheless, issues and recommendations for further improvements are suggested, which can easily be extended beyond Cambodia, the chosen country for the empirical research.

Printed by Media-Tryck, Lund 2021 NORDIC SWAN ECOLABEL 3041 0903

LUND UNIVERSITY

School of Economics and Management
Department of Business Law

ISBN 978-91-7895-939-6

Global Framework Agreements: A Response to Urgent Global Labour Concerns

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Fabiana Avelar Pereira

LUND
UNIVERSITY

DOCTORAL DISSERTATION
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To be defended at Karlssonsalen. Date, 16 September 2021, at 13:00.

Faculty opponent
Tonia Novitz

Organization LUND UNIVERSITY	**Document name:** Doctoral Dissertation
	Date of issue: 25 August 2021
Author: Fabiana Avelar Pereira	Sponsoring organization: Department of Business Law

Title and subtitle: Global Framework Agreements: A Response to Urgent Global Labour Concerns

Abstract:
This dissertation is developed against the background of globalisation and the rise of a new type of instrument used to deal with the accompanying developments. These instruments are designated by the present dissertation as global framework agreements (GFAs). They constitute a written compromise, signed between global union federations and multinational enterprises, setting rights-based minimum standards throughout a company's global operations, including its suppliers and subcontractors. The development of these agreements, both in terms of number and content, has originated a new generation of global framework agreements whose placement within the concept of collective agreement can indeed be discussed. These are designated as global collective agreements (GCAs). Global collective agreements have emerged in a similar context to the development of collective agreement at the national level. They have developed in a regulative vacuum, now being filled with instruments akin to collective agreements. Hence, the identification of a set of core features that compose the collective agreement as a concept are identified and analysed in relation to global framework agreements. Some elements are more contentious than others and require special attention, namely the binding character and the agreement's enforcement as an expression of this bindingness. Likewise, the relationship between these agreements and other sets of rules at both the international and domestic level add further problematics that need to be highlight. The analysis and comprehensive understanding of these agreements is further complemented through a content analysis, based on an examination of the agreement's parties, content, scope, implementation, and enforcement mechanisms. The empirical work carried out in the form of interviews provides added insights into the functioning, usage, and actual impact of two selected agreements. The findings show that, while the agreements are indeed used, they have resulted in different outcomes in terms of enforcement. Moreover, the usage of these agreements beyond the formally instituted mechanisms is unveiled through the interviews. Tensions, distrust, and dissemination issues are further identified. The agreements selected as the focus of the empirical work are identified as global collective agreements and their impact and implementation are evaluated through interviews conducted with various stakeholders.

Key words: collective agreement, corporate discourse, corporate social responsibility, empirical work in law, global collective agreements, global framework agreements, international labour law, legitimacy theory, stakeholder theory.

Classification system and/or index terms (if any)

Supplementary bibliographical information	**Language:** English
ISSN and key title	**ISBN:** 978-91-7895-939-6 (print) 978-91-7895-940-2 (pdf)

Recipient's notes	**Number of pages:** 657	Price
	Security classification	

Signature  Date 5 August 2021

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Coverphoto by Charles Fox

Faculty School of Economics and Management, Lund University
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ISBN 978-91-7895-939-6 (print)
ISSN 978-91-7895-940-2 (pdf)

Printed in Sweden by Media-Tryck, Lund University
Lund 2020

To my sister Bárbara,

Table of Contents

Acknowledgements

While arduous, I am very grateful for the opportunity I was given. For four years, I had the possibility to fully dedicate myself to the study of a field I love, develop skills, and grow both professionally and individually. I was provided with a support network, from both my supervisors and my department, and had access to a variety of opportunities and materials. Furthermore, I was able to attend various conferences, supervise students, conduct lectures, and organise seminars. These greatly developed my competences in the educational field. I also want to thank the other doctoral students, particularly Henriette, who has always been a breath of fresh air. Thank you for your company and friendship.

I will be forever thankful for the continuous support of my supervisors, Andreas Inghammar and Vincenzo Pietrogiovanni, without whose encouragement I would not have been able to carry this work to full term. I appreciate our numerous meetings and discussions, which were at times reassuring and sometimes thought-provoking. Thank you, Andreas, for always being more optimistic than I ever was and stating how things were evolving well, which eased a lot of my anxiety. And thank you, Vincenzo, for providing honest criticism, which has helped me grow and has improved my work. I am also thankful for the helpful feedback and readiness to help granted by several members of the institutionen för handelsrätt. In particular, I would like to thank Annamaria Westregård for reading my (very long) manuscripts and always providing constructive comments during my seminars. Likewise, Boel Flodgren, has been present in all key moments of my doctoral process, offering fruitful feedback, being encouraging, and always highlighting important issues.

Thank you to the Crafoord Foundation and the institutionen för handelsrätt for supporting and financing this project. I would further like to thank the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, who gave me a place to work during my time in Cambodia, as well as logical and emotional support. I have the deepest appreciation for Andreas Ljungholm and Hanna Johnsson, who were the directors of the Phnom Penh office during my time in Cambodia, as well as the office's programme and finance officers, who were always ready to help and provide assistance. Thank you to Charles Fox, who showed great readiness and willingness to help me find a cover picture for my dissertation. Your support meant a lot.

A giant thank you goes to my family, who has been through everything with me, in real time. If technology has reduced distances, it has also made my family have a live, 'hands-on' experience of every step of my doctoral process. Thank you mamã, papá, Baba, and avó Adelaide. Also, of course, to Lucy, the best dog ever, who always makes me happy and comforted when I see her. She comes to see me when I sing 'Garota de Ipanema' and stays next to me when I am in Portugal working from the dining table at late hours in the night. I would like to thank my parents, who have always shared my happiness, sadness, and anxiety. I made you suffer quite a bit, for being away, sometimes sick, and (often) moody. Thank you for providing me with more resources and emotional support than I ever needed. If that is not privilege, I do not know what it is. Thank you mamã, for your unconditional support and love. Thank you for believing in me, more than I have ever believed in myself. For being honest and telling me what I need to hear, instead of I want to hear. For being selfless and my safe harbour at all times. Thank you papá, for your love, worry, and dedication. For helping me put things into perspective and adding humor into my pessimistic views. For spending your holidays planning and helping me move and furnish an entire apartment, just so I could move again after a year. For spoiling me when I am home and giving me virtual support when I am away. For sending me cookies and cerelac. Thank you for your patience.

Obrigada Avó Adelaide. Pelo teu apoio incondicional, pelo teu amor, e pelo teu interesse no meu trabalho. Com 91 anos ainda me perguntas por detalhes sobre o meu doutoramento, até mais do que qualquer outro membro da familia. Eu sei que ter-nos longe não é fácil para ti mas és tão altruísta que dizes que isso não importa desde que estejamos bem. Tens poucos defeitos, mas acho que os herdei a todos. As coisas boas, espero que vá aprendendo. Obrigada pela companhia e pelas conversas ao telefone. Obrigada por teres (relutantemente) comprado um aparelho auditivo para nos conseguires ouvir como deve ser. Obrigada pelo teu amor, absolutamente incondicional. Also, thank to my avô Ramos, who was absolutely crazy about me and my sister, even in his latest years, when he was severely sick. I remember you still wanted to put on perfume when we came to visit and kissed you on the cheeks. I know we were the apples of your eyes and I miss you everyday. You were an amazing man, going to the United States at 17, learning the language by yourself and eventually becoming American. You really are the example of courage. I know your dream was for us to study and become independent – could you image that both of your (twin) granddaughters went on to follow doctoral studies? I hope you are pretty content. I love you and I really hope you are proud of me and Baba, wherever you are.

I would like to dedicate my dissertation to my sister, who first inspired me to go to Cambodia in 2013. Unknowingly, your incentive had an immense impact in my personal and professional life. You are my inspiration, moving countries and 'testing the waters' first. You are independent and know your self-worth, but you are humble at the same time. You are diligent, kind, and rational. I brag about you every time I get the chance. I am beyond proud of you, you are my best friend and my role model, even if you are just three minutes older.

I want to thank my sambo Daniel. Meeting you is another reason why I am so grateful for this experience. Thank you for staying with me in sickness and in health, literally. For insisting for us to move in together a year before my defense, despite all of my warnings. I was a stressful mess, with sleepless nights, anxiety about my self-worth, and the future. Thank you calming me,

for insisting we are a team, for better or worse. For your support and tolerance, accepting my long working weekends and bringing me ice cream, chocolate, and hugging me when I needed the most. Jag älskar dig. Thank to Daniel's family, who have received me with open arms and have been more than understanding and supportive. You really have been my family away from Portugal.

Och nu, mitt försök att tacka Daniel och hans familj på svenska – jag skrev allt utan hjälp så misstag är ursäktliga? Jag vill tacka min sambo Daniel. Att träffa dig är en annan anledning till att jag är så tacksam för den här upplevelsen. Tack för att du stöder med mig i sjukdom och i hälsa (bokstavligen). För att du insisterade på att vi skulle flytta in tillsammans, ett år före min disputation, trots alla mina varningar. Jag var en stressig röra, med sömnlösa nätter och oro. Tack för att du lugnar mig, för att du insisterar på att vi är ett team, på gott och ont. För ditt stöd och tolerans, din acceptans av mina långa arbetshelger. Och tack för att du gett mig glass, choklad, och kramar när jag behövde det mest. Tack till Daniels familj, som har tagit emot mig med öppna armar och varit mer än förstående och stödjande. Ni har verkligen varit min familj borta från Portugal.

Lund, August 5 2021

Summary

This dissertation is developed against the background of globalisation and the rise of a new type of instrument used to deal with the accompanying developments. These instruments are designated by the present dissertation as global framework agreements (GFAs). They constitute a written compromise, signed between global union federations and multinational enterprises, setting rights-based minimum standards throughout a company's global operations, including its suppliers and subcontractors. The development of these agreements, both in terms of number and content, has originated a new generation of global framework agreements whose placement within the concept of collective agreement can indeed be discussed. These are designated as global collective agreements (GCAs). Global collective agreements have emerged in a similar context to the development of collective agreement at the national level. They have developed in a regulative vacuum, now being filled with instruments akin to collective agreements. Hence, the identification of a set of core features that compose the collective agreement as a concept are identified and analysed in relation to global framework agreements. Some elements are more contentious than others and have required special attention, namely the binding character and the agreement's enforcement as an expression of this bindingness. Likewise, the relationship between these agreements and other sets of rules at both the international and domestic level add further problematics that need to be highlight. The analysis and comprehensive understanding of these agreements is further complemented through a content analysis, based on an examination of the agreement's parties, content, scope, implementation, and enforcement mechanisms. The empirical work carried out in the form of interviews provides added insights into the functioning, usage, and actual impact of two selected agreements. These agreements are identified as global collective agreements and their

impact and implementation are evaluated through interviews conducted with various stakeholders.

List of Abbreviations

ARL	Act on the Labour Court and Industrial Arbitration Tribunals
BWI	Building and Wood Worker's International
CCOO	Confederación Sindical de Comisiones Obreras
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEEP	European Centre of Enterprises with Public Participation
CEO	Chief Executive Officer
CFA	Committee on Freedom of Association
CSR	Corporate Social Responsibility
ECSR	European Committee of Social Rights
ETUC	European Trade Union Confederation
ECJ	European Court of Justice
GATT	General Agreement on Tariffs and Trade
GCAs	Global Collective Agreements
GFAs	Global Framework Agreements
GDP	Gross Domestic Product
GUFs	Global Union Federations
ICEM	International Federation of Chemical, Energy Mine and General Workers' Union
IFAs	International Framework Agreements
IFBWW	International Federation of Building and Wood Workers
IFJ	International Federation of Journalists
ILO	International Labour Organisation
IMF	International Metalworkers' Federation

IRLex	ILO Legal Database on Industrial Relations
ITGLWF	International Textile, Garment and Leather Workers' Federation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
JIRDC	Joint Industrial relations Development Committee
MNE Declaration	Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy
MNEs	Multinational Enterprises
NMC	National Monitoring Committee
OECD Guidelines	OECD Guidelines for Multinational Enterprises
PSI	Public Services International
TCAs	Transnational Company Agreements
UDHR	Universal Declaration of Human Rights
UGT-FICA	Federación de Industria, Construcción y Agro de la Unión General de Trabajadores.
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UEAPME	European Association of Craft, Small and Medium-Sized Enterprises
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
UNGC	United Nations Global Compact
UNI	Uni Network International
UNICE	Union of Industrial and Employers' Confederation of Europe
WFBW	World Federation og Building and Wood Workers

1. Introduction

1.1. Background and State of Research

1.1.1. A Global Response to Urgent Labour Concerns?

Efforts to legally regulate the conduct of multinational corporations and its impact on human rights have been developed since the last century and mostly since the seventies. The UN Commission on Transnational Corporations attempted to elaborate a draft **UN Code of Conduct** on Transnational Corporations. Lasting until the early nineties, the work of the Commission was never finalised.[1] Following the failure of the code, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted the **'Norms on the Responsibilities of Transnational Corporations** and Other Business Enterprises with Regard to Human Rights' in 2003. Intended to be viewed as soft law and possibly building the foundations for a future treaty, the norms were never approved. In fact, the UN Commission on Human Rights considered they had no 'legal standing'.[2] The Draft Norms' failure in 2003 did not ruin hopes of negotiating an international legally binding instrument regulating the matter. In 2014, the **UN Human Rights Council** established a Working Group on Transnational Corporations and Other Business Enterprises. This intergovernmental working group was given the task of drafting a treaty.[3] The first draft regulating activities of

[1] Economic and Social Council Resolution 1987/57, *Code of Conduct on Transnational Corporations* (28 May 1987). Available At: https://digitallibrary.un.org/record/156251?ln=en [Accessed 27 August 2020].

[2] UN Sub-Commission on the Promotion and Protection of Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Draft)* (26 August 2003). Available At: https://digitallibrary.un.org/record/501576?ln=en [Accessed 27 August 2020].

[3] General Assembly Resolution 26/9, *Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights*, A/HR/RES/26/9 (14 July 2014). Available At: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement [Accessed 27 August 2020]. According to the Resolution, transnational corporations have both a responsibility to respect human rights and the capacity to foster economic well-being, development, technological improvement and wealth, as well as causing adverse impacts on human rights. Accordingly, the Human Rights Council, *"Decides to establish an*

transnational corporations in the field of human rights and labour rights in particular was released in July 2018. Still, based on the opposition expressed by industrialised countries, a treaty, if achieved, would be substantially empty.[4] Up until August 2020, the working group had had five sessions, with a second revised draft legally binding instrument being released in August 2020.[5] The sixth session of the open-ended intergovernmental working group took place from the 26th to the 30th of October 2020.[6] However, no legally binding instrument has been adopted so far. **In parallel** to these developments, a variety of labour governance initiatives have emerged, particularly since the nineties. These constitute soft law instruments and include both multistakeholder and company-iniated schemes aimed at standard-setting, compliance, and capacity-building, illustrating a move beyond exclusive reliance on state policy.[7]

In 2016, **the International Labour Conference** held a tripartite discussion on decent work throughout supply chains. The discussion resulted in a resolution calling for the ILO Governing Body to convene a tripartite meeting or a meeting of experts to assess the failures and evaluate measures and guidance programmes. The meeting took place in February 2020, along with the publication of a report. It was recognised that international labour standards represent a global consensus and that their suitability to achieve decent work in global supply chains is reliant on adequate state implementation. However, while states have a responsibility to ensure

open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises".

[4] Ramona Elisabeta Cirlig, 'Business and Human Rights: From Soft Law to Hard Law?' (2016) Vol. 6 No. 2 Judicial Tribune, pp. 228-244.

[5] UN Human Rights Council, '2nd Revised Draft Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises' (06.08.2020). Available At: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf [Accessed 27 August 2020].

[6] UN Human Rights Council, 'Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights'. Available At: https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx [Accessed 25 March 2021].

[7] Kate Macdonald, *The Politics of Global Supply Chains* (Polity, 2014).

compliance with legal obligations, they also have different capacities and resources in regard to both the monitoring and enforcement of the relevant standards. This disparity is aggravated by the fact that, in global supply chains, where multinational enterprises are capable of exercising leverage over the conduct of a supplier or subcontractor, they originate in another state. Furthermore, transnational litigation is challenging to both the choice of jurisdiction and law, but also because it is necessary to show that the transnational corporation had legal control/ responsibility for the actions of another legal entity.[8]

Due to the lack of a legally binding regulation, unions continue to support the development of binding instruments, such as a UN Treaty or an ILO convention on global supply chains, even if with weak support from both employers and governments. Other initiatives, moving from either the purely unilateral or multi-stakeholder spectrum and more akin to collective bargaining have emerged. Collective bargaining has been recognised as essential for workers to negotiate agreements regarding wages and working conditions, with collective agreements being viewed to prosper because they are enforceable. Within this background, **global framework agreements** (GFAs) have emerged. Initially based on a set of identified 'core labour standards', these agreements have gradually expanded in content. Agreements recently signed and renewed now cover a wide range of labour standards and act as a new form of transnational labour regulation. Contributing to the achievement of sustainable development, particularly relation to its social dimension, global framework agreements can be analysed as a development in international industrial relations.[9] Being

[8] Laura Knöpfel, 'CSR Communication in Transnational Human Rights Litigations Against Parent Companies' (2018) Vol. 1 TLI Think! Paper; International Labour Organisation, 'Achieving Decent Work in Global Supply Chains: Report for Discussion at the Technical Meeting on Achieving Decent Work in Global Supply Chains' (25-28 February 2020), paragraphs 101, 103, 104, 122, 129. Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/meetingdocument/wcms_736541.pdf [Accessed 27 August 2020].

[9] Questioning the role of international framework agreements in the achievement of sustainable development and highlighting the role of partnerships, where these agreements can be placed. While freedom of association and trade unions are not explicitly included in sustainable development goal 8, referent to decent work and economic growth, worker participation is mentioned as an indicator within the goals' targets and can be included in regard to good governance and fundamental freedoms. See, Tonia Novitz and Lisa Tortell, 'The Role of Labour Standards in Sustainable Development: Theory in Practice?' (2009) International Union

negotiated and signed by global union federations (GUFs) and multinational enterprises (MNEs), they are clearly similar to collective agreements. However, this similarity needs to be discussed. At first sight, global framework agreements clearly match a general notion of collective agreement. However, even in regard to more easily identifiable features, an analysis must be carried. For instance, despite the involvement of an employer and workers' representatives, representativeness issues can be discussed. In particular, global union federations do not have an internationally given mandate to negotiate collective agreements at the international level and were, until now, not recognised by multinational enterprises as legitimate bargaining partners. Other issues are even more contentious, such as the matter of bindingness, enforcement, and relation to other sources of labour law.

Global framework agreements are a regulative initiative that, while intersecting with other regulative efforts, represent an entirely new development course. This evolution is placed in neither public nor private governance, belonging to the arena of social partners' initiatives.[10] Hence, although overlapping with corporate social responsibility (CSR) instruments, as well as national and international standards, global framework agreements constitute a distinct regulative attempt. Nevertheless, the implementation, monitoring, and enforcement of these agreements is not without problems. For instance, IndustriALL has stated that, while companies seem to be able to deal with enforceable collective agreements at national level in the countries where they operate, they seem more reluctant to enter into these agreements for their global operations, with the legally binding Bangladesh Accord constituting an exception.[11]

Rights Vol. 16 No. 1, pp. 16-17; Tonia Novitz, 'Engagement with Sustainability at the International Labour Organisation and Wide Implications for Collective Worker Voice' (2020) International Labour Review, Vol. 159 No.4, pp. 463-482.

[10] International Labour Organisation, 'Achieving Decent Work in Global Supply Chains: Report for Discussion at the Technical Meeting on Achieving Decent Work in Global Supply Chains' (n8), paragraph 116.

[11] IndustriALL, 'Feature: Supply Chain Justice Through Binding Global Agreements' (15 January 2019). Available At: http://www.industriall-union.org/feature-supply-chain-justice-through-binding-global-agreements [Accessed 29 January 2019].

This dissertation intends to examine several different but related issues. First it intends to analyse the legal status of global framework agreements. Hence, based on their aims and global scope, different alternatives of framing these agreements are examined. In particular, their similarity to collective agreements is assessed, as well as the possibility of differentiating a narrower category that are indeed **(global) collective agreements**. The binding character and enforcement mechanisms are given particular importance in the discussion. Likewise, the relation of these agreements to other sources of labour law is examined, while considering a theory concerning the intersectionality of different frameworks. This supports the idea according to which global collective agreements create an independent set of rules that nevertheless intersect with national collective agreements, as well as domestic and international labour law. Moreover, the functioning of global framework agreements is analysed, in regard to the parties, the content, scope, and implementation mechanisms. Based on the empirical work carried out, different stakeholders' views are further assessed. When regulated, enforcement is given particular consideration. Finally, in order to analyse the impact of global framework agreements in Cambodia, the implementation and the enforcement of two agreements in the garment sector is examined, based on interview data. These agreements are further identified within the narrower category of global collective agreements, which is clarified in the terminology section.

1.1.2. State of Research

The first global framework agreement was signed in 1988. However, the development of global framework agreements, both in number and content, mostly occurred in the beginning of the twenty first century. Hence, **available research has expanded** significantly in the past two decades. A number of more far-reaching studies have been carried out, mostly focused on a social dialogue perspective, as well as these agreements' potential impact and the analysis of some examples and cases.[12] Also, apart from

[12] E.g., Konstantinos Papadakis (ed.), *Shaping Global Industrial Relations – The Impact of International Framework Agreements* (Palgrave Macmillan 2011). Available At:

academic research, the International Labour Organisation (ILO),[13] global union federations,[14] corporations,[15] and the media[16] have also provided reports, articles, or comments on these agreements' implementation and impact. Still, as Papadakis, Casale, and Tsotroudi have highlighted, more research is needed in regard to the parties' compliance and the application of remedies or corrective measures when a violation happens. In particular, the authors have identified a lack of research on the topic of implementation, the

https://link.springer.com/book/10.1057%2F9780230319448 [Accessed 20 March 2017]; Michael Fichter, Kadire Zeynep Sayim, and Özge Berber-Agtaş, 'Organisation and Regulation of Employment Relations in Transnational Production and Supply Networks. Ensuring Core Labour Standards Through International Framework Agreements? – Report Turkey' (2012) Friedrich-Ebert-Stiftung Association Turkey Office; Dimitris Stevis, 'Global Framework Agreements in a Union-Hostile Environment: The Case of the USA' (2013) Berlin Friedrich Ebert Stiftung; Jörg Sydow, Michael Fichter, Markus Helfen, Kadire Zeynep Sayim, and Dimitris Stevis, 'Implementation of Global Framework Agreements: Towards a Multi-Organisational Practice Perspective' (2014) Vol. 2 No. 4 European Review of Labour and Research, pp. 489-503; Felix Hadwiger, 'Global Framework Agreements: Achieving Decent Work in Global Supply Chains – Background Paper' (International Labour Office 2016); Felix Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (Springer, 2018); Henner Gött (ed.), *Labour Standards in International Economic Law* (Springer 2018).

[13] E.g., Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Office 2008). Available At: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_093423.pdf [Accessed 20 May 2020]; Konstantinos Papadakis, 'Signing International Framework Agreements: Case Studies from South Africa, Russia and Japan – Working Paper No. 4' (International Labour Office 2009). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_158018.pdf [Accessed 20 May 2020]; International Labour Office, 'International Framework Agreements and Global Social Dialogue: Lessons from the Daimler Case – Working Paper No. 46' (International Labour Office 2010). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_120440.pdf [Accessed 20 May 2020]; International Labour Office, *International Framework Agreements in the Food Retail, Garment and Chemicals Sectors: Lessons learned from Three Case Studies* (International Labour Office 2018). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_631043.pdf [Accessed 20 May 2020].

[14] E.g., Leónie Guguen, 'Inditex and IndustriALL Global Union: Getting Results from a Global Framework Agreement – Special Report' (IndustriALL 2014). Available At: http://www.industriall-union.org/special-report-inditex-and-industriall-global-union-getting-results-from-a-global-framework [Accessed 20 May 2020]; IndustriALL, 'Agreement with H&M Proves Instrumental in Resolving Conflicts' (7 January 2016). Available At: http://www.industriall-union.org/agreement-with-hm-proves-instrumental-in-resolving-conflicts-0 [Accessed 20 May 2020]; IndustriALL, 'Using Global Framework Agreements to Organise' (31 January 2020). Available At: http://www.industriall-union.org/using-global-framework-agreements-to-organize [Accessed 20 May 2020].

[15] E.g., Inditex, 'Inditex Group Consolidated Annual Account as at 31 January 2020'. Available At: https://www.inditex.com/documents/10279/645708/Annual+Accounts+2019+Consolidads.pdf [Accessed 20 May 2020].

[16] E.g., Phil Bloomer, 'To Respect Human Rights, Fashion Needs Business, Unions and Governments' *The Guardian* (17 November 2014). Available At: https://www.theguardian.com/sustainable-business/sustainable-fashion-blog/2014/nov/17/to-respect-human-rights-fashion-needs-business-unions-and-governments [Accessed 20 May 2020].

improvement of working conditions, and the promotion of freedom of association and collective bargaining, particularly in countries with poor labour standards or their inadequate implementation.[17] The **empirical work carried out** under this project can provide some insights in regard to these issues and the latest point in particular. Interviews carried out with IndustriALL affiliates in Cambodia, non-governmental organisations, and a multinational enterprise's representative in the country showed that, for H&M in particular, and despite still being in an early stage of development, activities are indeed carried out under the agreement and disputes are in fact addressed.

The following paragraphs provide an overview of the current stage of development in discussions regarding both the impact and future of global framework agreements. A list of selected cases, consistently repeated in literature and considered to illustrate key ways in which global framework agreements have been used and disputes have been settled, is provided. The listed cases show that often the settlement of industrial relations issues is resolved outside existing grievance mechanisms, with agreements being used as a basis for asserting workers' rights, sometimes together with cross-border mobilisation and a threat of contract termination. Other developments, namely recommendations and discussions in regard to the implementation and impact of global framework agreements are included. Developments published by IndustriALL, both in terms of positive impact examples and activities carried out for follow-up and the exchange of information are also described. In regard to the garment industry, public information, made available by the relevant global union federation or the multinational enterprise and concerning the implementation of the studied agreements is outlined. A case regarding Inditex's agreement and the resolution of a child labour case in Portugal, previously analysed in a publication for this project,

[17] Konstantinos Papadakis, Giuseppe Casale, and Katerina Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Office 2008), pp. 78-79.

is also referred.[18] Lastly, issues regarding the withdrawal and cancellation of agreements are further addressed.

The following points provide an overview of cases previously analysed in literature concerning the role of global framework agreements in **facilitating unionisation**. A first example concerns a previous version of DaimlerChrysler's agreement, first signed in 2002 and last renewed in 2012, which was used to solve a dispute between a Turkish supplier and the multinational enterprise. In 2002, workers undertook industrial action, based on the employer's refusal to bargain with the union and its neglect for trade union rights. The company laid off 400 workers, incurring in a breach of the global framework agreement, which was also applicable to suppliers. The agreement acknowledged the human right to form trade unions and the respect for collective bargaining, while asserting that *"freedom of association will be granted even in those countries in which freedom of association is not protected by law"*. As for suppliers, the global framework agreement declared that the multinational enterprise *"supports and encourages its suppliers to introduce and implement equivalent principles in their own companies"* and it expected *"its suppliers to incorporate these principles as a basis for relations"*. This incorporation was regarded *"as a favourable basis for enduring business relations"*. A cross-border mobilisation with IMF's Turkish affiliate and a threat of contract cancelation by Daimler led to a settlement allowing the reinstatement for the majority of workers.[19] A second example concerns Telefónica's agreement. UNI's Brazilian affiliate Sintetel used the global framework agreement to organise and increase membership. By referring to the agreement, the union was able to oppose call centres' opposition to unionisation and increased almost five times its membership. Likewise, a contribution to the organisation of workers and the fighting of layoffs has also been found in Puerto Rico and Chile.[20] The third example refers to the implementation of IKEA's global framework

[18] Fabiana Avelar Pereira, 'Global Policy Instruments for Unions in the Global Economy' in Adalberto Perulli (ed.), *New Industrial Relations in the Era of Globalisation* (Wolters Kluwer 2018).

[19] Susan Hayter, *The Role of Collective Bargaining in the Global Economy* (Edward Elgar Publishing 2011), pp. 291-292.

[20] Jamie K. MacCallum, *Global Unions, Local Power: The New Spirit of Transnational Labour Organising* (Cornell University Press 2013), p. 44.

agreement in the United States. The agreement served as a dialogue basis to deal with IKEA's subsidiary Swedwood's anti-union behaviour. The national trade union resorted to the global framework agreement to organise workers and take the problems to IKEA's top management. Based on the agreement and through a transnational solidarity campaign involving the national trade union, BWI, and Swedwood's Swedish union representative, workers voted in favour of union representation and were able to achieve their first collective bargaining agreement.[21] A fourth example, found in Felix Hadwiger's work, refers to the implementation of Carrefour's agreement with UNI Global Union in Colombia. The conduct of the company's local management, the political context, and consequent danger associated with trade union engagement placed Colombia as one of the rare countries in which Carrefour possessed no independent trade unions. After efforts to create a trade union in 2009 and 2010 purportedly resulted in dismissals, UNI Global Union carried out an investigation in 2011. Subsequently, based on the global framework agreement, the global union requested Carrefour's central management to guarantee the respect of ILO Conventions No. 87 and No. 98, as well as Convention No. 135 in Colombia. As Felix Hadwiger highlights, the agreement was deemed to have contributed to the formation of a trade union at the company's subsidiaries in Colombia. A collective agreement was signed in 2012 and, after Carrefour sold its subsidiaries in Colombia to Cencosud, the new owner agreed to comply with the global

[21] See, Nikolaus Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (2005) European Review of Labour and Research Vol. 11 No. 4, pp. 511-530; Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (n13); Keith Ewing, 'International Regulation of the Global Economy: The Role of Trade Unions' in B. Bercusson and C. Estlund (eds), *Regulating Labour in the Wake of Globalisation: New Challenges New Institutions* (Hart Publishing 2008), pp. 221-226; Dimitris Stevis, 'The Impacts of International Framework Agreements: Lessons from the Daimler Case' in Konstantinos Papadakis (ed.) *Shaping Global Industrial Relations: The Impact of International Framework Agreements* (Palgrave Macmillan 2011), pp. 116-142; McCallum, *Global Unions, Local Power: The New Spirit of Transnational Labour Organising* (n20); Nathaniel Popper N, 'IKEA's U.S. Factory Churns Out Unhappy Workers' *Seattle Times* (2011). Available At: https://www.seattletimes.com/business/ikeas-us-factory-churns-out-unhappy-workers/ [Accessed 2 December 2017]; BWI, 'Support the Workers at the Swedwood Plant in Danville' (12 July 2011) Virginia. Available At: http://connect.bwint.org/default.asp?index=3611&Language=EN [Accessed 2 December 2017]; BWI, '100,000 Support Swedwood Workers in Danville' (22 July 2011). Available At: http://connect.bwint.org/default.asp?index=3627&Language=EN [Accessed 2 December 2017]; César F. Rosado Marzán, 'Organising with International Framework Agreements: An Explanatory Study' (2014) Vol. 4 UC Irvine Law Review, pp. 725-780; BWI, 'Swedwood Unions in Poland Sign Collective Bargaining Agreement' (6 February 2016). Available At: http://connect.bwint.org/default.asp?Index=4675&Language=EN [Accessed 2 December 2017].

agreement and the established social dialogue structure. This led to the signing of a new, improved, collective agreement with Cencosud.[22] As Felix Hadwiger states, *"Considering that Colombia is widely regarded as a dangerous country for trade unions, this an exceptional development induced and promoted by Carrefour's GCA and ILO Convention No. 135"*.[23] Other examples listed in literature include G4S's agreement in the United States, South Africa, India, Ghana, and Malawi.[24] It is worth noting that, while global framework agreements have contributed to the resolution of the mentioned issues, these were based on a solidarity mobilisation, an active involvement of the global union or its affiliates, and cooperation by the multinational enterprise. Dispute settlement provisions comprised in the agreements were not used.

Global union federations and IndustriALL in particular have also provided material concerning parties' expectations, activities conducted for the exchange of information, as well as positive impact cases, particularly in regard to anti-union behaviour and transnational solidarity, functioning in the background of global framework agreements.[25] In some cases, the agreement was viewed by the parties as a potentiator of workers' rights.[26] Awards can

[22] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 141-143.

[23] ibid, p. 143.

[24] McCallum, *Global Unions, Local Power: The New Spirit of Transnational Labour Organising* (n20), pp. 44-45.

[25] In 2013 IndustriALL's Global Union's Executive Committee, which represents 50 million workers from several industrial sectors, presented an action plan on sustainable industrial policy. This was based on the construction of a common understanding among affiliates on union priorities, developing a strategic approach to sustainability for each industry sector, sharing effective strategies for influencing governments on sustainable industrial policies, using trade union networks in multinational companies to identify joint actions, and develop regional workshops able to identify key sustainability issues and establish joint actions. Discussions focused on trade union networks and global framework agreements. Both positive and negative examples of global framework agreements were discussed and a working group to monitor the content and implementation of global agreements, as well as a Charter of Principles to Confront Corporate Bad Behaviour were discussed. See, IndustriALL, 'IndustriALL Executive Launches Action on Sustainable Industrial Policy' (30 May 2013). Available At: http://www.industriall-union.org/industriall-executive-launches-action-on-sustainable-industrial-policy [Accessed 29 January 2019]; IndustriALL, 'IndustriALL Global Union's Charter of Solidarity in Confronting Corporate Violations of Fundamental Rights'. Available At: http://www.industriall-union.org/industriall-charter-of-solidarity [Accessed 4 September 2020].

[26] For instance, the Siemens Workers' Union expected that the actions developed by the global union networks of the company and the global framework agreement would defend workers' rights, fight de-unionisation, and other labour issues faced by workers at Siemens in India. See, IndustriALL, 'Global Networks and GFA Expected to Defend Workers' Rights at Siemens in India' (11 October 2012). Available At:

also be counted among positive examples of these agreements' application.[27] In November 2018, IndustriALL's global framework agreement working group met at the ILO in order to report on global framework agreements' implementation and reinforcement. The working group, composed of representatives from all continents and sectors, presented remarks and recommendations to the global union's secretariat and executive. The importance of local involvement, the use of global agreements as a remedy to violations and their prevention, and the need of training in regard to these agreements' implementation, were among the factors highlighted. The contribution of global framework agreements in workers' organisation was discussed, with examples regarding the textile industry in Bangladesh and Turkey, auto companies, the role of different actors, and the impact of global agreements in social dialogue. Case studies on effects the of global framework agreements in the improvement of workers' rights and their contribution to both organising and dispute settlement were presented, referring to H&M, Total, Solvay, and Siemens. A stronger use of due diligence language, as well as ILO tools and mechanisms were recommended.[28] In January 2019, IndustriALL published an article arguing for the need to ensure an enforcement mechanism that not only avoids the drawbacks of the United Nations Commission on International Trade Law (UNCITRAL) Rules process, but it is also faster, cheaper, not overly bureaucratic, and directly accessible to trade unions. It also highlighted that, while some agreements refer to the ILO as a potential arbitrator, the ILO *"has made clear that it is not able to take on this role"*.[29] These and other related issues are discussed throughout chapter 5 and chapter 6 in regard to the enforcement of global framework agreements.

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http://www.industriall-union.org/global-networks-and-gfa-expected-to-defend-workers-rights-at-siemens-in-india [Accessed 29 January 2019].

[27] ThyssenKrupp's global framework agreement won the silver medal for its conflict resolution model at the Germany's 'Works, Council Day' in 2016. See, IndustriALL, 'ThyssenKrupp Launches Online Violations Reporting System' (30 March 2016). Available At: http://www.industriall-union.org/thyssenkrupp-launches-online-violations-reporting-system [Accessed 17 November 2020]; IndustriALL, 'Global Agreement with ThyssenKrupp Receives Award' (15 November 2016). Available At: http://www.industriall-union.org/global-agreement-with-thyssenkrupp-receives-award [Accessed 29 January 2019].

[28] IndustriALL, 'Global Framework Agreements Are Strategic Tools' (12 November 2018). Available At: http://www.industriall-union.org/global-framework-agreements-are-strategic-tools-confirms-working-group [Accessed 29 January 2019].

[29] IndustriALL, 'Feature: Supply Chain Justice Through Binding Global Agreements' (n11).

It is relevant to note that global framework agreements are influenced by the economic sector in which the company operates. Agreements in the **garment industry** have been considered particularly difficult to negotiate, due to the fragmentation of the workforce and labour market.[30] Still, when signed, literature has denoted a general positive impact. Available information on meetings and initiatives carried out by global union federations, companies, and other relevant stakeholders has expanded.[31] Likewise, data regarding the agreements selected as the focus of the empirical study has increased. For instance, Inditex's agreement improved dialogue between management and a supplier factory in Portugal, preventing the termination of the supplying contract and addressing child labour occurrences in the context of an economic crisis.[32] Inditex's agreement has also contributed to the

[30] See, Glynne Williams, Steve Davies, and Crispen Chinguno, 'Subcontracting and Labour Standards: Reassessing the Potential of International Framework Agreements' (2015) British Journal of Industrial Relations Vol. 53 No. 2, p. 185.

[31] For instance, in September 2018, a meeting of more than 130 trade union leaders from Turkey and Bangladesh gathered to exchange experiences and knowledge on union organising, collective bargaining, collective agreements, and social dialogue within the context of global framework agreements. Global brands that have signed global framework agreements, namely Inditex, H&M, ASOS, Tchibo, and Esprit, also took part. The impact of global framework agreements in organising, collective bargaining, elimination of gender-based violence, and the development of good industrial relations across supply chains was evaluated. The importance of adequate implementation and monitoring was emphasised. Moreover, the production countries shared experiences of best monitoring practices and supported the existence and development of national monitoring committees. See, IndustriALL, 'Implementing Global Agreements with Brands in the Garment Sector' (3 October 2018). Available At: http://www.industriall-union.org/implementing-global-agreements-with-brands-in-the-textile-and-garment-sector [Available 29 January 2019].

[32] Martin Eaton and Carlos Pereira da Silva, 'Portuguese Child Labour: Manufacturing for Change or Continuing Exploitation in the Textiles Industry?' (1998) Vol. 5 No. 3 Childhood, pp. 325-343; El País, 'Una Empresa Subcontratada por Zara en Portugal Utiliza Mano de Obra Infantil, Según un Semanario' (27 May 2006). Available At: https://elpais.com/sociedad/2006/05/27/actualidad/1148680803_850215.html [Accessed 8 March 2017]; Sonia Domínguez, 'Un Semanario de Portugal Denuncia que Una Empresa Subcontratada por Zara explota a Niños' *El Mundo* (27 May 2006). Available At: https://www.elmundo.es/elmundo/2006/05/27/sociedad/1148728729.html [Accessed 8 March 2020]; Núcleo de Profesionales Y Técnicos del Partido Comunista de Madrid, 'Trabajo Infantil para Zara en Portugal' (27 May 2006). Available At: http://www.profesionalespcm.org/_php/MuestraArticulo2.php?id=6279 [Accessed 8 March 2020]; Diário de Felgueiras, 'Trabalho Infantil em Felgueiras' (27 May 2006). Available At: http://josecarlospereira.blogspot.com/2006/05/trabalho-infantil-em-felgueiras.html [Accessed 8 March 2017]; Últimas Notícias, 'Contratada da Zara em Portugal Explora Trabalho Infantil' (27 May 2006). Available At: https://noticias.uol.com.br/ultnot/lusa/2006/05/27/ult611u72212.jhtm [Accessed 8 March 2017]; Público, 'Zara Investiga Caso de Trabalho Infantil em Fornecedor Português' (30 May 2006). Available At: https://www.publico.pt/2006/05/30/jornal/zara-investiga-caso-de-trabalho--infantil-em-fornecedor-portugues-81649 [Accessed 8 March 2017]; Natália Faria, 'Zara Mantém Negócios com Fábrica que Empregava Menores' *Público* (24 July 2008). Available At: https://www.publico.pt/2008/07/24/jornal/zara-mantem-negocios-com-fabrica-que-empregava-menores-269853 [8 March 2020]; Ana Maria Henriques, 'Um Terço da

reinstatement of more than 200 trade union members who had been dismissed in Peru and Cambodia, as well as the subsequent increase in trade union membership.[33] Likewise, H&M's agreement proved to be instrumental in solving industrial conflicts through trade union recognition in Myanmar and by reinstating workers in Pakistan.[34] Global framework agreements have been considered an important tool in guaranteeing fundamental labour rights, both in the multinational enterprise's headquarters, but also along the supply chain. While this might be true for some of the company's supplying countries, the empirical work carried out found a set of glitches in the settlement of disputes in Cambodia. In 2014, a special report regarding the global framework signed between Inditex and IndustriALL was published. In the report, Inditex's agreement was considered a success model for the garment sector. According to the report, the agreement had proven to have a positive impact, helping to reinstate workers expelled for being union activists, raising salaries, and promoting freedom of association.[35] However, as it developed in chapter 6, such positive impact was not entirely confirmed by the interviews conducted in Cambodia.

In December 2018, the national monitoring committees (NMCs), which exist in some cluster countries and were created under H&M's agreement met to discuss dispute resolution recommendations and agreed on a framework for

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Moda Fabricada Para a Inditex é Made in Portugal' *Público* (6 May 2013). Available At: https://www.publico.pt/2013/05/06/jornal/um-terco-da-moda-fabricada-para-a-inditex-e-made-in-portugal-26480195 [Accessed 8 March 2017]; Confederação Geral dos Trabalhadores Portugueses (CGTP), 'Sindicatos Assinaram Acordo Global' (26 September 2013). Available At: http://www.cgtp.pt/accao-e-luta-geral/6710-sindicatos-assinaram-acordo-global [Accessed 8 March 2017]; International Programme on the Elimination of Child Labour, *Estudo Sobre a Aplicação das Convenções No. 138 e No. 182 da OIT e suas Recomendações na Legislação Nacional dos Países da CPLP - Portugal* (International Labour Organisation 2013).

[33] Doug Miller, 'Preparing for the Long Haul: Negotiating International Framework Agreements in the Global Textile, Garment and Footwear Sector' (2004) Vol. 4 No. 2 Global Social Policy, pp. 215-239; Doug Miller and Catia Gregoratti, 'International Framework Agreements for Workers' Rights? Insights from River Rich Cambodia' (2011) Vol. 2 No. 2 Global Labour Jornal, pp. 84-105.

[34] See, Caroline da Graça Jacques, Maria João Nicolau dos Santos and Maria Soledad Etcheverry Orchard, 'Decent Employment Opportunities in Global Value Chains: The Case of the Textile and Clothing Sector' in C. Machado and J. P. Davim (eds), *Management for Sustainable Development* (River Publishers 2016), pp. 125-148; H&M, 'Conscious Actions Sustainability Report' (2015), p. 53; IndustriALL, 'Agreement with H&M Proves Instrumental in Resolving Conflicts' (n14).

[35] Guguen, 'Inditex and IndustriALL Global Union: Getting Results from a Global Framework Agreement – Special Report' (n14).

a global dispute resolution mechanism. As provided in IndustriALL's website and stated by Mats Svensson, International Secretary of IF Metall, the Swedish affiliate to the global framework agreement, the procedural recommendations allow for a structured and result oriented dispute settlement, which is focused on local resolution, meaning problems are initially tackled closer to where occur.[36] However, as unveiled in chapter 6, the interviews carried out reveal that dispute settlement mechanisms at the local level function poorly. The content, supply chain references, and dispute settlement provisions comprised in these agreements are further developed in chapter 6, focused on the empirical findings. In a similar development, in November 2019 Inditex and IndustriALL extended the global framework agreement first signed in 2007. A novelty of the renewed agreement is the establishment of a global union committee, composed by union representatives of the company's six main production clusters and representatives from Comisiones Obreras and UGT, two Spanish trade unions.[37] The committee allows for a direct involvement of local unions in the implementation of the global framework agreement to the relevant clusters and the exchange of best practices in regard to the promotion of freedom of association and the right to collective bargaining, as well as the grounds for improving of working conditions. The committee can also receive the advice of union experts.[38]

Finally, new developments include the **withdrawal or cancellation** of global framework agreements, which should not be ignored. In January 2018 IndustriALL and national unions representing LafargeHolcim workers

[36] IndustriALL, 'IndustriALL Unions Negotiate Global Dispute Resolution Mechanism with H&M' (20 December 2018). Available At: http://www.industriall-union.org/industriall-unions-negotiate-global-dispute-resolution-mechanism-with-hm [Accessed 29 January 2019].

[37] As stated in the agreement, the global union committee is composed by one member representing the African production cluster, one member representing the Americas production cluster, four members representing the Asian clusters, two representing the Western European clusters and one representing the Eastern European cluster.

[38] Inditex, 'Inditex and IndustriALL Global Union Agree to Create a Global Union Committee' (13 November 2019). Available At: https://www.inditex.com/article?articleId=640512&title=Inditex+and+IndustriALL+Global+Union+agree+to+create+a+Global+Union+Committee [Accessed 14 July 2020]; IndustriALL, 'IndustriALL and Inditex Create a Global Union Committee' (13 November 2019). Available At: http://www.industriall-union.org/industriall-and-inditex-create-a-global-union-committee [Accessed 14 July 2020].

globally voiced their indignation due to the company's unilateral decision to withdraw its signature of the global framework agreement *"designed to build positive industrial relations throughout the company"*.[39] Also, in January 2019 IndustriALL suspended its agreement with Volkswagen due to the company's constant refusal to afford the same rights to its workers in Chattanooga, Tennessee, USA.[40]

1.2. Purpose and Research Questions

This project has four general aims. First, it intends **(1) to analyse whether, and to what extent, global framework agreements can be considered collective agreements**. Accordingly, an examination of global framework agreements in relation to the core features of a collective agreement is carried out. The **hypothesis** put forward is that some global framework agreements indeed fit within the notion of collective agreement. Defining a narrower set of global framework agreements as possible collective agreements carries with it an array of connotations. In particular, the 'collective agreement' label entails a particular placement in the hierarchy of labour law sources, a recognised binding character, and a set of commonly agreed rights and obligations. A particular set of agreements, with certain characteristics, are indeed identified as collective agreements. Regardless of whether judicial enforcement is allowed and whether they fit the different countries' formal national requirements, these are collective agreements, whose issues should be jointly solved by the parties, within the meaning of collective autonomy. Chapter 3 illustrates that, despite particularities in different national systems, the binding effect is a distinctive feature of the collective agreement. As a minimum, a collective agreement binds the parties and the employees covered by it. Moreover, it represents a protection for workers, entailing a

[39] IndustriALL, 'Unions Outraged Over LafargeHolcim's Sudden U-turn on Global Commitments' (10 January 2018). Available At: http://www.industriall-union.org/unions-outraged-over-lafargeholcims-sudden-u-turn-on-global-commitments [Accessed 29 January 2019].

[40] IndustriALL, 'IndustriALL Suspends Global Agreement with Volkswagen' (21 January 2019). Available At: http://www.industriall-union.org/industriall-suspends-global-agreement-with-volkswagen [Accessed 29 January 2019].

'codification' of standards, comparable to those comprised in statutes. The actual implementation of two agreements considered to fit into this notion is further addressed, through an empirical examination of their operation within a specific, challenging, and limited context. Based on these findings, this dissertation intends to construct an identification framework for global frameworks that fit within the concept of collective agreement.

Additionally, this dissertation intends **(2) to understand the functioning of global framework agreements,** through both a literature and content analysis of different agreements. This entails an examination of the different key provisions that constitute a global framework agreement, including the scope, content, implementation, monitoring, and (when existing) the enforcement mechanisms comprised.

Based on the empirical material gathered, this dissertation further attempts **(3) to assess the impact of global collective agreements in protecting and promoting labour rights in Cambodia.** The project aims to understand whether, and if so, to what extent, these documents have had a meaningful impact in the improvement of working conditions and industrial relations in Cambodia. Besides an overall content and literature analysis of global framework agreements, the third research aim focuses on two agreements, identified within the narrower category of global collective agreements, and examines their impact within a specific sector and country. This work is based on both an examination of available documents and complemented with the empirical work conducted in 2019 and 2020.

Finally, the project intends **(4) to understand how the regulatory framework created by global collective agreements intersects with other regulatory frameworks** (i.e., both domestic collective agreements and statutory legislation at the national and international level) and **analyse the consequences of such intersections** (i.e., the relationship developed between these different legal systems). Hopefully, this research can lead to advances in the understanding and evaluation of future global framework agreements, as more companies sign or renew these instruments.

To achieve these purposes, this thesis answers the following four research questions and their corresponding sub-questions:

(1) What is the legal status of global framework agreements?

Answering the first research question entails an examination of various issues, which are also connected to the empirical component of the present work. First, analysing the legal status of global framework agreements requires a consideration of the alternative ways of viewing these agreements. Two alternatives are examined and discussed in chapter 4. These include the possibility of viewing these agreements as contracts, enforceable within private international law, or as collective agreements. Second, taking into consideration the adopted terminology, the concept of global framework agreement and global collective agreement needs to be clearly demarcated. Accordingly, the extent to which global collective agreements constitute a narrower concept when compared to global framework agreements has to be explained and answered. As developed in chapter 4, besides fulfilling the constitutive elements of a global framework agreement, global collective agreements need to satisfy the core features of the concept of collective agreement, which are defined in chapter 3. This fulfilment can be more or less restrict, depending on the global agreement itself and the relevance of the core feature considered. Accordingly, the first question requires analysing whether global framework agreements should be viewed as pure private law contracts, made legally enforceable through private international law, or within the concept of collective agreement, based on core features of the notion. This analysis is based on the identification of the broader category of transnational company agreements, which encompasses global framework agreements. Through a content evaluation of different global framework agreements, an even narrower concept, of global collective agreements, can be identified. Hence, within the notion of global framework agreements, a stricter group of agreements, which fulfil an additional set of criteria can be selected. This entails analysing global framework agreements based on the following core features of the concept of collective, which are identified in

chapter 3: bilaterality and the parties' representativeness, voluntariness, bindingness, enforcement, scope, content, form, and relation to statutory law and other collective agreements. Third, and greatly based on the interviews carried out, the signatory parties' views regarding the legal status of global framework agreements need to be analysed. Likewise, and also centred around the information gathered through the conducted interviews, other stakeholders' views on these agreements legal status have to be pondered. These include the views of affiliated trade unions, multinational enterprises, global union federations, and non-governmental organisations. Finally, a fourth point to reflect on refers to global framework agreements' binding character. This reflection demands the analysis of the enforcement mechanisms comprised in these agreements and the interviewees' views. Particular focus must be given to the creation of binding commitments and their enforceability, which is especially controversial in this context. Issues regarding global framework agreements' aims and the need (or lack of) legal enforceability are examined. The views of interviewees in regard to the legal status and binding character of global framework agreements further contribute in answering the first research question.

(2) How do global framework agreements function?

Looking into the functioning of global framework agreements entails an examination of these agreements' parties, content, implementation mechanisms, and scope. The scope is considered in relation to an agreement's references to the supply chain. Likewise, the implementation, monitoring mechanisms also need to be analysed. When existing, the operation of an agreement's enforcement mechanisms is also examined. This consideration is connected to the binding character of an agreement, referent to the first research question. The possibility of resorting to judicial enforcement of an agreement is further studied. This involves a consideration of agreements that explicitly exclude the possibility of legal effects and those that allow it. Hence, agreements that explicitly or implicitly permit the possibility of the parties to resort to court and those that clearly refer the applicable law are examined. Finally, answering the second research

question entails an analysis of the parties' obligations or responsibilities created by global framework agreements. Thus, the second research question involves a thorough examination of the content of global framework agreements. The main topics addressed by these agreements, besides the minimum content, based on the ILO Declaration on Fundamental Principles and Rights at Work, are listed. Likewise, the different scopes of application mentioned in the agreements are identified and systematised. The implementation mechanisms, varying from broad references to joint implementation, dissemination, training, and monitoring are further identified. For agreements that tackle enforcement, the different dispute settlement procedures are discussed and systematised. Responsibilities arising from the agreements' implementation and enforcement, particularly in regard to dissemination, transparency, and monitoring are catalogued and problems are discussed, based on literature and information gathered in interviews. Moreover, concerns found in interviews carried out and the analysis of global framework agreements' content are considered when making suggestions to be considered in the renewal, negotiation, and signature of future global framework agreements.

(3) What is the impact of global collective agreements in protecting and promoting labour rights in Cambodia?

The answer to the third research is primarily based on the interview work. Taking into consideration the broader category of global framework agreements, this examination focuses on the impact of the narrower category of global collective agreements. These include more detailed requirements, promoting the possibility of a more positive impact. Two global collective agreements, Inditex's and H&M's, are selected as the analysis focus. A determination of whether and how these agreements have been implemented and disseminated is included in the analysis. Hence, focused on the implementation of two global collective agreements in Cambodia, the activities developed under the agreements, stakeholders' views of the agreements' impact, the use, and results of enforcement mechanisms are examined. An examination of whether and how the dispute settlement

mechanisms have been used is integrated.[41] Answering the third research question further entails looking into literature and public resources made available by companies, global union federations, and trade unions. Hence, academic, corporate, media, and trade union discourses are used in the construction of these agreements' impact. Nevertheless, the interviews conducted constitute the key source of information. Empirical limitations are acknowledged, as the interviews focus on the implementation and impact of two global collective agreements, within one industry, and one country. Accordingly, findings are restricted to this specific context. An attempt to surpass some of these limitations and support more general conclusions justifies a comprehensive use of company reports, global union federations' resources, and case study-based literature.

(4) How and to what extent do the obligations established by global collective agreements intersect with the international and domestic statutory legislation? Moreover, how do they intersect with national collective agreements emerging from domestic industrial relations systems?

The fourth research question addresses a more theoretical concern. Already in the beginning of the nineteenth century, when collective agreements were not judicially enforceable, Sinzheimer argued that they possessed a normative force as law.[42] In his perspective, trade unions and employers' organisations possessed a 'law-creating capacity' and collective agreements constituted real, 'living' law (as expressed by Ehrlich[43]). For Sinzheimer, states should recognise this socially-created law and promote these organisation's law-making capacity.[44] Based on these ideas, the fourth

[41] According to the structure summarised in European Commission and the ILO's database. See, European Commission and the ILO – Employment, Social Affairs & Inclusion, 'Database on Transnational Company Agreements'. Available At: https://ec.europa.eu/social/main.jsp?catId=978&langId=en [Accessed 1 February 2019].

[42] Ruth Dukes, 'Hugo Sinzheimer and the Constitutional Function of Labour Law' in Guy Davidov and Brian Langille (eds), *The Idea of Labour Law* (Oxford University Press 2013).

[43] Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Routledge 2002, originally published in 1936 by Harvard University Press).

[44] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (1992) Industrial Law Journal Vol. 21 No. 4, pp. 84-85.

question departs from the concept of collective autonomy, developed by Gino Giugni, and the idea that, based on mutual recognition, the social partners can create a framework, separate and parallel to the state's. The normative organisation of this *intersindacale* community is grounded on the collective agreement, which is negotiated between the two sides of the labour relation.[45] However, as Gino Giugni stated, the *ordinamento intersindacale* (i.e., inter-union system) is not a closed system. It interacts with the state's legal order. As collective agreements at the international level, global collective agreements could create an original and independent framework from the state's that, nevertheless, intersects with phenomena that is considered legally relevant and regulated in both domestic and international legislation. Furthermore, this international *ordinamento* (i.e., order) also intersects with nationally developed *ordinamenti*, whose primary sources are usually national collective agreements. These ideas and Giugni's theory in particular are further developed in chapters 5, 6, and in the conclusions, comprised in chapter 7. In this context, the aim of this project is to analyse the extent to which there is an intersection between the three systems and what are the consequences of such intersection. This is visible in the text of some global collective agreements, which comprise provisions regarding their relation to national legislation and collective agreements, while others do not.

1.3. Terminology

The term 'global framework agreement', used throughout the dissertation, refers to a particular, narrower type of transnational company agreements.[46] According to Eurofound, transnational company agreements are: "*an*

[45] Ilídio Duarte Rodrigues, *Concorrência de Convenções Colectivas de Trabalho* (Estudos do ISCAA 1981), pp. 53-74.

[46] Using the term 'transnational collective agreements' as encompassing international framework agreements and European framework agreements. See, Stephen Mustchin and Miguel Martínez Lucio, 'Transnational Collective Agreements and the Development of New Spaces for Union Action: The Formal and Informal Uses of International and European Framework Agreements in the UK' (2017) Vol. 55 No. 3 British Journal of Industrial Relations, pp. 577-601.

agreement comprising reciprocal commitments, the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives."[47]

In 2009, in its report 'European and International Framework Agreements: Practical Experiences and Strategic Approaches', Eurofound structured transnational company agreements into international framework agreements (IFAs)/global framework agreements (GFAs) and European framework agreements (EFAs).[48] While the terms international framework agreement and global framework agreement can be used interchangeably, this dissertation has **opted to consistently use the term global framework agreement**. Eurofound defines global framework agreements as instruments serving *"to establish an ongoing relationship between a multinational enterprise and a global union federation (GUF) to ensure that the company adheres to the same standards in every country in which it operates"*.[49] According to Eurofound, these agreements possess a global scope of application, are signed by global union federations, and intend to warrant the labour standards throughout the enterprise's worldwide operations. In contrast, European framework agreements do not have a global scope, but a European scope instead.[50]

[47] European Commission, 'Commission Staff Working Document, Transnational Company Agreements: Realising the Potential of Social Dialogue' (2012).

[48] Volker Teljohann, Isabel da Costa, Torsten Müller, Udo Rehfeldt, and Reingard Zimmer, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (European Foundation for the Improvement of Living and Working Conditions 2009).

[49] Eurofound, 'International Framework Agreement' (20 December 2019). Available At: https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/international-framework-agreement [Accessed 27 January 2020].

[50] Eurofound, 'European Framework Agreement' (February 2013). Available At: https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/european-framework-agreement [Accessed 1 May 2019].

The notion of global framework agreements selected and used is based on Eurofound's definition and Drouin's identification of four elements. Accordingly, a global framework agreement must comprise four constitutive elements: 1) the involvement of a global union federation in the agreement's negotiation and signature, 2) an ILO, rights-based content, 3) some type of implementation mechanism(s), and 4) a reference(s) to the multinational enterprise's suppliers and business partners.[51]

The concept of **global collective agreements** is contained within the notion of global framework agreements. Global collective agreements have a global scope, call for the same aims, and are signed by global union federations. However, they are narrower in the sense they must possess particular features that not all global framework agreements comprise. For a global framework agreement to be considered as a global collective agreement, besides the four mentioned constitutive elements, key features of collective agreements need to exist. These were not considered in a restricted sense, with the possibility of fulfilment on a scale evaluation. Some features should be entirely fulfilled, namely the existence of an enforcement mechanism. Still, even for these, variations are allowed. Hence, different forms of enforcement mechanisms are present throughout the various agreements. Differently, other features might be more or less explicitly fulfilled, such as an explicit reference to good faith or the relationship between the different sources of labour law. Hence, the use of the term 'global collective agreement' is based on global framework agreements' constitutive elements and the core features of collective agreements, presented and described in chapter 3.

[51] Renée-Claude Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (2010) Vol. 31 No. 59 Comparative Labour Law & Social Policy Journal, p. 4.

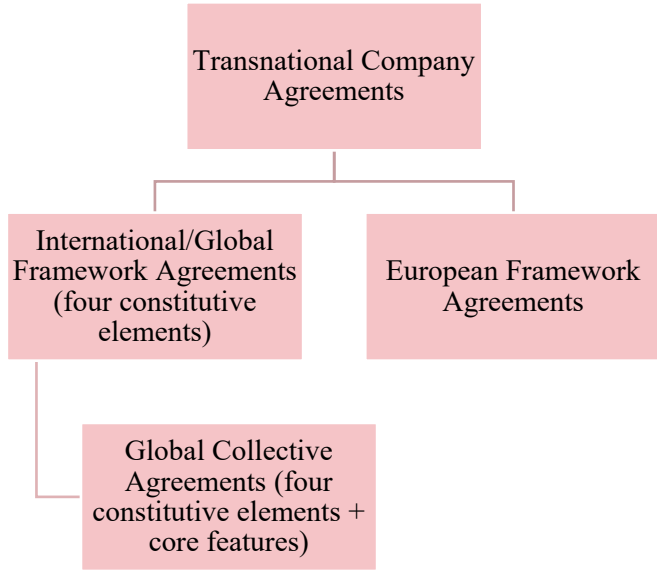

Figure 1. Classification of global framework agreements.

1.4. Methodology

The research questions presented above are interrelated and possess no explicit hierarchy. It is not possible to provide a definitive answer as to whether some global framework agreements can in fact be considered as collective agreements without looking at issues regarding their (not merely legal) binding character, representativeness, and other core features identified in chapter 3. In particular, the binding character involves analysing the enforcement mechanisms comprised in these agreements, their use, and the parties' perception. Likewise, the examination of the relation between global collective agreements, international labour law, domestic labour law, and domestic collective agreements is part of the analysis of the whether global framework agreements fit into the concept of collective agreement. This is also a factor influencing an agreement's positive impact in countries with different legislations and implementation backgrounds. In turn, this relation is part of the answer to the question regarding the intersection of different legal frameworks.

The **legal dogmatic method** is used in order to identify the core, basic, features of a collective agreement.[52] These constitute the basis against which the status of global framework agreements is examined and it requires analysing the international and different domestic perspectives of what constitutes a collective agreement. However, this project does not intend to carry out a legal comparison and therefore the comparative legal method is not used.

Through an **empirical method**, in the form of interviews, this project intends to understand different stakeholders' perceptions of global framework agreements, particularly in regard to their enforcement and actual implementation. Interviews were carried out with a list of selected stakeholders, focusing on the implementation, enforcement, and impact of two identified global collective agreements in the Cambodian garment industry. The use of semi-structured interviews allowed for the interviewees to spontaneously share other issues, including references and comparisons between different brands, and the relationships between stakeholders. While challenging, discrepancies between interviewees' accounts of the same situations, contributed to the discovery of differences in the parties' registration of settled disputes under a global collective agreement, impacting the parties' perception of the agreement's results.

The following sections list and describe the methodologies used and correlate them to specific research questions, without ignoring their existing connections. The methodology used is comprised of legal dogmatics (section 1.4.1), an empirical method in the form of interviews and their interpretation (section 1.4.2.), as well as a description of the legal theory on the intersection of different frameworks, based on Giugni's views on collective autonomy (section 1.4.3.).

[52] Mark Van Hoecke, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' in Mark Van Hoecke (ed.), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011), pp. 1-19; Pauline C. Westerman 'Open or Autonomous? The Debate on Legal Methodology as a Reflection of the Debate on Law' in Mark Van Hoecke (ed.), *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (Hart Publishing 2011), pp. 87-108; Aleksander Peczenik, 'A Theory of Legal Doctrine' (2001) Vol. 14 No. 1 Ratio Juris, pp. 75-105.

1.4.1. Legal Dogmatics

This section explains how legal dogmatics is used in the selection and interpretation of valid law, as well as the identification of a collective agreement's core elements and subsequent identification of some global framework agreements as global collective agreements.

Before clarifying the way in which the legal dogmatic method is used it is essential to elucidate what is understood by legal dogmatics. The traditional legal method entails the investigation and systematisation of the applicable law.[53] *Rechtsdogmatik* (legal dogmatics), presented by German legal analysis[54] is viewed as a key concept in legal science. Radbruch defined legal dogmatics as *"the science of investigating the objective meaning on positive legal order"* and Larenz as a *"system of statements about valid law"*.[55] It is, however, worth mentioning that *"when jurists talk about dogmatics much remains unclear, even the definition"*.[56] Nevertheless, it is common to identify two different levels in dogmatics: a general level, *"understood as scientific processing of all legal material"*[57] and a more specific sense, referent to a system that enables to conceptualise and systematically value the application of law.[58] Hence, legal dogmatics analyses legal materials, for instance legislative practice, executive actions, and court decisions, and views the role of the legal scientist as someone using inductive reasoning to determine the natural laws explaining these phenomena. It focuses on the systematisation and examination of positive law and jurisprudence, generally excluding non-legal data and theories from other fields.[59]

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[53] Peter Wahlgren, 'On the Future of Legal Science' (1957) Stockholm Institute for Scandinavian Law, p. 516.
[54] Anthea Roberts, *Is International Law International?* (Oxford University Press 2017), p. 218.
[55] Karl Larenz, *Methodenlehre der Rechtswissenschaft* (Springer-Verlag 1991); Chia-ying Chang, 'Doctrinal Knowledge and Interdisciplinary Studies of Law: A Reflection on Methodology', pp. 1-10.
[56] Raul Narits, 'Principles of Law and Legal Dogmatics as Methods Used by Constitutions Courts' (2007) Juridica Int'l Vol. 12, pp. 15-22.
[57] ibid, p. 19.
[58] ibid, p. 19.
[59] John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (3rd ed., Sandford University Press 2007); Anthea Roberts, *Is International Law International?* (n54), p. 218.

This dissertation makes use of the legal dogmatic method by analysing the relevant legal material, both in the form of primary and secondary sources of law. Special focus is given to international labour law, the fundamental principles and rights at work, and the corresponding conventions, identified in the 1998 ILO Declaration. In regard to the concept of collective agreement, the starting point is the ILO definition, set in Recommendation No. 91, and referred in Convention No. 98. Nevertheless, a deeper analysis and identification of additional core features of the concept cannot be solely based on ILO instruments. It is necessary to look into different national legislations and the way collective agreements are defined in each. In some countries, clear definitions exist, whereas in others such definitions are absent. Regardless, even if an exact legal definition is inexistent, there is a general understanding regarding what constitutes a collective agreement, which can be discovered through the use of secondary legal sources. Hence, an analysis of legal materials, both in the form of primary and secondary legal sources, is carried out and eight core features of the concept of collective agreement are identified and further discussed. In particular, the existing national definitions, representativeness criteria, references to an agreement's effects, content, scope, and form are analysed throughout selected legal frameworks. Hence, legal dogmatics is used in chapter 3, in terms of the identification of the core features of a collective agreement throughout different legal systems. The aim of this dissertation is not to examine and engage in a concrete definition and description of the way collective agreements are regulated throughout all the different legal systems addressed in chapter 3. The legal dogmatic method required a slightly distinctive usage. Chapter 3 is mainly based on the primary sources, directly found in the country's legislation or through the ILO's IRLex database, but also on doctrinal work, giving less emphasis on other sources, namely case law and preparatory works.

Finally, while representing an autonomous regulative instrument in regard to both working conditions and the relationship between the social partners, collective agreements also possess specific aims. In particular, a collective

agreement intends to ensure industrial peace and improve working conditions. In turn, this twofold purpose illustrates the dual nature of the collective agreement, both in relation to the subject matter and those covered. Hence, a collective agreement covers issues of collective interest, referring to the relationship between the employer and the union, as well as individual interest, referring to relationship between the employer and the individual employee.[60] Thus, the collective agreement has a dual nature, being both a contract between the contracting parties and a binding regulation for their members. This dual nature and purpose enable an analysis of global framework agreements through a teleological interpretation. Despite the fact there is no documentation equivalent to preparatory works that could guide this examination, the preamble of global framework agreements often provides relevant support to analyse the signatories' intents and an agreement's purpose.[61] The goals of global framework agreements are described in chapter 4, in connection to both their development and constitutive elements. Chapter 5 deals with the purpose and the signatories' intention when signing global collective agreements in particular. Finally, chapter 7 addresses the parties' goals in relation to the legal status of global framework agreements.

1.4.2. Empirical Methods

Understandings of empirical research in social sciences seem to either follow a mainstream view, according to which empiricism can provide unequivocal 'imprints of reality', or opt for criticising it, based on different philosophical or theoretical grounds. The problematic, uncertain nature of empirical research validates some of the criticism. However, empirical material can be 'surprising and inspiring', and cannot be simply overlooked.[62] Considering its potential value and richness, one can neither ignore empirical material nor use it as a pure mirror of reality. Despite the critiques to empiricism, social

[60] Kurt Braun, 'The Dual Nature of Collective Agreements' (1943) Vol. 51 No. 5 Journal of Political Economy, p. 451.

[61] Neil MacCormick, 'Argumentation and Interpretation in Law' (1993) Vol. 6 No. 1 Ratio Juris, pp. 16-29; Žaklina Harašić, 'More About Teleological Argumentation in Law' (2015) Vol. 31 No. 3 Pravni Vjesnik, pp. 23-50.

[62] Mats Alvesson and Kaj Sköldberg, *Reflexive Methodology: New Vistas for Qualitative Research* (Sage 2018).

sciences still possess a strong orientation towards empirical research.[63] The same cannot be said for legal research in particular. Notwithstanding empirical research's 'long history' in law, there seems to be great caution and unwillingness when it comes to is use.[64] Most legal research tends to be purely normative, based on the search for legal rules, legal principles, and doctrines of law to deal with issues,[65] overlooking empirical methods. Still, the benefits of empirical labour law scholarship have been recognised but there is still hesitancy to develop such projects.[66] As stated by McKay and Moore, *"An empirical approach, particularly one focused on the workplace, can lead to a more nuanced understanding of labour law because it goes beyond analysis of legislation, legal doctrine and case law"*.[67] Given the potential of empirical material to inspire problematisation, to develop theoretical ideas, and facilitate critical reflection, in other words, to *"enhance our ability to challenge, rethink, and illustrate theory"*,[68] the empirical material should be utilised as a 'critical dialogue partner' and not a mirror of reality.[69]

In this dissertation, the empirical material includes the text of global framework agreements, policy documents, company reports, corporate guidelines, news sources,[70] and the interview statements. The primary empirical method used are semi-structured interviews. Key informants were selected as interviewees, covering both management and trade union perspectives, particularly at the supplying country level, which are closer to the agreements' local implementation. Other stakeholders, from both civil society and academia are also part of the selected interviewees. Still, in the

[63] Mats Alvesson, *Interpreting Interviews* (Sage 2011).
[64] Felicity Bell, 'Empirical Research in Law' (2016) Vol. 25 No. 2 Griffith Law Review, pp. 262-282.
[65] Theresita Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object' (2015) Vol. 219 Procedia – Social and Behavioural Sciences, pp. 201-209.
[66] Amy Ludlow and Alysia Blackham (eds), *New Frontiers in Empirical Labour Law Research* (Hart Publishing 2015).
[67] Sonia McKay and Sian Moore, 'Collective Labour Law Explored' in Amy Ludlow and Alysia Blackham (eds), *New Frontiers in Empirical Labour Law Research* (Hart Publishing 2015), p. 107.
[68] Mats Alvesson and Dan Kärreman, 'Constructing Mystery: Empirical Matters in Theory Development' (2007) Vol. 32 No. 4 Academic of Management Review, p. 1265.
[69] ibid, pp. 1265-1281.
[70] Stefan Titscher, Michael Meyer, Ruth Wodak, and Eva Vetter, 'How to Obtain Material for Analysis – An Overview' in *Methods of Text and Discourse Analysis* (Sage, 2000), pp. 31-40.

examination of other empirical materials, namely the agreements' texts and other corporate materials, textual and discourse analysis are restrictively applied,[71] analysing language patterns across texts and the social and cultural contexts in which they occur.[72]

A) Interviews and Interpretative Methodology

The chosen methodology for interpreting the interview data is based on management and organisational studies and adapted from a reflexive approach developed by Mats Alvesson, while keeping in mind some issues highlighted by discourse analysis.[73] The following paragraphs describe the methodology used to construct the interviews and interpret their material, as well as the role played by discourse analysis, employed to analyse corporate discourse and corporate derived material in particular. Accordingly, an initial description of the interpretative methodology of interviews is reproduced, as well as a justification of the reasons behind this choice. The methodology, and the identification of relevant issues highlighted through Alvesson's suggested metaphors and reflexive methodology are later used in chapter 6.

As Alvesson explained, there are three major theoretical positions on interviews: neo-positivism, romanticism, and localism. The **reflexive approach** builds on these three predominant perspectives. Neo-positivism advocates for bias reduction, aiming at a 'context-free truth' or a more moderate form, as advocated by interactive rationalism. Romanticism supports the idea according to which less structured interviews produce more honest, morally sound, and reliable accounts. Finally, localism views the produced accounts as situated responses, based on cultural norms. The three typical positions are not broad enough for the variety of views on

[71] Jamie Harding, 'A Discourse Analysis Approach to Interview Data: The Guidance Tutor Role in Higher Education' (2015) Sage Research Methods Datasets; Alvesson and Sköldberg, *Reflexive Methodology: New Vistas for Qualitative Research* (n62), p. 281.

[72] Brian Paltridge, *Discourse Analysis* (Bloomsbury 2012), p. 1.

[73] Willbur Pickering, *A Framework for Discourse Analysis* (Arlington: Summer Institute of Linguistics 1980); Mats Alvesson and Dan Karreman, 'Varieties of Discourse: On the Study of Organisations Through Discourse Analysis' (2000) Vol. 53 No. 9 Human Relations, pp. 1125-1149; Deborah Tannen, Heidei E. Hamilton, and Deborah Schiffrin, *The Handbook of Discourse Analysis* (John Wiley & Sons Incorporated 2015).

interviewing. Hence, Alvesson identifies these three typical positions and eight metaphors for interviews, which imply using a reverse interpretative logic. Alvesson constructs these metaphors based on his own experience as a researcher, highlighting interview characteristics and their central problems. However, resorting to one interview metaphor merely provides a partial understanding on interviews. Metaphors constitute organising devices for thinking and talking about complex phenomena, being essential in the understanding and thinking of language use. As a complex social situation, the interview comprises a combination of factors that must be examined. Alvesson presents eight metaphors, which simplify the complexities of the interview situation and constitute alternative understandings to what is considered conventional data-reporting mechanisms and reflect an integration of wider considerations.[74] Accordingly, metaphors *"create a departure from literal meaning; 'a word received a metaphorical meaning in specific contexts within which they are opposed to other words taken literally; this shift in meaning results mainly from results from a clash between literal meanings, which excludes literal use of the word in question."*[75] As Alvesson recognises, metaphors require goodwill, imagination and knowledge on the subject matter. Consequently, a lack of reflexivity entails the inexistence of careful interpretation or reflection. In this context, careful interpretation is understood as an awareness of the fact that neither the interview material nor the research results are a mirror of reality. Also, reflection is understood as an explicit or implicit analysis or consideration of the author himself/herself, the cultural and intellectual settings, and the complexities of language and narrative. In fact, as Alvesson and Sköldberg formulated, reflection means to ponder upon the premises for thoughts, observations and the use of language.[76]

Used as a purely qualitative method, interviews are sometimes said to lack mechanisms capable of reducing arbitrariness and subjectivity. According to

[74] Mats Alvesson, 'Rethinking Interviews: New Metaphors for Interviews' in *Interpreting Interviews* (Sage 2012), pp. 75-104.
[75] Paul Ricoeur, *The Rule of Metaphor: Multi-Disciplinary Studies of the Creation in the Creation of Meaning in Language* (London: Routledge & Kegan Paul 1978), p. 138.
[76] Alvesson and Sköldberg, *Reflexive Methodology: New Vistas for Qualitative Research* (n62).

Alvesson, it is important not to simplify and idealise the interview situation, viewing the interviewee as a competent truth teller.[77] Hence, one should acknowledge the interview situation as a socially and linguistically complex meeting, in which the interviewer's questions and style shape the context, frame, and content of the study. Furthermore, rather than simply assisting in science, the interviewee might be a politically motivated actor. Issues regarding what the interviewee knows or his/her ability to communicate it, either knowing a subject but being incapable of expressing it or solely having the capability to tell something convincing but not actually having the knowledge.[78] One should acknowledge an interview's limited range and its social and linguistic complexity. Accordingly, the decision to resort to interviews is made with an awareness of its limited capacity to mirror reality. Bearing in mind these limitations, the study intends to use interviews through the mentioned reflexive approach[79] and as 'analytical interviews'.[80]

Alvesson identifies eight **metaphors** for interviews, which imply using a reverse interpretative logic. The metaphors identified by Alvesson are the following: the interview accounts as local accomplishment, the interview as establishing and perpetuating a storyline, as identity work, as a cultural script, as impression management, as political action, as an arena for construction work, and as a play of the powers of discourse. Not all the eight metaphors proposed by Alvesson are equally relevant in the interpretation of the interviews carried out. However, they are all taken into account in the understanding of interview accounts. The first, metaphor, referring to **interview accounts as a local accomplishment**, sees interviews a complex social interaction between two people, each with his/her own characteristics, such as age gender, professional background, and ethnicity, which can heavily impact the resulting accounts. Understandably, these cannot be

[77] As Alvesson recognises *"it is important not to simplify and idealise the interview situation, not to assume that the interviewee is primarily a competent and moral truth teller, acting in the service of science, producing the data needed to reveal the 'interiors' of the interviewees (experiences, feelings, values) or the practices of social institutions"*. See, Alvesson, *Interpreting Interviews* (n63), p. 4.

[78] Alvesson, *Interpreting Interviews* (n63).

[79] Alvesson and Sköldberg, *Reflexive Methodology: New Vistas for Qualitative Research* (n62).

[80] K. Kreiner and J. Mouritsen, 'The Analytical Interview: Relevance Beyond Reflexivity' in S. Tengblad, R. Solli and B. Czarniawska (eds) *The Art of Science* (Copenhagen: Liber 2005), pp. 153-176.

directly addressed. Instead, while avoiding too much interference, an attempt to minimise them and create a comfortable environment for the interviewee to actively share knowledge and thoughts was adopted. Although more easily managed than other contextual features, location can also impact the accounts produced. Hence, when presential, interviews were carried out in the interviewees' desired location, normally in the relevant offices. One interview was conducted in a café, with a researcher who selected the location and did not possess an office in Cambodia.

The second metaphor, referring to the **interview as establishing and perpetuating a story line**, relates to the 'behind-the-surface-thinking'. In particular, it refers to the interviewees' own guesses and assumptions on what the project is about, why is it being carried out, how the results will be used, among others. These are often difficult to identify, although the responses produced can unveil some of the interviewees' interpretations in this respect. In the context of the interviews carried out, some interviewees were sometimes interested in sharing an event, not related to the interview questions, expecting this would be publicly shared later on. In fact, it was not uncommon for interviewees, particularly trade union representatives, to request some matters to be shared with brands.[81]

The third metaphor, viewing the **interview as identity work**, is connected with interviewees' different identities. For instance, an interviewee can be a woman, trade union leader, and of a certain age. If the focus on a particular identity is understood by interviewee, that facilitates communication. In other words, if there is a correspondence between the interviewer's expectations and the interviewee's identity. Clearly indicating the identity capacity in which someone is being interviewed might limit answers. However, actors tend to stage performances of their desirable selves, with interviews tending to be a place for positive identity work by interviewees. Accordingly, some interviewees were sometimes inclined to share a

[81] For instance, *"Go tell H&M"* about unresolved disputes under the corresponding global framework agreement. See, Interview with Trade Union Representative (Phnom Penh, Cambodia, April 2019).

flattering narrative, not only for themselves but also for their corresponding organisation.

The fourth metaphor, the **interview as cultural script application**, relates to the use of ready-made script for how to talk about certain things. Despite their contribution in simplifying the information conveyed, they can preclude the possibility of attaining a truthful account of individual experiences and insights. This was particularly visible in corporate discourse. Nevertheless, given the fact that the information intended to attain was not centred around particular individual experiences or perceptions, this was not entirely problematic.

The fifth metaphor, the **interview as impression management (moral storytelling and promotional activity)**, relates to self-promotion and giving a good impression about oneself, as well as the internalisation and identification with an organisation and consequent loyalty in discourse. A cultural script may be used, but it is not required, meaning that the interviewee can refer to him/herself and the relevant organisation in a complimentary light and in a completely innovative way. The target is the realisation of an effect on others, based on a general perception of what is morally good.

The sixth metaphor, **the interview as political action**, emphasises how an interviewee can act in his/her own self-interests or the group with which he/she identifies. This means interviewees not only engage in self-promotion and defence of the relevant organisation or social group, but are also politically motivated actors. This was the case for many of the interviews conducted, through the use of exaggerations, repetitions, generalisations, an emphasis on positive measures taken, and evading answering questions related to reasoning gaps or implementation problems.

The seventh metaphor, the **interview as an arena for construction work**, refers to the use of language to create effects, namely convincing and conveying something interesting. Accordingly, interviewees make use of

creativity and construction work to fill cultural scripts and produce something interesting. Also, some interviewees might be able to express themselves fluently and communicate their message effortlessly but that does not mean invention or fiction are not present. In some cases, interviewees did not know how to answer a question and would focus on developing matters related to a different company or disputes falling outside the scope of the agreements studied. In other cases, language issues constituted a barrier, even with translators. When language appeared to be a hindrance, 'test' questions would be placed, assessing whether they had the necessary knowledge.

Finally, the eight metaphor, the **interview as a play of the powers of discourse**, looks at interviewees as being constituted and constrained by discourse, meaning that the resulting information is an indication of discourses at play and powers over the interviewee.[82]

By referring to reflexive pragmatism, Alvesson means an awareness of the fact there are several ways of understanding something and that the knowledge produced might be different from what was initially intended.[83] This has various implications for research practice, such as (1) the necessity to revise and improve the research work, (2) refine the ability to critically interpret interview material, (3) revise the research question(s) and purpose(s), and (4) be more modest about empirical claims.[84] The project resorts to interviews in the study of global framework agreements through a 'reverse interpretative logic'. This means one should have good reasons to believe the statements provided indicate reality before using them as such.

The **chosen participants** constitute stakeholders in regard to global framework agreements. These include current and previous representatives at the company level, from the relevant global union federation, affiliated trade unions, academia, and non-governmental organisations. Matters

[82] Mats Alvesson, 'A Metaphor Approach' in *Interpreting Interviews* (Sage 2012), pp. 62-74
[83] Mats Alvesson, 'Views on Interviews' in *Interpreting Interviews* (Sage 2012), pp. 9-42; Alvesson, 'Rethinking Interviews: New Metaphors for Interviews' (n74), pp. 75-104.
[84] Alvesson, *Interpreting Interviews* (n63).

referent to the interview structure are present in the section referent to the ethical review and Annex 1.

The chosen interpretative methodology is considered **appropriate for three reasons.** First, global framework agreements are negotiated and implemented in the context of organisations, which is also the setting for the interviews. Thus, the interviews are carried out in an organisational setting. Second, this approach does not simplify and idealise the interview situation, acknowledging its limited range to mirror reality and its social and linguistic complexity. Finally, it provides an overview of complex issues frequently present in interviews. Examples of matters reflected in this approach included the interviewee's developed assumptions regarding the interview and how its results can be used, ready-made scripts for how to talk about certain issues and the interviewee's lack of knowledge or inability to communicate it. The main objective is to attain a more profound understanding regarding the implementation of global framework agreements. Another aim is to find discourse patterns throughout the interview statements and additional empirical material that could help comprehending the actual implementation, enforcement, and impact of global framework agreements. The choice to use interviews constitutes a complementary method of collective data and it is directly tied to two objectives of the doctoral project – the functioning of global framework agreements and the impact of global collective agreements in Cambodia. In this context, it is relevant to note that the use of interviews does not necessarily mean that a substantial number of interviews need to be carried out, as researchers can permit 'key informants' to express themselves in detail on specific issues.[85] Finally, it is worth noting that in three cases the interviewees were not fluent in English and the help of a translator was necessary. This created additional challenges, as it adds a further interpretation layer, assumed by the translator. Accordingly, the analysis of these interviews had to take into consideration this difficulty and, particularly in connection to these interviews, broad conclusions are actively avoided.

[85] Alvesson and Sköldberg, *Reflexive Methodology; New Vistas for Qualitative Research* (n63).

B) Discourse Analysis

"The discourse of large corporations is the discourse of extremely powerful organisations that often have not been held accountable for their actions."[86] Discourse analysis inspires the analysis of the empirical material and the analysis of the text of global framework agreements in particular. It is also applied in the understanding of corporate social responsibility, since it is intertwined with corporate narratives and advertising.[87] In particular, corporate social responsibility/sustainability reports and annual reviews are increasingly used for promotional purposes, using an array of design options and mixing information and promotional elements, creating *"new mode of corporate communication that is open to interpretation on many layers"*.[88] Hence, not only the agreements themselves are examined, but also other standard means of corporate reporting and communication, which have evolved and now include a variety of means, such as media communication, corporate websites, sustainability reports, among others.[89] Focused on corporate discourse and complemented with the text of global framework agreements, the analysis looks into discourse both in a textual sense and a broader societal understanding, which are influenced by and influence each other.[90] This multi-layered interpretative analysis allows for a comprehensive understanding of the materials encountered and a better insight of the practical functioning of global framework agreements. In particular, the analysis of these agreements' text shows that, while sometimes vague, especially in terms of implementation and enforcement procedures, they are

[86] Ruth Breeze, *Corporate Discourse* (Bloomsbury 2013), p. 190.

[87] Elsa Simões Lucas Freitas, 'Advertising and Discourse Analysis' in James Paul Gee and Michael Handford (eds), *The Routledge Handbook of Discourse Analysis* (Routledge 2013), pp. 425-441; Radolphie Ocler, 'Discourse Analysis and Corporate Social Responsibility: A Qualitative Approach (2009) Society and Business Review Vol. 4 No. 3, pp. 175-186; Margaret Adolphus, 'How To… Use Discourse Analysis' (2020) Emerald. Available At: https://www.emeraldgrouppublishing.com/archived/research/guides/methods/discourse_analysis.htm [Accessed 24 August 2020].

[88] Breeze, *Corporate Discourse* (n86), p. 171.

[89] Dewan Mahboob Hossain, 'Discourse Analysis: An Emerging Trend in Corporate Narrative Research' (2017) Vol. 12 No. 4 Middle East Journal of Business, pp. 3-9; Katherine Taken Smith, 'Longitudinal Analysis of Corporate Social Responsibility on Company Websites' (2017) Vol. 80 No. 1 Business and Professional Communication Quarterly, pp- 70-90.

[90] Breeze, *Corporate Discourse* (n86), pp. 29-30; Teun A. van Dijk, *Discourse Studies: A Multidisciplinary Introduction* (Sage 2011), pp. 3-4.

placed within a corporate narrative and linked to social commitments that can either signify real obligations or represent a strategy for evading 'hard' legal regulation. This analysis also provides an additional grasp in the construction of these agreements' evolution and content. Also, as identified by van Dijk, the idea of legitimation as a discursive pattern used by companies to justify their actions and existence[91] is further used in the analysis of corporate material and linked to both stakeholder and legitimacy theory, as well as Asforth and Gibbs' two identified means through which organisations seek legitimacy, which are developed in chapter 2.[92]

Finally, the evolution of corporate discourse, now expressed in a variety of different ways, which include global framework agreements, can be viewed as a strategy to deal with changes brought by globalisation and *"perpetuate the state of affairs in the world that permits corporations to act as they"*.[93] Besides their growing power, influence, and ability to shift production and production suppliers based on cost convenience, companies are also influenced by globalisation. In particular, the emergence of a globally founded value system that is progressively based on human rights and environmental concerns means that corporate discourse tends to be aligned with beliefs that are valued in public opinion. Hence, aside from legal and economic constraints, discourse also limits company activity. Nevertheless, companies' discourse has shown a tendency to place all stakeholders as either clients or consumers,[94] designed around the consumer paradigm, with people being considered as subjects and objects of consumption. Hence, there is a strategic perpetuation of the currently dominant social order,[95] with

[91] Teun A. van Dijk, *Ideology: A Multidisciplinary Approach* (Sage 1998), p. 255; Breeze, *Corporate Discourse* (n86), p. 47.

[92] Blake E. Asforth and Barrie W. Gibbs, 'The Double-Edge of Organisational Legitimation' (1989) Vol. 1 No. 2 Organisation Science, pp. 177-194.

[93] Breeze, *Corporate Discourse* (n86), p. 186.

[94] Similarly, but in regard to people's relationship with the state. See, Jürgen Habermas, *The Theory of Communicative Action, Volume Two, Lifeworld and System: A Critique of Functionalist Reason* (Cambridge 1987); John F. Sitton, 'Disembodied Capitalism: Habermas' Conception of the Economy' (1998) Vol. 13 No. 1 Sociological Forum, pp. 61-83; Breeze, *Corporate Discourse* (n86), p. 189.

[95] Michael Foucault, *The Order of Things* (Tavistock 1972); Jean Baudrillard, 'Towards a Theory of Consumption' in *The Consumer Society* (Sage 1998).

individuals cooperating in their subjugation, based on the roles offered to them.[96]

1.4.3. Background and Aims of the Empirical Study

The implementation and enforcement of two global collective agreements, signed by two leading brands, H&M and Inditex, are analysed in a specific national context. Hence, the findings are limited in regard to the multinational enterprises selected and the domestic setting. Still, they provide an insight into how these agreements are actually implemented, how the enforcement mechanisms are used, and whether they truly enable the resolution of disputes. Additional information concerning the trade unions' perception of global collective agreements, the mentioned brands, and relationships within the trade union movement was collected.

H&M and Inditex are chosen due to their significance in the textile industry, as well as the content and developments given to the respective global agreements. H&M's agreement with IndustriALL and IF Metall, signed in 2015, was made permanent in 2016.[97] At the time of its signature, it was stated the global agreement would cover 1.6 million garment workers, throughout around 1,900 supplier factories. The agreement establishes national monitoring committees in selected countries, namely Cambodia.[98] Inditex was the first fashion retailer the sign a such an agreement, which was lastly renewed in 2019. Besides the agreement's renewal, the parties set up a global committee for the sharing of best practices on the promotion of freedom of association and the right to collective bargaining.[99] The committee is composed of Inditex's six main production clusters, including one representative for both Myanmar and Cambodia, and representatives

[96] Breeze, *Corporate Discourse* (n86), pp. 187-190.

[97] H&M, 'H&M Makes Its Global Framework Agreement with IndustriALL and IF Metall Permanent' (29 September 2016). Available At: https://about.hm.com/sv_se/news/general-2016/hm-permanently-collaborates-with-industriall-and-ifmetall.html [Accessed 17 July 2020].

[98] IndustriALL, 'IndustriALL Global Union and H&M Sign Global Framework Agreement' (3 November 2015). Available At: http://www.industriall-union.org/industriall-global-union-and-hm-sign-global-framework-agreement [Accessed 17 July 2020].

[99] Inditex, 'Inditex and IndustriALL Global Union Agree to Create a Global Union Committee' (n38); IndustriALL, 'IndustriALL and Inditex Create a Global Union Committee' (n38).

from IndustriALL's Spanish affiliates. Both agreements comprise a broad reference to the companies' supply chain. According to the H&M's agreement, *"The terms and conditions of the GFA shall cover all production units where H&M's direct suppliers and their subcontractors produce merchandise/ready made goods sold throughout H&M group's retail operations, and trade unions/worker representatives present at these production units"*. It is further asserted that *"Non-affiliated unions may participate in the implementation of this GFA by mutual agreement with IndustriALL"*.[100] According to the preamble of Inditex's agreement, *"Inditex undertakes to apply and insist on the enforcement of the above-mentioned international labour standards to all workers throughout its entire supply chain, regardless of whether they are directly employed by Inditex or by its manufacturers and suppliers"*. Also, similarly to what is stated in H&M's agreement, *"The terms and conditions of the Agreement shall apply throughout the Inditex supply chain including workplaces not represented by IndustriALL affiliated unions"*.[101]

The **garment industry** is considered especially relevant as global framework agreements signed in the sector are considered difficult to sign, due to the complexity and fragmentation of the supply chain. Nevertheless, global framework agreements will possibly have the greatest impact in the regulation of supply chains and, consequently, in the garment industry. Moreover, as described in chapter 2, violations of basic ILO standards are recurrent, particularly in the garment sector.

The **Cambodian** national context is selected for both practical and analytical reasons. In practical terms, contacts were facilitated based on previous work carried out in Cambodia. On an analytical level, Cambodia is a major supplier cluster for both brands. In Cambodia, the garment industry represents sixteen percent of the gross domestic product (GDP) and eight percent of the

[100] The agreement covers 1.6 million garment workers employed in around 1,900 factories run by H&M manufacturers. See, IndustriALL, 'IndustriALL Global Union and H&M Sign Global Framework Agreement' (n98).

[101] The agreement covers more than a million workers. See, Guguen, 'Inditex and IndustriALL Global Union: Getting Results from a Global Framework Agreement – Special Report' (n14).

country's export earnings.[102] The European Union accounts for around forty percent of the country's manufacturing,[103] with major multinational brands operating through supplying contracts.[104] Furthermore, and despite being characterised by a high level of unionisation, the union environment in the Cambodian context is highly politicised. Many unions are linked to the government, the opposition, or employers, with only a fraction of unions being truly independent. The Cambodian labour movement is characterised by an array of union federations with various affiliations and a high level of trade union membership.[105] Both the Cambodian Constitution and the Cambodian Labour Law, adopted in 1993 and 1997 respectively, set up a sturdy legal framework, in accordance with international standards. Cambodia became a member of the ILO in 1969 and has ratified all of the fundamental conventions. However, the biggest challenges relate to both implementation and enforcement.

Interviews were carried out with **multiple stakeholders**, throughout 2019 and 2020, both in Sweden and Cambodia. In most cases, a follow-up interview(s) followed the first interview. Three interviews were carried out on Skype, and follow-up was conducted by email correspondence. Interviews with trade union representatives in Cambodia were always conducted in person. National trade union representatives, global union federations' representatives, employers' representatives, and current or former brand representatives are given additional consideration, although non-governmental organisations, academia, and the employers' association are also included. Publicly available press releases and documents provided by trade unions were also used. When relevant, information from the Arbitration Council is referred. However, the 2016 new Trade Union Law obstructed the possibility for trade unions without the most representative status to bring

[102] Vasundhara Rastogi, 'Cambodia's Garment Manufacturing Industry' *Asean Briefing* (November 1 2018). Available At: https://www.aseanbriefing.com/news/cambodias-garment-manufacturing-industry/ [Accessed 26 October 2020].

[103] Note the lift of the preferential treatment under the Everything but Arms (EBA). See, European Commission, 'Cambodia loses duty-free access to the EU market over human rights concerns' (12 August 2020). Available At: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1469 [Accessed 25 September 2020].

[104] Rastogi, 'Cambodia's Garment Manufacturing Industry' (n102).

[105] Veasna Nuon and Melisa Serrano, *Building Unions in Cambodia: History, Challenges, Strategies* (Friedrich-Ebert-Stiftung 2010), pp. 16-17.

complaints and represent their members before the Arbitration Council. Hence, cases referred in the interviews were never dealt with by the Council.

The interviews conducted are **semi-structured**, using a guide provided in the annex section. Material provided by interviewees, specifically in regard to cases brought before H&M's dispute resolution committees, is further used. The interviews were not recorded, as required by the ethical approval. Notes in a notebook were taken and passed on to a computer, used solely to store the interview transcripts. When addressed by interviewees, other brands are referred. This can be appropriate based on a comparison between different brands' agreements or with a company which has not signed a global framework agreement. Information on other brands' agreements that have in the meantime been renewed, such as Mizuno's, or were automatically renewed, namely Asos', was discovered.[106] Additionally, the relation between a company, the country-of-origin context, and the impact of the corresponding global agreement is further considered.

The empirical work carried out provides an additional insight into the implementation, functioning, and their associated challenges, as well as the binding character of these agreements. Nevertheless, it is fundamental to keep in mind the limitations of the study, both in terms of geographical reach and industry focus. Cambodia, H&M, and Inditex are selected based on studied criteria, which illustrate the challenges to implementation, as well as their current and potential positive impact. While providing an additional and important understanding, the findings cannot be overgeneralised.

1.4.4. Legal Theory: The Intersection of Frameworks and Collective Autonomy

Global collective agreements emerged in the midst of a legal vacuum, without any legally binding framework to clearly regulate an array of issues, such as the legitimate signatories to such an agreement, its scope, form,

[106] It was referred during interviews that Mizuno's agreement was in discussions aimed at its renewal and the agreement ended up being renewed in October 2020. See, IndustriALL, 'Mizuno' (13 October 2020). Available At: http://www.industriall-union.org/mizuno [Accessed 1 December 2020].

implementation mechanisms, among others. As in collective agreements at the national level, the absence of a legal framework did not bar the social partners from designing their own legal system. This is placed within a plurality of legal systems, which is further developed in section 3.1.[107] Based on the idea of **legal pluralism**, Gino Giugni's notion of an *ordinamento intersindicale* (i.e., inter-union system or order) is applied to the international context and the rise of global collective agreements. Gino Giugni developed the concept of ***ordinamento intersindicale*** based on the principle of collective autonomy. Giugni constructed his theory by focusing on the 'living law' originating from the relationship between workers and employers, outside the state's normative framework. Thus, the collective agreement is given particular importance, as an instrument of self-organisation and the foundation of the *ordinamento intersindicale*. Although developed on a domestic basis, these ideas are applied at an international level in the dissertation. Giugni observed an increasing gap between the reality of labour relations and the legal norms regulating work. And, consequently, *"he recognised the autonomous bases for the self-regulation of the industrial relations system"*.[108] Giugni noticed how collective bargaining was carried out differently from what was stated in legal norms. A similar phenomenon can be viewed at the international level. First, there is a lack of legally binding rules applicable to the global activities of multinational enterprises. Second, the existing ones, which are voluntary, are normally viewed with scepticism and normally ineffective in guaranteeing basic workers' rights.

Giugni's theory on collective autonomy and the author's conceptualisation of the *ordinamento intersindacale* is fundamental in analysing the placement of global collective agreements within the hierarchy of sources of labour law. Giugni's theory is central in the construction of a conceptualisation of global collective agreements as instruments operating in a parallel way to collective agreements at the national level. This matter is resorted throughout the thesis,

[107] Fausta Guarriello, 'Transnational Collective Agreements' (ISLSSL Torino XXII World Congress, 2018), p. 3.
[108] Andrea Iossa, *Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining* (Lund University 2017), p. 86.

especially in regard to the relation between these agreements and other sources of labour law and addressed in chapter 3 and 5.

1.5. Materials and Delimitation

The legal material includes both international labour law and a selection of national labour law. Material outside the legal context is also included. This comprises corporate social responsibility instruments and multinational enterprises' documentation. Likewise, trade union files, in some cases provided by interviewees, non-governmental organisations reports, and news sources also constitute part of the material used. Doctrinal sources are further used, both in the form of textbooks and academic articles, focused on the topics of collective bargaining and global framework agreements.

1.5.1. ILO Instruments

The dissertation makes use of international labour law, in particular ILO instruments and, partly, national labour law. Despite focusing on the global framework, national concepts and regulations are considered relevant, in regard to the way in which different countries define what a collective agreement is. The present sub-section focuses on ILO instruments and demonstrates the pivotal role the ILO plays in the emergence and development of international labour law, while referring to the fundamental ILO conventions, as well as other key conventions and recommendations, which are used in the analysis. Likewise, the ILO plays an essential role in regard to corporate social responsibility since its labour standards and social dialogue references are essential components of corporate social responsibility instruments. *"Most CSR initiatives, including codes of conduct, refer to the principles deriving from international labour standards. Furthermore, the ILO's unique tripartite structure and its efforts to promote*

social dialogue are key to facilitating the involvement of all relevant stakeholders in the dissemination of CSR."[109]

Special focus is given to **Recommendation No. 91,** on collective agreements, which provides a definition of collective agreements and refers to their effects, extension, and interpretation. Also important is Convention No. 98. Despite not offering a definition of collective agreements, it outlines some key features. Also related to the concept of collective agreement and its content, it worth noting the definition of collective bargaining, provided by Convention No. 154.

The ILO Declaration on Fundamental Principles and Rights at Work is also a vital part of the material. Adopted in 1998, the Declaration identified four categories of labour rights, which Member states are obliged to respect and promote, regardless of whether they have ratified the corresponding conventions. The four identified core labour rights are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation. There are eight corresponding fundamental conventions, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).[110] Despite looking into a global framework agreement's content in reference to a 'rights-based content', the four categories of fundamental labour rights, comprised in the Declaration, constitute the

[109] Stephen Tully (ed.), *International Documents on Corporate Social Responsibility* (Cheltenham: Edward Elgar 2007).

[110] ILO, 'ILO Declaration on Fundamental Principles and Rights at Work'. Available At: https://www.ilo.org/declaration/lang--en/index.htm [Accessed 14 February 2019]; ILO, 'Conventions and Recommendations'. Available At: https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm [Accessed 14 February 2019].

emblematic benchmarks in the analysis of these agreements' content. Other relevant ILO conventions and recommendations are included in the analysis, if their content is implicitly or explicitly referred in a global framework agreement. In fact, most recent global framework agreements contain numerous provisions that go beyond the fundamental labour rights and include ILO standards on various matters, such as occupational safety and health, social protection, the environment, among others. Thus, the content is viewed as a 'rights-based content', in which the ILO core labour standards constitute minimum indicative benchmarks.

1.5.2. Domestic Law

National legislation is particularly relevant for the analysis of the core elements of the concept of collective agreement. Through a detailed examination, these allow to demonstrate that, despite variations, there is a common understanding of what constitutes a collective agreement, which is in line with the broad definition comprised in Recommendation No. 91. In terms of national frameworks, when linguistically feasible, the primary legal sources in either the original language or an official translation are used.

The ILO's Legal Database on Industrial Relations (**IRLex**) is further used to find the relevant primary sources. The database and its updates are considered until May 2021. Additionally, doctrinal sources are widely utilised. In particular, the **International Encyclopaedia for Labour Law and Industrial Relations'** national monographs on the topic of collective labour relations,[111] provide key insights into the same topics throughout different legislations. Furthermore, the European Employment & Industrial Relations Glossary[112] and the ILO's compilation on collective agreements from the XIVth Meeting of European Labour Court Judges[113] are used in a

[111] 'Part II. Collective Labour Relations' in Roger Blanpain and Frank Hendrickx (eds) *IEL Labour Law* (Kluwer Law International BV The Netherlands). Available At: http://www.kluwerlawonline.com/toc.php?pubcode=IELL [Accessed 1 May 2019]; Governance and Tripartism Depart, 'XIVth Meeting of European Labour Court Judges' (September 2006). Available At: https://www.ilo.org/ifpdial/events/meetings/WCMS_159922/lang--en/index.htm [Accessed 8 January 2018].

[112] Tiziano Treu and Michael Terry (eds), *European Employment and Industrial Relations Glossary Series* (1996).

[113] XIVth Meeting of European Labour Court Judges (n111).

complementary manner. Finally, the Resolution Concerning Statistics of Collective Agreements,[114] adopted in 1926, is also used. It provides a comprehensive list of issues to consider when analysing how a collective agreement is perceived at the domestic level.

The aim is not to take into consideration all legal orders and make a comparative study. Differently, the goal is to show the existing **similarities and differences** between the different legal frameworks in regard to both the definition and regulation of collective agreements. Thus, this work is conducted as a way to identify the core features that allow for a clear identification of what constitutes a collective agreement.

1.5.3. Corporate Social Responsibility Material

The most relevant international documents in this context are the ILO Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy, adopted in 1977, amended several times and revised in 2017, the United Nations Global Compact (UNGC), adopted in 2000, the OECD Guidelines for MNEs, and the 2011 UN Guiding Principles on Business and Human Rights. These are repeatedly mentioned in global framework agreements and are described in chapter 2, in connection to globalisation, global supply chains, and companies' responsibility to respect human rights. The harmonisation of all these instruments, which include both aspirational principles, guidelines, management, and reporting indicators[115] is complex for numerous reasons. Despite having emerged in different contexts, being developed by different organisations, and for a variety of different participants they all highlight the importance of a set of fundamentally recognised rights, and business responsibility in this context, also comprised in all global framework agreements.

[114] Resolution Concerning Statistics of Collective Agreements, adopted by the Third International Conference of Labour Statisticians (October 1926). Available At: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087547.pdf [Accessed 16 January 2019].

[115] European Commission – Employment and Social Affairs, *Mapping Instruments for Corporate Social Responsibility* (Luxembourg: Office for Official Publications of the European Communities 2003), p. 7.

1.5.4. Empirical Material

The interview statements constitute the key empirical component of the project. These were carried out in a specific sector and context, the Cambodian garment sector. However, the empirical material is not limited to the interview material, namely the interview guide, answers, and material provided during the interviews, also including the text of global framework agreements themselves. During the interviews, focus was given to the parties' general awareness of the agreements' content and knowledge on the actual dissemination, monitoring, revision, and dispute settlement. Individual perspectives were also given special emphasis, in regard to the agreements' impact and recommendations for the future. Numerous other sources are used in the dissertation. Documentation related to multinational enterprises' corporate social responsibility own policy guidelines, codes of conduct, and accounting are included. Likewise, sustainability reports or implementation reports are used, especially for the study of H&M's and Inditex's agreements, whose implementation and enforcement constitute the focus of the interviews conducted.[116] The vast majority of these documents can be found in the company's websites.[117] News pieces on the implementation of these agreements, publicly available and provided either by the company itself or the global union federation are further used. Reports published by non-governmental organisations are also utilised, particularly those from the ILO, the Clean Clothes Campaign, and the Fair Labour Organisation.[118] Finally,

[116] E.g., IndustriALL, 'Agreement with H&M Proves Instrumental in Resolving Disputes' (n13); H&M, 'H&M Group Sustainability Report 2019'. Available At: https://about.hm.com/content/dam/hmgroup/groupsite/documents/masterlanguage/CSR/reports/2018_Sustainability_report/HM_Group_SustainabilityReport_2018_%20FullReport.pdf [Accessed 24 August 2020]; Inditex, 'Inditex Annual Report 2019'. Available At: https://static.inditex.com/annual_report_2019/pdfs/en/memoria/2019-Inditex-Annual-Report.pdf [Accessed 24 August 2020].

[117] For example, see Sweden, 'Corporate Social Responsibility in Sweden'. Available At: https://sweden.se/business/csr-in-sweden/ [Accessed 1 March 2019]; Inditex, 'Annual Reports'. Available At: https://www.inditex.com/investors/investor-relations/annual-reports [Accessed 1 March 2019]; Electrolux, 'Sustainability Reports'. Available At: https://www.electroluxgroup.com/en/category/sustainability/sustainability-reports/ [Accessed 1 March 2019].

[118] E.g., Clean Clothes Campaign, 'Clean Clothes Campaign Response to Agreement Between H&M and IndustriALL' (12 February 2015). Available At: https://cleanclothes.org/news/2015/11/11/clean-clothes-campiagn-response-to-agreement-between-h-m-and-industriall [Accessed 24 August 2020].

trade union organisations and global union federations news, reports, and opinion pieces are included in the analysed literature material.

A) Database

The European Commission, together with the ILO, has developed a **database** on transnational company agreements, which is possibly the most comprehensive database on these documents.[119] The database constitutes the main source used to obtain the agreements' texts, together with the global union federations' websites. In particular the Building and Wood Workers' International's (BWI), IndustriALL's, and UNI's websites list the agreements by the corresponding global union federations.[120] The database allows for the imposition of specific delimitations, thus enabling the selection of certain types of agreements, particularly the ones signed by global union federations, in a certain industry, year, with a specific geographical scope, and according to the topics addressed, among other criteria. The agreements analysed throughout the dissertation are found in this database or in the website of the corresponding global union federation and are identified as global framework agreements based on a content analysis.

Agreements signed by global union federations that have merged into any of the currently active global unions are considered to be applicable if: (1) the agreement is listed by the now active global union federation and (2) if the agreement has not expired. That is considered to be the case if an agreement does not specify its duration or it is stated that the duration is indefinite.

Moreover, in regard to the database, two notes must be addressed. First, not all transnational company agreements signed by global union federations are global framework agreements. Also, as clarified in the terminology section,

[119] European Commission and the ILO – Employment, Social Affairs & Inclusion, 'Database on Transnational Company Agreements' (n41).

[120] See, respectively, BWI. Available At: https://www.bwint.org/cms/search?search_text=framework+agreement&search_published_on=&title_search=on [Accessed 24 September 2019]; IndustriALL, 'Global Framework Agreements'. Available At: http://www.industriall-union.org/global-framework-agreements [Accessed 24 September 2019]; UNI, 'Global Agreements'. Available At: https://www.uniglobalunion.org/about-us/global-agreements [Accessed 24 September 2019].

not all global framework agreements constitute global collective agreements. For instance, Media Prima's memorandum of understanding, signed between TV3 System Televisyen Malaysia Berhad and UNI Global Union, is a transnational company agreement but it is not a global framework agreement, as it does not fulfil all of the constitutive elements of a global framework agreement. In particular, the memorandum does not contain any dispositions on implementation, dissemination, review, or monitoring. Similarly, Brunel has signed a global framework agreement but, since it does not comprise any dispute settlement provisions, its consideration as possibly fitting into the concept of collective agreement must be excluded. Second, in some cases, the agreements provided by the referred database do not correspond to the updated version. For instance, Aker's renewed agreement was signed in 2012. However, the database merely comprises the previous version of the agreement, signed in 2008, with a two-year duration. IndustriALL's list, provided in the global union's website, comprises the text of the updated version, which is used in the dissertation.

Accordingly, the websites of the global union federations are crucial in finding new agreements or accessing revised versions of agreements comprised in the database. However, also within the global union's online listings, issues can be found. For instance, some agreements are designed as global framework agreements, despite merely possessing a regional scope. Also, similarly to the database, some of the agreements comprised in the listings are not the renewed version. Finally, some agreements are missing from the global union federations' available listings. These matters are comprehensively developed in chapter 4, in the section about the involvement of global union federations as one of the constitutive elements of global framework agreements. Company websites are also used and, in some cases, information about an agreement's renewal is primarily found in the enterprise's webpage. That is the case of Inditex's renewed agreement. The justification and full listing of the selected agreements is provided in Annex 4.

B) Interview Material

The interview material includes the questionnaire guide and consent information, comprised in Annex 1, as well as the interview transcripts, which are compiled in a separate laptop, without a wireless connection, according to the ethical approval requirements.

The interview transcripts are available, although access requires accessing that specific computer. Some clarifications and follow-up interviews in particular were conducted in written form, through email correspondence. This was requested by interviewees, based on convenience justifications and the data is compiled in the university email account of the candidate. This type of correspondence was never used for interviews with trade union representatives, whose affiliation requires protection and is the basis for the ethical approval application.

1.5.5. Delimitation

This dissertation does not intend to be a comprehensive study of **transnational company agreements.** These, however, are referred and used as a basis for the identification of a narrower concept, that of global framework agreements. As explained in chapter 4, global framework agreements require four distinct components. The focal point of examination revolves around the legal nature and functioning of global framework agreements. Together with a content analysis, an even narrower category can be identified, that of global collective agreements. These are more developed, particularly in terms of enforcement and the related binding effect. In global collective agreements, enforcement mechanisms are present and comprised in more detail, providing for a hierarchical complaint procedure, access to arbitration or mediation by a neutral third party, or addressing specific sanctions.

The vast majority of global framework agreements have been signed by companies located in European countries. This is considered to be the outcome of a positive social dialogue environment, both at the national level

and within the company itself.[121] Still, agreements with a regional scope are excluded from the present analysis. Hence, since **European framework agreements**, which are signed between multinational enterprises and European industry federations or European Works Councils, have a regional scope, they are outside the subject of the present dissertation. While their significance in the development of collective bargaining beyond the national context and within a not legally regulated background is acknowledged, these agreements are not passible of being applied globally and are therefore excluded from the present analysis. Accordingly, the topic of an optional framework for transnational collective bargaining at the European Union level is not addressed. Likewise, other agreements with a regional scope, which do not fit into the applied definition of global framework agreement, are not considered throughout the dissertation. However, an agreement with a potentially global scope that in practice merely applies in a regional context still fits into the concept of global framework agreement, since it can apply globally in the future.[122]

The analysis of global framework agreements' legal status is considered in relation to the agreement in itself, instead of the possibility of placing its provisions in **another legal context**. Hence, the possibility of framing these agreements within the field of consumer law, individual employment law, or competition law is excluded.[123]

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[121] Guarriello, 'Transnational Collective Agreements' (n107), p. 5.

[122] Likewise, matters relating to the *Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Developmen*t, COM(2002) 347 final. Available At: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52002DC0347 [Accessed 28 July 2021]; *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions* Com(2011) 681 final. Available At: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0681 [Accessed 26 July 2021]; Directive 2014/95/EU of the European Parliament and the Council of 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity by certain large undertaking and groups. Available At: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095 [Accessed 28 July 2021]; Draft Report with recommendations to the Commission on Corporate Due Diligence and Corporate Accountability (2020/2129(INL). Available At: https://www.europarl.europa.eu/doceo/document/JURI-PR-657191_EN.pdf [Accessed 28 July 2021]. These would be relevant issues to address in further research. When relevant, these matters are further addressed throughout the dissertation.

[123] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 64.

Furthermore, the dissertation does **not propose to develop a comparison** between different national definitions and regulations of collective agreements. The aim is not to engage in a comparative discussion, particularly when describing diverse domestic definitions or alternative ways to regulate the different aspects of collective labour law. An analysis solely based on international labour law and ILO instruments would overlook important elements and different variations in the concept of collective agreement and therefore would make the dissertation insufficient to fulfil its aim. Nonetheless, neither a comparison nor the analysis of the different systems' strengths and weaknesses is envisaged.

In regard to the topic of representativeness, one of the identified core features of the concept of collective agreement, the aim is to highlight key aspects relevant in the construction of the overall concept and the analysis carried out for global collective agreements. Thus, the intention is not to provide a description of different legal frameworks. Also, despite the importance that the consideration of whether the competence to negotiate collective agreements solely belongs to trade unions or whether it extends to groups of workers not necessarily organised in a recognised form,[124] that topic is not expanded in the dissertation. Instead, the requirement included in Recommendation No. 91, according to which workers' organisations need to be representative, is the focus of the analysis. When engaging in the topic of representativeness, the dissertation acknowledges the inexistence of an explicit international mandate given to global union federations for the negotiation of collective agreements. Hence, it highlights the significance of their recognition as an equal party in the negotiation, signature, implementation, and enforcement of global collective agreements but it does not analyse specific representation related rights other than collective bargaining, such as consultation on redundancies or transfer of an undertaking.

[124] Gian Carlo Perone (with the assistance of Antonio Vallebona), *The Law of Collective Agreements in the Countries of the European Community* (Commission of the European Communities 1984), p. 6.

1.6. Ethical Review

Research plays an important role in societal development. However, it is important to ensure such research is correctly carried out. Specific requirements are made, to ensure that the best methods are used and the individuals involved are protected. The interviews carried out, specifically with trade union representatives, mean that the project deals with **sensitive personal data**. As such, the interview component of the project requires ethical approval. The application for ethical review is carried out in accordance with Section 3 and 5 of the Ethical Review Act and Section 9 of the General Data Protection Regulation. Section 3 of the Ethical Review Act requires its application to research that includes the treatment of sensitive personal data, such as trade union membership, as referred in Article 9 (1) and 24 of the General Data Protection Regulation (GDPR) and Section 1 of Chapter 3 of Act (2018:218) with supplementary provisions to the EU Data Protection Regulation.

In terms of geographical applicability and according to Section 5 of the Ethical Review Act, the statue is applied to research conducted in Sweden. The interviews are carried out both in Sweden and Cambodia, which could imply that only the interviews conducted in Sweden should be subjected to ethical review. The Act's preparatory works refer to this, stating that only the part conducted in Sweden should be reviewed in Sweden. However, some review boards have applied a different criterion, based on the rules applied in the country where the remaining part of the research is conducted. If the country's ethical review rules are roughly in accordance with the rules applied in Sweden, only the component conducted in Sweden needs to be reviewed domestically. However, if no rules exist or these are broadly different from Swedish regulations, the whole study must be reviewed in Sweden. Thus, it is considered the project's entire empirical component should be reviewed in Sweden.

Furthermore, according to Section 17, research subjects must consent to the study and previously receive information regarding the same. Consent must be voluntary, express, and specified for the particular research, as well as documented. Article 13 of the GDPR lists the information that must be provided to the data subject and Article 21 explicitly states that the subject has the right to object to the processing of personal data. Prior to each interview, the research participants are informed about the project and the ability to withdraw or refuse consent. Likewise, information is provided both in spoken and written form, in a comprehensible and clear language. The written information is further translated to Khmer. The information provided includes the following:

(1) Information about which organisations and associates responsible for the research project will be provided with contact information for these;
(2) The project purpose and background;
(3) A description of the risks that participation might entail;
(4) Information about the complete volunteer participation and the possibility of interrupting the interview at any time or choosing not to answer questions and;
(5) Information on how sensitive personal data will be handled.

The contacts with interviewees are done through a pre-paid phone acquired in Phnom Penh. This is an unregistered prepaid card phone that cannot be linked to the researcher or the project. The interview data is kept in a separate computer without wireless communications, namely internet, Bluetooth connection, or any other type of wireless communication capacity. Furthermore, no data is transmitted digitally between this computer and other storage devices or any other electronic devices, such as USB sticks, micro-UBS sticks, etc. In particular, the information regarding the interviewees, their identities, specific organisations, the questions, and the interviewees' answers are solely stored in that computer. Furthermore, the names of the participants are not included in the monography. Hence, the data included in

the monography is not attributable to the individual interviewees and their identity is not disclosed.

Even though the project does not entail any physical injury, pain, discomfort or other violations of personal integrity, there is a risk associated with the political background in which the empirical study is conducted. The most vulnerable interviewees are the representatives of Cambodian unions, given the contentious relationship between the union movement and the government. This meant that participation in the project could pose a risk to the interviewees in the form of negative attention, namely through social or economic damage, including discrimination, censorship or, in extreme cases, physical violence. To mitigate these risks, numerous factors are taken into account. These include, but are not limited to: not conducting interviews with trade union representatives displaying signs of fear and allowing the interviewee to select the interview location. Accordingly, the interviews are carried out in places chosen by the interviewees and never in a factory, in plain sight, or places with a higher risk of identification. The selection of questions asked is further considered. These are not formulated in a such a way as to unnecessarily cause the interviewees to make statements that cannot be added to the interviews.

Finally, it is worth noting that the candidate had done a similar project, on a smaller scale. The candidate's master thesis, entitled "Female Representation in Trade Unions: The Case of the Cambodian Garment Industry" included an empirical component, which also entailed carrying out interviews. These were conducted with representatives and members of trade unions in order to gather women's 'real' experiences in Cambodian garment factories. One of the trade union representatives interviewed had also been interviewed before.

1.7. Structure of the Thesis

The hypothesis put forward is that some global framework agreements fit within the notion of collective agreement. Accordingly, global collective agreements constitute a narrower concept compared to both transnational company agreements and global framework agreements.

The dissertation is comprised of seven chapters. The **first chapter** presents the background and state of research, the purposes and research questions, the terminology, and the used methodology. Furthermore, it describes the materials used and comprises a section regarding the delimitation of the research topic. It also includes a section on the matters concerning the ethical review, which is required for the empirical study. Finally, it explains the structure of the dissertation, while including some final remarks.

The **second chapter** lays out the fundamental context that constitutes the basis of the analysis carried out in the following chapters. It begins by analysing globalisation in relation to the social partners, referring to business responsibility to respect human rights and highlighting the concepts of due diligence and leverage, which are included in key soft law instruments. It further addresses the problematic of global supply chains and related practices. Within this background, the role and strategies of global union federations is described, as well as the role of the ILO. The concept of corporate social responsibility is provided in relation to relevant conceptual theories, namely legitimacy and stakeholder theory, which are further presented. These notions and theories are considered to be relevant for the empirical work carried out and the analysis developed in chapter 6. Additionally, an outline of corporate discourse and how it is used is provided. This is relevant for the interpretation of the interview material and the analysis of global framework agreements within the concept of collective agreement or simply as corporate social responsibility initiatives, as well as the stakeholders these agreements aim to address. This examination is done in comparison with other instruments related to the regulation of the conduct

of multinational enterprises, namely codes of conduct. The interview statements themselves, reveal corporate discourse.

The **third chapter** looks into the concept of collective agreement from both an ILO and domestic labour law perspectives. The starting point is a theoretical approach to industrial relations, collective bargaining, and legal pluralism, which are the foundation of collective agreements. Subsequently, it goes into a theoretical background and legal framework of the collective agreement itself. Hence, it departs from the ILO definition comprised in the Collective Agreements Recommendation, 1951 (No. 91) and referred in the Collective Bargaining Convention, 1981 (No. 154). Eight features are identified, described, and analysed in relation to different domestic legal frameworks. These are the following: 1) bilaterality, 2) voluntariness, 3) bindingness, 4) enforcement mechanisms, 5) scope, 6) content, 7) form, and 8) relation to statutory law and other sources of law.

The **fourth chapter** examines global framework agreements. The chapter begins by analysing the emergence, definition, and evolution of global framework agreements, both in terms of quantity and quality. Subsequently, the constitutive elements of global framework agreements are identified and described. The dissertation analyses the alternative views of framing global framework agreements, namely as a form of private law contracts or as collective agreements at the international level. Thus, the chapter provides an overview of global framework agreement's emergence, their evolving content, and legal status. Two global framework agreements are analysed in reference to the constitutive elements identified, providing a concrete exemplification of the information examined.

The **fifth chapter** analyses global framework agreements in relation to the core identified features of the concept of collective agreement. Hence, a narrower concept, that of global collective agreements is delineated.

The **sixth chapter** presents the empirical material gathered through the interviews and ties the previously mentioned concepts and theories in order

to answer the research questions. The background and aims of the empirical study, described in the section referent to the empirical methodology in chapter 1, are completed and the identification of H&M's and Inditex's as global collective agreements is presented. The empirical findings include the stakeholders' general views on global collective agreements and their binding character. A description regarding the background of the Cambodian context is further presented. Other issues, namely the parties' views on the importance of a company's origin are included, as well as a detailed description and analysis of the current implementation of H&M's and Inditex's global collective agreements in Cambodia. Both references to a positive impact and implementation of these agreements are included, as well as some identified problems. Finally, the impact of global framework agreements and their related dilemmas are described. Their impact is examined from a critical view point, observing the available material, current dissemination and comprehension problems, and the vagueness of dispute settlement procedures.

Finally, the **seventh chapter** comprises the conclusions reached and final answers to the research questions. It starts by referring to the legal status of global framework agreements and their placement within corporate social responsibility and industrial relations. Moreover, in answering the second research question, it tackles the functioning of global framework agreements. Using H&M's and Inditex's global collective agreements as the focus, the impact of global collective agreements is further addressed. The final section focuses on the fourth research question, referring to the relationship between the framework created by global collective agreements and other sources of labour law.

1.8. Final Remarks

Global framework agreements have the potential to face the limited scope of labour law, which is highly dependent on the national context, whereas

companies and labour relations have become more and more international. As Papadakis recognised, there is a 'mismatch' between the increasingly international scope of activities of multinational enterprises and the still mostly national scope of action of social actors, namely trade unions. Papadakis stated that *"this mismatch reflects a wider systematic disequilibrium in terms of the available tools of action and power, between, on the one hand, for-profit global actors like MNEs, and on the other hand, not-for-profit actors in the social field, who work for an equitable distribution of globalisation"*.[125] Additionally, global framework agreements can be a response to the lack of effectiveness of labour law, in terms of the gap between international legally binding texts and their application to companies.[126] Compared to corporate social responsibility instruments and codes of conduct in particular, global framework agreements go a step further, holding a higher degree of legitimacy due to their negotiated character and symbolising the recognition of global union federations as legitimate bargaining partners, while embodying unions' strategic policy to deal with globalisation and labour law's limited scope.[127] In fact, as displayed in the section regarding global union federations' involvement as a constitutive element of global framework agreements, some agreements expressly refer to a recognition of global unions as a legitimate counterpart. For instance, Danone's agreement, the first one to be signed, states that *"the union and company must recognise the legitimacy of each party"*. In the long-term, the union movement views global framework agreements as a strategy towards the creation of cross-border industrial relations and collective bargaining.[128] Hence, global framework agreements are often considered as a *"step towards the internationalisation of collective*

[125] Papadakis (ed.), *Cross-Border Social Dialogue and Agreements*: *An Emerging Global Industrial Relations Framework?* (n13), p. 1; Konstantinos Papadakis, 'Globalising Industrial Relations: What Role for International Framework Agreements?' in Susan Hayter (ed.), *The Role of Collective Bargaining in the Global Economy – Negotiating for Social Justice* (International Labour Office 2011), p. 1.

[126] André Sobczak, 'Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility' (2007) Vol. 62 No. 3 Industrial Relations pp. 466-491.

[127] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21); Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges (n51), pp. 591-636.

[128] Brian Burkett, 'International Framework Agreements: An Emerging International Regulatory Approach for a Passing European Phenomenon?' (2001) Canadian Labour Employment Law Journal, pp. 81-114.

bargaining".[129] They formalise the recognition of global union federations as legitimate counterparts in industrial relations at the international level and their negotiation, content, and implementation processes are evocative of collective bargaining processes.[130] They *"are not mere unilateral declarations, but contain obligations, although not legally enforceable ones"*[131] and transform multinational enterprises' corporate social responsibility policies into more binding commitments.[132] These considerations provide the basis for the next chapters.

[129] Isabelle Schömann, André Sobczak, Eckhard Voss, and Peter Wilke, *Codes of Conduct and International Framework Agreements: New Forms of Governance at Company Level (*European Foundation for the Improvement of Living and Working Conditions 2008); Telljohann, da Costa, Müller, Rehfeldt, and Zimmer, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (n48); Williams, Davies, and Chinguno, 'Subcontracting and Labour Standards: Reassessing the Potential of International Framework Agreements' (n30), p. 185.

[130] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 67-87.

[131] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 518; Isabelle Schömann, André Sobczack, Eckhard Voss and Peter Wilke, 'International Framework Agreements: New Paths to Workers' Participation in Multinational's Governance?' (2008) HAL, p. 121.

[132] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining (n21), p. 518; Schömann, Sobczack, Voss and Wilke, 'International Framework Agreements: New Paths to Workers' Participation in Multinational's Governance?' (n131), pp. 111-126.

2. Globalisation and Corporate Social Responsibility

This chapter lays out the context in which global framework agreements have emerged, as well as concepts and theories that are fundamental for the analysis carried out in the subsequent chapters. Section 2.1. presents the setting behind the development of global framework agreements, through the introduction of the term globalisation and its direct relation to a growing trend of internationalisation of collective bargaining. In this context, the development and growing importance of global supply chains is addressed. Business responsibility to, at least, respect human rights and the associated concepts of due diligence, predatory purchasing practices, and leverage are further highlighted. The work of global union federations in regard to global framework agreements is introduced as a strategy to tackle globalisation and the need to operate within an international context. Focusing on the ILO Tripartite Declaration and the Declaration on Fundamental Principles and Rights at Work, section 2.2. discusses the role of the ILO in relation to global framework agreements. The significance of ILO instruments in relation to these agreements' content and the organisation's possible intervention in dispute settlement and training schemes are further referred. Finally, section 2.3. starts by examining corporate social responsibility as a concept. Stakeholder theory and legitimacy theory are described and linked to global framework agreements and its associated corporate discourse. These reveal key differences in both the design and use of global framework agreements and previous company-initiated instruments intended to regulate global supply chains. The argument placed is that, compared to codes of conduct, which are aimed at consumers and investors and more commonly used as marketing instruments, global framework agreements address other stakeholders. In particular, they focus on the relationship between workers' representatives and the development of good industrial relations.

2.1. Globalisation and The Social Partners

The concept of **globalisation** is not without controversy.[133] *"It can be 'good' and 'bad' at the same time"*,[134] referring both to multinational enterprises' growing internationalisation and power, as well as the spread of knowledge and awareness of human rights issues.[135] A common and universal definition of globalisation does not exist.[136] In fact, the concept has no *"no clearly marked, diachronic borders."*[137] The term has *"often been left vague and undefined, better to conjure up the large panoply of forces that have seemingly imposed similar imperatives across advanced industrialised countries"*.[138] Thus, *"like many apparently meaningful terms, it tends, upon closer examination, to dissolve, or worse, multiply into many other complex terms."*[139] Globalisation created an environment susceptible of bringing chances for the integration and the development of emerging economies, as well as new tests for their growth and sustainable development. However, as acknowledged in the Millennium Declaration, the benefits and costs of globalisation are very unevenly distributed.[140] The internationalisation and growing power of enterprises granted them the ability to easily shift

[133] See, Stephen Rix, 'Globalisation and Corporate Social Responsibility' (2002) Vol. 27 Alternative, pp. 16-21; Petra Vujakovic, 'How to Measure Globalisation? A New Globalisation Index (NGI)' (2009) No. 343 WIFO Working Papers Austrian Institute of Economic Research, pp. 1-34; Pawel Kozlowski, 'Globalisation Asynchronies' (2004) Vol. 187 No. 8 Polish European, pp. 187-195.

[134] Vujakovic, 'How to Measure Globalisation? A New Globalisation Index (NGI)' (n133), p. 3.

[135] ibid, pp. 3-4.

[136] See, for various definitions of globalisation – Paul Streeten, *Globalisation: Threat or Opportunity?* (Copenhagen Business School Press 2001), pp. 167-173. Also, in regard to different ways of categorising globalisation, David Held, Anthony McGrew, David Goldblatt, and Jonathan Perraton, 'Global Transformations: Politics, Economics and Culture' in Chris Pierson and Simon Tormey (eds), *Politics at Edge* (Springer 2000) pp. 14-28; Peter Thomas Muchlinski, 'Globalisation and Legal Research' (2003) Vol. 37 No. 1 The International Lawyer, pp. 221-240; Marco Caselli, 'On the Nature of Globalisation and its Measurement. Some Notes on the AT Kearny/Foreign Policy Magazine Globalisation Index and the CSGR Globalisation Index' (2006) UNU-CRIS OCASSIONAL PAPERS Universita Catolica del Sacro Cuore Milano, pp. 4-5; Vujakovic, 'How to Measure Globalisation? A New Globalisation Index (NGI)' (n133), pp. 3-4.

[137] Kozlowski, 'Globalisation Asynchronies' (n133), p. 187.

[138] Richard Hyman, 'Trade Unions, Global Competition and Options for Solidarity' in Andreas Bieler and Ingemar Lindberg (eds) *Global Restructuring, Labour and the Challenges for Transnational Solidarity* (Routledge 2011), p. 18; Vivien A. Schmidt, *The Future of European Capitalism* (Oxford University Press 2002), p. 13.

[139] Muchlinski, 'Globalisation and Legal Research' (n136).

[140] UNGA 'Millennium Declaration' (18 September 2000) A/RES/55/2, para. 5.

production across countries, sparking concerns regarding the impact of their activities on working people.[141] There is a concern that the increasing competition between developing countries, in order to attract foreign investment, leads to a gradual lowering of labour standards, as well as environmental and social protection.[142] As stated by the World Commission on the Social Dimension of Globalisation, *"in the absence of a balanced multilateral framework for investment there is a risk that countries may be pushed by competitive bidding for investments to offer concessions that go too far in reducing the overall benefits and impede the fair distribution of these benefits"*.[143] Moreover, there is a mismatch between multinational enterprises' global scope of activities and that of trade unions, which is mostly national.[144] Accordingly, the relationship between employers, employees, their representative organisations, and the state can no longer be analysed solely based in a national context.[145] In fact, *"Globalisation processes have produced a downward pressure on labour rights that neither nationally based labour laws nor international institutions such as the International Labour Organisation have been able to effectively counter."*[146]

While creating jobs and promoting a broader consensus in regard to the recognition of international standards, globalisation has also worsened competition between suppliers and created a **growing neglect** of labour

[141] Jurgen Hoffman, 'Ambivalence in the Globalisation Process – The Risks and Opportunities of Globalisation' in D. Foden, J. Hoffmann and R. Scott (eds) *Globalisation and the Social Contract* (Brussels: ETUI 2001).

[142] World Commission on the Social Dimension of Globalisation, *A Fair Globalisation: Creating Opportunities for All* (International Labour Office 2004), p. 34 para. 162 and p. 86 para. 389; Konstantinos Papadakis, 'Introduction' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Office 2008), p. 1.

[143] World Commission on the Social Dimension of Globalisation, *A Fair Globalisation: Creating Opportunities for All* (n142), p. 86 para. 389; Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 67.

[144] Papadakis, 'Introduction' (n142), p. 1.

[145] *"The advent of intensified forms of global economic integration has led to a situation where relationships between employers, employees and their organisations and the state can no longer be thought in ways that are bounded by the nation-state."* See, Michele Ford and Michael Gilan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (2015) Vol. 57 No. 3 Journal of Industrial Relations, p. 457.

[146] Thomas Maak, 'The Cosmopolitical Corporation' (2009) Vol. 84 Journal of Business Ethics, pp. 361-372. Available At: https://link.springer.com/article/10.1007%2Fs10551-009-0200-3 [Accessed 9 August 2017].

standards.[147] In fact, it facilitated corporations' shift of production to countries where labour costs are lower and labour standards, or their implementation, are weaker. Adding to this background, multinational corporations started to adopt *"a discourse according to which multinational corporations had no home base"*, being placed outside countries' jurisdictions.[148] Furthermore, **ILO standards** only impose obligations on states, meaning there is no direct horizontal effect between legal subjects. Still, the activities of multinational corporations can indisputably have an impact on human rights.[149]

Increasing awareness from consumers, governments, and also from companies, as well as recent and recurring tragedies highlight the emergency of addressing these concerns, particularly in the context of complex supply chains.[150] These include recent disasters like the two 2012 Pakistan garment factory fires, which killed more than 300 workers,[151] the 2013 Rana Plaza

[147] Rüdiger Krause, 'The Promotion of Labour Standards Through International Framework Agreements' in Henner Gött (ed.), *Labour Standards in International Economic Law* (Springer, 2018), p. 320.

[148] Tarja Halonen, 'Harnessing Globalisation: An Everlasting Challenge' in Tarja Holonen and Ulla Liukkunen (eds), *International Labour Organisation and Global Social Governance* (Springer, 2020), p. 6.

[149] See, Peter T. Muchlinski, 'Human Rights and Multinationals: Is There a Problem?' (2001) Vol. 77 No. 1 International Affairs, pp. 31-47; Surya Deva, 'Human Rights Violations by Multinational Corporations and International Law: Where from Here?' (2003) Vol. 19 Connecticut Journal of International Law, pp. 1-57; Robert McCorquodale and Penelope Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (2007) Vol. 70 No. 4 The Modern Law Review, pp. 598-625; Robert McCorquodale, 'Towards More Effective Legal Implementation of Corporate Accountability for Violations of Human Rights' (2009) Vol. 103 International Law as Law, pp. 288-291; Nicolas Zambrana Tevar 'Shortcomings and Disadvantages of Existing Legal Mechanisms to Hold Multinational Corporations Accountable for Human Rights Violations' (2012) Cuadernos de Derecho Transnational Vol. 4 No. 2, pp. 398-411; Maciej Zenkiewicz, 'Human Rights Violations by Multinational Corporations and UN Initiatives' (2016) Vol. 12 No. 1 Review of International Law and Politics, pp. 121-160.

[150] Globalisation has enabled the fragmentation of production and the growth of global supply chains, which account for about eighty per cent of international trade. See, Guillaume Delautre, 'Decent Work in Global Supply Chains: An Internal Research Review – Research Department Working Paper No. 47' (International Labour Office 2019), p. 15.

[151] Michael Georgy, 'Fires Engulf Pakistan Factories Killing 314 Workers' *Reuters* (Karachi, 12 September 2012). Available At: https://www.reuters.com/article/us-pakistan-fire/fires-engulf-pakistan-factories-killing-314-workers-idUSBRE88B04Y20120912 [Accessed 6 December 2019]; Zia ur-Rehman, Declan Walsh, and Salman Masood, 'More Than 300 Killed in Pakistani Factory Fires' (12 September 2012) *The New York Times*. Available At: https://www.nytimes.com/2012/09/13/world/asia/hundreds-die-in-factory-fires-in-pakistan.html [Accessed 3 May 2019]; Associated Press, 'Pakistan Factory Fires Kill 125' (12 September 2012) *The Guardian*. Available At: https://www.theguardian.com/world/2012/sep/12/pakistan-factory-fires-karachi [Accessed 3 May 2019]; Clean Clothes Campaign, 'Justice for the Ali Enterprises Victims'. Available At: https://cleanclothes.org/safety/ali-enterprises [Accessed 3 May 2019].

collapse in Bangladesh, which killed 1,134 people and injured more than 2,500,[152] and the 2015 Kentex slipper factory fire in the Philippines, which killed 72 workers on the second anniversary of the Rana Plaza disaster.[153] Also, in the context of the Covid-19 pandemic, several brands have refused to pay for orders completed or in production, impacting the livelihood of millions of workers.[154] Currently, top fashion brands are facing legal challenges over garment workers' rights in Asia, with the Pan-Asian group launching a innovative attempt to hold these global buyers accountable for rights violations carried out during the pandemic.[155]

These concerns have not been ignored, being a central point in discussions carried out by governments and social partners but lasting improvements for workers' rights have not been accomplished.[156] Initially perceived as positive, through the creation of numerous jobs in emerging economies and a possible contribution to their economic development, globalisation has ultimately brought an opposite impact in working conditions and workers' rights. Associated to economic and reputational costs, multinational enterprises have developed **numerous corporate social responsibility**

[152] BBC News, 'Bangladesh Factory Collapse Toll Passes 1,000' (10 May 2013). Available At: https://www.bbc.com/news/world-asia-22476774 [Accessed 3 May 2019]; Jim Yardley, 'Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame' (May 22 2013) *The New York Times*. Available At: https://www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html [Accessed 3 May 2019]; Syed Zain Al-Mahmood, Jason Burke, and Rebecca Smithers, 'Dhaka: Many Dead as Garment Factory Building that Supplied West Collapses' (25 April 2013) *The Guardian*. Available At: https://www.theguardian.com/world/2013/apr/24/bangladesh-building-collapse-shops-west [Accessed 3 May 2019]; Michael Safi and Dominic Rushe, 'Rana Plaza, Five Years On: Safety of Workers Hangs in Balance in Bangladesh' *The Guardian* (Dhaka and New York, 24 April 2018). Available At: https://www.theguardian.com/global-development/2018/apr/24/bangladeshi-police-target-garment-workers-union-rana-plaza-five-years-on [Accessed 6 December 2019]; Kristine Wong, 'Bangladesh Factory Collapse: Can GAP and Others Pin Down Worker Safety' *The Guardian* (10 September 2013). Available At: https://www.theguardian.com/sustainable-business/rana-plaza-gap-worker-safety [Accessed 6 December 2019].

[153] Irene Pietropaoli, 'Philippines Factory Fire: 72 Workers Need Not Have Died' *The Guardian* (8 June 2015). Available At: https://www.theguardian.com/global-development-professionals-network/2015/jun/08/philippines-factory-fire-72-workers-unions-human-rights [Accessed 6 December 2019].

[154] Mark Anner, 'Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains' (March 27 2020) Research Report – Center for Global Workers' Rights.

[155] Annie Kelly, 'Top Fashion Brands Face Legal Challenge Over Garment Worker's Rights in Asia' *The Guardian* (9 July 2921). Available At: https://www.theguardian.com/global-development/2021/jul/09/top-fashion-brands-face-legal-challenge-over-garment-workers-rights-in-asia [Accessed 29 July 2021].

[156] Felix Hadwiger, 'Global Framework Agreements: Achieving Decent Work in Global Supply Chains?' (2015) Vol. 7 No. 1-2 International Journal of Labour Research, pp. 75-94.

initiatives to tackle the costs of globalisation and the poor working conditions throughout their supply chains. Yet, such initiatives have systematically lacked labour participation and have not achieved lasting improvements.[157] There is a general consensus in regard to the fact that both codes of conduct and auditing programmes *"have failed to eliminate, or perhaps even substantially reduce, incidents of labour violations in global supply chains"*.[158]

Besides an irrefutable obligation to make profits for shareholders, corporations have further obligations. Presently, the question is not *"whether or not corporations have human rights responsibilities at all, but rather how extensive they are"*.[159] However, there is still **no set of legally binding rules** governing the conduct of multinational enterprises.[160] This absence of international legally binding rules leaves a regulatory 'vacuum', which has quickly been filled by a set of unilateral and undefined, employer-initiated programmes,[161] as well as various multistakeholder initiatives. In regard to the second, the heterogeneous and complex character of international documents on corporate social responsibility, lacking a strict legal hierarchy, coherent objectives, and a defined content, have been identified as weaknesses.[162] Substantial obstacles can also be found in company developed corporate social responsibility initiatives. For more or less altruistic reasons, multinational enterprises have generally showed openness in recognising their responsibility to (at least) respect human rights and one

[157] Hadwiger, 'Global Framework Agreements: Achieving Decent Work in Global Supply Chains – Background Paper' (n12); Kasey McCall-Smith and Andreas Rühmkorf, 'Sustainable Global Supply Chains: From Transparency to Due Diligence' in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance* (Edward Elgar, 2019), pp. 110, 113.

[158] Mark Anner, Jennifer Balir, and Jeremy Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (2013) Vol. 35 No. 1 Comparative Labour law & Policy Journal, p. 5.

[159] Florian Wettstein, 'Normativity, Ethics and the UN Guiding Principles on Business and Human Rights: A Critical Assessment' (2015) Vol. 14 Journal of Human Rights, p. 163.

[160] Cirlig, 'Business and Human Rights: From Soft Law to Hard Law?' (n4).

[161] Burkett, 'International Framework Agreements: An Emerging International Regulatory Approach for a Passing European Phenomenon?' (n128).

[162] Teun Jaspers, 'Corporate Social Responsibility: A New Framework for International Standard Setting?' in C. Ryngaert, E. J. Molenaar and S. M. H. Nouwen (eds), *What's Wrong with International Law?* (Brill/Nijhoff, 2015).

cannot affirm they have been inactive in addressing these concerns.[163] However, the increase of unilateral corporate social responsibility programmes, placed entirely in the hands of management is often seen as 'window dressing', undermining workers' representation and collective ownership of social regulation instruments.[164] Furthermore, their inconsistent content and ineffective enforcement have also been considered as significant limitations.[165]

2.1.1. Business Responsibility to Respect Human Rights

Several initiatives addressing business responsibility in regard to human rights have been developed by international organisations, namely the Organisation for Economic Co-Operation and Development (OECD), the International Labour Organisation, and the United Nations. These include the **OECD Guidelines** for Multinational Enterprises, which constitute non-binding recommendations on responsible business conduct addressed to multinational enterprises operating in or from the adhering territories. Since 2011, the Guidelines contain a chapter on human rights, stating that enterprises should, among other things, respect human rights, meaning *"they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved"*.[166]

Similarly, the ILO **Tripartite Declaration** of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) provides

[163] Michael Fichter, Markus Helfen, and Jörg Sydow, 'Regulating Labour Relations in Global Production Networks – Insights on International Framework Agreements' (2011) Vol. 2 International Politics & Society, pp. 69-86.

[164] André Sobczak, 'Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Institute for Labour Studies 2008), pp. 116, 126-127; Fichter, Helfen, and Sydow, 'Regulating Labour Relations in Global Production Networks – Insights on International Framework Agreements' (n163); Paul Hohnen, 'OECD MNE Guidelines – A Responsible Business Choice' (December 2008-January 2009) No. 270/271, pp. 18-20;

[165] Ruth Pearson and Gill Seyfang, 'New Hope or False Dawn? Voluntary Codes of Conduct, Labour Regulation and Social Policy in a Globalising World' (2001) Vol. 1 No. 1 Global Social Policy, pp. 48-78; Mark P. Thomas, 'Global Industrial Relations? Framework Agreements and the Regulation of International Labour Standards' (2011) Vol. 36 No. 2 Labour Studies Journal, pp. 269-287.

[166] OECD, *OECD Guidelines for Multinational Enterprises* (OECD Publishing 2011). Available At: https://www.oecd.org/daf/inv/mne/48004323.pdf [Accessed 12 May 2020].

recommendations on matters of employment, training, conditions of work and life, industrial relations, and general policies. These are founded on ILO conventions and recommendations and on the Declaration on Fundamental Principles and Rights at Work in particular. The principles and guidelines are addressed to multinational enterprises, governments, as well as employers' and workers' organisations, and are based on principles contained in international labour standards. While referring to the Guiding Principles on Business and Human Rights and mentioning each actor's specific role to play in this context, the Declaration recalls 'the corporate responsibility to respect human rights'. Similarly, based on the 2011 Guiding Principles, the 2017 update of the Tripartite Declaration explicitly refers to due diligence in paragraph 10.[167]

Likewise, the **UN Global Compact** provides a non-binding framework of principles based on membership and addresses businesses in the areas of human rights, labour, the environment, and anti-corruption. The Compact is a voluntary international initiative joining multinational enterprises, UN agencies, as well as labour and civil society in the support of universal social and environmental principles. Hence, it constitutes a strategic policy initiative for businesses committed to ten universally accepted principles in the fields of human rights, labour, environment, and anti-corruption.[168] It represents a universal multi-industry voluntary code of conduct.[169] The Compact highlights ten principles, derived from the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.[170] Principles 1 and 2,

[167] International Labour Organisation, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (International Labour Office 5th Edition 2017). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf [Accessed 12 May 2020].

[168] United Nations Global Compact. Available At: https://www.unglobalcompact.org/ [Accessed 25 February 2019].

[169] S. Prakash Sethi and Donald H. Schepers 'United Nations Global Compact: An Assessment of Ten Years of Progress, Achievements, and Shortfalls' in S. Prakash Sethi (ed.), *Globalisation and Self-Regulation* (Palgrave Macmillan 2011), pp. 249-275.

[170] The principles can be divided into human rights (principles 1 and 2), labour (principles 3, 4, 5, and 6), environment (principles 7, 8, and 9), and anti-corruption principles (principle 10). See, United Nations,

referent to human rights, state that *"Businesses should support and respect the protection of internationally proclaimed rights"* and *"make sure that they are not complicit in human rights and abuses"*.[171] Principles 3 to 6 note that businesses should uphold the four fundamental rights and principles at work as identified by the ILO. Similarly, the Global Compact's guide to corporate sustainability states that, in order to be sustainable, businesses *"must operate responsibility in alignment with universal principles and take actions that support the society around them"* and *"report annually on their efforts, and engage locally where they have a presence"*.[172] These are the basis of a due diligence policy aimed at the construction of sustainable supply chains.[173]

Finally, and despite not imposing any legal obligations, the **UN Guiding Principles** on Business and Human Rights,[174] endorsed in 2011 by the UN Human Rights Council, they constitute the most authoritative initiative to date. It is also the most innovative and robust initiative to date, endorsed by the United Nations. They give guidance on the implementation of the UN's 'Protect, Respect and Remedy' Framework,[175] and offer advice to both governments and businesses on how to prevent and remedy the adverse effects of businesses on human rights. Learning from the failures of another UN initiatives (i.e., the Norms of Transnational Corporations and Other Businesses Enterprises), the Guiding Principles show *"self-constraint with respect to corporate responsibility"* and do not have any *"any ambition to*

United Nations Global Compact – The Ten Principles of the UN Global Compact (2000). Available At: https://www.unglobalcompact.org/what-is-gc/mission/principles [Accessed 12 May 2020].

[171] United Nations, *United Nations Global Compact – The Ten Principles of the UN Global Compact* (n170).

[172] UN Global Compact, *Guide to Corporate Sustainability: Shaping a Sustainable Future* (2014). Available At: https://d306pr3pise04h.cloudfront.net/docs/publications%2FUN_Global_Compact_Guide_to_Corporate_Sustainability.pdf [Accessed 7 April 2021].

[173] McCall-Smith and Rühmkorf, 'Sustainable Global Supply Chains: From Transparency to Due Diligence' (n157), p. 113.

[174] When the UN Human Rights Council unanimously adopted the John Ruggie's Guiding Principles, also known as the UN Guiding Principles on Businesses and Human Rights, this represented the first time the UN stated its expectations in the field of business and human rights in an authoritative way. These are a set of guidelines for both states and companies to prevent, address and remedy human rights abuses. See, Business & Human Rights Resource Centre, 'UN Guiding Principles'. Available At: https://www.business-humanrights.org/en/un-guiding-principles [28 January 2019]; Radu Mares (ed.), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Martinus Nijhoff Pubishers 2012.

[175] See, Ursula A: Wynhoven, 'The Protect-Respect-Remedy Framework and the United Nations Global Compact' (2011) Vol. 9 Santa Clara Journal of International Law, pp. 81-99; Mares (ed.), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (n174), p. 4.

set new substantive standards".[176] Still, they state that, irrespective of a state's duty to protect human rights, companies have a responsibility to respect human rights. Furthermore, they extend this responsibility to both impacts linked to a company's own activities, but also to those directly linked to its operations, products or impacts.[177] In fact, in its second pillar, the Guiding Principles explicitly state business responsibility to respect human rights, meaning *"they should avoid infringe on the human rights of others and should address adverse human rights impacts with which they are involved"*.[178]

Membership in these instruments is self-selective and voluntary compliance monitoring is normally audit based. Furthermore, both the standards included and their compliance monitoring is merely applicable to those that choose to join.[179] The lack of sanctions and monitoring problems makes these instruments possible paths of avoiding legal regulation.[180] Still, these instruments, and the Guiding Principles in particular, highlight key concepts that identify a set of dynamics resulting from globalisation, as well as ways to address them.

[176] Björn Fasterling and Geert Demuijnck, 'Human Rights in the Void? Due Diligence in the UN Guiding Principles on Business and Human Rights' (2013) Vol. 116 No. 4 Journal of Business Ethics, p. 800.

[177] Justine Nolan and Gregory Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (2018) Vol. 24 No. 1 Australian Journal of Human Rights, pp. 50-51.

[178] United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (2011), Principle 11. Also, according to the commentary to Principle 11 of the Guiding Principles, *"Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation"*. Available At: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf [Accessed 12 May 2020].

[179] Generally, and referring to the UN Global Compact as an example. See, S. Prakash Sethi and Donald H. Schepers, 'United Nations Global Compact: The Promise-Performance Gap' (2014) Vol. 122 Journal of Business Ethics, pp. 193-208; Nolan and Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (n177), pp. 51-52.

[180] Daniel Wintersberger (ed.), *International Human Resource Management: A Case Study Approach* (Kogan Page 2017), p. 101; Nicolas Bueno, 'Multinational Enterprises and Labour Rights: Concepts and Implementation' in Janice R. Bellace and Beryl ter Haar (eds), *Research Handbook on Labour, Business and Human Rights Law* (Edward Elgar, 2019), p. 427.

The Guiding Principles[181] and the OECD Guidelines[182] underline the concept of **due diligence**, which companies should apply in relation to their responsibility to respect human rights. The term, first used by John Ruggie when developing the United Nations 'Protect, Respect and Remedy Framework'[183] is now included in several other instruments.[184] The Guiding Principles address due diligence based on a risk assessment approach, defining it as a process through which companies should identify, prevent, mitigate, and account for how they address their actual and potential adverse human rights impacts.[185] Similarly, the OECD Guidelines define due diligence as a *"the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems"*.[186] This concept is also reiterated in other OECD guidance instruments.[187]

According to Principle 13 of the UN Guiding Principles, companies should *"seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business*

[181] Principle 17 expressly states that, *"In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence"*, which *"Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships"*. See, United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (n178), Principle 17.

[182] OECD, *OECD Guidelines for Multinational Enterprises* (n166), chapter II, para. 10 and commentary para. 14, chapter IV, para, 15 and commentary para. 45-46. The concept has further been adopted in the everyday vocabulary of business and human rights, corporate social responsibility, and related stakeholders. See, Radu Mares, 'Human Rights Due Diligence and the Root Causes of Harm in Business Operation' (2018) Vol. 10 No. 1 Northeastern University Law Review, p. 4.

[183] UN Human Rights Council, *Protect, Respect and Remedy: A Framework Business and Human Rights* (2008). Available At: https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf [Accessed 29 March 2021].

[184] The UNGPs were incorporated in the OECD Guidelines for MNEs – chapter II, paras. 10, 14, and 15, chapter IV para. 5 and commentary, and chapter VII para. 4 and commentary.

[185] Bueno, 'Multinational Enterprises and Labour Rights: Concepts and Implementation' (n180), pp. 422-423.

[186] OECD, *OECD Guidelines for Multinational Enterprises* (n166), commentary para. 14, 45.

[187] For instance, OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (OECD Publishing 2017). Available At: https://mneguidelines.oecd.org/oecd-due-diligence-guidance-garment-footwear.pdf [Accessed 12 May 2020]; OECD, *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas* (OECD Publishing 2016). Available At: https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf [Accessed 12 May 2020].

relationships, even if they have not contributed to those impacts". In turn, the concept of **'business relationships'** includes relationships with business partners in the company's value chain.[188] Accordingly, 'business relationships' include business partners, entities in the company's value chain, and any other non-state or state entity directly linked to the company's business operations, products, or services. Thus, it is recognised that business responsibility to respect human rights goes beyond formally affiliated entities.[189] In fact, according to the UN Guiding Principle 18, business enterprises should carry out an impact assessment covering all business relationships, including those part of the company's supply chain. Likewise, the definition of due diligence provided in the OECD Guidelines reinforces that the business relationship includes any entity in the supply chain.[190]

The problem of predatory **purchasing practices** is placed within the broader discussion about human rights due diligence. The United Nations Office of the High Commissioner for Human Rights refers to changes of product requirements for suppliers without adjusting production deadlines and prices as examples where business enterprises may be deemed to have cause adverse human rights impacts since they exert pressure on suppliers to breach labour standards in order to deliver and not lose business.[191] In fact, *"the principal root cause of sweatshop conditions in international subcontracting networks is to be found in the sourcing practices of the brands and retailers that coordinate these supply chains"*. [192] Labour violations are not merely a factory-based problem, capable of correction through monitoring. Instead, they are expectable results of an outsourcing production model mostly based on cost and flexibility concerns.[193] Buyer sourcing practices are often the root

[188] United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (n178), Principle 13.
[189] Nolan and Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (n177), p. 52.
[190] McCall-Smith and Rühmkorf, 'Sustainable Global Supply Chains: From Transparency to Due Diligence' (n157), p. 119.
[191] United Nations Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide* (United Nations, 2012), p. 17.
[192] Anner, Balir, and Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (n158), p. 3.
[193] ibid, p. 3.

causes[194] of problems at the factory level.[195] While multinational enterprises can use their **leverage** to obtain price reductions,[196] change order specifications, or even remove themselves from risk, leverage can also be used to ensure compliance with human rights standards.[197] Wages, commercial and sourcing practices, relationships within supply chains, and adherence to labour standards, are within businesses' control and scope to change'.[198] Shorter deadlines aligned with more votatile orders in both style and number have resulted in (inadequately or not compensated) overtime, increased subcontracting, and various forms of forced labour, with buyers shifting risks to suppliers which, in turn, shift the burden to the workers.[199] Companies can promote a 'commitment model', engaging in long-term commitments to suppliers and joint problem solving.[200] In the commentary to Guiding Principle 19 it is stated that leverage is considered to exist where the enterprise has the ability to effect change in an entity's harmful practices.[201] Similarly, while providing examples of leverage, the Office of the High Commissioner for Human Rights' guide defines it as an advantage

[194] Referring to the dangers of adopting a risk management due diligence approach, focused on the mitigation of human rights impacts, instead of the elimination of their root causes. See, Radu Mares, 'Human Rights Due Diligence and the Root Causes of Harm in Business Operation' (n182), pp. 1-69

[195] Richard Locke, *The Promise and Limits of Private Power: Promoting Labour Standards in a Global Economy* (Cambridge University Press, 2013); Anner, Balir, and Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (n158), pp. 3,7.

[196] Referring to power consolidation of lead firms in relation to downstream suppliers, illustrated in numerous small apparel producers that are forced to compete for contracts with a limited number of retailers. This results in buyers being able to dictate the price paid for each garment. See, Mark Anner, 'Labour Control Regimes and Worker Resistance in Global Supply Chains' (2015) Vol. 56 No. 3 Labour History, p. 297.

[197] Nolan and Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (n177), p. 60.

[198] Genieve Lebaron, 'Wages: An Overlooked Dimension of Business and Human Rights in Global Supply Chains' (2021) Vol. 6 No. 1 Business & Human Rights Journal, p. 20.

[199] Referring to importance of stable sourcing contracts and their volatility and explaining that, in this context, *"employers are likely to maintain the same level of employment, and require excessive overtime in order to meet demand during the peak production cycles that result from volatile sourcing contracts with short lead times"*, while stressing that these problems are not unique to supply chains in the garment industry. See, Anner, Balir, and Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (n158), pp. 9-10.

[200] ibid, p. 7.

[201] *"Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes harm."* See, United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (n178), Commentary to Principle 19.

that gives the power to influence, meaning *"the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact"*.[202] In these cases, the enterprise should use its leverage to mitigate impacts and cease or prevent its contribution.[203] However, besides causing or contributing to adverse human rights impact, a company can also be involved in an adverse impact when this is directly linked to its operations. For instance, when a supplier violates contractual terms, resorting to child or forced labour, the appropriate action will depend on the company's leverage.[204] The commentary to Principle 19 provides an open list of factors determining the appropriate action. These include the company's leverage over the entity, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship would have adverse human rights consequences. When the business enterprise lacks sufficient leverage, the Guiding Principles provide further recommendations on how a company can increase its influence. Still, *"there is not a one-size-fits-all approach"*.[205]

While global supply chains vary across sectors, they are a feature of a globalised economy, which is increasingly organised as either a producer-driven or buyer-driven supplier chains.[206] Global supply chains are characterised by **asymmetric power relationships**, with companies having the power to dictate profit distributions and shift risk down the chain.[207] In fact, *"The growth of transnational corporations has resulted in an asymmetrical distribution of power among actors both those within some*

[202] United Nations Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide* (n191), pp. 7, 19, 49-50.

[203] Bueno, 'Multinational Enterprises and Labour Rights: Concepts and Implementation' (n180), pp. 424-425.

[204] United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (n178), Principle 19; OECD, *OECD Guidelines for Multinational Enterprises* (n166), chapter II, para. 12.

[205] Galit A. Sarfaty, 'Shining Light on Global Supply Chains' (2015) Vol. 57 No. 2 Harvard International Law Journal, p. 434.

[206] Andreas Bieler and Ingemar Lindberg, 'Globalisation and the New Challenges for Transnational Solidarity' in Andreas Bieler and Ingemar Lindberg (eds) *Global Restructuring, Labour and the Challenges for Transnational* Solidarity (Routledge 2011), pp. 5-6; International Labour Conference, *Decent Work in Global Supply Chains – Report IV* (105th Session 2016). Available At: https://www.ilo.org/public/libdoc//ilo/2016/116B09_43_engl.pdf [Accessed 19 November 2020].

[207] Nolan and Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (n177), pp. 60-61.

global supply chains and those engaged with the relationship between business and some states."[208] The term, 'global supply chains', in itself emphasises the trend towards the scattering of production stages across different organisational units and geographical sites.[209] This power asymmetry between buyers and suppliers[210] means companies can easily switch suppliers and influence their behaviour. These, in turn, can also pressure lower tier subcontractors and ultimately workers. Based on changes to order specifications and deadlines, suppliers are pushed to compete and avoid losing business. This promotes the adoption of 'innovative', often illegal, practices. In these conditions, complex subcontracting networks have emerged as a business strategy that allows buyers to distance themselves from risk.[211]

Differently, if buyers are faced with high costs when changing suppliers, they possess lower leverage and it is more difficult to carry out due diligence and exercise influence.[212] In the context of globalisation, the development of global supply chains and their multiplicity of suppliers makes due diligence sometimes problematic. **Supply chains can be complex and fluid**. While first layer suppliers can often be easily identifiable, lower tiers are more challenging to keep track of.[213] This reality is explicitly recognised in the UN Guiding Principles. In the commentary to Principle 17, it is stated that, when business enterprises have a large number of entities in their value chain, making it unreasonably difficult to conduct due diligence, they should

[208] While these power dynamics might vary from sector to sector, this assertation is generally true. See, Nolan and Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (n177), p. 49.

[209] Macdonald, *The Politics of Global Supply Chains* (n7).

[210] *"In the context of high levels of market concentration, asymmetry of market power is entrenched by the simple fact that suppliers face limited numbers of buyers for their goods, lending to those lead firms a form of monopsony power, while buyers often have many potential suppliers and are able to use their market power to generate intense competition between supplier firms, particularly on conditions of price and supply."* Nicola Phillips, 'Power and Inequality in the Global Political Economy' (2017) Vol. 93 No. 2 International Affairs, p. 435.

[211] Nolan and Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (n177), p. 49.

[212] Sarfaty, 'Shining Light on Global Supply Chains' (n205), pp. 432-433.

[213] *"Supply chains can be fluid, and while the first tier of suppliers may be easily identified, those suppliers in lower tiers are not so visible and may enter and exit supply chains at various points."* See, Nolan and Bott, 'Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices' (n177), p. 49.

identify general areas where the risk of adverse human rights impacts is most significant and prioritise them.

Business responsibility to, as a minimum, respect human rights is internationally recognised. This responsibility extends to business relationships, covering the company's supply chains. Given the asymmetrical power relationship that characterises global supply chains, companies should use their leverage to improve compliance with human rights and labour standards. While the type of action will depend on the particular context, some type of leverage is to be exerted. Global framework agreements embody these principles, both in their references to an agreement's scope, but also in terms of implementation and, when existing, enforcement mechanisms. In particular, agreements that cover the entirety of the supply chain, include remedies in the form of enforcement mechanisms, and specific sanctions, constitute a concrete embodiment of the principles comprised in the above-mentioned soft law instruments. The UN General Assembly (UNGA) has expressly criticised the *"artificial distinction between labour rights and human rights"*, while recognising that *"labour rights are human rights"*.[214] Still, this recognition did not necessarily entail a better protection for workers. The internationalisation of economic activities placed new tests in the respect, protection, and fulfilment of human rights and labour rights in particular. These concerns have not been ignored, being a central point in discussions carried out by governments and social partners. However, lasting improvements for workers' rights have not been accomplished.[215] Both unilateral company-based instruments and the above-mentioned soft law initiatives *"have been largely infective in shaping corporate behaviour as they lack independent monitoring and enforcement mechanisms and are thus subject to critiques of green washing"*.[216] There is a general understanding in regard to the fact that, besides public governance, carried out by governments, labour governance is composed of both private

[214] UN Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, 21 May 2012, A/HRC/20/27, p. 17. Available At: https://www.refworld.org/docid/525fad894.html [Accessed 22 January 2019].
[215] Hadwiger, 'Global Framework Agreements: Achieving Decent Work in Global Supply Chains?' (n156).
[216] Sarfaty, 'Shining Light on Global Supply Chains' (n205), p. 427.

and social governance. Private governance refers to actions taken by companies and therefore it includes corporate social responsibility initiatives. Differently, social governance, refers to the actions of social groups. Labour governance has progressively become more complex, including both hard and soft law, as well as initiatives adopted by both public and private actors.[217] While the UN Guiding Principles *"have emerged as the dominant framework on business and human rights"*, recent guidance on their use has seldomly addressed grievance mechanisms under collective agreements, labour arbitration, or global framework agreements as a potential access to effective remedies.[218] This dissertation addresses the use of global framework agreements, and the narrower category of global collective agreements in particular, as tools to implement and enforce labour standards.

2.1.2. Global Union Federations and Global Supply Chains

Current production and distribution are highly internationalised, along with a facilitation of capital movement around the globe and companies working across borders. This means that **trade unions**, initially a domestically restricted organised movement developed throughout the twentieth century, had to reorganise and discover new means of acting together in an international context.[219] Such development requires solidarity, which is essential for the organisation of joint workers' action beyond the domestic context. However, solidarity is not always present and entails a *"joint action for mutually shared interests"* and a 'shared sense of identity'[220] or a

[217] Frederick Mayer and Anne Posthuma, 'Governance in a Value Chain World' (2012) Summit Briefing for the 'Capturing the Gains in Global Value Chains' Summit. Available At: http://www.capturingthegains.org/pdf/CTG-Governance.pdf [Accessed 24 September 2020]; Tess Hardy and Sayomi Ariyawansa, 'Literature Review on the Governance of Work' (International Labour Office 2019). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_731477.pdf [Accessed 24 September]; Delautre, 'Decent Work in Global Supply Chains: An Internal Research Review – Research Department Working Paper No. 47' (n150), pp. 33-34.

[218] Anne Trebilcock, 'The Rana Plaza Disaster Seven Years On: Transnational Experiments and Perhaps a New Treaty?' (2020) Vol. 159 No 4 International Labour Review, p. 557.

[219] Ingemar Lindberg, 'Varieties of Solidarity: An Analysis of Cases of Worker Action Across Borders' in Andreas Bieler and Ingemar Lindberg (eds) *Global Restructuring, Labour and the Challenges for Transnational* Solidarity (Routledge 2011), p. 206.

[220] ibid, p. 219.

'mutuality despite difference'.[221] Holding on to solidarity models based on homogeneity would mean, at best, to ignore differentiated concerns of several categories of workers, such as those belonging to minority ethnic groups and female workers.[222] Functioning within an international background while answering the challenges brought by globalisation and the strategic need to gather different interests under a solidarity umbrella requires a higher level of involvement from a broader type of organisation. Global commodity chains create further problems for trade unions, since they require the organisation of workers internationally and within a multitude of employers.[223] Adapting to the changes in the world economy, **global union federations** have functioned as top offices of the international trade union movement, coordinated international solidarity, represented labour in global social dialogue within the ILO, and have attempted to increase their membership.[224] Congregating national trade unions in industry sectors or occupational groups, these global federations have, due to globalisation, gradually become more relevant. They demonstrate the importance of transnational cooperation and solidarity among their various affiliates, as well as collective bargaining at the international level, carried out with multinational enterprises.[225] Besides serving to protect workers' rights across a multinational's operations, these activities enable the monitoring and enforcement of working conditions along supply chains and informal work places, often placed outside the scope of labour law. Furthermore, they facilitate and promote collective bargaining conducted at the national level, by increasing local trade unions' capacity and leverage, particularly in countries where their influence or representativity is faint. Furthermore, they

[221] Hyman, 'Trade Unions, Global Competition and Options for Solidarity' (n138), pp. 16-30; Andreas Bieler and Ingemar Lindberg, 'Conclusions: A Variable Landscape of Emerging Transnational Solidarities' in Andreas Bieler and Ingemar Lindberg (eds) *Global Restructuring, Labour and the Challenges for Transnational* Solidarity (Routledge 2011), p. 228.

[222] Bieler and Lindberg, 'Conclusions: A Variable Landscape of Emerging Transnational Solidarities' (n221), p. 228.

[223] Bieler and Lindberg, 'Globalisation and the New Challenges for Transnational Solidarity' (n206), p. 6.

[224] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 513.

[225] Edmund Henry and Mike Noon (eds), 'Global Union Federation' in *A Dictionary of Human Resources Management* (Oxford University Press 2. ed. 2008). Available At: https://www-oxfordreference-com.ludwig.lub.lu.se/view/10.1093/acref/9780199298761.001.0001/acref-9780199298761-e-1629?rskey=FeCMHH&result=664 [Accessed 9 July 2020].

represent a development of social dialogue and collective bargaining at the international level, allowing for a global setting of minimum standards. In fact, deficits in union representation at the national level have led to a realisation of the importance and an increase in social dialogue and collective bargaining at the international level.[226]

Global framework agreements have resulted from the strategic work developed by global union federations in the face of globalisation. Global union federations are the leading actors in the negotiation of these agreements, sometimes with the support of national trade unions in the country where the multinational enterprise has its headquarters.[227] These agreements commit the signing multinational enterprise, and often its suppliers, to the respect and implementation of one same instrument, which can facilitate trade union organisation across borders. They constitute social governance initiatives, based on social dialogue and tripartism, which have been recognised by the ILO Declaration on Social Justice for a Fair Globalisation as the most appropriate methods for making labour law and institutions effective. Social governance is embedded with greater legitimacy, since it includes workers, employers, and their agreed implementation and dispute resolution mechanisms. As negotiated instruments, agreed between global union federations and multinational enterprises, global framework agreements are therefore illustrative of social governance. Through global framework agreements, global union federations aim to establish minimum standards in all of a multinational enterprise's worldwide operations, develop social dialogue with management, and promote unionisation throughout supply chains.[228] Hence, while focusing on the development of a continuous social dialogue with

[226] International Labour Organisation, *Workplace Compliance in Global Supply Chains* (International Labour Office 2016). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_540914.pdf [Accessed 7 July 2020].

[227] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), pp. 522-523.

[228] Telljohann, da Costa, Müller, Rehfeldt, and Zimmer, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (n48); Burkett, 'International Framework Agreements: An Emerging International Regulatory Approach or a Passing European Phenomenon?' (n128); Mark P. Thomas, 'Global Industrial Relations? Framework Agreements and the Regulation of International Labour Standards' (n165), pp. 280.

multinational enterprises and contributing to transnational unionisation, global framework agreements guarantee unions' involvement in the agreement's monitoring and implementation. They do not constitute a mere top-down approach and, in this sense, are a response to the criticism raised against traditional corporate social responsibility instruments.

Also, global union federations functioning is based on the principle of **subsidiarity**, meaning that the main institutional power belongs to the local affiliates and the international structure has the task of framework setting, coordination, and monitoring.[229] Global framework agreements are grounded on the same principle and there is a *"preference to solve and discuss matters at the local level before referring them to the headquarter management and the relevant GUF"*.[230] In line with these principles, these agreements are not intended to replace national collective agreements. Instead, they are seen as a complement to domestic collective bargaining,[231] with local trade unions holding a key role in a global framework agreement's implementation. And, as bilateral instruments, they constitute a policy strategy for unions, allowing the increase of membership and the development of international labour relations without neglecting implementation at the local level. However, this requires local unions to be reasonably operational, otherwise adequate monitoring and dispute settlement will be futile.[232]

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[229] The relationship between national and global trade unions is based on solidarity. See, Elizabeth Cotton and Tony Royle, 'Transnational Organising: A Case Study of Contract Workers in the Colombian Minimum Industry' Vol. 52 No. 4 (2014) An International Journal of Employment Relations, pp. 705-724.

[230] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 524.

[231] International Confederation of Free Trade Unions, *A Trade Union Guide to Globalisation* (2004 2nd ed.). Available At: https://www.ituc-csi.org/IMG/pdf/report.complete.pdf [Accessed 1 February 2019]; Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), p. 4.

[232] *"The concept of the global unions is rather based upon the idea, that workers get organised in trade unions affiliated to the GUFs and that through this channel complaints about violations of the agreements are transmitted to the body in charge of implementation and monitoring. This idea is close to more recent concepts of 'worker-centred' or 'worker-driven' monitoring, where the workers themselves play a central role in the monitoring-process and where the monitoring leads to necessary changes in the working conditions. The concept of the GUFs is working, however, only if there are trade unions which are organising the workforce in the production countries. Without such trade unions, it is likely that the committee in charge of the monitoring will not receive any information about violations of the IFA."* See, Reingard Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (2020) Vol. 17 International Organisations Law Review, p. 188.

As described in chapter 4, a constitutive element of a global framework agreement is the inclusion of a reference(s) to the **supply chain**. Globalisation has permitted an increase of competitiveness through cost-reduction and increased productivity, allowed by the fragmentation of production.[233] The ILO defines global supply chains as *"demand-supply relationships that arise from the fragmentation of production across borders, where different tasks of a production process are performed in two or more countries"*.[234] According to the World Employment Social Outlook published by the ILO, companies use global supply chains as either lead firms, which distribute production outside their home country, or as suppliers, which execute that production.[235] In this context, it is relevant to distinguish buyer-driven supply chains from producer-driven supply chains and their consequences in the monitoring and implementation of a global framework agreement throughout a company's supply chain.[236] This distinction captures hierarchy and power structures present in the two types of supply chains.[237]

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[233] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 137.

[234] Takaaki Kizu, Stefan Kühn, and Christian Viegelahn, 'Linking Jobs in Global Supply Chains to Demand – ILO Research Paper No. 16' (2016) International Labour Office, p. 2. Available At: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_512514.pdf [Accessed 29 October 2020].

[235] Furthermore, companies can participate directly or indirectly in global supply chains. Direct engagement is carried out through the offshoring or outsourcing of production steps to foreign countries. When offshoring, companies purchase or establish a production unit, meaning that the ownership still belongs to the lead firm. Differently, outsourcing entails the formation of a contractual link with an independent supplier. Indirect engagement involves a link with a supplier that obtains inputs from yet another country. According to the ILO report, more than one in five jobs is estimated to be connected to global supply chains, a number that has vastly risen in the past decades. See, International Labour Organisation, *World Employment and Social Outlook: The Changing Nature of Jobs* (International Labour Office 2015), p. 132. Available At: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_368626.pdf [Accessed 19 May 2020].

[236] Gary Gereffi, 'Beyond the Producer-driven/Buyer-driven Dichotomy' (2001) IDS Bulletin, pp. 30-40.

[237] *"Initially, the role of hierarchy and power as well the dynamic nature of global value chains was captured in this distinction between producer-driven and buyer-driven commodity chains."* See, Gary Gereffi, 'International Trade and Industrial Upgrading in the Apparel Commodity Chain' (1999) Vol. 48 No. 1 Journal of International Economics, pp. 37-70, as cited in Nikolaus Hammer, 'International Framework Agreements in the Context of Global Production' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Office 2008), p. 93.

Producer-driven chains entail higher investment levels and its typical example includes the automobile industry. Differently, through buyer-driven chains, the multinational enterprise outsources activities to competitive economic suppliers, while retaining strategic control. Strategic control refers to marketing, design, and retailing. Production itself is carried out somewhere else. A standard example of buyer-driven chains is the garment industry.[238] While the complexity of buyer-driven supply chains represents a challenge to the functioning of global framework agreements,[239] the embedded power structures mean that it is in this context that global framework agreements can have the most impact. In fact, the application of a global framework agreement to both suppliers and subcontractors, particularly in regard to buyer-driven commodity chains, has been viewed as advantageous for multinational enterprises.[240]

"In the absence of multilateral regulation of social labour rights, IFAs aim at fundamental labour rights within MNCs, while at the same time trying to extend their achievements along the value chain."[241] Global supply chains' can potentially benefit both workers and enterprises, through the creation of jobs and the possible improvement of working conditions, as well as productivity gains. However, this potential has not led to improvements in workers' rights. Moreover, and despite the productivity benefits, global supply chains entail inherent costs as well as risks of overflow in regard to small disturbances in production.[242]

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[238] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 93-94.

[239] *"It is argued that one of the biggest challenges for IFAs is to make them work within buyer-driven value chains."* See, Hammer, 'International Framework Agreements in the Context of Global Production' (n237), p. 90.

[240] As stated by Hammer, "*MNCs at the end of buyer-driven commodity chains find advantages in making the framework agreement part of the contractual obligations of suppliers and subcontractors, together with a host of other obligations. Indeed, a cluster of MNCs imposes concrete obligations on their suppliers and, to some extent, has established a complicated governance structure for monitoring social and labour rights"*. See, Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 98-104.

[241] ibid, p. 92.

[242] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 137-138.

The fact global framework agreements must necessarily refer to its application to the enterprise's supply chain, either partially or in its entirety, demonstrates these instruments' potential regulative impact. However, these mentions can vary significantly, as viewed in section 4.2.4. Still, the fact that an increasing number of agreements include a broad scope of application, covering the entire supply chain, and contain enforcement mechanisms that also apply to violations by third parties demonstrates a growing movement towards the creation of a transnational industrial relations system able to regulate global supply chains.[243]

2.2. The Role of the ILO

Through the adoption of the **Declaration on Social Justice for a Fair Globalisation**, the ILO has recognised that globalisation, characterised by, among other things, the internationalisation of business and business processes, is reshaping the world of work in profound ways. Built on the Declaration of Philadelphia and the Declaration on Fundamental Principles and Rights at Work, the Declaration on Social Justice for a Fair Globalisation expresses the ILO's mandate to achieve social justice in the context of globalisation. The adoption of international labour standards and implementation procedures set up by the ILO allow for a coordinated national action, which is an enabler of cross-border impact.[244] Nevertheless, despite the ILO's recognition of changes brought by globalisation, the obligations comprised in the Constitution in regard to ratified and non-ratified conventions, as well as in regard to recommendations,[245] and the fact

[243] Guarriello, 'Transnational Collective Agreements' (n107), p. 4.

[244] Janelle M. Diller, 'Pluralism and Privatisation in Transnational Labour Regulation: Experience of the International Labour Organisation' in Adelle Blackett (ed.), *Research Handbook on Transnational Labour Law* (Edward Elgar, 2015), p. 330.

[245] When a convention is ratified, member states have an obligation to apply it in national law and report on its application. Nevertheless, even if a convention has not been ratified, ILO membership entails an obligation to report on implementation and issues preventing ratification, as stated in Article 19 (1) (e) of the ILO Constitution. For recommendations, according to Article 19 (6) (b) (c) of the Constitution, member states have an obligation to bring the recommendation before the authority competent for the enactment of legislation or other action and inform the Director-General of the measures to bring the recommendation

ILO standards have gradually addressed transnational economic activity,[246] there is still a **wide regulation gap**, particularly in terms of transnational corporations' activities. In fact, while multinational enterprises have begun to use international labour standards, these are not directly applicable to them. Also, notwithstanding the existence of follow up-mechanisms and the significance of asserting particular principles in the ILO context, a fair globalisation has yet to be achieved.[247] In this background, **codes of conduct**, which constitute entirely company-based documents represent a voluntary approach to labour rights and illustrate a privatisation of labour standard-making processes. ILO and UN instruments function within a setting that is also composed of diverse corporate social responsibility instruments. As previously mentioned, these lack a hierarchy, overlap, and are difficult to harmonise.

Still, two ILO declarations serve as reference points in the field of corporate social responsibility.[248] The **ILO Declaration on Fundamental Principles and Rights at Work**, repeatedly mentioned in global framework agreements, as well as in other unilateral and multi-stakeholder initiatives, constitute a recognition of the member states' commitment to respect and promote principles and rights comprised in four categories, regardless of whether they have ratified the corresponding conventions. Taking into account the Declaration on Fundamental Principles and Rights at Work, the Governing Body's **Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy** offers a set of principles and recommendations that function as guidelines for corporations, states, as well as employers' and workers' organisations. While stressing its voluntary

before the competent enacting authority. As for conventions, Article 19 (6) (d) comprises a requirement for non-ratifying states to report on the extent to which effect has been given to the provisions of the Recommendation.

[246] Diller, 'Pluralism and Privatisation in Transnational Labour Regulation: Experience of the International Labour Organisation' (n244), p. 332.

[247] Emmanuel Reynaud, 'The International Labour Organisation and Globalisation: Fundamental Rights, Decent Work and Social Justice' (2018) ILO Research Paper No. 21 International Labour Office. Available: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_648620.pdf [Accessed 17 September 2020].

[248] International Labour Organisation, 'How International Labour Standards are Used'. Available At: https://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-use/lang--en/index.htm [Accessed 25 November 2020].

character, Addendum II to the Tripartite Declaration states that the contribution of multinational enterprises to the implementation of the ILO Declaration on Fundamental Principles and Rights at Work can prove to be an important element in the attainment of its objectives. Still, without adequate enforcement, the Tripartite Declaration merely repeats binding obligations that are already comprised in national law and other international instruments. The Tripartite Declaration established the Subcommittee on Multinational Enterprises for the follow-up to the declaration. The Subcommittee conducts periodic surveys on the effect given by ILO member states to the declaration. These, however, lack in transparency.[249] Moreover, considering that the ILO does not view monitoring bodies as judicial or quasi-judicial mechanisms, working instead to clarify the interpretation of instruments, meaning that the Declaration should itself provide for a complaints system.[250] Numerous global framework agreements include a reference to the Declaration of Principles on Multinational Enterprises.[251] Some global framework agreements are consistent with the Declaration's references to both the 'examination of grievances' and 'settlement of industrial disputes'. According to paragraph 66 of the Tripartite Declaration:

> Multinational as well as national enterprises should respect the right of workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure. This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO

[249] Jernej Letnar Cernic, 'Corporate Responsibility for Human Rights: Analysing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (2009) Vol. 6 No. 1 Miskolc Journal of International Law, p. 30.

[250] ibid, p. 31.

[251] International Labour Organisation, 'References made to the MNE Declaration in International Framework Agreements' (4 March 2020). Available At: https://www.ilo.org/empent/areas/mne-declaration/WCMS_737309/lang--en/index.htm [Accessed 24 September 2020].

> Conventions pertaining to freedom of association, to the right to organise and bargaining collectively and to forced labour.

Also, according to paragraph 68:

> Multinational as well as national enterprises jointly with the representatives and organisations of the workers whom they employ should seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.

Global framework agreements that include dispute settlement provisions are considered to be particularly relevant. These agreements support the existence of a binding character which, as identified in chapter 3, is one of the core features of the concept of collective agreement. Various agreements contain references to the ILO as a mediator or arbitrator in the settlement of disputes. However, the analysis of such references reveals their scarce content and degree of detail, which need to be complemented to avoid misinterpretations. Moreover, for H&M's and Inditex's agreements, the interviews showed that resort to the ILO in mediation has never happened. The role of the ILO in regard to globalisation and the regulation of multinational enterprises' conduct can be expanded. Still, despite the Tripartite Declaration's limited impact and implementation, the fact it has been repeatedly referred in global framework agreements means that, *"Even if corporations are not legally bound by the Declaration, however, reference to it in private agreements would suggest that ILO fundamental labour standards should be respected by the multinational enterprises"*.[252]

[252] Cernic, 'Corporate Responsibility for Human Rights: Analysing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (n249), p. 32.

Besides the alignment between the ILO Tripartite Declaration and the dispute settlement provisions comprised in global framework agreements, the ILO plays an important role in regard to these agreements' content and the **standards comprised**. As developed in chapter 4, the content of global framework agreements is based on international labour standards, using the ILO Declaration on Fundamental Principles and Rights at Work as a material benchmark. Hence, global framework agreements make international labour standards directly applicable within a company's worldwide operations.

2.3. Corporate Social Responsibility

2.3.1. The Concept

This section emphasises the development of corporate social responsibility as a concept and its main features.[253] The aim is to show that, besides economic responsibilities, a corporation has a variety of other obligations. Schwartz and Carroll divided definitions of corporate social responsibility into two schools of thought. On the one hand, there were those who considered that businesses' only obligation was the **making of profits**, despite recognising an obligation to respect the law and minimum ethical standards. On the other hand, there were those according to whom corporations possessed more social obligations.[254] When the concept emerged, in the fifties, an emphasis was placed on the corporation's long-

[253] As stated in the European Commission's Green Paper, *"corporate social responsibility is essentially a concept whereby companies decode voluntarily to contribute to a better society and a cleaner environment. At a time when the European Union endeavours to identify its common values by adopting a Charter of Fundamental Rights, an increasing number of European companies recognise their social responsibility more and more clearly and consider it as part of their identity. This responsibility is expressed towards employees and more generally towards all the stakeholders affected by business and which in turn can influence its success"*. This definition of corporate social responsibility, as part of both a company's identity and the importance of stakeholder involvement are present throughout the dissertation. See, European Commission, Green Paper: Promoting a European Framework for Corporate Social Responsibility (2001), pp. 5-9. Available At: Available At: https://ec.europa.eu/commission/presscorner/detail/en/DOC_01_9 [Accessed 29 July 2021].

[254] Mark S. Schwartz and Archie B. Carroll, 'Corporate Social Responsibility: A Three-Domain Approach' (2003) Business Ethics Quarterly Vol. 13 No. 4, pp. 503-530.

term objective of profit maximisation, and a separation of business and governmental functions. Thus, businesses were considered to have only two responsibilities: obey everyday civility and seek material gain.[255] In particular, Milton Friedman defended that the only responsibility of business was to increase its profits, while respecting the basic rules of society, namely the law.[256] A progressive shift begun, giving primacy to economic concerns but acknowledging a broader view of the firm's social responsibilities.[257] In 1973, Andrews anticipated that corporate social responsibility[258] *"is not only here to stay, but must increase in scope and complexity as corporate power increases"*.[259] A move towards a more moderate view of corporate social responsibility as more than the sole making of profits can be identified in the writings of a wide range of other scholars.[260] In 1979, Carroll argued that the **definition of social responsibility** would have to comprise economic, legal, ethical, and discretionary categories of social responsibility. Economic responsibilities represented the first and foremost social responsibility of business. Legal responsibilities referred to society's expectation that business

[255] Theodore Levitt, 'The Dangers with Social Responsibility' (1958) Vol. 36 No. 5, pp. 41-50.

[256] Only people can have responsibilities, meaning corporate executives/businessmen, who have a direct responsibility to shareholders. Such responsibility requires businessmen to conduct business in accordance with the shareholder's desires, making as much profit as possible, while respecting the basic rules of society in the form of law and ethical. *"There is one and only one social responsibility of business – to use its resource and engage in activities designed to increase its profits so as long it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud"*. According to Friedman, the doctrine of social responsibility is *"fundamentally subversive"*, and *"few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stakeholders as possible"*. See, Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' (1970 September 13) New York Times Magazine, pp. 122-126; Milton Friedman, *Capitalism and Freedom* (University of Chicago Press, 1962), p. 133.

[257] *"The idea of social responsibilities supposes that the corporation has not only economic and legal obligations, but also certain responsibilities to society which extend beyond these obligations"*. See, Joseph William McGuire, *Business and Society* (McGraw-Hill, 1963).

[258] According to Andrews, corporate social responsibility means a voluntary restraint of profit maximisation and a *"sensitivity to the social costs of economic activity and to the opportunity to focus corporate power on objectives that are possible but sometimes less economically attractive than socially desirable"*. Kenneth R. Andrews, 'Can the Best Corporations be Made Moral?' (1973 May-June) Harvard Business, pp. 57-64.

[259] ibid, p. 59.

[260] See, for instance, Archie B. Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance' (1979) Vol. 4 No. 4 The Academy of Management Review, pp. 497-505; Archie B. Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organisational Stakeholders' (1991) Business Horizons, pp. 39-48; William C. Frederick, 'From CSR1 to CSR2: The Maturing of Business and Society Thought' (1994) Vol. 33 No. 2 Business & Society, pp. 150-164; Schwartz and Carroll, 'Corporate Social Responsibility: A Three-Domain Approach' (n254).

will be conducted within the framework of legal requirements. Ethical responsibilities, although ill defined, referred to society's expectations placed over and above legal requirements. Finally, discretionary responsibilities would be purely voluntary, being at the business's discretion. Hence, they entailed actions guided by a business's desire to engage in social roles that are not mandated, not required by law, and not expected in an ethical sense (i.e., society might want but does not expect).[261] In 1991, building on the formerly identified types of social responsibility, Carroll developed a **pyramid of corporate social responsibility**. Again, economic responsibilities, translated into the responsibility to be profitable and constituted the foundational duty. Both the economic responsibility to be profitable and the legal responsibility to obey the law were viewed as required. Differently, ethical responsibilities would simply be expected and philanthropic responsibilities merely desired. While recognising that the pyramid metaphor was not perfect, Carroll considered it provided an integrated view of corporate social responsibility components that had previously been studied separately.[262] Finally, in 2003, Schwartz and Carroll presented a **three-domain model** of corporate social responsibility, based on Carroll's previous work, which removed the philanthropic category by incorporating it into the economic or ethical domains. The model provided a response to the hierarchy critique, which argued that the pyramid framework implied a hierarchical relationship between the categories or different stages, meaning that the top of the pyramid would represent more important or a more advanced stage. The model further recognised that the different categories of responsibility can all overlap. The new model proposed that the philanthropic/discretionary category would better be subsumed under the ethical and/or economic responsibilities, reflecting that philanthropic activities can have different motivations.[263]

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[261] Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance' (n260), pp. 498-499, 504.

[262] Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organisational Stakeholders' (n260), pp. 39-48.

[263] In fact, it would be difficult do distinguish between philanthropic and ethical activities. For instance, is a corporation's contribution to a charabitable organisation an ethical activity, expected by society, or a philanthropic activity, meaning merely desired by society? Moreover, philanthropic activities might be based on economic interests. Corporate philanthropy could be used as a strategy to increase sales or improve public image, being based on an economic responsibility as opposed to a philanthropic obligation. See, Schwartz and B. Carroll, 'Corporate Social Responsibility: A Three-Domain Approach' (n254), pp. 505-507.

Despite the existence of a set of guidelines, an **accepted definition** of corporate social responsibility does not exist. The construction of a definition of corporate social responsibility has proven to be a complex task. Frederick emphasised the vagueness of its content, questioning whether it meant conformity with legal standards or voluntarily going beyond the law, what institutional mechanisms could implement it, and its moral basis.[264] Thus, the concept has been carefully examined throughout the years, focusing on polishing a definition and trying to distinguish it from other related and sometimes overlapping concepts. While distinguishing corporate social responsibility from business ethics and corporate social responsiveness, Epstein linked it to the outcomes or products of corporate action.[265] Likewise, Frederick highlighted the transition from corporate social responsibility (CSR1), whose fundamentals underlined business corporations' obligation to 'work for social betterment', to corporate social responsiveness (CSR2), referent to a corporation's capacity to respond to social pressure and stressing the importance of managing a company's relations with society.[266] While referring to Votaw, Carroll emphasised the different meanings corporate social responsibility can have, from legal responsibility, socially responsible behaviour in an ethical sense, legitimacy, or a sense of higher behavioural standards than regular citizens.[267] As Frankental affirmed, regardless of the way one chooses to define corporate social responsibility, *"it implies that a company is responsible for its wider impact on society"*.[268] According to the European Commission, corporate social responsibility is *"the voluntary integration by firms of social and environmental concerns into the commercial activities and their relationships with stakeholders on a*

[264] Frederick, 'From CSR1 to CSR2: The Maturing of Business and Society Thought' (n260), pp. 152-153.
[265] Edwin M. Epstein, 'The Corporate Social Policy Process: Beyond Business Ethics' (1987) California Management Review Vol. 29 No. 3, pp. 99-114.
[266] CSR1 entailed asking why, whether, for whose benefit, and which moral principles, whereas for CSR2, such questions are replaced by how, with what effect, and with which operational guidelines. See, Frederick, 'From CSR1 to CSR2: The Maturing of Business and Society Thought' (n260), pp. 155-156.
[267] Archie B. Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) Vol. 38 No. 3 Business & Society, pp. 279-280.
[268] Peter Frankental, 'Corporate Social Responsibility – a PR Invention?' (2001) Social Responsibility Journal Vol. 6 No. 1, p. 19.

voluntary basis".[269] And, according to the ILO, it is *"a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law"*.[270] Hence, a broad understanding of the concept refers to voluntary actions taken by companies to put into place actions that are not required by law.

As stated by Arnold, *"meeting human rights duties is to be understood as a necessary cost of doing business"*.[271] While companies often operate in states with poor legislative standards or their weak enforcement, this can also be based on a lack of resources. Companies are frequently better adapted to, within their spheres of influence, avoid human rights violations or ensure their implementation.[272] Furthermore, if a corporation operates in a country with weak enforcement of labour laws, it is still obliged to respect local laws, based on a moral principle of fair play and a 'mutuality of restrictions'.[273] Still, regardless of national legislation and its enforcement, business responsibility to, as a minimum, respect human rights, is now widely agreed. As stated by Ruggie, *"corporate responsibility to respect human rights exists independently of states' duties or capacity"*, being *"a universally applicable human rights responsibility for all companies, in all situations"*.[274] With the adoption of the UN Guiding Principles, human rights became an established component of business responsibility. Ruggie clarified how companies

[269] Commission of the European Communities, *Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development* (18 July 2001) COM(2001) 366 final. Available At: https://www.europarl.europa.eu/meetdocs/committees/deve/20020122/com%282001%29366_en.pdf [Accessed 1 July 2020].

[270] International Labour Office, 'In Focus Initiative on Corporate Social Responsibility' (March 2006) GB.295/MNE/2/1. Available At: https://www.ilo.org/public/libdoc/ilo/GB/295/GB.295_MNE_2_1_engl.pdf [Accessed 17 September 2020].

[271] Denis G. Arnold, 'Transnational Corporations and the Duty to Respect Basic Human Rights' (2010) Vol. 20 No. 3 Business Ethics Quarterly, p. 384

[272] ibid, p. 380.

[273] H. L. A Hart, 'Are There Any Natural Rights?' (1995) Vol. 64 No.2 The Philosophical Review, pp. 175-191; Arnold, 'Transnational Corporations and the Duty to Respect Basic Human Rights' (n271), p. 389.

[274] John Ruggie, *Business and Human Rights: Further Steps Toward the Operationalisation of the 'Protect, Respect and Remedy' Framework, Report to the Human Rights Council* (2010), A/HRC/14/27, paragraph 65.

should be concerned with human rights, even if legal obligations are not imposed on them directly, since they 'can and do' infringe on their enjoyment.[275] Furthermore, corporate responsibility to respect applies to all human rights, including those comprised in the Universal Declaration of Human Rights, the two International Covenants, and the ILO core conventions.[276] Based on a human rights framework, companies are required to, at least, respect a set of internationally recognised principles comprised in the Universal Declaration of Human Rights (UDHR) and international treaties, broadly binding in the vast majority of states. In this context, instead of taking advantage of producing countries' weaker capacity and rule of law, companies should respect universal rights.[277] In connection with this responsibility, companies identify a set of stakeholders and engage in an associated legitimation strategy. In fact, established multinational enterprises tend to adopt purely symbolic CSR policies, being placed in 'window-dressing clusters', or adopt substantial CSR and commit to the respect for human rights, being placed in rights-oriented clusters. Similarly, local producers might participate in CSR policies but conduct their business in violation of human rights. For instance, it is not uncommon for local suppliers to invest in rights attached to the most problematic reputational impacts, while tolerating other abuses. These violations are often linked to order demands placed on suppliers, namely price and time pressures, which buyers can address and therefore promote a transition to a management culture of compliance. Also, besides state capacity and willingness to implement legal standards, an array of other stakeholders, such as civil society and local associations, can impact the extent and realisation of corporate social responsibility.[278]

[275] ibid, paragraph 60.
[276] ibid, paragraphs 59-60.
[277] Elisa Giuliani, 'Human Rights and Corporate Social Responsibility in Developing Countries' Industrial Clusters' (2014) Vol. 133 Journal Business Ethics, p. 42.
[278] ibid, pp. 43-48.

2.3.2. Stakeholder Theory

Stakeholder and legitimacy theory offer a framework to ground the choices behind the identification and importance given to the actors included in the empirical study. According to a traditional definition, **stakeholder** refers to any group or individual who can affect or is affected by the achievement of the organisation's objectives.[279] Ihlen highlighted the theory's merit of emphasising relational aspects. In particular, the fact that an organisation's success depends on its capability to manage its relationship with key groups.[280] Carroll constructed a stakeholder/responsibility matrix, intended to be used as an analytical tool by management. The matrix identified different types of stakeholders and corporate social responsibilities, as identified in Carroll's pyramid, planned to support management in framing what the firm ought to do in terms of each stakeholder and thus providing a useful framework for action.[281]

However, stakeholder theory has been criticised, based on the difficulty of identifying stakeholders, how to prioritise them, and the decreased importance awarded to shareholders.[282] Hence, several ways of **distinguishing stakeholders** have been developed, such as the distinction between primary and secondary stakeholders or normative and derivative stakeholders. Primary stakeholders would be those critical for the continued existence of the company, such as customers, suppliers, employees, and investors. Secondary stakeholders would be those affected, directly or indirectly, by the company's decisions, meaning those with relationships that occur as a consequence of business activities. These would include local communities, the media, business support groups, state and local

[279] R. Edward Freeman, *Strategic Management: A Stakeholder Approach* (Marshfield MA: Pitman Publishing Inc. 1984).
[280] Øyvind Ihlen, 'Mapping the Environment for Corporate Social Responsibility: Stakeholders, Publics and the Public Sphere' (2008) Corporate Communication: An International Journal Vol. 12 No. 2, pp. 135-146.
[281] Carroll, 'The Pyramid of Corporate Social Responsibility: Towards the Moral Management of Organisation Stakeholders' (n257), pp. 39-48.
[282] Ihlen, 'Mapping the Environment for Corporate Social Responsibility: Stakeholders, Publics and the Public Sphere' (n280), p. 137.

government, social activist groups, among others.[283] In terms of the distinction between normative and derivative stakeholders, normative stakeholders would be those over which the organisation has a moral obligation over and above other social actors, namely employees. Derivative stakeholders would be groups that might have an effect upon the organisation and its normative stakeholders, such as news media and competitors. Hence, when a firm is faced with conflicting interests and expectations, it must pay most attention is given to normative stakeholders.[284] Mitchell, Agle, and Wood developed a valuable contribution in the categorisation of stakeholders, based on the concepts of **legitimacy, urgency and power**.[285] The authors identified and ranked stakeholders based on the power to influence the firm, the legitimacy of the relationship with the firm, and the urgency of the stakeholder's claim on the firm. Power might be the force, the material, as well as financial or symbolic resources a stakeholder has over the firm. Legitimacy would mean a perception or assumption in regard to the actions of a stakeholder as desirable or appropriate. This could include having a contractual relationship, a moral or legal claim, or a risk in connection to the company. Finally, urgency would relate to whether the claims of a stakeholder call for immediate action or attention.[286]

Despite recognising that some of the criticism raised against stakeholder theory has its merits, particularly in regard to difficulties in prioritising stakeholders, its vagueness, and the assumption that stakeholders are isolated entities, easily identified by managers, the theory provides important insights. Regardless of whether a wide or narrow definition is adopted, stakeholder theory enables the understanding that **different actors can impact** the realisation of a firm's objectives. Accordingly, the set of actors institutionally recognised in the ILO context as key in the definition and

[283] Ronald K. Mitchell, Bradley R. Agle and Donna J. Wood, 'Toward a Stakeholder Identification and Salience: Defining the Principle of Who and What Counts' (1997) The Academy of Management Review Vol. 22 No. 4, pp. 853-854; Byung II Park, Agnieska Chidlow and Jiyl Choi, 'Corporate Social Responsibility: Stakeholders Influence on MNEs' Activities' (2014) Vol. 23, pp. 966-980.

[284] Robert Phillips, 'Stakeholder Legitimacy' (2003) Vol. 13 No. 1 Business Ethics Quarterly, pp. 25-41.

[285] They also presented a chronological literature review regarding the concept of stakeholder and the grounds for stakeholder identification. See, Mitchell, Agle, and Wood, 'Toward a Stakeholder Identification and Salience: Defining the Principle of Who and What Counts' (n283), pp. 853-886.

[286] ibid, pp. 854-855.

implementation of labour standards, are complemented by an array of other actors whose relationship with the firm can be more or less influential. Different stakeholders will have different levels of influence and relevance over the company. This means that legal protection will only be awarded to a particular set of stakeholders, for instance shareholders and employees. Based on stakeholder theory, the selection of interviewees takes into consideration that, besides the signatories, other actors constitute important actors that influence the successful implementation of global framework agreements. In fact, some global framework agreements explicitly refer to a wide set of stakeholders as a key component of the agreement's implementation.[287] In the Cambodian national context, and in regard to the two selected global collective agreements, these refer to national trade union affiliates, non-governmental organisations, academia, and the national employers organisations within the garment sector.

2.3.3. Legitimacy Theory

Stakeholder theory and legitimacy theory are two **overlapping** theories.[288] An organisation is legitimate when its means and ends appear to conform with social norms, values, and expectations.[289] **Legitimacy** is a (dynamic) constraint on organisations but some are more affected than others. It is a fundamental resource for the survival of organisations, which they can impact or manipulate.[290] Accordingly, legitimacy means the *"appraisal of action in terms of shared or common values in the context of the involvement*

[287] For instance, Section 3 (2) of Eni's agreement, signed in 2019, is entitled 'respect of stakeholders. According to the mentioned section, *"Eni intends to respect all stakeholders with whom it interacts in operating its own business activities, convinced that they represent an important asset for the company. It confirms respect for trade unions and workers' representatives, and relevant parties for the correct development of its business"*. In particular, the provision refers to the company's employees, local communities, ethical behaviour in business relationships, and cooperation.

[288] Rob Gray, Reza Kouhy, and Simon Lavers, 'Corporate Social Environmental Reporting: A Review of the Literature and a Longitudinal Study of UK Disclosure' (1995) Auditing & Accounting Vol. 8 No. 2, pp. 47-77.

[289] John Dowling and Jeffrey Pfeffer, 'Organisational Legitimacy: Social Values and Organisational Behaviour' (1975 January) Vol 18 No. 1, pp. 122-136.

[290] ibid, pp. 122-136.

of the action in the social system".[291] Differently, **legitimation** *"is the process whereby an organisation justifies to a peer or superordinate system its right to exist, that is to continue to import, transform, and export energy, material, or information"*.[292] Dowling and Pfeffer hypothesised that, despite affecting all organisations, those that are more visible, larger, and receive more political and social benefits are more likely to engage in legitimating behaviour. In fact, while referring to the content of corporate annual reports, Lentz and Tschirbi identified that ethical statements referring to the recognition of corporate responsibility as going beyond the making of profits was considerably higher in companies worth over one billion dollars.[293]

Asforth and Gibbs distinguished two general means through which organisations seek legitimacy: substantive management, in the form of real changes in goals, structures, processes or practices, and symbolic management, referent to situations in which the organisations portray themselves as seemingly consistent with social values and expectations.[294] **Substantive management** includes role performance, coercive isomorphism, altering resource dependencies, and altering socially institutionalised practices. Role performance entails meeting the expectations of actors on whose support the organisation depends for critical resources, such as shareholders' return, reasonable prices for consumers, as well as job security and fair wages for employees.[295] Coercive isomorphism means that an organisation conforms to the constituents' values, norms, and expectations, based on formal pressures, such as legal requirements, or

[291] Talcott Parsons, *Structure and Process in Modern Societies* (New York: Free Press, 1969), p. 175; Dowling and Pfeffer, 'Organisational Legitimacy: Social Values and Organisational Behaviour' (n289), p. 123.

[292] John G. Maurer (ed.), *Readings in Organisation Theory: Open-System Approaches* (New York: Random House, 1971), p. 361; Dowling and Pfeffer, 'Organisational Legitimacy: Social Values and Organisational Behaviour' (n289), p. 123.

[293] Arthur Lentz and Harvey Tschirgi, 'The Ethical Content of Annual Reports' (1963) Vol. XXXVI No. 4 The Journal of Business, pp. 390-391; Dowling and Pfeffer, 'Organisational Legitimacy: Social Values and Organisational Behaviour' (n289), pp. 133-134.

[294] Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92).

[295] Walter R. Nord, 'The Study of Organisations Through a Resource-Exchange Paradigm' in Gergen Kenneth J. Gergen, Martin Greenberg, and Richard H. Willlis (eds), *Social Exchange: Advances in Theory and Research* (Springer 1980), pp. 119-139; Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 178.

informal pressures, such as cultural expectations.[296] As the name indicates, substantive management in the form of altering resource dependencies refers to an organisation's adjustment of the constituents to which it is accountable and consequently the relevant expectations.[297] Differently, the alteration of socially institutionalised practices, although inconvenient, refers to a company's effort to bring institutionalised practices, laws, and traditions into conformity with its ends.[298]

In **symbolic management**, a company attempts to look consistent with social values and expectations. Asforth and Gibbs identified six types of symbolic management, namely espousing socially acceptable goals, denial and concealment, redefining means and ends, offering accounts, offering apologies, and ceremonial conformity.[299] By espousing socially acceptable goals, an organisation might advocate for socially acceptable aims and pursue others. For instance, an organisation can publicly advertise ethical policies, without establishing any monitoring or enforcement procedures.[300] Through denial and concealment, an organisation disregards information that could jeopardize its legitimacy.[301] Redefinition of means and ends refers to a company's attempt to frame or identify an issue in connection to values that are perceived as legitimate.[302] By offering accounts, a company provides excuses or justifications for an unfavourable situation.[303] Differently, by offering apologies, a company acknowledges responsibility for a negative event and shows remorse, as a way to demonstrate concern, garner sympathy,

[296] Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) Vol. 48 American Sociological Review, pp. 147-160; Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 178.

[297] Rich Strand, 'A System Paradigm of Organisational Adaptions to the Social Environment' (1983) Vol. 8 No. 1 Academy of Management Review, pp. 90-96; Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 178.

[298] Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 178-180.

[299] ibid, pp. 182-185.

[300] Paul C. Nystrom and William H. Starbuck, 'Organisational Façade' (1984) Vol. 1 Academy of Management, pp. 182-185; Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 180.

[301] Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 180.

[302] Dowling and Pfeffer, 'Organisational Legitimacy: Social Values and Organisational Behaviour' (n289), pp. 122-136; William B. Waegel, M. David Ermann, and Alan M. Horowitz, 'Organisational Responses to Imputations of Deviance' (1981) Vol. 22 No. 1 The Sociological Quaterly, pp. 43-55; Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), pp. 180-181.

[303] Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 181.

reaffirm managerial control, and maintain managerial credibility.[304] Finally, ceremonial conformity entails the adoption of policies that are consistent with expectations but without the actual adoption of implementation measures.[305] While these can overlap, they provide a guideline in distinguishing the forms through an organisation can attain legitimacy.

When faced with legitimacy threats, an organisation can use various means to legitimate its activities: it can adapt is output, goals, and methods of operation to conform with the prevailing definitions of legitimacy, it can attempt to alter the definition of social legitimacy, or it can try to become identified with symbols, values or institutions that constitute a strong legitimacy basis.[306] For instance, an organisation's statements of goals and objectives relate to a process of legitimation.[307] The violation of internationally recognised standards, either conducted or enabled by multinational corporations, together with a growing awareness by an array of stakeholders, embody a legitimacy threat to which corporations need to respond. As for other initiatives, global framework agreements can indeed represent a strategy for an organisation to attain legitimacy. This matter is further analysed in connection with these agreements' content and actual implementation, in both chapter 4 and chapter 6. In particular, global framework agreements are examined as a form of legitimacy discourse and a form of substantive management.

[304] Robert I. Sutton and Anita L. Callahan, 'The Stigma of Bankruptcy: Spoiled Organisational Image and Its Management' (1987) Vol. 30 No. 3 The Academy of Management Journal, pp. 405-436; Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 181.

[305] John W. Meyer and Brian Rowan, 'Institutionalised Organisations: Formal Structure as Myth and Ceremony' (1977) Vol. 83 No. 2 American Journal of Sociology, pp. 340-363; Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 181.

[306] Dowling and Pfeffer, 'Organisational Legitimacy: Social Values and Organisational Behaviour' (n289), p. 127; Gary O´Donovan 'Environmental Disclosures in the Annual Report: Extending the Applicability and Predictive Power of Legitimacy Theory' (2002) Accounting & Accountability Journal Vol. 18 No. 1, pp. 344-371.

[307] Talcott Parsons, 'Suggestions for a Sociological Approach to the Theory of Organisations' (1956) Vol. 1 No. 1 Administrative Science Quaterly, pp. 63-85; Dowling and Pfeffer, 'Organisational Legitimacy: Social Values and Organisational Behaviour' (n289), p. 127.

2.3.4. The Corporation and Corporate Discourse

As described in the preceding section, a corporation can try to attain legitimacy through different means. The type of action taken by a company needs to have into account an array of factors,[308] whose relevance will be contingent on the company sector, the type of supply chain, and its location, among others. For instance, the company's contribution to the problem and its proximity in the community will be more relevant within the petroleum industry. The chosen path to achieve legitimacy is related to a particular type of discourse that shares the same aim. Connected to legitimacy theory, **corporate discourse** also refers to the company's relation to its stakeholders. The progressive increase of available forms of corporate discourse illustrates a recognition of its importance in terms of a company's relation to investors and consumers, but also in terms of legitimating the company before the general public. Corporate discourse constitutes a discourse system, meaning a set social of practices which include a variety of texts and genres, including communication with the different types of stakeholders.[309]

Companies use an array of communication means through which they sent messages to their various **stakeholders**. These stakeholders can assume overlapping roles in relation to a company, from an employee, consumer, and shareholder. Moreover, an enterprise's communication has been progressively gathered under one heading, with the goal of creating a coherent identify and communication strategy. Accordingly, stakeholder identification and management of relations is confronted with a growing complexity, blended roles, and diluted communication strategies. A consistent message enables the construction and the shaping of a company's image. This identity is, nevertheless, constrained by the economic responsibilities of a corporation.[310]

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[308] Joshua D. Margolis and James P. Walsh, 'Misery Loves Companies: Rethinking Social Initiatives by Businesses' (2003 June) Vol. 48 No. 2 Administrative Science Quarterly, pp. 292-295.
[309] Breeze, *Corporate Discourse* (n86), pp. 22-23.
[310] ibid, pp. 19-21, 24.

The various, overlapping, types of stakeholders a company is answerable to, their claims, the coherent use of communication tools and message, together with the always recognised economic responsibilities of a company, have created an enabling environment for the development of corporate social responsibility and a connected **legitimacy discourse**. The growing development of corporate social responsibility as a concept and a societal awareness of corporations' impact and obligations towards the general public has resulted in an increase of the use of legitimacy discourses by corporations.[311] Furthermore, recent events have highlighted the need to use a legitimacy-based discourse within specific industry sectors.[312] Hence, companies potentially involved in environmental or labour related disasters, for instance in the garment industry, are especially susceptible to engage in legitimation. An organisation's legitimacy is attributed by its constituents and refers to their perception as pursuing socially acceptable goals in a socially acceptable manner. However, given the changing landscape of social values and expectations, together with the variety of stakeholders a company relates to, legitimacy is challenging. Still, since the support of constituents is fundamental for an organisation's survival, legitimacy is viewed as valuable.[313]

Despite not having resulted in an international treaty, the growing concern over the negative outcomes of globalisation, the rise of transnational enterprises, and the current discussions on the regulation of multinational corporations' worldwide activities, represent long-going legitimacy threats for companies. Hence, for multinational enterprises, global framework agreements constitute a way of seeking and maintaining legitimacy from various stakeholders. Based on the description provided in the previous section and the content analysis provided in chapter 4 and 5, most global frameworks can be identified as **substantive management** in the form of coercive isomorphism. In these cases, the multinational enterprise conforms to stakeholders' values, norms, and expectations, based on informal

[311] ibid, p. 24.
[312] ibid, p. 158.
[313] Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 177.

pressures.[314] Hence, it is plainly related to the emergence and evolution of corporate social responsibility, which nowadays is widely viewed as involving more than economic responsibilities. However, a legitimacy theory analysis of some global framework agreements also shows that, despite fulfilling the criteria described in chapter 4, they can constitute a representation of **symbolic management**, mostly in the form of espousing socially acceptable goals and ceremonial activity. In particular, through the negotiation and signature of global framework agreements some companies do adopt policies that are viewed by the public as socially acceptable without any proper implementation mechanisms or without actual use of the ones comprised in the agreement.[315] For instance, the first version of Mizuno's global framework agreement, despite not including any sufficiently detailed enforcement mechanisms, which therefore excluded its inclusion within the concept of collective agreement, refers to all the ILO fundamental conventions and contains a broad mention to monitoring and enforcement. However, the interviews conducted showed this agreement was not actually implemented in Cambodia. Mizuno's global framework agreement was renewed in October 2020, after the conclusion of the empirical component of this dissertation. The agreement now includes a dispute settlement procedure and a reference to the possibility of arbitration. These additions not only allow for the agreement's consideration as a global collective agreement, but will also possibly enable an effective implementation and enforcement, as well as a passage into substantive management. While a content analysis of global framework agreements and updated news might provide sufficient information into whether a global framework agreement represents a form of substantive or symbolic management, empirical work in other countries and within particular sectors would provide further insights, also in regard to the status and functioning of these agreements.

Corporate discourse can be analysed on a variety of different approaches, based on the text, history, **function, or according to the intended**

[314] DiMaggio and Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (n296); Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), p. 178.

[315] Ashforth and Gibbs, 'The Double-Edge of Organisational Legitimation' (n92), pp. 182-185.

addressees.[316] Companies' communication to stakeholders normally follows a narrative that focuses on a display of the corporation as a 'good', 'legitimate', actor. While it is true that corporate communication can often be directed to an array of different stakeholders, instead of being constructed in relation to a particular group,[317] some types of outputs are indeed more focused on specific stakeholders. As communication tools, sustainability reports and company websites often refer to corporate initiatives within the context of corporate social responsibility.[318] These are generally aimed at stakeholders with direct financial relevance, namely shareholders, investors, and consumers at large. Codes of conduct are the quintessence example of such communication. Referred in other types of corporate discourse and representative of corporate discourse themselves, codes of conduct are widely publicised and easily accessible. That is not the case for global framework agreements, even for those that represent a form of symbolic management. This refers to both the communication about the agreements and the agreements as a means of communication themselves. Whereas global union federations communicate these agreements through various different formats and, while varying according to the specific global union federation, relevant information is relatively easy to find. However, that is not the case for multinational corporations. Hence, when it comes to global framework agreements, **corporate discourse has a different aim and addressees**. In particular, when illustrative of substantive management, global framework agreements are more directed at the relationship with trade unions, employees, and local communities. Differently, corporate discourse in the form of statements comprised in most codes of conduct embodies a legitimacy intent that is mostly directed at a particular set of stakeholders. This can be connected to current or past legitimacy attacks, but also to pre-emptive action. Such communicative instruments emanate solely from the top, namely the company, which holds a position of power. In fact, *"legitimation typically operates in a top-down manner, since power-holders tend to legitimate themselves to those on whose compliance they rely"*.[319]

[316] Breeze, *Corporate Discourse* (n86), pp. 25-26.
[317] ibid, p. 147.
[318] ibid, p. 168.
[319] ibid, p. 111.

This legitimation activity aims to prevent criticism and set the boundaries of the company's rights and obligations.[320] When actually implemented and respected, codes of conduct can be representative of substantive management, going beyond mere advertising and legitimation. However, previous attempts to regulate the conduct of multinational enterprises through either multi-stakeholder or self-regulation initiatives have not been successful. Codes of conduct in particular have been the target of criticism based on their unilateral character and a lack of implementation. As Breeze stated, *"Twenty-first century corporations show a marked tendency to communicate in terms of 'good practices', 'standards' and 'codes', which has the effect of enshrining their operations in a quasi-legal framework and thereby appearing to guarantee their quality"*.[321] The same can be said in regard to global framework agreements that merely refer to the core labour standards, lack proper implementation, and merely comprise dispute settlement mechanisms that do not go beyond general references to cooperation. However, for the majority of global framework agreements, and the smaller set analysed as possibly being global collective agreements, the relative lack of promotional character and stronger content, both in the form of broader standards, actual implementation, and dispute settlement provisions, are highly indicative of substantive management, if the agreement is truly applied.

2.4. Final Remarks

Given the inexistence of legally binding international instruments, the insufficiency of unilateral corporate social responsibility initiatives, the limited capacity of labour law to deal with globalisation, and the pressures faced by the union movement, global framework agreements, constitute a second-best response to urgent concerns. Indeed, *"the emergence of*

[320] van Dijk, *Ideology: A Multidisciplinary Approach* (n91), p. 255; Breeze, *Corporate Discourse* (n86), pp. 47-48, 110-111.
[321] Breeze, *Corporate Discourse* (n86), p. 157.

international framework agreements demonstrates that industrial relations in on the cusp of significant change".[322] The previously mentioned non-binding, soft law instruments, together with the ILO fundamental conventions and the International Bill of Rights constitute the ground in which global framework agreements have developed. The listed soft law instruments have served as 'an international reference framework' and have promoted the emergence of agreements that go beyond mere declarations of intent, representing *"(…) a transition towards procedures of social dialogue and concertation"*.[323] They have promoted a culture of social dialogue which, given the failures attributed to unilateral corporate social responsibility instruments, has ultimately led to the negotiation and signing of concrete agreements that involve workers' representatives.[324] In turn, these agreements have progressively developed in a new generation,[325] which includes a broader content, monitoring mechanisms, and dispute settlement procedures. As agreements concluded at the global level, between a multinational enterprise and a global union federation, global framework agreements aim to improve working conditions throughout a company's worldwide operations. As further explained in chapter 4, the content of global framework agreements has become increasingly more detailed and wide-ranging, covering an array of issues that go beyond the fundamental ILO conventions and referring to occupational safety and health, working hours, wages, training, among others. Moreover, besides implementation provisions, newly signed and renewed agreements tend to include monitoring and dispute resolution procedures, carried out in cooperation by both the social partners. The term global collective agreement is phrased as a narrower concept, when compared to both transnational company agreements (TCAs) and global framework agreements (GFAs). Differently from other attempts to overcome the enforcement gap and despite covering enforcement mechanisms, global collective agreements are also based in a co-enforcement

[322] Burkett, 'International Framework Agreements: An Emerging International Regulatory Approach for a Passing European Phenomenon?' (n128).
[323] Guarriello, 'Transnational Collective Agreements' (n107), p. 19.
[324] ibid, pp. 6, 9, 18.
[325] Tonia Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' in Tonia Novitz and David Mangan (eds), *The Role of Labour Standards in Development: From Theory to Sustainable Practice?* (Oxford University Press 2011), p. 240.

ideal. Workers' organisations participate in the enforcement of labour standards and can play a significant role since they are uniquely placed to identify violations.[326] Still, for an agreement to be properly implemented and enforced, it is important that the global union federation has developed functional relations with local trade unions, which might not exist in all domestic contexts in which the agreement is intended to be applied. An effective involvement of local trade unions is essential, since violations are first noted and complaints are first dealt with at the local level.[327]

Global framework agreements constitute a deliberate strategy of both signatories. While different, the goals pursed by them are complementary. Corporations intend to gain or maintain legitimacy and improve their relationship with relevant stakeholders. In relation to consumers and shareholders, multinational enterprises want to improve their public image. Based on reputational and economic goals, corporations also desire to settle disputes at the earliest possible stage, avoiding an escalation of the dispute and possible production interruptions. As for global union federations, multinational enterprises also have the aim of developing a good, long-term relationship, even if for different reasons.[328] A corporation possesses a variety of responsibilities. Consequently, it is seldom that its actions are solely based on a single obligation. The decision to sign a global framework agreement is not wholly founded in the enterprise's ethical responsibilities and society's expectations, since both economic and ethical responsibilities can be interconnected. In this context, the possibility of guaranteeing a peaceful industrial relations setting, foreseeability in production, an improved public image stance, and enhanced overall relations with its various stakeholders, namely shareholders, employees, business partners, and consumers, constitute an incentive to the negotiation and signature of global framework agreements. Hence, in the context of globalisation, lack of binding standards, and resultant labour violations, corporations have (rightly) been faced with legitimacy threats. Enclosed in a legitimation discursive

[326] Hardy and Ariyawansa, 'Literature Review on the Governance of Work' (n217), pp. 24-25.
[327] Guarriello, 'Transnational Collective Agreements' (n107), pp. 7-8.
[328] ibid, pp. 8-9.

pattern, multinational enterprises have showed a tendency to respond through the adoption of promotional instruments, namely corporate codes of conduct. These, however, have been subjected to criticism and accused of symbolic management by espousing social relevant goals while continuing to engage in the same behaviour. Highly publicised, they are viewed as public relations stunts, without actual implementation and monitoring measures, aimed at guaranteeing their effective use. Differently, global framework agreements, while feasibly placed within the same legitimacy-based corporate discourse are, nevertheless, less advertised and include a sounder content. As described in chapter 4, global framework agreements must include some type of implementation reference. In the vast majority of agreements, these are more than broad references to a cooperative implementation, including an actual specification of the corresponding mechanisms. Also, as illustrated in chapter 4 and chapter 5, several agreements include a comprehensive scope of application, broad content, and dispute settlement provisions, making the agreement enforceable and turning their commitments into actual obligations.

3. The Collective Agreement

The present chapter introduces the collective agreement as conceptualised in key industrial theories. It starts by providing an overview of the theoretical context in which collective agreements have originated, focusing on a view of industrial relations as a system of rules placed within legal pluralism (section 3.1.). Collective bargaining, as an expression of the autonomy of the social partners and a form of rulemaking in industrial relations, is given special emphasis. The existence of law created outside the state and the relations established between these different systems and the state's legal system constitute the departure points to present Gino Giugni's theory of the *ordinamento intersindacale* or 'inter-union' system. This analysis is then used in chapter 5, to understand how and the extent to which the framework created by global collective agreements insersects with other soures of labour law. It is further used in the conclusions in chapter 7. The power to create law, given to industrial partners, is viewed at the international level through the emergence of global framework agreements in general and global collective agreements in particular. These create a set of minimum standards intended to be equally applied in all of a multinational's worldwide operations. Finally, the actors engaged in the functioning of industrial relations, commonly agreed in the theories mentioned upfront, are complemented by a set of other actors that have increasingly become more relevant. Section 3.2. looks into the collective agreement in itself, namely its theoretical background, definition, legal nature, and legal framework. The fundamental legal framework analysed includes both ILO instruments and different national definitions. The above-mentioned sections present the foundations through which the identification of the core features of a collective agreement is constructed. These core features are identified, described, and analysed in section 3.3., serving as a standard to which the analysis of whether global framework agreements are in fact collective agreements is submitted. The essence of the core identified features is described and at times followed by illustrations of the way different countries address them. This shows that, despite divergencies, these are largely

prevalent in all contries and allows for a broad framework of the elements a collective agreement should comprise. These are not intended to be restrictively comprised in all collective agreements in all different legal frameworks. Similarly, the narrower identified category of global collective agreements does not necessarily need to contain these elements in a restricted way. These elements, while necessary, can be perceived in a broad sense, varying in terms of how explicit and comprehensive their presence is required. Finally, section 3.5. comprises the final remarks and the departure points for the examination carried out in the next chapter.

3.1. Industrial Relations and Legal Pluralism

The Webbs, often considered "*the father and mother of Industrial Relations"*,[329] were the first to use the term 'industrial relations'. Yet, there is **no universally accepted definition of the term**.[330] According to Allan Flanders, industrial relations deal with certain regulated or institutionalised relationships in an industrial unit.[331] For Hugh Clegg the field *"includes the study of workers and their trade unions, management, employers' associations and the state institutions concerned with the regulation of employment"*.[332] The ILO has constructed a definition,[333] according to which industrial relations are normally defined in a broad and interdisciplinary manner, referent to the study of work and employment or all aspects of the

[329] Bruce B. Kaufman, *The Origins and Evolution of the Field of Industrial Relations in the United States* (ILR Press 1993), p. 213.

[330] Hilde Behrend, 'The Field of Industrial Relations' (1963) Vol. 1 No. 3 British Journal of Industrial Relations, pp. 383-394; C. J. Margerison, 'What Do We Mean by Industrial Relations? A Behavioural Science Approach' (1969) Vol. III No. 2 British Journal of Industrial Relations, pp. 273-286.

[331] Allan Flanders, *Management & Trade Unions: The Theory and Reform of Industrial Relations* (Faber 1970).

[332] Hugh Clegg, *Industrial Democracy and Nationalisation* (Basil Blackwell 1951).

[333] Industrial relations refer to *"the individual and collective relations between workers and employers at work and arising from the work situation, as well as the relations between representatives of workers and employers at the industry and national levels and their interaction with the state. Such relations encompass legal, economic, sociological and psychological aspects and include the following issues: recruiting, hiring, placement, training, discipline, promotion, lay-off, termination, wages, overtime, bonus, profit sharing, education, health, safety, sanitation, recreation, housing, working hours, rest, vacation, and benefits for unemployment sickness, accidents, old age and disability"*. See, David Macdonald and Caroline Vandenabeele, *Glossary of Industrial Relations and Related Terms* (International Labour Office 1996), p. 6.

employment relationship.[334] However, this is not a statutory definition, being comprised in an ILO publication. While a commonly agreed definition does not exist, the scope of industrial relations is broadly agreed and its definitions tend to highlight the same aspects, despite some variances when setting the field's boundaries. These can be viewed through a wider approach, like Dunlop's construction of industrial relations as a system, or more narrowly, like Kaufman, who refers to industrial relations as the study of the employment relationship.[335]

Embracing a broader understanding, implies that industrial relations are viewed as a **system of rules** regulating employment and behaviour at work. These, in turn, can take various forms, namely agreements, statues, customs, among others. These rules were perceived to be a product of the interactions between three, equally important agents, namely employers, labour unions, and the government. However, at the international level, there is an increasing participation of other actors and a readjustment of roles. In particular, multinational enterprises, non-governmental organisations, and consumers are progressively gaining importance. While it is not required that these actors adhere to a set of shared ideas, they must have a common ideology, defining their roles within the relationship and providing unicity and stability to the system. This can be viewed as the pursuit of a common goal,[336] as organisational common interests, or separate, but interdependent interests.[337] Regardless, these actors create a set of rules regarding the

[334] Thomas A. Kochan and Harry C. Katz, *Collective Bargaining and Industrial Relations: From Theory to Policy and Practice* (Irwin 1988); Carola M. Frege, 'The History of Industrial Relations as a Field Study' in Paul Blyton, Nicolas Bacon and Edmund Heery (eds) *The Sage Handbook of Industrial Relations* (London: Sage 2008), pp. 35-52; Thomas A. Kochan and Greg J. Bamber, 'Industrial Relations and Collective Bargaining' in Adrian Wilkinson, Nicolas Bacon, Tom Redman, and Scott Snell, *The Sage Handbook of Human Resource Management* (London: Sage 2010), pp. 308-321.

[335] Edmund Heery, Nicolas Bacon, Paul Blyton, and Jack Fiorito, 'Chapter 1: Introduction: The Field of Industrial Relations' in Paul Blyton, Nicolas Bacon, Jack Fiorito, and Edmund Heery (eds) *The Sage Handbook of Industrial Relations* (London: Sage 2008), pp. 2-3.

[336] R. Sivarethinamohan, *Industrial Relations and Labour Welfare: Text and Cases* (PHI 2010), p. 11; Diana Kelly, 'The Transfer of Ideas in Industrial Relations: Dunlop and Oxford in the Development of Australian Industrial Relations Thought, 1960-1985' (2011) Vol. 17 No. 1, pp. 126-138.

[337] Alan Fox, *Beyond Contract* (London: Faber & Faber 1974); Alan Fox, *Industrial Sociology and Industrial Relations* (London: Her Majesty's Stationery Office 1996); John W. Budd and Devasheesh P. Bhave, 'Values, Ideologies, and Frames of Reference in Employment Relations' in Paul Blyton, Nicolas Bacon, and Edmund Heery (eds) *The Sage Handbook of Industrial Relations* (London: Sage 2008), pp. 92-113; Conor

workplace and working conditions. This rule creation is the central aim of the industrial relations system, which does not exist in a vacuum, functioning in the background of a set of elements. Furthermore, as a subsystem of the society system, industrial relations operate with other subsystems.[338] The theories and issues developed by different scholars in the study of industrial relations highlight the *"theoretical coherence around the crucial importance of the social context of work and workplace relation"*,[339] and the common understanding of collective bargaining as one of the key functions of an industrial relations system.[340] Industrial relations must deal with the effects employment policies have on workers, management, and society at large, as well as their multiple interests, which can fundamentally be in conflict.[341] Collective bargaining is one of the mechanisms used to resolve such conflicts[342] and it constitutes a prerequisite for harmonious industrial relations.[343]

An industrial relations system needs to have a 'web of rules',[344] which are essential to guide the conduct of employers, are a prerequisite for the cooperation of employees, and because industrial enterprises require an authority and responsibility ranking.[345] As identified by Kahn-Freund, the enterprise is an **'absolute monarchy'**,[346] an understanding that is also

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Cradden, *Unitarism, Pluralism, Radicalism… And the Rest? Working Paper No. 7* (Genéve: Université de Genéve 2011), p. 5.

[338] *"An industrial relations system at any one time in its development is regarded as comprised of certain actors, certain contexts, an ideology which binds the industrial relations system together, and a body of rules created to govern the actors at the work place and work community."* See, John T. Dunlop, *Industrial Relations Systems* (New York: Holt 1958), p. 7.

[339] Cradden, *Unitarism, Pluralism, Radicalism… And the Rest? Working Paper No. 7* (n337), p. 4.

[340] In particular, Reinhold Fahlbeck identified the functions of an industrial relations system as: 1) the procurement of labour, 2) the determination of compensation for labour and 3) the creation of rules regulating the workplace. See, Reinhold Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (Juridiska Föreningen i Lund 1987), p. 15.

[341] Kochan and Katz, *Collective Bargaining and Industrial Relations: From Theory to Policy and Practice* (n334), p. 6-7.

[342] ibid, p. 7.

[343] Sivarethinamohan, *Industrial Relations and Labour Welfare: Text and Cases* (n336), p. 10.

[344] Dunlop, *Industrial Relations Systems* (n338).

[345] David E. Feller, 'A General Theory of the Collective Bargaining Agreement' (1973) California Law Review Vol. 61 No. 3, p. 721.

[346] Andrea Iossa, 'Anti-Authoritarian Employment Relations? Labour Law from An Anarchist Perspective' in Alysia Blackham, Miriam Kullmann, and Ania Zbyszewska, *Theorising Labour Law in a Changing World: Towards Inclusive Labour Law* (Hart 2019).

increasingly evident at the international level. Globalisation has accentuated an imbalance in labour relations. While multinational enterprises operate globally, workers' representatives and their intervention in regard to the negotiation of employment conditions is still mainly conducted at the national level. Furthermore, multinational enterprises can easily shift production on a cost basis judgment, leaving suppliers in production countries fairly dependent on a company's interests and management decisions. Global framework agreements (and specifically global collective agreements) join the responsibility link back to multinational enterprises by setting a particular set of rules that, while part of the industrial relations system, are solely produced through collective bargaining and independently from statutory law. Existing in parallel to other sets of rules, particularly those applicable within a specific domestic context, the rules emerging from global framework agreements operate globally, to a multitude of the multinational enterprises' business partners and their corresponding workers. In fact, for agreements whose scope includes the entirety of the company's supply chain, the subjects working for the multinational enterprise, directly or through a subcontractor or supplier, are placed under a minimum protective umbrella. This protection is the result of workers' involvement in both the setting of employment standards and their implementation, contributing to the democratisation of the enterprise.

The system of industrial relations is manifested in rules, found in legislation, trade union regulations, arbitration awards, and collective agreements.[347] This system of rules is produced, to a great degree, through **collective bargaining**.[348] Flanders viewed collective bargaining as 'an institution for

[347] Allan Flanders, *Industrial Relations: What is Wrong with the System?* (Faber and Faber 1965); Sivarethinamohan, *Industrial Relations and Labour Welfare: Text and Cases* (n336), p. 15; Foluso Iesanmi Jayeoba, Oyelekan Ishola Ayantunji, and Olayinka Yusuf Sholesi, 'A Critique of the Systems Theory of J. T. Dunlop' (2013) Vol. 2 No. 2 International Journal of Academic Research in Economics and Management Sciences, p. 100.

[348] The term 'collective bargaining' was first used in Beatrice Potter's *The Cooperative Movement in Great Britain*. However, it was only in 1897 it gained recognition, in Beatrice and Sidney Webb's *Industrial Democracy*. The Webbs did not define collective bargaining but provided insights later used in Flanders' construction of the concept. They saw it as a method through which unions pursue their aim of maintaining or improving members' working lives and preventing the employer from taking advantage of the competition between workers. See, Beatrice Potter, *Co-Operative Movement in Great Britain* (London: Swan Sonnenschein & Co. 1891), p. 217; Sidney and Beatrice Webb, *Industrial Democracy* (London: Longmans

the joint regulation of labour management and labour markets'.[349] Differently, Alan Fox saw collective bargaining as comprising a bargaining process that could (or not) end in an agreement, which could (or not) be embodied in a contract of employment.[350] Sinzheimer acknowledged that collective bargaining had creative law-making functions.[351] According to him, trade unions and employers' organisations possessed a 'law-creating capacity', meaning that collective agreements constituted real, 'living' law (i.e., as expressed by Ehrlich).[352] Collective action helps balancing the power relation between labour and management and acts as a protection against market, corporate, and managerial abuse.[353] However, collective bargaining is not merely a tool of raising wages and improving working conditions.[354] The aim of obtaining higher wages and other economic benefits is often viewed as the focus of collective bargaining. However, as a form of **rule-making** in industrial relations, the *"creation of a system of private law to govern the employer-employee relationship"*[355] is in fact the main objective. This final goal is expressed in the form of an agreement, which comprises the rules jointly decided by the parties. This demonstrates how collective agreements influence and are influenced by the industrial relations system.[356]

1897), pp. 173-174; Sidney and Beatrice Webb, *The History of Trade Unionism 1666-1920* (London: Longmans 1920 Ed), p. 1; Allan Flanders, 'Collective Bargaining: A Theoretical Analysis' (1968) Vol. 6 British Journal of Industrial Relations, pp. 1-26.

[349] Flanders, 'Collective Bargaining: A Theoretical Analysis' (n348).

[350] Alan Fox, 'Collective Bargaining, Flanders, and the Webbs' (1975) Vol. 13 No. 2 British Journal of Industrial Relations, pp. 151-174; Mark Butler, 'Introduction – Great Britain' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2018), p. 45.

[351] Lord Wedderburn, Roy Lewis, and Jon Clark (eds), *Labour Law and Industrial Relations – Building on Kahn-Freund* (Clarendon Press – Oxford 1983), p. 109.

[352] ibid, pp. 84-85.

[353] Webbs, *Industrial Democracy* (n348); John R. Commons, *Industrial Goodwill* (New York: McGraw-Hill 1919); Selig Perlman, *A Theory of the Labour Movement* (Macmillan Company 1949); Jacob Estey, *The Labour Problem* (New York: McGraw-Hill 1928); Paul C. Weiler, *Governing the Workplace* (Harvard University Press 1990); Kaufman, *The Origins and Evolution of the Field of Industrial Relations in the United States* (n329).

[354] Selig Perlman, 'The Principle of Collective Bargaining' (1936) Vol. 184 The Annals of the American Academy of Political and Social Science, pp. 154-160.

[355] Feller, 'A General Theory of the Collective Bargaining Agreement' (n345), p. 721.

[356] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), p. 15; Eurofound, *The Concept of Representativeness at National, International and European Level* (Publications Office of the European Union, Luxembourg 2016), p. 3.

The system of rules that compose industrial relations and those created through collective bargaining in particular illustrate the reality of rule creation beyond the state. The present section lays out the outline for the analysis of law creation independently from statutory law, its hierarchical relation to state law, and collective agreements as an illustration of the phenomenon. It commences with the topic of **legal pluralism** and its verification in labour law through the activity of trade unions and collective bargaining. In connection to legal pluralism, the concept of **collective autonomy** and the intersection of the order produced through collective bargaining and the state's legal order are defined in order to highlight some common understandings. First, the idea of collective agreements as autonomously created law, placed within a system of legal sources is highlighted. Second, it is recognised that, in spite of being autonomously created, its relevance and functioning now occurs within the state's constructed limits and framework. These topics are consequential in the analysis of global framework agreements within the same structure.

Labour law developed in the backdrop of political and industrial revolutions, poor working conditions, and the concomitant organisation of workers, first in opposition to the law and later under state recognition and protection.[357] The capacity of workers' organisations to negotiate, together with employers, the regulation of working conditions in an agreement[358] brought about a discussion on the creation of labour norms with a non-state origin. Accordingly, the topic of collective autonomy is best placed within **legal pluralism**. Law encompasses *"multiple, uncoordinated, co-existing, and overlapping bodies of law"*[359] and it is not an exclusive prerogative of the state. Positioned in the context of legal pluralism and consequently on the idea according to which state law coexists with other legal systems, collective

[357] Walküre Lopes Ribeiro da Silva, 'Autonomia Privada Colectiva' (2007) Vol. 102 Revista da Faculdade de Direito da Universidade de São Paulo, pp. 135-159.

[358] As explained by the Webbs, in collective bargaining *"(the employer) meets with a collective will, and settles, in a single agreement, the principles upon which, for the time being, all workmen of a particular group, or class, or grade, will be engaged"*. Webbs, *Industrial Democracy* (348), pp. 173-174.

[359] Paul Gragl, *Legal Monism: Law Philosophy, and Politics* (Oxford University Press 2018), p. 9. Available At: https://www.oxfordscholarship.com/view/10.1093/oso/9780198796268.001.0001/oso-9780198796268 [Accessed 15 August 2019].

autonomy is viewed as the ability of social actors to create legal rules, regardless of jurisdictional delegation of authority.[360] Differently, a shared feature of legal monism's currents of thought is the idea of one sole legal order, being natural or state law.[361] Developed in opposition to legal monism, pluralism also represents a recognition of law's shortcomings and state inadequacy in the face of a growing variety of norm producing centres.[362]

The variety of legal orders[363] and the rejection of law as a state monopoly, resulting instead from the activity of social organised forces,[364] entails a recognition of a **hierarchy**. Hence, in the same way norms can be hierarchised within an order, these different law creating orders or *ordinamenti*, can also be hierarchised.[365] This autonomous law creation does not work as a substitute of the state's, being in a hierarchical relation to it. Collective bargaining does not exist in a void, but in the context of a certain environment involving technological, economic, and legal aspects. This environment can promote or restrict collective bargaining but it is also

[360] *"Pluralism manifests itself mainly through work-related provisions recognised by state law through norms that concern them, but whose normative significance and juridicity are not the result of this recognition."* See, Martine Le Friant, 'Collective Autonomy: Hope or Danger' (2013) Vol. 34 No. 3 Comparative Labour Law & Policy Journal, p. 629.

[361] Gragl, *Legal Monism: Law Philosophy, and Politics* (n359), pp. 8-9.

[362] Gino Giugni recognised that the abandonment of legal monism coincided with the critical opening to the problem of legal sources and a crisis surrounding the 'legalist' thinking. Giugni pointed out how the reality of law creation beyond the state made it necessary to overcome rigid and formal perspectives in which law was solely emanated from it. See, Noberto Bobbio, *La Consuetudine Come Fatto Normativo* (Milano 1942), pp. 5, 10, 81; Gino Giugni (translated by José Luis Monereo Pérez and José Antonio Fernández Avilés), *Introducción Al Estudio De La Autonomía Colectiva* (Editorial Comares 2004), pp. 15, 51-52.

[363] Santi Romano viewed law as an institution which, in a broad sense, meant organised society. According to him, the original manifestation of law is the institution. As the scholar identified, the state represents the most important institution and the distinguishing purpose of law is of a social organisation. Furthermore, for Santi Romano *"the law cannot develop but into an institution, and the institution exists and can be defined as such only inasmuch as it is created and preserved by the law."* The author recognised there are as many legal orders as institutions and rejects the idea according to which *"the state is most often claimed to imprint on them (other legal orders) a legal character, either when it directly brings them about or when it simply recognises them"*. However, given the author's involvement in the Fascist regime makes his views on legal pluralism open for discussion. See, Santi Romano (ed. and translated by Mariano Croce), *The Legal Order* (Routledge 2017), pp. 21, 50.

[364] Santi Romano, *The Legal Order* (n363), pp. 25-27; Lopes Ribeiro da Silva, 'Autonomia Privada Colectiva' (n357), p. 136.

[365] Norberto Bobbio (translated by Maria Celeste Cordeiro Leite dos Santos), *Teoria do Ordenamento Juridico* (Universidade de Brasilia 1995), p. 165; Lopes Ribeiro da Silva, 'Autonomia Privada Colectiva' (n357), p. 137.

influenced by it.[366] Hence, the rules resulting from collective bargaining, part of the industrial relations system, interact with the state's 'order' and other 'smaller orders'. These smaller orders develop within the state and intertwine with it.[367] Thus, the rules emanating from collective bargaining constitute a **system of its own** which, nevertheless, interacts with the legal system.[368]

State's failure of adjustment or support to the growing complexity of labour relations leads to the construction of **legal orders by other organisations**.[369] These legal orders are different from the one recognised by the state, and they are able to either complement the state's legal order or conflict with it. These orders can be original or derivative, the first corresponding to legal orders that are not established by other institutions, which is the case of the second.[370] Another distinction refers to state orders and non-state orders. Non-state *ordinamentos* could be placed (1) hierarchically above the state, which is the case of the international *ordinamento*, (2) underneath the state, meaning social *ordinamentos*, which the state acknowledges, imposing limitations or absorbing them, (3) besides the state, which is the case of the international order in legal dualism, and (4) against the state, namely sects.[371] These *ordinamentos* can relate to each other, based on their validity degree, the scope of such validity, and the validity one *ordinamento* attributes to the norms of another.[372] The relation between social orders, namely the one created by trade unions, and the state's legal order can be placed in a relation

[366] David B. Lipsky and Clifford B. Donn, 'Introduction' in David B. Lipsky and Clifford B. Donn (eds), *Collective Bargaining in American Industry: Contemporary Perspectives and Future Directions* (Lexington 1987), pp. 8-9.

[367] Bobbio, *Teoria do Ordenamento Juridico* (n365), pp. 169-170.

[368] Italian industrial relations view the rules resulting from collective bargaining as holding *"a definite identity, on the whole different from the rules coming from the state, so that it can be appropriated studied (...) as a system of its own, not closed but open to inter-relations with the legal and public labour law system"*. See, Tiziano Treu, 'General Introduction - Italy' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2020), p. 37.

[369] Note the concrete examples concern previous legislation. See, Santi Romano, *The Legal Order* (n363), p. 61.

[370] Santi Romano also constructed other classifications, namely between institutions with particular or general ends, based on their different basis, between simple or complex institutions, perfect or imperfect ones, with or without personality, independent, coordinated or subordinated. See, Santi Romano, *The Legal Order* (n363), pp. 19-21, 50, 60-62, 67, 67-69, 96-99, 164.

[371] Bobbio, *Teoria do Ordenamento Juridico* (n365).

[372] ibid, pp. 165-169.

of subordination,[373] or independently from any legal framework.[374] In most cases, the regulation of labour relations through collective autonomy is carried out within a framework created by the state, which also determines the placement of the collective agreement within legal sources in labour law.[375] Within the international context, this rule-making dimension exists outside of any legal framework.

Collective autonomy, as a social power with regulatory authority,[376] requires a pluralistic view of society, since it entails a rejection of the state's normative monopoly and the recognition of multiple creators of legal norms.[377] The notion developed through the recognition of a 'social law', created by communities with a collective spirit,[378] also referred to as spontaneous groups and their mounting agreements.[379] Law creation began to be viewed not only as a state prerogative, also laying with organised groups and being formed autonomously from the state, meaning that organisations began being accepted as law-creating bodies.[380] This law creation refers both to the establishment of norms and their enforcement, specifically through social sanctions.[381] The assumption is that only autonomously created norms possess enough flexibility and immediacy in order to guarantee their effectiveness.[382]

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[373] ibid, pp. 165-166.

[374] Giugni, *Introducción Al Estudio De La Autonomía Colectiva* (n362), p. 21.

[375] László Nagy, *The Socialist Collective Agreement* (Akadémi Kiadoó 1984), p. 230.

[376] Manuel Alonso Olea, *Derecho del Trabajo* (Faculdad de Derecho de la Universidad de Madrid 1980), p. 417.

[377] Giugni, *Introducción Al Estudio De La Autonomía Colectiva* (n362), p. 53.

[378] Nathan B. Oman, 'Corporations and Autonomy Theories of Contract: A Critique of the New Lex Mercatoria' (2005) Vol. 83 No. 1 Deven University Law Review, pp. 117-118; Frederic William Maitland, 'Translator's Introduction' in Otto von Gierke (translated by Frederic William Maitland) *Political Theories of the Middle Age* (Cambridge University Press 1913), p. xxvi.

[379] Translated by the author. See, Georges Gurvitch, *Le Temps Présent et l'Idée du Droit Social* (Paris 1931), pp. 13-14.

[380] Otto Kahn-Freund, 'Hugo Sinzheimer' in Roy Lewis and Jon Clarke (eds) *Labour Law and Politics in the Weimar Republic* (John Wiley and Sons Ltd 1981), pp. 79-80; Ruth Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (2008) Vol. 35 No. 3 Journal of Law and Society, p. 347; Le Friant, 'Collective Autonomy: Hope or Danger' (n360), p. 631.

[381] *"In accordance with Sinzheimer's conception of autonomous law making, unions and employers are regarded as autonomous organisations, which act and bargain autonomously to create and enforce legal norms."* See, Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380), p. 351.

[382] ibid, p. 347.

The ***autonomia collettiva privata*** **theory**, elaborated by Santoro Passareli and developed by Gino Giugni, views collective autonomy as creating an *ordinamento intersindacale*. Viewed as a phenomenon of opposing private interests' self-regulation, this private autonomy is a manifestation of contractual autonomy within private law.[383] Santoro Passarelli also introduced the idea according to which collective autonomy constituted the foundation of the *ordinamento intersindacale*.[384] This *ordinamento* originated from the *autonomia collettiva privata* and would be one of the above mentioned 'smaller orders'. According to Santoro Passarelli, the legal order recognises social groups' ability or power to regulate their own interests, as it does for individuals, despite differences regarding their limits and structure.[385] Somewhat differently, Giugni perceived this autonomy as an autonomous *ordinamento intersindicale,* based on an amounting difference between the reality of industrial relations and the norms regulating them.[386] His configuration of industrial relations as a system of social organisation is a product of the flourishing systemic socio-juridical theories (e.g., Dunlop, Flanders)[387] and legal pluralism.[388] Giugni identified how collective bargaining functioned in a different way from what was prescribed by state created legal and constitutional norms. Existing outside the state's legal order, the inter-union order produces a set of rules that result from collective autonomy.[389] Social partners tend to create autonomous practices

[383] Le Friant, 'Collective Autonomy: Hope or Danger' (n360), p. 632.

[384] ibid, p. 633.

[385] Francesco Santoro Passarelli, 'Autonomia Colletiva' in *Saggi di Diritto Civile Vol. 2* (Napoli: Eugenio Jovene 1961), pp. 261-262; Lopes Ribeiro da Silva, 'Autonomia Privada Colectiva' (n357), pp. 141-142.

[386] Iossa, *Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining* (n108), p. 86.

[387] Manuel Correa Carrasco, *La Negociación Colectiva como Fuente del Derecho del Trabajo* (Doctoral thesis, University Carlos III de Madrid 1996), p. 94; Giugni, *Introducción Al Estudio De La Autonomía Colectiva* (n362), pp. 97 ff.

[388] Giugni argued that legal pluralism, if not useful for the delimitation of competences between the state and smaller ordinances, was a valuable methodological tool in the comprehension of social bodies' organisational dynamics. In other words, it helped to uncover the terms of the separation between organisations' juridical and socio-economical functions. See, Giugni, *Introducción Al Estudio de la Autonomía Colectiva* (n362), pp. 13-14.

[389] As Martine Le Friant captivatingly declares, *"Giugni explained that, outside the state legal order, there were no barbarians. There was a stratified set of rules and institutions stemming directly from collective autonomy. There also was what he called, an 'inter-union' order that referred to the principle of plurality of legal orders and supported by the most unprejudiced master thinkers of the turn of the century, who were not unaware of the signs of the decline of legal positivism prevailing in the nineteenth century."* See, Giugni, *Introducción Al*

by forming their own bodies. This shows the dynamic dimension of industrial relations and how these cannot not be constrained by pre-existing state's legal categories and institutions, which are not fully able to capture all the dimensions of collective autonomy.[390] Thus, Giugni observed how legal reality was not limited to the coercive power of the state[391] and these premises allowed for *"the definition of the phenomenon of collective autonomy as an autonomous normative system"*.[392] Giugni developed the idea of an *ordinamento intersindacale* based on his realisation that industrial relations and collective bargaining in particular had functioned in a different way than what was prescribed by legal norms. Thus, Giugni's theory is used as a tool for improving democracy. In the case of global framework agreements, there is no international legal norms governing the signing, content, or functioning of these agreements. Thus, one can make a parallel between the situation identified by these authors and the current state of events at the international level. The social partners, meaning global union federations and multinational enterprises, create a set of rules to regulate their opposing self-interests, which develop outside a state created framework.

In this context, **collective agreements** are perceived as the sources of a new law grounded in principles linked to a group's autonomy to create law.[393] Still, this autonomously created law was often placed within the primacy of state-created law.[394] Accordingly, state law was considered a subsidiary to autonomously created law,[395] with state intervention being considered as

Estudio de la Autonomía Colectiva (n362), p. 21; Le Friant, 'Collective Autonomy: Hope or Danger' (n360), p. 634.

[390] Giugni, *Introducción Al Estudio de la Autonomía Colectiva* (n362); Iossa, *Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining* (n108), p. 88.

[391] Giugni, *Introducción Al Estudio De La Autonomía Colectiva* (n362); Iossa, *Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining* (n108), pp. 16-15, 89.

[392] Iossa, *Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining* (n108), p. 89.

[393] Translated by Le Friant, 'Collective Autonomy: Hope or Danger' (n360), p. 632; Hugo Sinzheimer, *Des Korporative Arbeitsnormenvertrag* (1907), pp. 98-101.

[394] Kahn-Freund, 'Hugo Sinzheimer' (n380), pp. 81-82; Giugni, *Introducción Al Estudio De La Autonomía Colectiva* (n362), pp. 54-55.

[395] *"Subsidiary role means that the state abstains from establishing rules as far as practicable, primacy means that it intervenes to establish rules if the organs of the state deem it to be necessary."* See, Kahn-Freund, 'Hugo Sinzheimer' (n380), p. 85.

legitimate in regard to the imposition of limits within which collective bargaining functions. Differently, the idea of *laissez-faire*, meaning *"the retreat of law from industrial relations and of industrial relations from the law"*,[396] developed in the British context, gained increasing relevance.

The relationship between state created law and autonomously created norms, particularly those resulting from collective bargaining and collective agreements, entails a recognition of both an **inequality of bargaining power** between the employer and the individual worker, and the presence of an engrained and lasting conflict between their goals.[397] In fact, differently from general contract law, where a perceived 'equality of arms' exists, labour law deals with an acknowledged asymmetry.[398] The inequality of bargaining power in the conclusion of the employment contract illustrates the submissive and subordinate character of this relationship.[399] The conflict between the employer and the individual worker, whose eradication is impossible, can, however, be minimised and contained.[400] This is a common interest of both parties.[401] In this context, legislation and collective bargaining are not mutually exclusive, representing supplementary sources of regulation.[402] Based on collective bargaining's increased flexibility and

[396] Iossa, *Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining* (n108), p. 85; Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380); Otto Kahn-Freund, *Selected Writings* (1978), p. 9.

[397] Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380), p. 353.

[398] As Otto Kahn-Freund wrote in the seventies, *"The relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination, however much of the submission and the subordination may be concealed by the indispensable figment of the legal mind known as the 'contract of employment"*. See, Otto Kahn-Freund, *Labour and the Law* (Stevens and Sons 1977), p. 8.

[399] Kahn-Freund underlined how the main object of labour law is to be *"a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship"*. Hence, protective legislation in the field of labour law *"is an attempt to infuse law into a relation of command and subordination"*. See, Paul Davies and Mark Freedland (eds), *Kahn-Freund's Labour and the Law* (Stevens 1983), pp. 17-18.

[400] Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380), p. 353.

[401] Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380), p. 353; Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), p. 27.

[402] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), p. 58.

adaptability to economic change, law shows a limited efficiency,[403] meaning collective agreements possess a complementary task. Despite the law's significant function in labour relations, these are secondary when compared to workers' social power, spontaneously created to balance management's.[404] Thus, the employment relationship assumes a different setting, which justifies the existence of the collective agreement as a means of enabling workers' participation in employment regulation. As mentioned above, in the international context, the negotiation, signing, and implementation of global framework agreements illustrates a democratisation of the enterprise. Accordingly, in labour relations, although the law retains its own sanctions, these need to be supported by social sanctions, namely through workers' social power.[405]

Collective bargaining autonomy was initially placed into a legal framework aimed at its promotion. Still, in general, state tended to adopt an abstention role. Later on, during the 70s and the end of the 80s, the state assumed a more promotional task in regard to relation between the social partners. Collective bargaining legislation, including a duty to bargain in good faith represent examples of this development. Likewise, the emergence of mechanisms that allow for a collective agreement to be generally applicable, the use of semi-dispositive legal provisions, and explicitly stated derogation clauses have enabled a higher sense of power balance between the social partners.[406]

To sum up, and as mentioned above, the ILO views an industrial relations system as the institutions representing the parties in industrial relations, their form of interaction, their rules and procedures, and the general pattern of

[403] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), p. 58; Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380), p. 353.

[404] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), p. 19.

[405] *"The law does, of course, provide its own sanctions, administrative, penal, and civil, and their impact should not be underestimated, but in labour relations legal norms cannot often be effective unless they are backed by social sanctions as well, that is by the countervailing power of trade unions and of the organised workers asserted through consultation and negotiation with the employer and ultimately, if this fails, through withholding their labour."* See, Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), pp. 19-20.

[406] Niklas Bruun, 'The Autonomy of the Collective Agreement' (2002) Report to the VII European Regional Congress of the International Society for Labour Law and Social Security, p. 8.

work relations.[407] Collective bargaining concerns the participation of workers in the making of rules governing the overall employment relationship. The idea of collective bargaining as essential for a harmonious industrial relations system and its rule creating ability compose the key considerations developed in the remaining sections of this chapter. This, and the promotion of collective agreements as a basis for the development of industrial relations is stated in various global framework agreements. This coherence is conveyed throughout different domestic contexts.[408] Finally, industrial relations are viewed as preferably structured[409] through autonomous regulation, carried out by the social partners, namely employers' associations and workers' organisations.[410] In this context, the main role of labour law is enabling this autonomous regulation,[411] meaning the task of permitting and imposing limits or a 'floor', to such type of regulation.[412] Accordingly, labour law is highly connected to the phenomenon of social power, regardless of the participation law had in its establishment.[413]

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[407] Macdonald and Vandenabeele, *Glossary of Industrial Relations and Related Terms* (n333), p. 6.

[408] As already stated in the 1984 document on 'The Law of Collective Agreements in the Countries of the European Community', submitted by Gian Carlo Perone to the then Commission of the European Communities, *"the fears of certain authoritative schools of thought must be dispelled. They consider that the collective bargaining does not lend itself to being harmonised and regulated by a uniform system for it must respond to particular circumstances to which collective bargaining applies, it is true that circumstances tend to be dissimilar rather than similar. However, the technological revolution could exert a unifying effect on collective bargaining systems and the social situation on which it impinges. On the assumption that the dissemination of new technology in the various countries will be standardised, it is reasonable to suppose that the responses by the industrial relations machinery, in particular collective bargaining, will not differ in substance"*. See, Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 1.

[409] *"In many countries, however, labour standards are regulated partly by the state and party by collective agreement, and the relative importance of each method and the degree of coordination between varies from country to country according to the political system established and the degree of development of industrial relations between employers and workpeople."* See, International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (Geneva 1936), p. 200.

[410] However, as Ruth Dukes explains, there are different perspective. For instance, Sinzheimer viewed the regulation of industrial relations as a public matter, whereas Kahn-Freund viewed it a private matter for the bargaining parties. See, Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380), p. 360.

[411] ibid, p. 359.

[412] Folke Schmidt and Allan C. Neal, 'Collective Agreements and Collective Bargaining' (1984) Vol. 15 Chapter 12 International Encyclopedia of Comparative Law Vol. 15, p. 17.

[413] Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) Vol. 37 No. 1 The Modern Law Review, pp. 48 ff.

3.2. The Collective Agreement: Theoretical Background and Concept

3.2.1. Theoretical Background and Legal Nature

The construction of the collective agreement's theoretical background requires a focused analysis of its definition, legal nature, and effects. This section presents an overview of the collective agreement's emergence and legal nature, while highlighting crucial aspects for the development of collective autonomy as a concept. Linked to the concept of collective autonomy and the creation of law outside the state, collective agreements are presented as *sui generis* instruments, constituting collective bargaining originated law.

In the nineteenth century, the inexistence of a regulative framework governing labour relations in Europe left a **'vacuum'**. This, as identified by Reinhold Fahlbeck, constituted the reason behind the advent of collective agreements. Based on a new, liberal ideology, the conception of **collective agreements** under contractualism emerged as *"the only permissive means of establishing uniform working conditions"*.[414] Instead of concluding many individual contracts of employment, the employer could conclude one agreement, applicable to workmen of a group, class, or grade.[415] Flanders, while condemning the suggestion that collective agreements entail a commitment to buy and sell labour argued that they *"lay down the terms upon which individual workers sell their ability to work"*.[416] Wedderburn referred that collective agreements were 'industrial peace treaties' and a 'source of rules', leading to a 'joint regulation' (i.e., according to Flander's

[414] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), p. 30.

[415] *"Instead of the employer making a series of separate contracts with isolated individuals he meets with a collective will, and settles, in a single agreement, the principles upon which, for the time being, all workmen of a particular group, or class or grade, will be engaged."* See, Webbs, *Industrial Democracy* (n348), pp. 173-174.

[416] Butler, 'Introduction – Great Britain' (n350), p. 45.

expression) of the work place and had a 'rule-making' capacity.[417] Similarly, Kahn-Freund, defined a collective agreement as *"an industrial peace treaty and at the same time a source of rules for terms and conditions of employment, for the distribution of work and for the stability of jobs"*.[418] Fahlbeck stated that collective agreements *"serve as instruments for uniform and universal regulation of the terms and conditions of employment, thus functioning as normative instruments"*.[419]

The question of a collective agreement's **legal enforceability**[420] is placed within the broader discussion regarding the role of law in the regulation of industrial relations and legal creation outside the state. The collective agreement develops simultaneously in two different orders, the state's order and the one created by employers and workers.[421] It is a private contract within the state's legal order and a system in itself for employers and workers.[422] The collective agreement is the **primary expression of collective autonomy**. Through the action of trade unions and primarily the agreements set and their corresponding effects, collective agreements are placed in a hierarchy in terms of their relation to other legal sources. In particular, collective agreements exist in parallel to labour law legislation and employment contracts. Already in 1936, the International Labour Office's Report on collective agreements recognised that collective agreements have the force of legislative texts, in relation to those whose conditions of employment they regulate and restrict the freedom of contract of the parties in the same way.[423]

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[417] Lord Wedderburn, *The Worker and The Law* (Penguin Books, 3rd ed. 1986), p. 270.

[418] Kahn-Freund, *Labour and the Law* (n398), p. 124.

[419] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), p. 50.

[420] The 1965 Donovan Commission addressed the state of industrial relations and the question of a collective agreement's legal enforceability. See, H. A. Turner, 'The Donovan Report' (March 1969) Vol. 79 No. 313 The Economic Journal, pp. 1-10.

[421] Santi Romano, *The Legal Order* (n363), p. 98.

[422] Iossa, *Collective Autonomy in the European Union: Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining* (n108), p. 35.

[423] In this sense, according to the report, *"collective agreements are in every way analogous to protective labour legislation, but they must be considered as special laws governing a certain industry or occupation, limited in their duration and promulgated – as a rule – by the parties and not by the legislative authorities"*. Moreover, "*where the state intervenes, the conditions which it establishes are limited to those which are tacitly approved by the employers and workers and which are practically in view of prevailing economic conditions"*. See,

The concept of **collective autonomy** is derived from democracy and systems theory, which will be further addressed in chapter 3. This refers to the participation in democratic decision-making processes by certain collective actors. Collective autonomy is based on the private autonomy of the individual employment contracting parties. Accordingly, collective autonomy is an expression of collective exercise of private autonomy. This collective use of private autonomy counteracts the inherent inferior position that characterises the individual employee in comparison to the employer. Hence, it helps balancing the asymmetry that is inherent to the employment relationship. Obviously, this presupposes the respect and implementation of freedom of association. In some countries, it does not enjoy the status of a legal or constitutional concept. Differently, in other countries it is explicitly referred in the constitution. Regardless of whether it is explicitly referred in the constitution, the concept of collective autonomy is highly relevant throughout different legal systems. This is particularly visible in the Nordic countries, which do not award collective autonomy the status of an independent legal concept and is not constitutionally mentioned. As Stein Evju importantly highlights, collective autonomy refers to both a freedom right and an institutional scheme or regulatory authority and has been provided to the collective bargaining parties. Still, a proper functioning of collective agreement regulation requires the freedom to form and join organisations, capable of acting as collective bargaining parties. Likewise, it is necessary that these parties have the freedom to act in the interests of their members. Collective autonomy allows the parties to enter into agreements enhancing what is already stated in legislation. These, however, cannot disregard legislation and a collective agreement cannot take precedence before legislation. As chapter 3 and 5 unveil, in the relationship between collective agreements and statutory legislation, the latest is placed in the top of the hierarchy of labour law sources. Likewise, as developed in chapter 3, the framework is determined by the state, whose legislation takes precedence over the rules comprised in other sources of labour law. Evju underlines the

International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 130, 203.

fact that a functional system with collective agreement regulation presupposes an interaction between the relevant actors. The agreements entered into should be binding for both parties, their members, and should include conflict resolution arrangements. Differently from the rest of Europe, where a more individualistic orientation to labour law is adopted, the Nordic countries are considered to have a stronger collective positioning. The fact that, in the Nordic countries, collective agreements possess a more central position when compared to individual employment contracts, has highly contributed to the development of working conditions regulation. The Nordic model is further based on a collaborative approach, which is characterised by a strong involvement and influence of the social partners in the formulation and implementation of labour market policies. This development differs from the developments occurred in continental Europe, where legislation constitutes the primary basis. In chapter 3, the section regarding the representativeness of the parties to a collective agreement underscores the relevance of mutual recognition and freedom of association as preconditions for the development of collective bargaining and dispute resolution. In the Nordic countries these elements, together with general centralisation and coordination, have enabled the development of strong central organisations and mature collective bargaining. Evju stresses the importance of strong local unions and bargaining relations at the local level, referring to local negotiations that are complemented by central agreements. Moreover, the Nordic countries present a high rate of trade union membership. Hence, the coverage of collective agreements is extensive. As the interviews reveal in chapter 6, this is often not the case, which hinders the achievement of these agreements' full potential. The content of a collective agreement is subjected to legislation. However, in some countries, legislation plays a smaller role when compared, for instance, to Norway and Sweden. These differences are particularly striking when compared to continental Europe. Still, in all countries, the (freed)room to negotiate and regulate working conditions through collective agreements enables an interaction between the social

partners and is an expression of collective autonomy, which adds comprehension and realism to the formulation of labour market policies.[424]

The **legal nature** of the collective agreement has been considered through different lenses, being viewed as a mandate or a third-party contract,[425] but also as a peace treaty, whose only sanction is the strike.[426] Having both the uniformity of standards and the prevention of industrial action as objectives, the dichotomy surrounding collective agreements and collective bargaining law (i.e., contractualism or legalism, private or public law) was born.[427] Collective agreements are said to be either contracts, anchored on contractual freedom and private autonomy, or statutory acts, negotiated by private entities through a delegation of powers awarded by the state, constituting *"true chameleons in the world of legal creatures"*.[428] Contractual theories view collective agreements in the framework of roman law contracts, as a form of business management, a stipulation in favour of a third party, legal representation, an innominate contract, or as industrial custom, among others. Also, the fact collective agreements must be freely and voluntarily negotiated, a requirement that is explicitly stated in international labour law (Article 4 of ILO Convention No. 98), meaning that the parties cannot be forced to negotiate or/and reach an agreement, depicts a somewhat contractual facet.

The Committee on Freedom of Association (CFA) has highlighted the voluntary nature of collective bargaining on various occasions.[429] In fact, the

[424] (Translation by the author) Stein Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (2010) Arbeidsrett Vol. 7 No. 1-2, pp. 1-9.

[425] Archibald Cox, 'The Legal Nature of Collective Bargaining Agreements' (1958) Vol. 57 No. 1 The Michigan Law Review Association, pp. 1-36.

[426] Le Friant, 'Collective Autonomy: Hope or Danger' (n360), p. 637.

[427] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), pp. 28-30.

[428] ibid, pp. 28-30.

[429] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining pp. 1313-1321*. Available At: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3947747,1 [Accessed 30 September 2019]; International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (International Labour Office, Fifth (Revised) Edition 2006), paragraphs 793, 925-929, 990, 930, 931. Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf [Accessed 30 September 2019].

Committee has clarified that *"Legislation which lays down mandatory conciliation and prevents the employer from withdrawing, irrespective of circumstances, at the risk of being penalised by payment of wages in respect of strike days, in addition to being disproportionate, runs counter to the principle of voluntary negotiation enshrined in Convention No. 98"*.[430] Collective bargaining is a process aiming to reach a mutual agreement, meaning that neither employers nor employees have to be be entirely satisfied with every single provision of a collective agreement, but with the balance of interests instead. Hence, the composition of different interests, should be done in a manner that is beneficial for both. Although presenting contractual aspects, collective agreements are somewhat different from private civil law contracts since the position of the individual parties (i.e., the employer and the individual worker) is characterised by an initial unbalance of powers, which is counteracted through the organisation of workers. Thus, despite possessing some clear contractual features, collective agreements **cannot be viewed as pure civil law contracts**.[431] Even when viewed as private law contracts, collective agreements still possess a rule-making function, *"as they govern employment relationships in the bargain unit and thereby create generally binding standards"*.[432]

For instance, in France, the collective agreement is a contract and its corresponding obligations bind the parties and *"constitute the law of the contracting parties"*.[433] Due to their innovation, flexibility, and creativity, collective agreements constitute a relevant source of labour law, despite the crucial role played by statutory law. The law provides minimum standards which are improved in the employees' favour through collective bargaining.

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[430] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1320* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph 930.

[431] The collective agreement has the body of the contract and the soul of the law. The collective agreement has *"il corpo del contratto e l'anima della lege"*. See, Francesco Carnelutti, *Teoria del Regolamento Colletivo dei Rapporti di Lavoro* (Padova, 1928).

[432] Michal Sewerynski (ed.), *Collective Agreements and Individual Contracts of Employment* (Kluwer Law International 2003), pp. 6-7.

[433] Michel Despax, Jean-Pierre Laborde, and Jacques Rojot, 'Part II. Collective Labour Relations – France' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2017), pp. 336-339.

The collective agreement has a dual nature, being both a contract and a binding regulation to the members' of a contracting organisation, becoming "*a kind of internal regulation of a whole occupation if negotiated at industry-wide level"*.[434] In Germany, the collective agreement is a contract, governed by the rules comprised in the Civil Code, although not a typical contract, due to its normative effects.[435] In Italy, considering that Article 39 of the Constitution has not been implemented, collective agreements are considered as private law contracts, governed by civil law. However, they possess a somewhat normative effect, meaning that an individual employment contract cannot determine inferior working conditions than those comprised in the collective agreement. They are binding not only on the parties to the agreement, but also on the employers and the workers who are members of the contracting organisations. Furthermore, an agreement's effects are often extended.[436] Hence, although viewed as private agreements, their normative effects mean they function as a regulatory source of the individual employment relationship.[437] In Sweden, collective agreements are considered to be contracts.[438] However, collective bargaining is centralised and union membership is high, making collective agreements' applicability similar to countries where the agreements have a statutory or quasi-statutory nature.[439] Collective agreements may be concluded at the central level, national branch level, and local level. Central agreements *"represent a way of creating rules and negotiation machinery almost as important as the making of laws"*.[440] Thus, in some cases, such as in the construction industry, the Swedish Employment Protection Act has been almost replaced by

[434] ibid, p. 316.

[435] For instance, the Federal Office of Labour can declare a collective agreement 'generally applicable'. See, Niklas Bruun and Jari Hellsten (eds), *Collective Agreement and Competition in the EU – The Report of the COLCOM-project* (Iustus Förlag Uppsala 2001), p. 85; Bernd Waas, 'Germany' in Ulla Liukkunen (ed.), *Collective Bargaining in Labour Law Regimes* (Springer 2019), p. 287.

[436] Tiziano Treu, 'Part II. Collective Labour Relations - Italy' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2020), pp. 224, 227.

[437] Treu, 'General Introduction - Italy' (n368), p. 37.

[438] Sweden *"clings to the private law concept although collective agreements in Sweden differ profoundly from their British counterparts"* See, Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), pp. 44-45.

[439] ibid, pp. 44-45.

[440] Axel Adlercreutz and Birgitta Nyström, 'General Introduction – Sweden' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2021), p. 67.

collective agreements.[441] In Sweden, there is no possibility of extension afforded by legislation or a decree. Nonetheless, *"Swedish collective agreements have some kind of extended effect in the way that the rules in a collective agreement could be applicable to employers and employees not originally covered by the agreement"*.[442] This is based on a Swedish labour market principle according to which the employer should not be able to hire cheaper, non-unionised, labour. This involves a 'free-rider' difficulty, although it is possible for some benefits to be granted solely to union members. Moreover, if not regulated differently between the employer and an employee, even an employer who is not bound by a collective agreement could be required to apply its provisions if these can be viewed as custom.[443]

Some countries comprise a law governing collective agreements, meaning that general contract law merely plays a supplementary role, whereas in others, *"if considered as binding at the level of the general legal system, (collective agreements) are governed by the general principles of the law of contract provided these are compatible with the special nature and function of such agreements"*.[444] In other cases, collective agreements are considered *"as binding exclusively 'in honour', i.e. merely on the inter-organisational plane, the general principles relating to contracts with legal effect not applicable to them"*.[445] Thus, collective agreements can be considered to be contracts or agreements, *"binding only on the social plane"*.[446] It seems that, even though considered to have a contractual character, the generally recognised normative effect gives the collective agreement a somewhat statutory dimension. Hence, labour market regulation can be statutory or contractual but the choice between one or the other is often more formal than

[441] Axel Adlercreutz and Birgitta Nyström, 'Part I. The Individual Employment Relationship – Sweden' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2021), p. 137.
[442] Axel Adlercreutz and Birgitta Nyström, 'Part II. Collective Labour Relations – Sweden' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2021), p. 203.
[443] Jonas Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (2002) Stability and Change in Nordic Labour Law: Scandinavian Studies in Law Vol. 43, pp. 203-210; Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), p. 204.
[444] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 5.
[445] ibid, p. 5.
[446] ibid, p. 5.

substantial.[447] Fahlbeck stated that *"collective agreements dwell in the borderland between private law contracts and public law statues."*[448] Therefore, applying private law rules to collective agreements does not explain the validity of an agreement's terms to third parties. Also, it does not explain potential state intervention in the bargaining process. Seeing a collective agreement as a statutory source of norms is also incomplete since its terms lack features that are specific to legal norms.[449] When referring to the possibility of extension, Fahlbeck questioned if countries where such option exists would have collective agreements with a more statutory character. Differently, collective agreements emanating from countries without extension rules would be considered as pure private law instruments. However, in countries like Sweden collective agreements possess a wide coverage, giving them a *"certain statutory aura"*.[450] Fahlbeck also highlighted the moment of state intervention in the regulation of collective agreements as a decisive factor in their legal qualification. He found that countries where no disruptive events provoked government intervention tend to regulate collective agreements in a private law framework (e.g., Nordic countries) or without any regulation (e.g., Britain).[451] Differently, countries 'recently' freed from authoritarian regimes had taken a diverse approach, asserting the binding nature of collective agreements in legislation (e.g., Spain, Portugal, Greece).[452]

3.2.2. In International Labour Law

Historically, the First International Labour Conference, in 1919, made a mention to collective agreements in the context of the Hours of Work (Industry) Convention. This Convention referred to arrangements made for its application through collective agreements. Subsequently, in 1927, the tenth session of the International Labour Conference adopted a resolution on the 'general principles of contracts of employment', a term which

[447] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), p. 27.
[448] ibid, p. 16.
[449] Pedro Romano Martinez, *Direito do Trabalho* (Almedina, 2010), pp. 1230 ss.
[450] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), pp. 15-17.
[451] ibid, pp. 31-32.
[452] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), p. 246.

encompassed both collective agreements and contracts of employment. Despite dealing with the subject in the context of agriculture (1928-1936) and at its nineteenth session, dealing with the draft Forty Hour Convention and a Resolution concerning the maintenance of workers' standard of living, it was only in 1935 that the Governing Body of the ILO submitted a report to the International Labour Conference on the topic. The aim of the report was to provide a general survey and not the necessary information for the adoption of a convention or a recommendation.[453] In 1948 the International Labour Conference adopted the Convention on Freedom of Association and the Protection of the Right to Organise (No. 87), defining unions' rights in regard to their establishment and functioning. In the following year, the Conference adopted the Convention on the Right to Organise and Collective Bargaining (No. 98). Article 4 of **Convention No. 98** offers some guidelines on the concept of collective agreement, based on its definition of collective bargaining. According to this provision, collective bargaining is a:

> Voluntary negotiation 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.

The Committee on Industrial Relations, established by the International Labour Conference in 1951, recognised the considerable differences between systems of collective agreements, *"related to the diverse conceptions and traditions peculiar to the different countries"*.[454] The Committee focused on finding essential and comprehensive principles on the matter. Hence, also in 1951, when Convention No. 98 entered into force, the General Conference of the ILO adopted, with a two thirds majority, **Recommendation No. 91**, concerning collective agreements. This Recommendation offers essential insights into the core features of a collective agreements. As for other ILO standards, Recommendation No. 91 was based on a comparative analysis of

[453] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 1-3.
[454] International Labour Conference, *Record of Proceedings* (34th Session 1951), p. 601.

both law and practice of the organisation's member states, unveiling the essential elements of collective bargaining from a comparative perspective.[455]

The Recommendation comprises a very broad definition of collective agreement and does not provide a precise indication on an agreement's content. The diversity of matters that can possibly be included in an agreement justifies this avoidance. It would be challenging to construct a rigid separation between matters suitable for bargaining and those belonging to management.[456] According to Paragraph 2 (1) of Recommendation No. 91:

> For the purpose of this Recommendation, the term collective agreements means all agreements in writing regarding conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.

In Paragraph 3, the Recommendation determines the **binding character of** collective agreements and their **normative legal efficacy**:

> (1) Collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. Employers and workers bound by a collective agreement should not be able to include in contracts of employment stipulations contrary to those contained in the collective agreement.

[455] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 67-70.
[456] Jean de Givry, 'Legal Effects of Collective Agreements' (1958) The Modern Law Review Vol. 21, pp. 501-509.

(2) Stipulations in such contracts of employment which are contrary to a collective agreement should be regarded as null and void and automatically replaced by the corresponding stipulations of the collective agreement.

(3) Stipulations in contracts of employment which are more favourable to the workers than those prescribed by a collective agreement should not be regarded as contrary to the collective agreement.

According to the Recommendation, collective agreements are binding and take precedence over individual contracts of employment. If an employment contract comprises stipulations that are contrary to the collective agreement, such stipulations are to be regarded as null and void and substituted by those prescribed in the collective agreement. However, if an individual employment contract comprises more favourable stipulations, this should not be regarded as contrary to the collective agreement.

The Conference left member states free to choose between encouraging collective bargaining through the voluntary or the legislative method. In Paragraph 3 (4) the Recommendation states that, if effective observance of the provisions of collective agreements is secured by the parties, the provisions of subparagraph (1), (2) and (3) should not be regarded as calling for legislative measures. Still referring to the effects of collective agreements, Paragraph 4 of the Recommendation provides that an agreement's stipulations should apply to all workers of the classes concerned in the undertakings covered by the agreement, unless the contrary is specifically provided for. Paragraph 5 deals with the extension of collective agreements to all employers and workers included within the industrial and territorial scope of the agreement. National laws can make such extension subject to conditions. Finally, Paragraphs 6 and 7 focus on the interpretation and supervision of the agreements. According to the Recommendation, disputes over the interpretation of a collective agreement should be submitted to an appropriate procedure, **established by agreement or law**. Supervision

should be ensured by the parties, namely the employers' and workers' organisations, bodies established for that purpose, or bodies established *ad hoc*.

The broad definition of collective agreement constructed by the ILO and the fact it was comprised in a recommendation, instead of a convention, represents a consideration of the variety present in **different national contexts**.[457] In fact, while discussing the recommendation, the Committee agreed that states have the freedom to choose between implementation by agreement or legislation, notwithstanding the possibility of combining these methods. Thus, based on their own, specific, socio-economic and historical developments, countries have developed legislation on collective bargaining. Some countries provide a legal definition of collective agreements, whereas others focus on legally promoting collective bargaining.[458] It is worth noting that legislation promoting collective bargaining (i.e., negotiation, matters concerning union recognition) is different from agreement promoting legislation.[459] The preparatory works show that a recommendation was considered to be *"better suited to a field in which relations between employers and workers are, in a number of countries, based on agreements rather than on national regulations"*.[460] Consequently, only a recommendation would be sufficiently comprehensive to cover the practices adopted in different countries. Furthermore, supporters of a recommendation argued that the respect for the principle of free negotiation required an avoidance of rigid regulations.[461] Differently, those in favour of a convention argued this would promote collective agreements in less industrialised countries, particularly in those without national legislation or practical experience.[462] Still, the two amendments proposing to change the regulations

[457] Nicolas Valticos and Geraldo Von Potobsky, *International Labour Law* (Kluwer Law and Taxation Publishers 1995).
[458] Yasuo Suwa, 'The Actors of Collective Bargaining: Is the System Really Sustainable in the Future?' in Roger Blanpain (ed.), *The Actors of Collective Bargaining: A World Report* (Law and Social Security, Kluwer Law International 2003), p. 26.
[459] Kahn-Freund, *Labour and the Law* (n398), pp. 70-90.
[460] International Labour Conference, *Record of Proceedings* (n454), p. 602.
[461] ibid, p. 602.
[462] ibid, p. 602.

into a convention (one referent to a part of the text and another one to its totality) were rejected.

According to the Right to Organise and Collective Bargaining Convention (No. 98), the Collective Bargaining Convention (No. 154), and the Collective Agreements Recommendation (No. 91), the content of collective bargaining focuses on the terms and conditions of work and employment and the regulation of relations between employers and workers and between their organisations. Recommendation No. 91 in particular refers to the *"regulation of terms and conditions of employment"*. Both freedom of association and the right to collective bargaining are fundamental rights. According to the Freedom of Association and Protection of the Right to Organise Convention (No. 87), freedom of association refers to the right of workers and employers to freely establish the rules of the corresponding organisation, as well as to form and join organisations of their own choosing for furthering and defending the interests of workers or employers (Articles 2 and 10). Collective bargaining, as defined in the Collective Bargaining Convention (No. 154), refers to negotiations between an employer, a group of employers, or one or more employers' organisations, and one or more workers' organisations for determining working conditions and terms of employment, regulating the relations between employers and workers, and the relations between employers or their organisation and a workers' organisation or organisations (Article 2). Both Convention No. 87 and Convention No. 98 constitute two of the eight core conventions, according to the ILO Declaration on Fundamental Principles and Rights at Work. According to its Article 3, Convention No. 98 states that measures appropriate to national conditions shall be taken, where necessary, to ensure the respect of the right to organise. Likewise, according to Article 4, state parties should take measures appropriate to the national conditions and, where necessary, to encourage the full development and use of machinery for voluntary negotiation between workers and employers in order to regulate the terms and conditions of employment through collective agreements.

The following table provides a list of relevant instruments regarding freedom of association and collective bargaining, relevant in regard to collective agreements.

Organisation	Name	Subject
ILO	Constitution (1919) and Declaration of Philadelphia (1944). [463]	The Constitution contains the organisational structure, procedure, legal status, as well as the privileges and immunities of the ILO. The Declaration of Philadelphia reaffirms the ILO's fundamental principles, sets the aims and purposes of the organisation.
	Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention 87).[464]	Right for workers and employers to establish and join organisations of their choosing without previous authorisation.
	Right to Organise and Collective Bargaining Convention, 1949 (No. 98).[465]	Principles on the right to organise and to bargain collectively.
	Right of Association (Agriculture) Convention, 1921 (No. 11).	Obligation for states to secure that those engaged in agriculture have the same rights of association as industrial workers.
	Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84).	Right of association and settlement of labour disputes in non-metropolitan territories.
	Workers' Representatives Convention, 1971 (No. 135).	Protection and facilities afforded to workers' representatives in the undertaking.
	Workers' Representatives Recommendation, 1971 (No. 143).	
	Rural Workers' Organisation Convention, 1975 (No. 141).	Organisation of rural workers and their role in economic and social development.
	Rural Workers' Organisations Recommendation, 1975 (No. 149).	
	Labour Relations (Public Service) Convention, 1978 (No. 151).	Freedom of association and procedures for determining conditions of employment in the public service and supplementing Recommendation.
	Labour Relations (Public Service) Recommendation, 1978 (No. 159).	
	Collective Bargaining Convention, 1981 (No. 154).	Promotion of collective bargaining and supplementing Recommendation.
	Collective Bargaining Recommendation, 1981 (No. 163).	
United Nations	Universal Declaration of Human Rights, 1948.	In particular, Article 20 on the right to freedom of peaceful assembly and association, and Article 23 (4) on the right

[463] Constitutional texts of the ILO.

[464] Recognised, according to the ILO Declaration on Fundamental Principles and Rights at Work, as one of the organisation's core conventions, which states have an obligation to promote and realise, based on membership and regardless of ratification.

[465] Recognised, according to the ILO Declaration on Fundamental Principles and Rights at Work, as one of the organisation's core conventions

		to form and join trade unions for the protection of one's interests.
	International Covenant on Civil and Political Rights, 1976.[466]	In particular, Article 21 and 22 on the right of peaceful assembly, freedom of association and the right to form and join trade unions for the protection of one's interests.
	International Covenant on Economic, Social and Cultural Rights, 1976.[467]	In particular, Article 8 on the right to form and join trade unions without restriction.
Council of Europe	European Convention on Human Rights, 1953.[468]	In particular Article 11 on the right to freedom of assembly and association.
	European Social Charter, 1965.[469]	In particular, Article 5 and 6 on the right to organise and the right to collective bargaining.
European Union	Charter of Fundamental Rights of the European Union, 2000.[470]	In particular, Article 12 on the right to freedom of assembly and association.

Table 1. Relevant ILO instruments on freedom of association,[471] collective bargaining, and collective agreements, as well as other international and regional instruments.

3.2.3. Country Selection and Outline of Legal Framework

In order to highlight how, at the domestic level, and despite variations, certain aspects exist throughout different legal systems, distinct countries are mentioned. This illustrates the existence of a common thread in regard to the core features of a collective agreement. The aim is not to carry out an in-depth comparison of these countries' regulative options. Differently, such remarks intend to emphasise how, notwithstanding some standard deviation, certain aspects are common throughout different systems.

The **selection of countries** as illustrative of specific core features is based in three main reasons. Some domestic frameworks are particularly relevant, due to their unique characteristics or importance in terms of the analysis carried

[466] Date of entry into force.
[467] Date of entry into force.
[468] Date of entry into force.
[469] Date of entry into force.
[470] With the Lisbon Treaty (2009), the Charter has the same legal value as the European Union Treaties.
[471] Alberto Odero and Horacio Guido, *ILO Law on Freedom of Association: Standards and Procedures* (International Labour Office 1995). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087994.pdf [Accessed 6 September 2019].

out for global framework agreements as potential collective agreements. That is the case of the United Kingdom in regard to the binding character in particular. Other countries are repeated due to their importance as territories where the multinational enterprises' headquarters are located or originate, as well as countries where the implementation of global framework agreements can have a substantial impact. Accordingly, countries where signatory companies have their headquarters, namely Spain, Sweden, France, and Italy are recurrently referred. Likewise, Bangladesh and Cambodia are mentioned as countries where these companies contract their suppliers and where these agreements can have a greater impact in terms of the regulation of working conditions throughout global supply chains. The framework of Cambodia, Sweden, and Spain are especially relevant for the interviews conducted. Finally, other countries are referred when relevant in regard to a particular core feature. That is the case of, for instance, countries with an explicit legal requirement to bargain in good faith.

Due to its unique features, remarks in regard to the collective agreement within the **British context** are reiterated throughout the following sections. Thus, it is relevant to lay out key notions regarding the British system. As in several other legal systems, the collective agreement constitutes a significant source of labour law, *"particularly remarkable in view of their independence from the formal legal system"*.[472] Section 178 (1) of the Trade Union and Labour Relations Act, defines a collective agreement as

> Any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified.

Section 179 states that:

> (1) A collective agreement shall be conclusively **presumed not to have** been intended by the parties to be a **legally enforceable**

[472] Simon Deakin and Gillian S. Morris, *Labour Law* (6th edn, Hart Publishing 2012), p. 69.

> contract unless the agreement (a) is in writing, and (b) contains a provision which (however expressed) states that the parties intend that the agreement shall be a legally enforceable contract.

Moreover, it is not legally required for the collective agreement to be concluded in a particular form, cover certain matters, last for a minimum or maximum period of time, or be registered. In 1954, Otto Kahn-Freund linked the lack of resort to actions for injunctions or damages by trade unions and employers' organisations to the parties' intention for the agreement to be binding in honour only and enforced through social sanctions, instead of legal sanctions.[473] The Donovan Commission (1965-1968) restated this idea, underlining the lack of intention to make collective agreements legally binding as one of the distinctive features of the British system.[474] In 1969, the question was judicially raised.[475] In Ford Co Ltd v AUEFW, the court held that the commercial context was outweighed by other considerations, namely the agreements' wording, their nature, the parties' expressed views and by extra judicial authorities. Accordingly, the collective agreement was not intended to be legally binding.[476] After the introduction (and failure)[477]

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[473] Otto Kahn-Freund, 'Legal Framework' in Allan Flanders and Hugh Clegg (eds) *The System of Industrial Relations in Britain* (Blackwell), p. 57; Deakin and Morris, *Labour Law* (n472), p. 69.

[474] *"In this country collective agreements are not legally binding contracts. This is not because the law says that they are not contracts or that the parties to them may not give them the force of contracts. There is in fact nothing in the law to prevent employers or their associations and trade unions from giving legal force to their agreements. This lack of intention to make legally binding collective agreements, or, better perhaps, this intention and policy that collective bargaining and collective agreements should remain outside the law, is one of the characteristic features of our system of industrial relations which distinguishes it from other comparable systems."* See, Royal Commission on Trade Unions and Employers' Associations 1965-1968: Report, pp. 470-471.

[475] Both Kahn-Freund's writings and the Donovan Report were mentioned. Although not considering them as precedents affecting the legal decision of the case, but instead as material matters when analysing the intention of the parties. Evidence brought before the Donovan Commission by the Confederation of British Industry and the Ministry of Labour in 1965 are also mentioned. Similarly, according to this evidence, collective agreements were not legally enforceable, also highlighting this was in contrast in comparison to most countries. The evidence brought by the Trade Union Congress states the same, stressing that the effectiveness of the obligations arisen from the agreement was not dependent of legal sanctions and that in Britain legal sanctions had almost no practical importance. See, Ford Motor Co. Ltd v. Amalgamated Union of Engineering and Foundry Workers and Others [1969] 2 ALL ER 481, [62] [64] [65].

[476] Ford Motor Co. Ltd v. Amalgamated Union of Engineering and Foundry Workers and Others [1969] 2 ALL ER 481, [61-62], [67], [68].

[477] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), p. 164.

of a presumption of legal enforceability in the Industrial Relations Act of 1971, in 1974 the reverse presumption was implemented.[478] The lack of legal enforceability of the collective agreement stands in contrast to most countries.[479] Furthermore, the terms of a collective agreement are not automatically incorporated in contracts of employment, meaning that an employer is not obliged to apply the terms of an agreement to its workers. Also, differently from what is provided in several countries, an extension procedure with regard to a collective agreement's effects is not legally regulated.[480] In Great Britain, "*the collective agreement is neither a contract nor a Code"*.[481]

3.2.4. In Domestic Labour Law

The present subsection looks into different domestic definitions of the collective agreement, while underlining some shared features. At the domestic level, it is often possible to find a legal provision containing a definition of collective agreement and/or stipulating its content and the contracting parties. Some systems provide an explicit legal definition, whereas in others the concept is developed by general practice, case law, or doctrine. [482] This section views the concept of definition in a broad sense, including both explicit and implicit definitions. Accordingly, clear definitions of a collective agreement, references to its content or the contracting parties, and legal definitions concerning the application of a specific act are all considered. As it is seen in the following paragraphs, some key aspects are part of all domestic definitions.[483]

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[478] Deakin and Morris, *Labour Law* (n472), pp. 70-71.

[479] *"The general non-enforceability of collective agreements in Britain stands in marked contrast to the position in many other systems."* However, as repeated throughout the dissertation, this enforceability refers to enforceability carried out through legal sanctions. See, Deakin and Morris, *Labour Law* (n472), p. 71.

[480] ibid, pp. 71-72.

[481] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (399), pp. 153-200; Deakin and Morris, *Labour Law* (n472), p. 73.

[482] XIVth Meeting of European Labour Court Judges (n111).

[483] As stated in 1984, despite referent to the European context, *"in all the countries alike where no general definition of a collective agreement exists in law (...) a general notion has been developed in case law and legal theory because of the need already mentioned to provide an adequate legal structure for a phenomenon of remarkable social importance"*. See, Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 2.

Either preceding or succeeding Recommendation No. 91, the national definitions of collective agreement share the basic features identified in Paragraph 2 (1). In particular, most European Union countries contain a legal definition, in which collective agreements are considered to be agreements between an employer or a group of employers and a representative of workers or a trade union, regulating working conditions. However, some countries do not possess a statutory definition and, differently from what is provided in the Recommendation, in some cases the written form is not required.[484] The next tables systematise various countries according to whether they possess an explicit legal definition of collective agreement, a provision which indicates it, referring to an agreement's content, effects, and/or the contracting parties, or do no not comprise any legal provisions on the matter. Still, even in countries without an explicit or implicit legal definition, both practice and the law assume *"the notion derived from common use"*.[485]

Country	Provision	Legal definition
Belgium	Article 5 of the Law on Collective Agreements and Joint Committees	An agreement between one or more workers' organisations and one or more employers' organisations or one or more employers, which determines the individual and collective relations between employers and workers within companies or branch of activity and regulating the rights and obligations of the contracting parties.[486]
Cambodia	Article 96 of the Labour Law	*"The purpose of the collective agreement is to determine the working and employment conditions of workers and to regulate relations between employers and workers as well as their respective organisations. The collective agreement can also extend its legally recognised roles to trade union organisations and improve the guarantees protecting workers against social risks."* *"The collective agreement is a written agreement relating to the provisions provided for in Article 96 – paragraph 1".*[487]
Spain	Article 82 (1) (2) of the Workers' Statue	The result of the negotiations carried out by representatives of workers and employers, which are the expression of the agreement freely entered into by them under their collective autonomy. Collective agreements enable workers and employers to regulate working

[484] Bruun, 'The Autonomy of the Collective Agreement' (n406), pp. 6-7.
[485] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 2.
[486] International Labour Organisation, *IRLEX – Belgium* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:BEL,,2019:NO [Accessed 20 May 2021].
[487] International Labour Organisation, *IRLEX – Cambodia* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:KHM,,2015:NO [Accessed 20 May 2021].

		conditions and productivity in the relevant area and may regulate labour peace.[488]
Sweden	Section 23 of the Employment (Co-Determination in the Workplace) Act	A written agreement between an employer or an employers' organisation and a trade union, concerning the conditions of employment and the relationship between the employer and the employee. [489]
United Kingdom	Section 178 (1) (2) of the Trade Union and Labour Relations Act	*"Any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified."*[490]

Table 2. Explicit definitions of a collective agreement in different countries.

Country	Provision	Legal definition
India	Section 2 (p) of the Industrial Disputes Act	*"'Settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to (an officer authorised in this behalf by) the appropriate Government and the conciliation officer."*[491]
Republic of Korea	Articles 34 and 35 of the Trade Union and Labour Relations Adjustment Act	Regulates the legal and binding effect of collective agreements.[492]

Table 3. Implicit definitions of a collective agreement in different countries.

[488] International Labour Organisation, *IRLEX – Spain* (2015). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2015:NO [Accessed 9 September 2019].

[489] As explained by Axel Adlercreutz and Birgitta Nyström, the definition reveals that a collective agreement entails four requirements, namely a bilateral character, the fact it needs to be in writing, that the employees' party must be an organisation, and that the agreement must regard the terms of employment and the relationship between the contracting parties. Section 25 establishes that an agreement is not valid if its content is other than as referred in Sections 23 and 24. Accordingly, an agreement's scope can be very comprehensive. See, Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 204-205.

[490] International Labour Organisation, *IRLEX – United Kingdom* (2015). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:GBR,,2015:NO [Accessed 9 September 2019].

[491] International Labour Organisation, *IRLEX – India* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:IND,,2019:NO [Accessed 20 May 2021].

[492] International Labour Organisation, *IRLEX – Republic of Korea* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:KOR,,2015:NO [Accessed 20 May 2021].

Explicit legal definition[493]	Implicit definition[494]	No legal provision
Belgium Cambodia Norway Spain Sweden United Kingdom Viet Nam	India Republic of Korea	Bangladesh France Italy

Table 4. Legal definition of the collective agreement in different countries.

The above-mentioned catalogue shows how, regardless of providing an explicit legal definition of collective agreement, stipulating indicators in regard to the concept, or lacking any legal provisions on the matter, some features are repeatedly highlighted throughout different countries. These do not deviate from what is provided at the international level regarding the contracting parties and the general content or aim of an agreement, i.e., the regulation of working conditions and terms of employment, and the relation between the contracting parties. Hence, there seems to be an understanding on an agreement's core features.[495] A collective agreement presupposes the intervention of a collectivity (i.e., where the workers' side cannot amount to one individual), which is voluntarily negotiated, carrier of certain effects and a binding character in particular, and with a broad material scope.[496] Furthermore, a collective agreement can be required to be put into writing and fulfil certain formal conditions. The following sections analyses these specific features, as well as others that, despite not always being comprised

[493] Other examples include, for instance, Australia, Brazil, China, Indonesia, Japan, Myanmar, the Philippines, and the Netherlands. See, International Labour Organisation, *Legal Database on Industrial Relations - IRLex*. Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1:0::NO::: [Accessed 9 September 2019].

[494] Other examples include, for instance, Argentina, Hungary, and Poland. See, International Labour Organisation, *Legal Database on Industrial Relations – IRLex* (n493).

[495] As stated in 1984, *"Examination of countries, (...) makes it possible to point to a common concept of the collective agreement everywhere performing the same function of independent regulation by the occupational groups concerned of a) the terms of employment to be incorporated in individual contracts separately and b) the relations directly arising between the same groups at collective level. In all countries, in fact, even where there is no express normative provision to that effect, a collective agreement performs this double function which characterises its contents and aspects according to the traditional distinction between the normative part and the obligatory part"*. See, Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 2.

[496] Folke Schmidt, *Law and Industrial Relations in Sweden* (Almqvist & Wiksell 1977), p. 122; Kahn-Freund, *Labour and the Law* (n398), p. 70.

in the legal definitions are repeatedly displayed or relevant in terms of an agreement's placement in a legal framework.

3.3. The Collective Agreement: Core Features

The above-mentioned definition of collective agreement, based on both the international context and the different domestic legal frameworks, enable the identification of a set of key elements. These are the basis for the analysis carried out in chapter 5 and the construction of an identification framework for which global framework agreements can indeed be viewed as collective agreements.

Niklas Bruun refers to the definition of collective agreement throughout different EU member states, emphasising these are formal written agreements, which regulate working conditions for individual employees. Normally, the parties to an agreement are an employer or an employers' association. On the side of workers', collective agreements are signed by a representative of workers or an organisation of workers. This goes in accordance with Recommendation No. 91, which specifically requires the workers' side to be representative, meaning that not all organisations or workers' representatives can negotiate and sign collective agreements. Furthermore, as an agreement, it cannot be imposed on the parties. This requirement is connected to its negotiation and implementation, which must be carried out in good faith. Bruun also refers to the exceptionality of Denmark and the UK, where a statutory definition of collective agreement does not exist. As the scholar highlights, this this is often related to the countries' legal system. Hence, in the Nordic countries, the UK, and Italy, the collective agreement is often considered to be a private law contract, whereas in Spain, France, and Belgium, its relationship with the collective agreement is closer to public law.[497]

[497] Bruun, 'The Autonomy of the Collective Agreement' (n406), pp. 6-7.

As explicitly stated in Recommendation No. 91, a collective agreement must be binding between the signatories. Collective agreements regulate the terms and conditions of employment, covering the terms applied to union members (and sometimes non-union members), as well as the relationship between the signatory parties. As chapter 4 addresses, global framework agreements comprise a minimum ILO based content, which has increasingly become more comprehensive. Global framework agreements function as basic hallmarks, establishing minimum conditions. These, in some cases, might improve working conditions in the countries where a company operates. Nevertheless, they work as a ground basis from which working conditions can be improved, according to the different national conditions. The aim is to apply a minimum benchmark of labour standards, making the respect for (at least) basic labour rights mandatory throughout a company's operations. A key feature, especially relevant in the discussion regarding global collective agreements in chapter 5, refers to an agreement's binding character and correspondent enforcement. This is normally focused on judicial settlement, although there are exceptions. These are particularly relevant for analysing the enforcement of global collective agreements.

Other matters, for instance relating to the temporal scope of a 'traditional' collective agreement are further detailed in the respective section of the present chapter. In regard to the form, registration, and publication of collective agreements, chapter 3 underlines that, in the vast majority of countries, a collective agreement must be written, as stated in paragraph 2 (1) of Recommendation No. 91. Finally, a collective agreement is placed in the hierarchy of labour law sources in accordance with domestic legislation, often working based on a favourability principle. However, it is worth noting, that, while these eight requirements are strong indicators of an agreement's character as a collective agreement, national definitions of collective agreements often comprise looser requirements for such identification. Hence, it is worth questioning whether demanding higher benchmarks for global collective agreements is reasonable or excessive. Hence, global

collective agreements must fulfil these characteristics, in a more or less restrictive manner.

The above-mentioned shows that the identified core features of a collective agreement are:

1) The parties' representativeness;
2) Voluntariness;
3) Good faith;
4) The content and effects;
5) Enforcement mechanisms;
6) Scope;
7) Form and;
8) Relation to statutory law, contracts of employment, and other collective agreements.

3.3.1. Representativeness

The focus of this section is to highlight relevant aspects concerning the representativity of workers in the negotiation and signature of collective agreements. This is considered relevant for the analysis of global union federations as representatives of workers in the negotiation and signature of global framework agreements in general and global collective agreements in particular. Accordingly, emphasis is given to the requirement comprised in Recommendation No. 91, according to which workers' organisations need to be representative. Hence, the representativeness of the employers' side is not analysed. Furthermore, all agreements are, at the present moment, company based.

In relation to global framework agreements, chapter 4 highlights some problematic aspects regarding the coverage of subsidiaries, suppliers, and subcontractors. The aim is not to provide an overview of the legal framework at neither the international nor European level. Also, despite the interest that different domestic alternatives can have in regard to whether the competence

to negotiate collective agreements solely belongs to trade unions or whether it extends to groups of workers not necessarily organised in a recognised form,[498] that topic is not expanded in the present section. Accordingly, the selection of focal points is based on the overall intent of the current section, as well as the fact that some of the above-mentioned features are not relevant in the analysis carried out in chapter 5 for global collective agreements.

A) In International Labour Law

As a separate legal discipline, labour law is distinguished from civil law by, among other things, its collective character, focusing on collective negotiations and collective compromises.[499] Collective agreements involve both sides of the labour relation. The employer side can, but does not necessarily have to, be represented by an **organisation**. Differently, the workers' side requires the involvement of one or more organisations or, in their absence, elected representatives – i.e., as stated in Article 4 of ILO Convention No. 98 and Paragraph 2 (1) of Recommendation No. 91. Both Article 5 of the Workers' Representatives Convention (No. 135) and Article 3 (2) of the Collective Bargaining Convention (No. 154) highlight that the existence of **elected representatives** does not undermine the position of workers' organisations. In fact, when discussing Recommendation No. 91, the situation of countries with underdeveloped trade union organisations was taken into consideration and, in the absence of such organisations, duly elected and authorised worker representatives were admitted to conclude collective agreements. The governments of Denmark, Norway, Sweden, and Argentine proposed deleting this specificity, arguing that such reference was already comprised in Convention No. 98. Differently, the workers' members argued that maintaining the reference represented a guarantee of trade union independence. The suggested amendment was rejected[500] and consequently Paragraph 2 (1) of the Recommendation states the following:

[498] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 6.
[499] Bruun, 'The Autonomy of the Collective Agreement' (n406).
[500] International Labour Conference, *Record of Proceedings* (n454), p. 603.

> (…) or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations.

ILO **Convention No. 87**, on Freedom of Association and Protection of the Right to Organise, states that workers and employers have the right to establish and join organisations of their own choosing without previous authorisation and have right to draw up their constitutions and rules, elect their representatives, organise their administration and activities, and formulate their programmes. The convention also states that public authorities shall refrain from interfering in a way that could restrict this right or obstruct its lawful exercise. According to Article 3, these organisations also have the right to establish and join federations and confederations and to affiliate with international organisations. **Convention No. 98** asserts that workers are to enjoy adequate protection against acts of anti-union discrimination in respect of their employment. The same convention also declares that measures are to be taken to encourage and promote the full development and utilisation of machinery for voluntary negotiation 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. And, as the ILO's Freedom of Association Committee stated, first-level trade unions, federations, and confederations should be able to conclude collective agreements.[501]

The workers' side should involve a collectivity, which needs to possess 'real representativity'.[502] As indicated in ILO Recommendation No. 91, workers' **organisations need to be representative**, if a collective agreement is to reflect a fair balance between both workers and employers' interests.[503] Still, when discussing the definition of collective agreement in Recommendation No. 91, the Government members of Denmark, Norway, Sweden, and Italy

[501] International Labour Conference, *General Survey* (International Labour Office 1994), paras. 781-783; International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph 883.
[502] Alan Gladstone and Muneto, Ozaki, 'Trade Union Recognition for Collective Bargaining Purposes' (1975) International Labour Review Vol. 112 Nos. 2-3, p. 164.
[503] ILO, Factsheet No. 2 (14 December 2015).

and the employers' members presented amendments suggesting the term 'representative' should be deleted from the phrase *"representative worker organisations"*. They argued the phrase was incompatible with the principle of freedom of association. However, other members of the Committee emphasised the term's importance when dealing with the application of collective agreements to third parties. Likewise, workers' members opposed the deletion and the majority of the Committee voted in favour of maintaining the term.[504]

The **concept of representativeness** first emerged in the 1919 Treaty of Versailles and the ILO's statues, which referred to consultation with the 'most representative organisations' of employers and workers. According to Paragraph 3 of Article 389 of the Peace Treaty, which contained the ILO Constitution and its Article 3 (5) in particular:

> The members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are the most representative of employers or workpeople, as the case may be, in their respective countries.

The expression created disputes and, already in **1922**, the **International Court of Justice** was faced with questions regarding the provision's proper interpretation in a case concerning the Dutch nomination for the workers' delegate. When making the nominations for the first General Labour Conference, the Netherlands' Minister of Labour invited the five labour organisations he considered to be the most important. Since there was no opposition and based on its numerical strength, the Netherlands Confederation of Trade Unions selected the workers' delegate for the first two sessions of the General Labour Conference. However, in 1921, due to a disagreement between the Confederation of Trade Unions and the other organisations, the Dutch government chose the nominee proposed by the three other organisations which, together, constituted the most representative

[504] International Labour Conference, *Record of Proceedings* (n454), p. 603.

organisations. The Netherlands Confederation protested the nomination, arguing that, since it was numerically the largest, it possessed an exclusive right to appoint a delegate. The Labour Conference admitted the Dutch nominee but invited the ILO Governing Body to request the Council of the League of Nations to obtain an advisory opinion from the court on whether the nomination had been done in accordance with the Treaty. The court unanimously stated the nomination respected Paragraph 3 of Article 389. It emphasised that Paragraph 3 contained a legal obligation and that the expression 'most representative organisations' referred to actual representation, which could only be examined on a case-by-case basis. Hence, the court recognised that membership was an important factor, even decisive in the absence of other relevant factors, but it could not constitute the only criterion. The provision did not contain a legal obligation to nominate a delegate from the largest organisation and such interpretation could neither be deduced or harmonised with the Article's reasonable interpretation and application.[505] Furthermore, the court stated the Constitution's reference to 'organisations' in its plural form could not clearly be understood as a mere recognition regarding the inclusion of both employers' and employees' organisations. Differently, it could cover the possibility of attempting to reach an agreement with more (or even without) the largest organisation.[506] The court stated that, since the Treaty did not include a criterion for the definition of the term 'representative', this was a question that could only be decided on an individual basis, whose duty to decide belonged to the government.[507] The Netherlands' government

[505] *Nomination of the Workers' Delegate for The Netherlands at the Third Session of the International Labour Conference* (Advisory Opinion) 1922. Available At: http://legal.un.org/PCIJsummaries/documents/english/PCIJ_FinalText.pdf [Accessed 6 March 2018]; Rudolf Bernhardt, *Decisions of International Courts and Tribunals and International Arbitrations* (1st edn., North Holland 1981); Edith Franssen and A. T. J. M. Jacobs, 'The Question of Representativity in the European Social Dialogue' (1998) Common Market Law Review Vol. 35, p. 1312.

[506] Bernhardt, *Decisions of International Courts and Tribunals and International Arbitrations* (n505), pp. 76-77.

[507] The Advisory Opinion stated the following: *"There is no definition of the word 'representative' in the Treaty. The most representative organisations for this purpose are, of course, those organisations which best represent the employers and workers respectively. What these organisations are, is a question to be decided in the particular case, having regard to the circumstances, in each particular country at the time when the choice falls to be made. Numbers are not the only test of the representative character of the organisations, but they are an important factor; other things being equal, the most numerous will be the most representative. The Article throws upon the Government of the State the duty of deciding, on the data at its disposal, what organisations are, in point of fact, the most representative"* (paragraph 26). See, *Designation of the Workers'*

considered the three other organisations, which had achieved an agreement and which, together, gathered more members than the Netherlands Confederation of Trade Unions, to be more representative.[508] The use of the plural form, in the expression 'industrial organisations', stated in Paragraph 3 was also examined. The court pondered on whether it referred to both sides of industry, meaning that only one organisation should be nominated, or whether it referred to each side individually, meaning all organisations would be taken into consideration. The court considered that, if several organisations representing workers exist, the government should take all into account when selecting the nominee of the workers' delegate.[509] If the largest organisation was always entitled to choose the delegate, in the case of several (smaller) organisations, which together, could represent a greater number of workers, these would always be unable to choose a delegate.[510] Such conclusion should be rejected.[511] Governments should try their best to reach an agreement that may be regarded as the best in representing the workers of that country. The court found that, after failing to reach an agreement with all the relevant organisations, the Netherlands' government acted in accordance with Paragraph 3 of Article 389.[512] Again, in the **1970s**, the International Court of Justice made a key ruling on the matter, determining

Delegate for the Netherlands at the Third Session of the International Labour Conference (Advisory Opinion) 1922. Available At: http://www.worldcourts.com/pcij/eng/decisions/1922.07.31_ILC_delegates.htm [Accessed 7 October 2019].

[508] *International Labour Conferences – Nomination of non-Government delegates; duties of Governments Art. 389, paragraph 3, of Treaty of Versailles* (Advisory Opinion), 1922 PCIJ Series B, No. 1.

[509] According to the Court, *"The only object of the intervention of industrial organisations, in connection with the selection of delegates and technical advisers, is to ensure, as far as possible, that the Governments should nominate persons who opinions are in harmony with the opinions of employers and workers respectively. If, therefore, in a particular country there exist several industrial organisations representing the working classes, the Government must take all of them into consideration when it is proceeding to the nomination of the workers' delegate and his technical advisers. Only by acting in this way can the Government succeed in choosing persons, who having regard to the particular circumstances, will be able to represent at the Conference the views of the working classes concerned"* (paragraph 33). See, *Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference* (n507).

[510] The court gave an example, suggesting that, if in a country six organisations of workers existed, five with 100,000 members and one with 110,000, the candidate proposed for nomination chosen by the five organisations would be discarded in favour one the one selected by the union with more members. According to the court, *"such a result is enough to condemn the interpretation which make it possible, and unequivocal terms would be required to compel its adoption"*. See, *Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference* (n507), paragraphs 34-35.

[511] Bernhardt, *Decisions of International Courts and Tribunals and International Arbitrations* (n505), pp. 76-77.

[512] ibid, pp. 76-77.

that an organisation's numbers were an important factor but did not constitute the only criterion to evaluate representativeness.[513]

The ILO's **Committee of Experts** on the Application of Conventions and Recommendations (CEACR), set up in 1926, referred the concept of representativeness for the first time in 1956, on a case concerning the Union of South Africa. Regarding the extension of collective agreements, the Committee stated that *"The representativeness of the parties must be substantial. Non-parties are not consulted"*,[514] using both the term representativeness and representativity throughout the years.[515] Also, in 1982, the CEACR accepted distinctions based on trade unions' representativity, as long as the determination is based on objective, previously laid down criteria.[516] In 1988, in a case concerning the Belgian National Labour Council, the Committee restated the necessity for objective, predetermined criteria.[517] Also, in 1994, when referring to 'recognition for

[513] Giuseppe Casale, *Union Representativeness in a Comparative Perspective* (ILO-CEET Working Paper No. 18, ILO 1996), p. 1.

[514] International Labour Conference, *Information and Reports on the Application of Conventions and Recommendations – Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)* (39th Session 1956), p. 35. Available At: https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1956-39).pdf [Accessed 7 October 2019].

[515] International Labour Conference, *General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948 and the Right to Organise and Collective Bargaining Convention (No. 98), 1949* (81st Session 1994), p. 108. Available At: https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1994-81-4B).pdf [Accessed 7 October 2019]; Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), pp. 39-40.

[516] According o the Committee, *"it is permissible, to a certain extent, for distinctions to be made or occasion between trade unions on the basis of their degree of representativity, on condition that the determination of the most representative organisations is made on the basis of objective criteria laid down in advance, so as to avoid any possibility of partiality or abuse. The Committee is of the opinion that the criteria fixed by law should enable the trade unions which appear to be the most representative of the workers in a given sector, or a given category of workers, to be associated in the collective bargaining procedures so as to represent and defend the collective interests of their members"*. See, International Labour Conference, *Report III – Information and Reports on the Application of Conventions and Recommendations* (68th Session 1982), p. 113. Available At: https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1982-68).pdf [Accessed 7 October 2019].

[517] The Committee noted *"that the Committee on Freedom of Association considers that the simple fact that the legislation of a country establishes a distinction between the most representative workers' and employers' occupational organisations and other occupational organisations is not in itself open to criticism. However, the determination of the representative occupational organisation must be based on objective and predetermined criteria, so as to avoid any possibility of partiality or abuse. In view of the absence of any criteria in the legislation, the Committee of Experts, in line with the Committee on Freedom of Association, therefore invites the Government to adopt by legislative means objective, predetermined and detailed criteria*

the purposes of collective bargaining', the Committee acknowledged different domestic alternatives on the matter, while reiterating the necessity of objective and predetermined criteria.[518] In the same report, the Committee of Experts affirmed that representativeness criteria should be predetermined and impartial.[519] And, again, in 2007 and 2012, the Committee restated such need, in order to avoid any possibility for bias or abuse.[520] Thus, the representativeness criteria, according to the CEACR should be objective, precise, and predetermined,[521] having in consideration the specificities of the domestic system of industrial relations.[522]

The 2013 ILO guide, entitled 'National Tripartite Social Dialogue' identified that one of the main challenges in regard to social dialogue was the determination of which organisations should take part in collective bargaining. The guide lists the need for precise, objective, and preestablished criteria, in order to avoid partiality or abuse. This means these criteria should not be left to the government's discretion. The report also separates

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to govern the organisations to the National Labour Council and the various public and private sector committees in which the binding collective agreements are formulated, in order to avoid any possibility of partiality or abuse in the choice of organisations authorised to sit in these bodies". See, International Labour Conference, *Report III – Information and Reports on the Application of Conventions and Recommendations: Summary of Reports (Articles 19, 22 and 35 of the Constitution)* (75th Session 1988), p. 145. Available At: https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1988-75).pdf [Accessed 7 October 2019].

[518] The Committee of Experts recognised that in some countries only registered trade unions can be recognised for such. Also, according to the Committee, excessive registration conditions seriously impair the development of collective bargaining. While stating that recognition of trade unions raises the question of representativity, the Committee showed how recognition could be optional, voluntary or a well-established practice. When countries determine a system of compulsory recognition under specific circumstances, the criteria must be objective and preestablished. Likewise, when legislation allows for the determination of an exclusive bargaining agent, certain safeguards must be guaranteed. See, International Labour Conference, International Labour Conference, *General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948 and the Right to Organise and Collective Bargaining Convention (No. 98), 1949* (n515), pp. 108-109.

[519] ibid, p. 275.

[520] International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)* (96th Session 2007), p. 164. Available At: https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2007)1A.pdf [Accessed 7 October 2019]; International Labour Conference, *General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalisation* (201st Session 2012). p. 36. Available At: https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2012-101-1B).pdf [Accessed 7 October 2019].

[521] Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), p. 41.

[522] International Labour Conference, *Application of International Labour Standards 2014 (I) – Report of the Committee of Experts on the Application of Conventions and Recommendations* (103rd Session 2014), p. 90. Available At: https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2014-103-1A).pdf [Accessed 7 October 2019].

representativity criteria as being quantitative (e.g., membership, geographical or industrial coverage, number of collective agreements, elections), qualitative (e.g., respect for democratic principles, financial autonomy, experience, organisational structures), and other (e.g., certain affiliations).[523]

B) In the European Context

As systematised by Eurofound in regard to the EU member states and Norway, representativeness can have different meanings, structured around legal conformity, which is based on a list of formal criteria, or mutual recognition, which is built on informal criteria and self-regulation. Normally countries regulate representativeness using a mix of both criteria. In regard to workers' organisations, when regulated, legally imposed thresholds generally concern union membership or union elections. Differently, countries without legally imposed thresholds base representativeness on 'social strength' and use trade union density as an indicator.[524] Thus, whereas in some countries conformity with legal requirements is fundamental, in others mutual recognition is viewed as more relevant for the assessment of representativeness.[525] Most countries possess a legal framework regulating

[523] International Labour Organisation, *National Tripartite Social Dialogue: An ILO Guide for Improved Governance* (International Labour Office 2013) pp. 103-106. Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_231193.pdf [Accessed 7 October 2019].

[524] Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), pp. 12-13.

[525] The mentioned Eurofound's report classified countries in four representativeness models, based on legal conformity or mutual recognition reliance. Accordingly, countries like Denmark, Ireland, Norway, Sweden and the UK belong to the 'social partner self-regulation'. In these countries, mutual recognition holds a higher significance than legal conformity. Two key countries comprised in the identified model are Sweden and the UK. In Sweden, representativeness is based on mutual recognition and constitutes a legitimacy constructed through custom and practice, as well as organisational development. In the UK, recognition by employers is based on industrial pressure and membership density, making mutual recognition demonstrative of a union's ability to make long-term commitments in the name of members, and constructing a legitimacy based on custom and practice.[525] Differently, a mixed model highlights mutual recognition, while including state regulating and legal conformity. Germany and Hungary constitute examples of this model. Finally, the report identifies a state membership model, in which social strength is a measure for representativeness and a state electoral model, in which electoral success is the main determinant of representativeness. Countries comprised in a state membership model include Bulgaria, Latvia, Poland, and Slovakia whereas a state electoral model includes countries such as Belgium, France and Spain. See, Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), pp. 1, 20, 26-33.

representativeness or stipulating the rights granted to the representative parties, although it is worth noting that, as the **European Committee of Social Rights** (ECSR) has stated, representativity is an autonomous concept, not necessarily identical to the national notion.[526] The ECSR, in line with the criteria developed at the ILO level, has stated that, in order to be compatible with the European Social Charter, and specifically with Article 5, the criteria for representativeness must be reasonable, clear, predetermined, objective, laid down in law, and subject to judicial scrutiny.[527]

Within the **European social dialogue**, representativity refers to *"which organisation(s) are allowed to participate in negotiations leading to Euro-level agreements that can be transformed into EC legislation"*.[528] Therefore, at the European level, and according to Eurofound, representativeness is a criterion used by the European Commission to identify management and labour, whom the Commission must consult and who may initiate social dialogue, as referred in Articles 154 and 155 of the Treaty on the Functioning of the European Union (TFEU).[529] In this context, it is worth distinguishing the social partners that are consulted at the 'consultative stage', for which the European Commission has defined participation criteria, from those that are consulted at the 'law-generation stage', in which the representation matter remains unsolved.[530]

The Commission first referred to representativeness in 1993, in the context of the EU social policy.[531] In Annex 3 of the Commission's Communication

[526] European Committee of Social Rights, Complaint No. 9/2000, *Confédération Française de l'Encadrement CFE CGC'v. France*, decision on admissibility of 6 November 2000, paragraph 6. Available At: https://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":["cc-09-2000-dadmiss-en"]} [Accessed 8 October 2019]; Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), p. 43.

[527] Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), p. 43.

[528] Franssen and Jacobs, 'The Question of Representativity in the European Social Dialogue' (n505), p. 1295.

[529] Eurofound, 'Representativeness' (17 February 2017). Available At: https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/representativeness [Accessed 7 November 2017].

[530] Faina Milman-Sivan, 'Representativity, Civil Society and the EU Social Dialogue: Lessons from the International Labour Organisation' (2009) Indiana Journal of Global Legal Studies Vol. 16 No. 1, p. 312.

[531] According to the Commission, this was due to the fact that, *"Since the adoption of the Maastricht Treaty, the Protocol on Social Policy and the Agreement, a number of organisations which do not participate in the existing social dialogue have submitted formal requests to the Commission to take part directly in the social dialogue. To take a position on this question in full knowledge of the facts, the Commission carried out a*

concerning the application of the Agreement on social policy, entitled 'Main findings of the Social Partners' study (Representativeness)', the Commission defined the criteria for representativeness in the consultation phase of social dialogue.[532] The document states that, *"For collective bargaining, in most countries **mutual recognition** is the basic mechanism, but additional formal or legal requirements may have to be fulfilled. In several countries there are mechanisms (for example quantitative criteria established by law or otherwise) to make a distinction between organisations with (the most) substantial membership and those which are less representative"*.[533] Therefore, for the consultative stage and according to the Commission, organisations should:

> - Be cross industry or relate to specific sectors or categories and be organised at European level;
> - Consist of organisations which are themselves an integral and recognised part of Member State social partner structures and with the capacity to negotiate agreements, and which are representative of all Member States, as far as possible;
> - Have adequate structures to ensure their effective participation in the consultation process.[534]

The Commission published the representativeness criteria in subsequent Communications. In 1996, the Commission's Communication on the Development of Social dialogue at Community Level, stated that representativeness was more based on **mutual recognition** of the European social partners, than an official decision.[535] Furthermore, it specified criteria

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study of European employers' and workers' organisations so as to enable the Commission to understand more clearly the different mechanisms by which representative social dialogues are established at national level, and to assist in assessing how this process might best operate at Community level". See, Commission of the European Communities, *Communication concerning the Application of the Agreement on Social Policy* (14 December 1993), COM (93). Available At: http://aei.pitt.edu/5194/1/5194.pdf [Accessed 8 October 2019].

[532] Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), p. 4.

[533] COM (93) 600 final (n525), p. 39.

[534] ibid, point 24.

[535] Commission of the European Communities, *Commission Communication Concerning the Development of the Social Dialogue at Community Level* (18 September 1996), COM (96) 448 final, points 62 and 72.

according to which it should examine an organisation's genuine interest in the matter and whether the organisation could demonstrate significant representation.[536]

In June 1998, the European General Court (previously, Court of First Instance) addressed the matter of representativeness on the employers' side.[537] Three organisations, namely the European Trade Union Confederation (ETUC), the European Centre of Enterprises with Public Participation (CEEP), and the Union of Industrial and Employers' Confederations of Europe (UNICE), negotiated and signed the first European social dialogue agreement, the Parental Leave Framework Agreement. The European Association of Craft, Small and Medium-Sized Enterprises (UEAPME), which had not participated in negotiating the document, challenged the legality of the Council's directive to implement it.[538] The Association sought the annulment of the EU Directive on parental leave (96/34/EC) or the annulment of its applicability to small and medium-sized enterprises. UEAPME argued the negotiations were not representative of the employers' interests and requested to take part in negotiations and participate in the EU social dialogue.[539] The European Court of Justice (ECJ) dismissed the action as inadmissible, concluding that the applicant should not be regarded as individually concerned by the Directive. Separating the consultation phase from the negotiating phase, the court determined that not all those consulted by the Commission have the right to take part in negotiations. Furthermore, it highlighted that the Commission's criteria for representativity and its correspondent list set out in Annex 2 was referent to the consultation phase. Consequently, the agreement on social policy did not confer a general right to participate in negotiations to any management or labour representatives.[540] However, the court highlighted that *"it is proper to*

[536] Milman-Sivan, 'Representativity, Civil Society and the EU Social Dialogue: Lessons from the International Labour Organisation' (n530), p. 313.
[537] Case T-135/96, UEAPME v. Council (17 June 1998).
[538] Council Directive 96/34/EC of 3 June 1996 on the framework of parental leave concluded by UNICE, CEEP and ETUC [1996] OJ L145/4.
[539] Milman-Sivan, 'Representativity, Civil Society and the EU Social Dialogue: Lessons from the International Labour Organisation' (n530), p. 317.
[540] UEAPME v. Council (n531), paragraphs 72, 75, 77.

stress the importance of the obligation incumbent on the Commission and the Council to verify the representativity of the signatories to an agreement".[541] Thus, when the signatories of an agreement are 'not sufficiently representative', the Commission and the Council must refuse the agreement at Community level.[542] Despite the case's significance, *"no clear standards were established to guide future cases"*.[543]

The Commission's Communication of 20 May 1998 on adapting and promoting the social dialogue at Union level established a triple criterion for determining the representative organisations referred in Articles 154 and 155 of the TFEU, confirming and refining the 1993 criteria.[544] Furthermore, Decision 98/500/EC on the establishment of Sectoral Dialogue Committees determined representativeness criteria for the European social partners, which requires organisations to:

> - Relate to specific sectors or categories and be organised at European level;
> - Consist of organisations which are themselves an integral and recognised part of member States' social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States;
> - Have adequate structures to ensure their effective participation in the work of the Committees.

Consequently, the expression 'management and labour' in Article 154 of the TFEU refers to the European social partners, organised at cross-industry or sectoral level. In 2002, the Commission reaffirmed this position, in its Communication on 'the European social dialogue, a force for innovation and

[541] ibid, paragraph 88.
[542] ibid, paragraphs 86-88, 90.
[543] Milman-Sivan, 'Representativity, Civil Society and the EU Social Dialogue: Lessons from the International Labour Organisation' (n530), p. 317.
[544] Commission of the European Communities, *Communication from the Commission adapting and promoting the Social Dialogue at Community Level*, COM (98) 322 final.

change'.[545] In 2004 it highlighted the importance of representativeness studies and in 2006 Eurofound was nominated to conduct research on representativeness.

The European Parliament, the European Economic and Social Committee, and the three inter-sectoral organisations (i.e., European Trade Union Confederation, Union of Industrial and Employers' Confederations of Europe, and European Centre of Enterprises with Public Interpretation) have formulated representativity criteria, which require organisations to be organised at the European level, consist of national affiliates regarded as representatives in their own member states, and have voluntary membership.[546]

Representativeness is a longstanding problem of labour law.[547] The concept varies among countries and it is impossible to establish one universal criteria.[548] The same difficulty can be found at the European level, since the understanding of representativeness diverges among the EU member states, based on their different social and historical backgrounds. Still, *"national experiences have taught us that there is a certain* ***consensus on the idea that not every organisation can participate in collective bargaining"***.[549] This has also been recognised by the European Court of Human Rights in 1975. In the case of National Union of Belgian Police v. Belgium, the applicant trade union argued the Belgian government had not recognised the union as one of the most representative organisations, which the Ministry of Interior was obliged to consult. However, the court found no violation of Article 11 of the European Convention on Human Rights and considered the government's aim of avoiding 'trade union anarchy' as legitimate. Also, it considered there

[545] Commission of the European Communities, *Communication from the Comission – The European Social Dialogue, A Force for Innovation and Change Proposal for a Council Decision Establishing a Tripartite Social Summit for Growth and Employment*, (26 June 2002), COM (2002) 341 final.

[546] Milman-Sivan, 'Representativity, Civil Society and the EU Social Dialogue: Lessons from the International Labour Organisation' (n530), p. 313.

[547] Franssen and Jacobs, 'The Question of Representativity in the European Social Dialogue' (n505), p. 1312; Christian Welz, *The European Social Dialogue Under Articles 138 and 139 of the EC Treaty: Actors, Processes, Outcomes* (Kluwer Law International 2008), p. 180.

[548] Casale, *Union Representativeness in a Comparative Perspective* (n513), pp. 1-2.

[549] Franssen and Jacobs, 'The Question of Representativity in the European Social Dialogue' (n505), p. 1309.

was no incompatibility between union freedom and the Belgian policy of restricting the number of organisations to be consulted, considering it a matter of the state's discretion.[550] Thus, and despite the disputes surrounding the concept of representativeness,[551] it is possible to find a comprehensive concept.

C) Representativeness and Recognition

Representativeness requires recognition, meaning the acquisition of representative status. Collective bargaining aiming at the conclusion of a collective agreement demands the employer's recognition of workers' representatives. In Paragraph 3 (a) of the Collective Bargaining Recommendation (No. 163), the ILO includes the recognition of representative employers' and workers' organisations among the various means of promoting collective bargaining. In this sense, trade union recognition, which will be dependent on the fulfilment of certain requirements, provides a legal basis for trade unions to conclude collective agreements and (legally) enforce them, while defining trade unions' obligations.[552] Nevertheless, it is relevant to emphasise the importance of organisations' mutual recognition, which *"is a necessary preliminary to the regulation of collective labour relationships"* and the conclusion of a collective agreement entails such recognition.[553] The 1936 International Labour Office Report on collective agreements referred to the national agreements made between employers' and workers' organisations in the Scandinavian countries as *"real treaties of mutual recognition"*, forming the basis of the system of collective agreements.[554]

There are two main groups of regulations concerning representativity and recognition for collective bargaining: **voluntary** and **mandatory**

[550] National Union of Belgian Police v. Belgium (ECHR 27 Oct 1975) Series A No. 122.
[551] Milman-Sivan, 'Representativity, Civil Society and the EU Social Dialogue: Lessons from the International Labour Organisation' (n530), p. 317.
[552] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 79.
[553] ibid, p. 61.
[554] ibid, p. 83.

recognition. Most common-law countries leave representativity matters to the social partners. Thus, even when legal norms exist, these are only applied in the absence of voluntary understandings. Differently, civil law countries comprise legal rules for the determination of who has the right to participate in collective bargaining, i.e., representative organisations.[555]

Also linked to representativity, is the concept of **registration**. This refers to a state act through which an organisation is allowed to be named a trade union. Registration may be a precondition of recognition but they constitute different concepts.[556] Registration might, nevertheless, facilitate recognition or prevent competition from other organisations.[557] However, the Freedom of Association Committee has highlighted the importance of allowing representative trade unions to negotiate, **regardless of registration**.[558] Moreover, the Committee has highlighted that the requirement of registration for bargaining purposes does not violate freedom of association principles, as long as it does not carry undue delays and the relevant authority does not possess discretionary powers.[559]

Representativeness and representativity constitute interchangeable terms and symbolise a selective rule or criterion, which identifies the organisations able to exercise representation.[560] In reality, both the ILO and the Council of Europe have used both the term 'representativeness' and 'representativity'

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[555] ILO, Factsheet No. 2 (n503).

[556] Gladstone and Ozaki, 'Trade Union Recognition for Collective Bargaining Purposes' (n502), p. 164.

[557] ibid, p. 165.

[558] International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph 884.

[559] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1361* (n429).

[560] Casale argues that representativeness refers to a *"trade union's ability to establish itself as one of the actors in the industrial relations system on the basis of a particular criteria"*. Grandi emphasises the distinction between representativity and representation, based on different theoretical and functional meanings. Grandi refers to representativity as a 'selection' or 'selective rule'. In systems featuring a plurality of labour unions, representativity refers to a 'selective' rule, which identifies the recognised labour union(s) capable of exercising representation. Differently, in systems characterised by a more uniform organisational structure the 'selection' is a product of natural developments through which certain structures acquired representation rights. See, Casale, *Union Representativeness in a Comparative Perspective* (n513), p. 2; Mario Grandi, 'The Actors of Collective Bargaining' in Roger Blanpain (ed.), *The Actors of Collective Bargaining: A World Report* (Law and Social Security, Kluwer International 2003), pp. 3-5.

over time.[561] In general, and as Eurofound has outlined, there are two main principles governing representativeness: **mutual recognition** and **legal conformity**. Mutual recognition requires a continuous, long-lasting relationship between the social partners, which *"create their own institutional fora"*.[562] Differently, in systems based on legal conformity, representativeness is determined through state regulations and formal criteria. However, in most countries, representativeness is determined through a combination of formal and informal criteria.[563] Therefore, **representativeness can be based on a number of factors**, such as workplace election results (electoral strength), membership (organisational strength), and capacity to negotiate.[564] Likewise, financial independence, independence from employers and the government, respect for key values, organisational requirements, and affiliation to national confederations are also often referred. Identifying the most representative organisation is often a mix of these factors.[565] Notwithstanding being one of the established ways of analysing representativity, the number of members does not suffice.[566] This goes in line with the Committee on Freedom of Association's view that requiring a majority in regard to the number of workers (and enterprises) for the conclusion of a collective agreement could raise problems with Convention No. 98.[567]

The 'most representative trade unions' are often granted special rights, for instance exclusive bargaining rights and/or participation in tripartite bodies. When exclusive bargaining rights are not granted, it is not uncommon to give

[561] For the ILO this is mentioned in the paragraphs referent to the Committee of Experts. For the Council of Europe, the Eurofound report on representativeness states shows how the use of the term has varied, from representativeness in 1979 to representativity in 2000 and representativeness again in 2006. See, Eurofound, *The Concept of Representativeness at National, International and European Level* (n356), p. 42.

[562] ibid, p. 19.

[563] ibid, p. 21.

[564] ibid, pp. 21-24.

[565] ibid, p. 25.

[566] Edith Franseen, *Legal Aspects of the European Social Dialogue* (Antwerp Intersentia 2002), p. 197; Milman-Sivan, 'Representativity, Civil Society and the EU Social Dialogue: Lessons from the International Labour Organisation' (n530), p. 318.

[567] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1362* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph 956.

a wider effect to the collective agreements negotiated by the 'most representative trade unions and enable their participation in public affairs.[568] Hence *"the legislature has shown a special confidence in acts independently negotiated by the most widely representative trade unions, in the belief that only such agreements offer the necessary guarantee that they satisfy both the interests of the workers and the actual economic situation in the various sectors of production"*.[569] When legislation determines what organisations can participate in collective bargaining, representative status is attained by conforming to the law. In this context, representativeness is usually based on legal thresholds, such as employer coverage, union elections, and union membership. According to the Committee on Freedom of Association, both systems based on a single bargaining agent, 'the most representative', and systems which allow all organisations or the most representative ones to bargain are compatible with ILO Convention No. 98. Also, the Committee has stressed that, when granting preferential or exclusive bargaining rights, the decisions regarding the relevant organisation should be objective and based on pre-established criteria to prevent abuse.[570]

D) National Requirements

The following list of countries is structured according to whether representativity requirements for employees' organisations are legally provided or not. Almost all the listed countries include some type of legal conditions. Hence, regardless of whether the parties' representativeness is legally regulated or left to the autonomy of the social partners, it is an agreed feature of the concept of collective agreement.

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[568] *"Indeed, many legal systems give preferential treatment to the most widely representative trade unions, either reserving for them the exclusive right to engage in collective bargaining or giving special effect to collective agreements made by such unions". S*ee, Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), pp. 11-12.

[569] ibid, p. 12.

[570] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining pp. 1360, 1369* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph 962.

Representativity requirements are legally regulated in, for instance, Spain,[571] where exclusive bargaining rights are granted to the 'most representative trade union'. Some countries provide for legal representativity requirements but do not grant exclusive bargaining rights. This is the case of Cambodia,[572] France,[573] and Italy.[574] In the United Kingdom, the Trade Union and Labour Relations (Consolidation) Act regulates two types of representativity requirements, based on whether recognition is voluntary or statutory.[575] Differently, some countries do **not possess legal requirements**

[571] Article 6 (3) and 7 of the Organic Law on Freedom of Association. See, International Labour Organisation, *IRLEX – Spain* (n488).

[572] Article 277 of the Labour Law, Prakas No. 033 of 2008, on Procedures for Certifying the Representative Status and the Most Representative Status and Organising an Election to Determine the Most Representative of Professional Organisations of Workers at the Enterprise/Establishment Level, Prakas No. 305 of 2011, on Representativeness of Professional Organisations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreements at that Level. International Labour Organisation, *IRLEX – Cambodia* (487).

[573] Articles L2121-1 and L212-2 of the Labour Code provide the general criteria, which is cumulative. Article 2122-1 regulates specific conditions for representativity at the enterprise level, Article L2122-5 for the sectoral level, and Article L2122-9 for the national level. Representativeness is examined at the level where it is intended to have effect. See, Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), p. 225; International Labour Organisation, *IRLEX – France* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:FRA,,2015:NO [Accessed 20 May 2021].

[574] Italian law does not comprise any general requirements. Article 39 of the Italian Constitution states that no obligations can be imposed on trade unions other than registration, which grants trade unions legal personality. The status of representative or most representative organisation awards certain privileges. See, Treu, 'Part II. Collective Labour Relations - Italy' (n436), pp. 159, 167, 192-195; International Labour Organisation, *IRLEX – Italy* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=LEGPOL:1100:8327427105312::::P1100_THEME_ID:105092 [Accessed 9 September 2019].

[575] Any trade union can submit a request to bargain and there are no legally imposed representativity requirements. If an employer rejects the request for voluntary recognition, the union can appy for statutory recognition. See, International Labour Organisation, *IRLEX – United Kingdom* (n490); Mark Butler, 'Part II. Collective Labour Relations – Great Britain' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law BV 2018), pp. 286-287.

on representativity. This is the case of, for instance, Bangladesh,[576] Denmark,[577] Norway,[578] Sweden,[579] and Viet Nam.[580]

Legal requirements on representativity	Exclusive bargaining rights given to the 'most representative trade unions'	Non-exclusive bargaining rights
	Spain	Cambodia France Italy
Mixed	United Kingdom	
No legal requirements	Bangladesh Viet Nam	Denmark Norway Sweden

Table 5. Representativity requirements and bargaining rights for workers' organisations in various countries.

3.3.2. The Principle of Free and Voluntary Negotiation

Based on decisions from the Committee on Freedom of Association and the Committee of Experts' general surveys, the present section highlights the

[576] There are no requirements for trade union representativity. However, if there is only one trade union at an enterprise, exclusive bargaining agent status is awarded. Also, if a trade union is voted the bargaining agent by the majority of workers it is awarded with exlcusive bargaining rights. See, International Labour Organisation, *IRLEX – Bangladesh* (2016). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:BGD,,2015:NO [Accessed 2 October 2019].

[577] Nønne Schou Christensen and Carsten Jørgensen, 'Denmark: The Representativeness of Trade Unions and Employer Associations in the Horeca Sector' (Eurofound 2012). Available At: https://www.eurofound.europa.eu/publications/report/2012/denmark-the-representativeness-of-trade-unions-and-employer-associations-in-the-horeca-sector [Accessed 2 October 2019]; Ole Hasselbalch, 'Part II. Collective Labour Relations – Denmark' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2019), pp. 207-330.

[578] International Labour Organisation, *IRLEX – Norway* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:NOR,,2015:NO [Accessed 3 October 2019]; (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 9.

[579] There is a general right of negotiation, stated in Section 10 of the Co-Determination Act. No representativity requirements exist. However, minority trade unions have more restricted rights relating to an array of different issues, from information to collective bargaining. Majority trade unions are prioritised in several collective labour issues. More information is provided in regard to table 7 and the peace obligation. See, Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 194-197.

[580] In Viet Nam there is a single trade union system (the Vietnam General Confederation of Labour), meaning there are no legal requirements. See, International Labour Organisation, *IRLEX – Viet Nam* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:VNM,,2015:NO [Accessed 2 October 2019].

voluntary character of collective bargaining and the lack of an obligation to reach an agreement.[581] These constitute an expression of the parties' collective autonomy. The present section also provides an overview of decisions from the Committee on Freedom of Association regarding the right to affiliate with international organisations. This is connected to national trade unions' affiliation to global union federations as a representation of international trade union solidarity and a way of defending workers' interests more effectively.

The **Committee on Freedom of Association** has emphasised that the voluntary negotiation of collective agreements and the autonomy of the bargaining partners are a fundamental part of freedom of association principles. The Committee underlined the importance of the parties' autonomy in collective bargaining, in order to ensure its free and voluntary character, as stated in Article 4 of Convention No. 98. The Committee has also recognised that, for collective bargaining to be effective, it must be voluntary and must not be subjected to coercive measures that could alter its voluntary nature. In fact, Article 4 of the Convention provides that measures to encourage and promote this voluntary negotiation through collective agreements *"shall be taken, where necessary"*. Hence, the Committee on Freedom of Association has stated that *"Nothing in Article 4 of Convention No. 98 places a duty on the government to enforce collective bargaining by compulsory means with a given organisation; such an intervention would clearly alter the nature of bargaining"*.[582] Consequently, according to the Committee, Convention No. 98 does not comprise a governmental duty to enforce collective bargaining. Article 4 of Convention No. 98 does not place a duty on the government to enforce collective bargaining or compel the social partners to enter into negotiations, while stressing that public

[581] In some countries, and already at the time of the International Labour Office's 1936 Report on collective agreements, previous legislation made the conclusion of collective agreements a compulsory principle. This was the case in Italy, Mexico, Venezuela, and the United States. However, even at the time, the obligation was merely to negotiate and not to conclude a collective agreement. See, International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 92.

[582] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining pp. 1316-1317* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs 927-928.

authorities should abstain from unjustified interferences.[583] A legislative imposed obligation to conclude a contract would be contrary to the principle of free and voluntary negotiations.[584] However, the Committee recognised this did not entail a complete governmental abstention concerning the establishment of a collective bargaining mechanism.[585] Likewise, during the preparatory work referent to the Collective Bargaining Convention (No. 154) the term 'promotion' was understood as excluding states' obligation to intervene and impose collective bargaining.[586] Accordingly, there is no formal obligation to negotiate or attain an agreement,[587] despite the fact that legally established criteria should allow the most representative organisations to engage in collective bargaining, which implicitly requires the recognition of these organisations.[588]

Furthermore, according to the **Committee of Experts**, the machinery supporting bargaining should also be voluntary, facilitating the process but leaving the parties free to reach their own settlement.[589] However, the ILO supervisory bodies have been accepting regarding the application of sanctions in the case of violations concerning the principle of good faith and

[583] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining pp. 1316-1317* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs 927-928.

[584] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining pp. 113-1321* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs 925-926, 929, 990.

[585] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1318* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph 929.

[586] International Labour Conference, *Record of Proceedings* (66th Session 1981), p. 22/6; Bernard Gernigon, Alberto Odero, and Horacio Guido, *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies* (International Labour Office 2000), pp. 27-33.

[587] In accordance to what is stated by the ILO, while Swedish labour legislation does not include the right to conclude a collective agreement, Section 10 of the Employment (Co-Determination in the Workplace) Act, explicitly refers to a right of negotiation, applicable to all labour organisations.

[588] International Labour Conference, *General Survey* (n501), para. 245; Gernigon, Odero, and Guido, *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies* (n586), pp. 27-33.

[589] International Labour Conference, *General Survey* (n501), para. 248.

have admitted legally imposed conciliation and mediation procedures, within certain time limits.[590]

In regard to the **bargaining level**, paragraph 4 (1) of the Collective Bargaining Recommendation (No. 163), stated that *"measures adopted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels"*. Furthermore, according to both the Committee of Experts and the Committee on Freedom of Association, the choice of bargaining level should not be imposed by law or administrative authorities, but left to the discretion of the parties.[591] In regard to the right to affiliate with international organisations, as stated by the Committee on Freedom of Association, *"international trade union solidarity constitutes one of the fundamental objectives of any trade union movement and underlines the principle laid down in Article 5 of Convention No. 87 that any organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers"*, without intervention by the political authorities.[592] Similarly, the Labour Conference's 1994 Freedom of Association and Collective Bargaining General Survey, recognised that international solidarity required that national federations and confederations should be able to group and act at the international level. Furthermore, it declared that workers' and employers' organisations should have the right to form federations and confederations, in order to defend the interests of their

[590] Gernigon, Odero, and Guido, *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies* (n586), p. 29.

[591] International Labour Conference, International Labour Conference, *General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948 and the Right to Organise and Collective Bargaining Convention (No. 98), 1949* (n515), p. 189-198; Gernigon, Odero, and Horacio Guido, *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies* (n586), p. 30.

[592] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Right of Employers and Workers Organisations to Establish Federations and Confederations and to Affiliate with International Organisations of Employers and Workers, p. 1036-1037, 1041*. Available At: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3946675,1 [Accessed 17 October 2019]; International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs. 732-733, 737.

members more effectively. These should have the rights granted to first-level organisations, namely concerning their freedom of operation, activities, and programmes.[593] Moreover, the Committee on Freedom of Association emphasised that the mentioned provision and its preparatory work illustrate *"the fact that workers or employers are united by a solidarity of interests, a solidarity which is not limited either to one specific undertaking or even to a particular industry, or even to the national economy, but extends to the whole international economy. Furthermore, the right to organise corresponds to the practice followed by the United Nations and the International Labour Organisation, both of which have formally recognised international organisations of workers and employers by associating them directly with their own activities"*.[594] These recognitions are clearly relevant for both the representative character of global union federations, mostly in the form of mutual recognition, and the voluntariness of negotiations regarding global collective agreements.

3.3.3. The Duty to Bargain in Good Faith

The present section highlights key aspects regarding the duty to bargain in good faith, based on decisions of the ILO Committee on Freedom of Association. This duty extends to the application of the agreement, based on a belief that the parties will respect the negotiated commitments. Moreover, this section provides an illustrative list of legal requirements in regard to good faith in collective bargaining, with some countries comprising explicit or implicit requirements, as well as good faith related duties. Differently, some countries do not refer to legal requirements in regard to good faith.

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[593] International Labour Conference, *General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948 and the Right to Organise and Collective Bargaining Convention (No. 98), 1949* (n515), pp. 189-190; International Labour Conference, *Report III (1B): Giving Globalisation a Human Face (General Survey on the Fundamental Conventions)* (101st Session 2012), paragraph 163.

[594] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Right of Employers and Workers Organisations to Establish Federations and Confederations and to Affiliate with International Organisations of Employers and Workers, p. 1042* (n592); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs. 738.

The good faith principle exists both in regard to the bargaining process and the later application of a concluded agreement. According to the **Committee on Freedom of Association**, the obligation to negotiate in good faith is important in regard to the maintenance of harmonious labour relations. Furthermore, the parties should make every effort to reach an agreement, since genuine and constructive negotiations, confidence between the parties, and satisfactory labour relations depend on them.[595] This means that, for example, unjustified unilateral meetings and unjustified delays are unreasonable.[596] The Committee has also recognised that the failure to implement an agreement, even if temporarily, violates both the right to collective bargaining and the obligation to bargain in good faith. Moreover, the Committee on Freedom of Association has recognised that *"Collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured, at every least for the duration of the agreement, such agreement being the result of compromises made by both parties on certain issues, and of certain bargaining demands dropped in order to secure other rights which were given more priority by trade unions and their members. If these rights, for which concessions on other points have been made, can be cancelled unilaterally, there could be neither reasonable expectation of industrial stability, nor sufficient reliance on negotiated agreements"*. Hence, legally allowing the employer to unilaterally modify an agreement's content is considered to be contrary to the principles of collective bargaining.[597] Finally, the Committee has stated that mutual respect for the commitment undertaken is an important part of

[595] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1327-1329* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs 934-936.

[596] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1330-1333* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs. 937-938.

[597] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1337-1338* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs. 941-942.

collective bargaining and should be defended.[598] Thus, just as required in contract law, the contracting parties of a collective agreement have an obligation to apply the agreement in good faith. If not, the collective agreement can be considered null and the violating party might be required to pay damages. Falling from general principles, such obligation does not need to be expressly stated in the agreement's terms. The good faith obligation means the parties *"are bound to refrain from doing anything that might interfere with its loyal application and to do all they can to secure its enforcement"*.[599] In other words, the parties should abstain from pressure in order to amend or terminate the agreement. Furthermore, they should encourage the respect of the agreement by their members through all possible means.[600] Accordingly, the parties have an obligation to give effect to the collective agreement.

Some countries **expressly require** the parties to bargain in good faith. This is the case of China.[601] In other cases, such a requirement is **implicitly** referred in labour law, namely in Spain[602] and Viet Nam[603]. Similarly, in Belgium, a general rule is provided, in regard to contract law.[604] In other cases, **duties related** to good faith are legally required. Cambodian law comprises a list of non-cumulative requirements according to which the parties must bargain and which express a duty of good faith.[605] Similarly, in

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[598] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1336* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph. 940.

[599] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 142.

[600] ibid, p. 142.

[601] Required by Article 5 (3) of the Regulations on Collective Contracts. See, International Labour Organisation, *IRLEX – China* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:CHN,,2015:NO [Accessed 3 October 2019].

[602] Article 89 of the Workers' Statute. See, International Labour Organisation, *IRLEX – Spain* (n488).

[603] Article 67 (1) of the Labour Code states that collective bargaining must be carried out according to the principles of good faith, cooperativeness, openness to the public and transparency. See, International Labour Organisation, *IRLEX – Viet Nam* (n580).

[604] Required by Article 1134 of the Civil Code. See, International Labour Organisation, *IRLEX – Belgium* (n486).

[605] The list requires the parties to bargain agreeing to an orderly process, to make reasonable offers and counter-offers, for the employer to give the trade union representatives the appropriate facilities, for the employers to provide all requested information which is relevant for the bargaining process (Article 11 of the Prakas No. 033 of 2008 on Procedures for Certifying the Representative Status and the Most Representative Status and

the French Labour Code there is no express obligation for the parties to bargain in good faith but periodic negotiations in regard to specific issues are required (e.g., wages, gender equality, working conditions, career skills planning, workers with disabilities, vocational training).[606] In Italy, there is no explicit requirement in the law but its violation can be considered as contrary to the Workers' Statute.[607] In the United Kingdom, employers must disclose information to the recognised trade union according to 'good industrial practice'.[608] Finally, some countries, such as Bangladesh,[609] Norway,[610] and Sweden[611] contain **no legal provision** on the matter. However, it is worth noting that a long-term contractual relationship can create a legal standard comprising such requirement. This would be derived from contractual law principles.

Explicit legal requirement	Implicit legal requirement	Related duties legally required	No legal requirement
China	Belgium Spain Viet Nam	Cambodia France Italy United Kingdom	Bangladesh Norway Sweden

Table 6. Legal requirements concerning the duty to bargain in good faith.

Organising an Election to Determine the Most Representative of Professional Organisations of Workers at the Enterprise/Establishment Level). See, International Labour Organisation, *IRLEX – Cambodia* (n487).

[606] Articles L2241-1 to L2241-8 of the Labour Code. These provisions also include a duty to bargain but there is no definition of its content or related sanctions. Hence, the duty to bargain is not a duty to reach an agreement or to bargain in good faith. See, International Labour Organisation, *IRLEX – France* (n573); Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), p. 339.

[607] Treu, 'Part II. Collective Labour Relations - Italy' (n436); International Labour Organisation, *IRLEX – Italy* (n574).

[608] Section 181 of the Trade Union and Labour Relations Act, in particular (2) (b) and (4). See, International Labour Organisation, *IRLEX – United Kingdom* (n490).

[609] International Labour Organisation, *IRLEX – Bangladesh* (n576).

[610] International Labour Organisation, *IRLEX – Norway* (n578).

[611] In Sweden there is no explicit legal requirement as regards to a duty to bargain in good faith. However, collective bargaining is carried out based on cooperation. Section 15 of the Co-Determination Act loosely describes an obligation to negotiate, entailing a duty to attend negotiating meetings and make proposals (with specific information requirements for employers as regards to termination of employment due to shortage of work), although, according to case law (AD 1972, no. 5), it does not involve an obligation to reach an agreement. See, Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), p. 195.

3.3.4. The Content and Effects

Attempts to fit the collective agreement into recognisable legal moulds serve the overall purpose of facilitating the comprehension of a complex instrument. However, irrespective of the way the collective agreement is framed, its *sui generis* nature needs to be acknowledged. Constructing the concept of collective agreements requires the consideration of its content, as well as the function and effects performed by the agreement.[612]

The following section describes and analyses both the content and the effects of collective agreements. It begins by referring to the collective agreement's double content, i.e., the normative content and the obligatory content. Attached to this double content, this section further examines the normative and mandatory effect of collective agreements, giving particular emphasis to the binding character, expressly referred in ILO Recommendation No. 91.

A) The Content

Initially confined to the regulation of working days, hours, and wages, nowadays collective agreements regulate many other aspects of working life, meaning there has been a broadening of their content. At the international level, the definition of collective agreement, provided by Recommendation No. 91, only mentions the normative content of collective agreements, while referring to working conditions. In most domestic frameworks and ILO instruments, the standard references to the content of collective agreements state these concern 'the terms and conditions of employment'. ILO Convention No. 98, on the Right to Organise and Collective Bargaining, Convention No. 151, on Labour Relations (Public Service) and Recommendation No. 91, on Collective Agreements, set up a broad *ratione materiae*. According to these instruments, collective agreements are all agreements concerning terms of employment and remuneration.[613] These can

[612] Feller, 'A General Theory of the Collective Bargaining Agreement' (n345), p. 720.
[613] Andrzej Marian Swiatkowski, Daiva Petrylaite, Inga Blaziene, and Ausra Bagdonaite, 'International Legal Standards of Collective Agreements and Related Aspects in the Selected European Union Member States' (2015) Vol. 10 No. 13-16 Current Issues of Business and Law, p. 23.

include provisions on various issues, such as the form and content of the employment contract, working hours, sick leave, follow-up of the agreement, among others.

The 1936 International Labour Office Report on collective agreements distinguished two types of clauses in a collective agreement: those referent to the regulation of employment conditions and those regarding the relations between the parties to the agreement. The report differentiated these clauses according to whom they apply and their legal nature. Clauses regulating the conditions of employment apply to individual workers and employers, who are parties to the individual contract of employment. Differently, clauses regulating the relations between the contracting parties refer to employers' and workers' organisations.[614] The same division was referred in a 1984 document for the European Communities, according to which, *"The contents of a collective agreement are traditionally subdivided into the obligatory or bilateral part and the normative part"*, the first referent to the rights and obligations of the contracting parties and the second referent to rights and obligations for the parties of the individual contract of employment.[615] The two types of clauses are intrinsically bound with each other and it is not uncommon for them to impose obligations simultaneously on the contracting parties to the collective agreement, as well as the employer and individual worker. *"It is then a matter for the courts to decide in each particular case whether the person (or body) to whom a certain right (or obligation) applies is the individual employer or worker, or the contracting organisation, or both at once."*[616] Accordingly, some terms of a collective agreement comprise a normative and obligatory component meaning this classification allows for some overlap.[617] In terms of the clauses regulating working conditions, the

[614] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 138.

[615] Such distinction is clear in many countries, namely in Belgium, France, Germany, Italy, Belgium, Denmark, and the Netherlands. Differently, in countries like Sweden the distinction between the normative part, applicable to individual relations and the obligatory part, applicable to the collective relations, is not as clear. *"The interpretation of a provision determines what effect shall have at the various levels."* See, Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 25.

[616] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 138.

[617] Treu, 'Part II. Collective Labour Relations - Italy' (n436), p. 234.

1936 Report made a distinction between those defining the employer's and the worker's obligations under the individual contract of employment and those regarding the termination of the employment contract, the individual relationship, and the settlement of individual disputes.[618] In regard to the clauses regulating the relations between the agreement's contracting parties, the Report separated those regarding the enforcement of collective agreements, the organisation of collective relations, the establishment of joint bodies (e.g., bodies supervising the enforcement of the collective agreement), the engagement of staff, and collective dismissals.[619]

Accordingly, collective agreements can be said to have a double content, possessing two types of clauses. First, the **normative content**, which goes beyond wage regulation, stipulated in the first wage agreements, and refers to the conditions regulating the employment relationship, such as working hours, terms of employment, and remuneration. In other words, the overall employment conditions. Second, the **obligatory/contractual content**, which defines the binding rights and obligations of the contracting parties. Some systems include an obligation to refrain from industrial action within the content of a collective agreement. This obligation is designated as the peace obligation.

The **peace obligation** can be placed within the implicit obligational content of a collective agreement. It can also be required by law (e.g., Luxembourg) or developed through case law (e.g., Denmark).[620] The duty can be absolute, referring to all collective disputes, or relative, relating to certain subjects. When implicit, the duty to refrain from industrial action is a relative obligation, since an implicit absolute obligation is contradictory to trade union freedom. Furthermore, this duty can be applied throughout the entire

[618] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 139-141.

[619] ibid, pp. 141-142.

[620] This obligation *"assumes the existence of interaction between collective dispute and collective agreement in the sense that the ultimate object to be pursued is to be seen in industrial peace, while a collective dispute is regarded as a mere tool at the disposition of the opposing parties; they may use this tool only for the purpose of making an agreement and not for calling once more into question questions conditions which have already been agreed"*. See, Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), pp. 25-26, 36.

period in which the agreement is applicable, or temporary, relevant in regard to the prohibition of industrial action while awaiting the result of conciliation procedures. The prohibition can apply to all bargaining levels or solely to the level at which the collective agreement was concluded. Generally, the peace obligation binds only the contracting parties, meaning they are obliged to refrain from industrial action and ensure that their members do not engage in such an activity.[621] Despite detail variations among the different countries, the duty of peace is generally absolute in regard to litigation and relative in connection to conflicts of interest. Still, a common feature is that the duty of peace of peace includes a positive and a negative side. The first refers to a duty to counteract the labour struggle or the active peace obligation. The latest relates to the obligation to refrain from industrial action or the passive duty of peace for those covered, as well as liability as a potential sanction.[622]

Country	Provision	Reference
Belgium	Article 5 of the Law on Collective Agreements and Joint Committees	The peace obligation is relative, unless the parties agree differently. Likewise, unless explicitly provided, its violation does not entail judicial enforcement.[623]
France	Article L2262-4 of the French Labour Code	Employers or employers' organisations and workers' organisations bound by a collective agreement are required to do nothing that could comprise the agreement's 'loyal implementation', guaranteeing such execution only to the extent determined in the agreement. The parties are merely required to refrain from compromising such implementation, in *"a vague degree of neutrality"* and *"a much watered down peace obligation"* that only obliges the parties not to actively encourage their members to violate the agreement. This refers only to the terms of the agreement, meaning that industrial action based on other points is always possible. Still, since a collective agreement cannot provide for less favourable terms and the right to strike is viewed as an individual right, an absolute obligation of industrial peace is not permissible.[624]
Germany		The peace obligation is part of the obligatory content and it is relative, relating to the content of the agreement. This means industrial action aiming at attaining a collective agreement on working conditions not regulated by the

[621] ibid, pp. 36-38.
[622] Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 14.
[623] Roger Blanpain, 'Part II. Collective Labour Relations – Belgium' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2012), p. 395.
[624] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 333-334.

		collective agreement is not prohibited. An 'absolute' peace obligation is possible, but it needs to be expressly agreed between the contracting parties.[625]
Spain	Article 8, 11, and 20 of the Labour Relations Royal Decree Act	Within the obligatory content there is an implicit peace obligation. A collective labour conflict may not be proposed to modify the agreed content of a collective agreement. The parties can still explicitly agree on a peace duty, as determined by Article 8 of the Labour Relations Act.[626]
Sweden	Section 41, 41a, 41b, 41c, 44 of the Employment (Co-Determination in the Workplace) Act	Collective agreements entail a peace obligation, meaning that only those not bound by a collective agreement can engage in collective action.[627] Accordingly, industrial action is prohibited when an organisation is party to a collective agreement and such action has not been authorised or it has an illicit aim. A list of illicit aims is provided in the Co-Determination Act. The first illicit aim refers to rights disputes, intended to be dealt by the Labour Court. Hence, when the objective is to exert pressure in a dispute as to the validity of a collective agreement, its existence or correct interpretation, or an action is contrary to the agreement or the Co-Determination Act. Industrial action is further prohibited when it aims to bring about an amendment to the agreement, to affect a provision intended to enter into force after the termination of the agreement, or to aid someone who is not permitted to start an industrial action.[628]

Table 7. Examples of countries where legislation addresses the peace obligation.

[625] Manfred Weiss, Marlene Schmidt, and Daniel Hlava, 'Part II. Collective Labour Law - Germany' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2020), pp. 197-198.

[626] Manuel Alonso Olea, Fermín Rodríguez-Sañudo, and Fernando Elorza Guerrero, 'Part II. Collective Labour Relations – Spain' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2018), pp. 138-142.

[627] The 2017–2018 conflict at the Gothenburg harbour ultimately led to an inquiry on conflict legislation, which ended in legislative alterations (SOU 2018:40 *Vissa fredspliktsfrågor*, Prop. 2018/19:105 *Utökad fredsplikt på arbetsplatser där det finns kollektivavtal och vid rättstvister,* SFS 2019:503). The new Section 41 (d) of the Co-Determination Act has limited legally allowed industrial action in workplaces already covered by a collective agreement. The new paragraphs in the Co-Determination Act make it unlawful for employees to participate in industrial action if the (non-established) trade union has not duly sanctioned the action, if the action does not intend to attain a collective agreement, if the trade union has not negotiated with the employer concerning its demands, or if the trade union demands the employer to set aside the collective agreement already concluded between the employer and the relevant trade union. Section 41 (e) further makes industrial action in disputes of rights unlawful, also for non-established organisations. See, Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 232-233.

[628] Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 225-228; Annamaria J. Westregård, 'Sweden' in Ulla Liukkunen (ed.), *Collective Bargaining in Labour Law Regimes – A Global Perspective* (Springer, 2019), p. 576.

The following table illustrates how the normative and obligational content are addressed throughout different legal frameworks. In some countries there is a clear distinction, whereas in others the contents can sometimes overlap.

Country	Provision	Reference
Belgium	Article 4 and 5 of the Law on Collective Agreements and Joint Committees	The collective agreement contains terms concerning wages and working conditions (normative content, distinction between individual normative and collective normative content) and regulating the rights and duties of the contracting parties (obligatory content, distinction between implicit and explicit obligations). The peace obligation is included within the implicit obligations. The normative part is legally enforceable, whereas the obligatory part is not.[629]
France		The collective agreement has a dual nature, constituting a contract between the contracting parties and a binding regulation for their members. Hence, *"It has both a contractual and a normative element"*.[630]
Germany	Section 1, 3 (1), and 4 (1) of the Act on Collective Agreements	The content of a collective agreement is composed of a normative part and an obligatory part. The normative part deals with the terms applicable to individual employment relationships, which have a normative effect. The obligatory part refers to the rights and obligations of the contracting parties and includes the peace obligation and the duty to exert influence, even if the agreement does not explicitly comprise them. An individual employment contract can only deviate from these provisions based on a favourability principle. Section 3 (1) stipulates who is bound by the agreement. Section 4 (1) states that normative provisions have a direct and mandatory effect on all employment relationships within the scope of the collective agreement. Accordingly, when the normative part of a collective agreement is violated, the affected employee or employer can bring a claim to court.[631]
Italy		The obligatory part of a collective agreement regulates the obligations of the contracting parties, namely the duty to implement the agreement, to influence the members of the organisation to apply the normative component, and the peace obligation. The duty to exert influence, connected to the duty of good faith, obliges the parties to induce their members to respect the agreement. The peace obligation, which needs to be explicitly comprised in a clause of the agreement, requires the contracting parties to abstain from industrial action with the aim of modifying a collective agreement during the time agreement is in force.[632]

[629] Roger Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), pp. 393-395, 391, 399; International Labour Organisation, *IRLEX – Belgium* (n486).

[630] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 316, 332.

[631] Weiss and Schmidt, 'Part II. Collective Labour Law - Germany' (n625), pp. 197-201; Waas, 'Germany' (n431), p. 292.

[632] In regard to peace clauses, the Italian Supreme Court has stated these are binding only on the individual employees who are members of the trade union party to the agreement. However, doctrine and the social parties reject such interpretation, based on the wording of the corresponding clause, phrased as an obligation of the contracting parties and therefore viewing the peace obligation as the obligatory part of the collective agreement. Accordingly, this means the peace obligation is violated only when unions promote an illegal strike or do not restrain, using all of the measures within their power, their members from doing so. Moreover, in Italy the constitutional right to strike is viewed as exclusive to workers. If considered as binding on union members this

Sweden		It is possible to mark a distinction between the normative and obligatory content. However, it is worth noting that such distinction is not clear-cut, being often based on interpretation.[633]

Table 8. Examples of countries where it is possible to differentiate the normative and the obligatory content.

The content of a collective agreement can also be analysed according to whether it is mandatory or optional, a distinction that should be not be confused with the normative and obligational content.[634] In some countries, the law requires the collective agreement to include to include a set of **mandatory references**, whereas in others the parties are free to decide the content of the agreement.

Country	Provision	Reference
Belgium	Article 16 of the Law on Collective Agreements and Joint Committees	A collective agreement must include various references, namely regarding the parties and the duration of the agreement.[635]
France	Articles L2221-1 and L2251-1, Articles L2222-5 and L2222-6, and Articles L2261-9 to L2261-13 of the Labour Code	Collective agreements can regulate all conditions of employment, vocational training and work, as well as social guarantees, capable of containing more favourable provisions than the law, provided they do not derogate from provisions of public order. However, the collective agreement must include provisions regarding termination, revision, and renewal.[636]
Norway	Section 4 of the Labour Disputes Act	A collective agreement must include provisions on the agreement's entry into force, duration, and notice period.[637]
Spain	Section 83 and 85 (3) of the Workers' Statue	A collective agreement must include in its provisions several references, such as the identification of the parties, its personal, functional, and temporal scope, procedures for dispute resolution, the procedure for the

would denote a union right to limit a right that is limited to workers, as well as their self-determination and freedom. See, Treu, 'Part II. Collective Labour Relations - Italy' (n436), p. 230.

633 Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 213, 215.

634 Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 26.

635 Article 16 requires collective agreements to include the name of the contracting organisations, the name of the joint body, if that is the case, the identity of those who enter into the agreement and, if concluded outside a joint body, the capacity in which these persons act and their functions, the people, industry or business and territorial scope of the agreement, except if it applies to all employers and workers within the respective joint body, the duration of the agreement and, when concluded for an indefinite period, the notice period for termination, the date of entry into force, the date in which in the agreement was concluded, the signature of those authorised to sign it, the identification number of the enterprise(s), and the date and registration number of the agreement. See, Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), p. 386; International Labour Organisation, *IRLEX – Belgium* (n486).

636 Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 327, 334.

637 International Labour Organisation, *IRLEX – Norway* (n578).

		agreement's termination, and the establishment of a joint committee.[638] Agreements can be distinguished based on their content, falling into four possible categories.

Table 9. Examples of countries where legislation requires that a collective agreement comprises certain mandatory references.

Country	Provision	Reference
Finland		Freedom of contract prevails but it is required for a collective agreement to contain at least one condition concerning employment relations.
Sweden	Section 23, 24, and 25 of the Employment (Co-Determination in the Workplace) Act	A collective agreement regulates conditions of employment and the relationship between employers and workers. As stated in Section 25, an agreement whose content is other than the one referred in Sections 23 and 24 is not valid. Still, an agreement's scope is very comprehensive.[639]
United Kingdom		Parties are left to decide the content of the agreement and can include matters that go beyond the legal definition.

Table 10. Examples of countries where the parties are virtually free to decide the content of a collective agreement.

B) The Binding Character

As it is internationally recognised, collective agreements should be **binding** on the parties. This is explicitly stated in Paragraph 3 (1) of ILO Recommendation No. 91 and the Freedom of Association Committee has restated the principle on numerous occasions.[640] In fact, when discussing the Recommendation, amendments proposing to delete Paragraphs 3 (3), (4), and 4 of the Recommendation were rejected based on the necessity *"to ensure that collective agreements freely negotiated and freely concluded should be effective"*.[641] Likewise, the extension of collective agreements was debated but the principle was included, due to its consolidated value for social progress in several countries.[642]

The binding character of a collective agreement is linked to the principle of bargaining in good faith, which is fundamental for the maintenance of

[638] International Labour Organisation, *IRLEX – Spain* (n488).
[639] Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 205-206.
[640] International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraph 939.
[641] International Labour Conference, *Record of Proceedings* (n454), p. 603.
[642] ibid, p. 603.

confidence and a mutual respect relationship between the parties.[643] In the preparatory work for Convention No. 154, the Committee on Collective Bargaining highlighted that the good faith principle, without which collective bargaining cannot function effectively, cannot be imposed by law, being attained through voluntary efforts developed by the parties.[644] In this sense, it is also linked with the representativeness requirement, in its mutual recognition dimension, and the principle of free and voluntary negotiation. This connection is expressed in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Tripartite Declaration), which refers to *bona fide* negotiations between multinational enterprises and workers' representatives and to the right of representative organisations to be recognised for the purpose of collective bargaining.[645] Besides referring to the good faith principle, the Committee on Freedom of Association also highlighted that the agreements should be binding.[646]

The problem of knowing whether a collective agreement is considered a contract, binding on the parties at the level of the legal system, or an agreement binding only on the social plane and *"therefore incapable of giving rise to obligations under the general law"*,[647] underlines the importance of **distinguishing legal bindingness from general bindingness**. In many jurisdictions, the legal effect of a collective agreement is expressly stated in legislation. In some cases, it was first declared by the courts and later placed in legislation.[648] According to Kahn-Freund, these differences are based in each country's economic history and the resulting bargaining methods, instead of their legal traditions.[649] In this sense, the United Kingdom constitutes a notable case. If not incorporated in the contract of

[643] International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), paragraphs 186-188.
[644] Gernigon, Odero, and Guido, *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies* (n586), pp. 33-37.
[645] ibid, p. 33.
[646] International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (International Labour Office, Fourth (Revised) Edition 1996), paragraphs 814-818; Gernigon, Odero, and Guido, *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies* (n586), p. 33
[647] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 30.
[648] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), p. 246.
[649] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (399), pp. 161-166.

employment, collective agreements are binding only 'in honour' and do not give rise to contractual obligations and are therefore unenforceable in court.[650] According to the Trade Union and Labour Relations (Consolidation) Act of 1992, a collective agreement is presumed not to have an intended legal enforceability, unless the agreement contains a written provision explicitly stating the intention of the parties to make it legally enforceable. However, the mentioned provision concerns legally enforceability and not the binding character of the agreement.[651] In fact also in the Donovan Report, where the binding character is addressed, bindingness is proceeded by the word 'legally', which clarifies the question at stake. However, it is worth noting that the distinction based on whether collective agreements are legally binding or not, is not the only basis of comparison. Despite the importance of such distinction, and the fact that the British model is atypical, since the parties of a collective agreement do not intend to create a legal relation, this distinction is not always useful. In fact, it is *"sometimes confusing because it lumps together jurisdictions which are as different from each other inter se as they all are from the British"*.[652]

The binding effect of a collective agreement can be expressly stated, in the constitution or legislation, or implied through other legal provisions. It can also be inferred by court practice or the practice of the social partners. Furthermore, the agreement may be required to fulfil certain formal requirements. Still, even when the binding effect is not provided for in legislation, a collective agreement is still considered to be binding. Bindingness and legal enforceability are different matters meaning that, while most countries have made collective agreements legally enforceable, that does not mean that, in countries in which collective agreements do not

[650] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), p. 246.

[651] Section 179 of the Trade Union and Labour Relations (Consolidation) Act states that *"(1) A collective agreement shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement (a) is in writing, and (b) contains a provision which (however expressed) states that the parties intend that the agreement shall be a legally enforceable contract."* According to Section 179 (2), *"A collective agreement which does satisfy these conditions shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract"*. See, International Labour Organisation, *IRLEX – United Kingdom* (n490).

[652] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), p. 246.

enjoy a legal effect (e.g., Britain, Cyprus,[653] Ireland[654]), such agreements are not considered to be binding. This matter is further developed in the section regarding enforcement.

Nevertheless, legal bindingness is the rule in the majority of countries. Hence, the following table provides a list of countries that, either explicitly or implicitly state the binding effect of collective agreements.

Country	Provision	Reference
Bangladesh	Section 222 of the Labour Act	*"An agreement reached between an association and the employer shall be legally binding upon the parties and it shall be enforceable through court"*.[655]
Belgium	Article 19 of Law on Collective Agreements and Joint Committees	The provision lists those bound by the agreement.[656]
Cambodia	Article 97 of the Labour Law	*"The provisions of a collective agreement shall apply to employers concerned and all categories of workers employed in the establishments as specified by the collective agreement"*.[657]
Denmark		Despite the absence of statutory regulation in regard to the effects of collective agreements, they are still viewed as binding. By entering in an agreement, the employer promises the trade union to apply the agreement to the employees, thereby creating a presumption according to which the terms of the agreement are comprised in the individual contract of employment.[658] An individual contract of employment cannot contradict the terms of a collective agreement in a more unfavourable manner for the employee, unless this is explicitly agreed between the parties to the collective agreement.[659]

[653] Article 26 (2) of the Constitution states that a law can provide for collective agreements of obligatory fulfillment. Such law has not been adopted and generally collective agreements are generally not legally binding. Hence, they are dependent on the willingness and cooperation of the parties and their members. See, Achilles C. Emilianides and Christina Ioannou, 'General Introduction – Cyprus' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2019), pp. 55-56; Achilles C. Emilianides and Christina Ioannou, 'Part II. Collective Labour Relations – Cyprus' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2019), pp. 201-258.

[654] With a few exceptions, collective agreements are not considered as intending to create legal relations. See, O'Rourke v. Talbot (Ireland) Ltd [1984]; XIVth Meeting of European Labour Court Judges (n111).

[655] International Labour Organisation, *IRLEX – Bangladesh* (n576).

[656] International Labour Organisation, *IRLEX – Belgium* (n486).

[657] International Labour Organisation, *IRLEX – Cambodia* (n487).

[658] Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), p. 198; XIVth Meeting of European Labour Court Judges (n111); Ole Hasselbach, 'General Introduction – Denmark' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2019), p. 56.

[659] Hasselbalch, 'General Introduction – Denmark' (n658), p. 63.

Finland	Section 4 of the Collective Agreements Act	The provision lists those bound by the agreement.[660]
France	Article L2262-1 of the Labour Code	Without prejudice of the effects of extension, the application of collective agreements is mandatory for all signatories and members of the contracting organisations.[661]
Germany	Section 3 (1) (2), 4 (1), and 5 (1) of the Act on Collective Agreements	Collective agreements apply to the members of the contracting organisations. If declared to be generally binding they apply to everyone within the agreement's scope.[662] Section 4 (1) states that normative provisions have a direct and mandatory effect on all employment relationships within the scope of the collective agreement. Accordingly, when the normative part of a collective agreement is violated, the affected employee or employer can bring a claim to court.[663] Section 3 (1) stipulates who is bound by the agreement. Generally, only the members of the contracting organisations are bound the collective agreement, with two provided exceptions.[664]
Italy	Article 39 of the Constitution	The idea according to which the parties to a collective agreement bind their affiliates is based on the presumed existence on a mandate or the affiliation to the contracting organisation. However, legislation permits territorial or company wide agreements to be generally binding on the whole workforce. For this, the agreements must have been concluded in accordance with inter-sector agreements and according to Article 8 of Decree 138 of 2011. According to Article 39, trade unions have the right to conclude collective agreements, binding on all workers. Since the constitutional rule has not been implemented, collective agreements are governed by the civil code and contract law in general.[665]
Spain	Article 37 (1) of the Constitution and Article 82 (3) of the Workers' Statute	*"The Act will guarantee the right to labour collective bargaining among the workers and employers' representatives, as well as the binding efficacy of collective agreements."* *"Any collective agreement governed by this Act shall bind all employers and workers included within its scope of application and throughout its validity."*[666]
Sweden	Section 26 of the Employment (Co-Determination in the Workplace) Act	Collective agreements bind the contracting parties, as well as members of the corresponding organisation, regardless of whether they entered before or after the conclusion of the agreement. The terms of the agreement are considered to part of the contract of employment for members of the contracting trade union. However, in practice, the contracting employer applies the terms the agreement to both unionised

[660] XIVth Meeting of European Labour Court Judges (n111).
[661] XIVth Meeting of European Labour Court Judges (n111); International Labour Organisation, *IRLEX – France* (n573).
[662] XIVth Meeting of European Labour Court Judges (n111).
[663] Manfred Weiss, Marlene Schmidt, and Daniel Hlava, 'General Introduction – Germany' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2020), p. 42; Weiss, Schmidt, and Hlava 'Part II. Collective Labour Law – Germany' (n618), pp. 198-200.
[664] Waas, 'Germany' (n435), p. 292.
[665] XIVth Meeting of European Labour Court Judges (n111); International Labour Organisation, *IRLEX – Italy* (n574); Treu, 'Part II. Collective Labour Relations - Italy' (n436), pp. 223-224.
[666] XIVth Meeting of European Labour Court Judges (n111); International Labour Organisation, *IRLEX – Spain* (n488).

		and non-unionised workers.[667] *"A collective agreement binds the parties within its scope of application'"*.[668] Still, it is worth noting that an agreement's scope of application is defined by the Labour Court.

Table 11. Examples of countries in which the binding effect of collective agreements is explicitly stated in legislation or implied from other legal provisions.

C) The Normative and Mandatory Effect

Collective agreements have a double function or effect, namely a normative or rule-making function[669] and a procedural or contractual function. Thus, collective agreements *"fulfil two major purposes"*.[670] The **normative** function refers to the regulation of individual employment contracts, covering its substantive terms. In other words, the normative function concerns the terms incorporated in the individual employment contract. Differently, the procedural or **contractual** function,[671] refers to the obligations taken by the collective parties, such as the peace obligations.[672] In general, one can see the role of collective agreements as referent to either legal efficacy, meaning the agreement has a normative legal efficacy, or contractual efficacy, meaning the agreement has a base in regular contract law. Kahn-Freund made a correspondence between the two 'social functions'

[667] In regard to the extension of an agreement's normative effects, it is worth noting that in Sweden there is no such mechanism. Still, collective agreements are applied outside their legal effects. Semi-compulsory legal provisions, from which collective agreements can deviate from, allow for the agreement to be applied also to those who are not bound by a collective agreement. Furthermore, the Labour Court views the usage of the labour market as an optional complementary rule, meaning that an employer bound by a collective agreement must not use less favourable terms to those who are not unionised with the contracting trade union. Such principle is based on the idea that, although outsiders could freely benefit from trade union activity, it is desirable that employers do not have an advantange in resorting to a non-unionised labour force. A union can bring a claim to the Labour Court, based on a breach of the collective agreement, if an employer does not apply the agreement to outsiders. Differently, the employee who is not a member of the contracting trade union, does not have a right to bring an action to the Labour Court. Unless an individual agreement is settled between the employer and the outsider worker, when such outsiders enjoy the benefits emerging from a collective agreement, they also become bound by the less favourable terms comprised in the agreement. See, XIVth Meeting of European Labour Court Judges (n111); Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), pp. 189-213; Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 204, 212-215.

[668] Westregård, 'Sweden' (n628), p. 554.

[669] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), p. 245.

[670] Deakin and Morris, *Labour Law* (n472), p. 68.

[671] ibid, p. 68.

[672] Lord Wedderburn, Lewis, and Clark (eds), *Labour Law and Industrial Relations – Building on Kahn-Freund* (n351), p. 42.

of collective agreements and two potential legal characteristics. Thus, a collective agreement could potentially be a legal code and a contract between the parties.[673] Furthermore, the rules giving effect to the normative function and shaping the employment relationship can have an automatic/non-automatic effect or a mandatory/non-mandatory effect.[674]

The dual legal effect of collective agreements refers to clauses regulating working conditions. It entails a prohibition of individual contracts of employment to deviate from the collective agreement and the consequence of being declared null and void, as well as the automatic replacement of such clauses by those comprised in the collective agreement. Thus, the normative effect means the parties cannot negotiate individual agreements that contradict the collective agreement.[675] In general, and as mentioned in Recommendation No. 91, this would not apply if the clauses of the individual contract of employment are more favourable than those comprised in the collective agreement. Differently, in regard to the clauses regulating the relations between the contracting parties, these are 'contractually' binding on them.[676] Consequently, *"the clauses regulating working conditions have the imperative force of law for the persons to whom the collective agreement applies, whereas the clauses concerning the relations between the parties to the agreement have simply the force of a contract between the signatory bodies"*.[677]

The normative effect of collective agreements is viewed in terms of the agreement's bindingness on the signatory parties and the members of the corresponding organisations. In the Nordic countries, this binding effect is automatic and normally statutory (i.e., in Denmark there is a presumption, based on a promise and hence, it is not statutory), despite the possibility of

[673] Kahn-Freund, *Labour and the Law* (n398), p. 124.
[674] For instance, in Britain, collective agreements can be automatically implied in the employment contract as a source of 'crystalised custom', but they are not compulsory. See, Kahn-Freund, *Labour and the Law* (n398), pp. 140-142.
[675] Malmberg, 'The Collective Agreement as an Instrument for the Regulation of Wages and Employment Conditions' (n438), pp. 198-201.
[676] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 137-139.
[677] ibid, p. 138.

other arrangements stating that members are automatically bound.[678] In some cases, it is possible for a union member to be exempt from the collective agreement's application, if the worker was already bound by another collective agreement. Thus, collective agreements are binding on the contracting parties and the members of the corresponding organisations. However, it is often possible to apply the normative part of a collective agreement to workers who are not affiliated to the contracting trade union, based on general principles of contract law.[679] *"These concern the reception or incorporation of the clauses of a collective agreement into an individual contract, by means of an express or implied manifestation of the will to do so on the parties to that individual contract."*[680] Moreover, the collective agreement applies to members of a contracting trade union, even if they become members of the union after the conclusion of the agreement. This application is based on the contract of association and its implied mandate or a specific, given, mandate.[681] In most cases, the normative effect is provided by law. However, it can also be derived from case law or let to the discretion of the parties.[682] While organisations can become parties to an existing collective agreement if the original contracting parties accept it, workers become parties to an agreement indirectly, when they join one of the contracting organisations. Moreover, when a collective agreement has a fixed duration, the organisations which are parties to the agreement are bound during that time, unless the agreement is terminated by common accord. Differently, members to these organisations can, by respecting an established period of time, withdraw from the organisation. When a collective agreement is of an indeterminate duration, the organisations can withdraw from the agreement if they respect the notice period. Such withdrawal entails the

[678] Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), p. 198.

[679] The Webbs had alreay identified that collective agreements could apply to outsiders. As they described, *"In the history of the building and engineering trades there are numerous instances of agreements being concluded, on behalf of a whole district, by temporary committees of non-unionists, and where the Trade Unions themselves initiate at habitually govern in these industries, not the members alone but the great bulk of similar workmen in the district"*. See, Webbs, *Industrial Democracy* (n348), p. 178; Schmidt and Neal, 'Collective Agreements and Collective Bargaining' (n412), p. 17.

[680] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 31.

[681] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 182.

[682] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 30.

withdrawal of its members. Still, these can also withdraw from the organisation by respecting the time frame provided. Finally, when an agreement has several contracting parties, the withdrawal of one does not directly free the other organisations.[683]

ILO Recommendation No. 91 advocates for a normative legal efficacy. According to Paragraph 3 (2), in case of a conflict between stipulations of an employment contract and the collective agreement, the terms of the individual contract should be regarded as null and void and the agreement's provisions should replace those of the individual contract of employment. Hence, according to international labour law, those bound by a collective agreement should not include in the contract of employment terms that conflict with a collective agreement. This effect was termed by Lord Wedderburn as the inderogability of collective agreements.[684] Accordingly, in most countries, collective agreements are legally binding and an employer cannot contract less favourable terms for the workers. *"Thus, the bilateral rule-making power of the parties to the collective agreement does not only influence but restrains the unilateral rule-making power of management."*[685] The so called inderrogability of collective agreements, usually functions *in peius*, meaning that the employer and the individual worker cannot contract less favourable terms than those comprised in a collective agreement. Nevertheless, inderrogability also exists *in melius*, in the sense that the terms of a collective agreement cannot be altered upwards.[686]

However, in Europe, for instance, there is no preeminent model. In the United Kingdom, collective agreements are not legally binding, constituting gentleman's agreements, not directly enforceable in courts. In Italy, collective agreements are contracts, governed by private law. They have a

[683] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 183-184.
[684] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), pp. 245-265; Jonas Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), p. 199.
[685] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), p. 178; Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), p. 249.
[686] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), pp. 250-251.

somewhat normative effect since domestic labour law does not allow for contractual stipulations containing inferior conditions than those established in collective agreements. Differently, for example in Germany, France and Spain, collective agreements have a normative legal efficacy. Finally, in countries like Sweden, for example, collective agreements are considered private law contracts but dwell in between both private and public law.[687]

Country	Provision	Reference
Belgium	Article 11 of the Law on Collective Agreements and Joint Committees	The clauses of an individual contract of employment are void if contrary to the terms of a collective agreement.[688]
Cambodia	Article 98 and 99 of the Labour Law	Provisions of employment contracts that are already covered by a collective agreement and are less favourable than the agreement's terms are null and automatically replaced by the relevant provisions of the collective agreement. The Minister in Charge of Labour can extend some or all of the provisions of a collective agreement to all employers and all workers within the occupational area and scope of the agreement.
France	Article L2254-1 and L2261-13 of the Labour Code	When an employer is bound by the terms of an agreement, the agreement's clauses apply to the employer's employment contracts, except when the individual contract provides for more favourable terms. This applies to both existing and future contracts of employment. Still, the employment contract cannot violate the agreement. The provisions incorporated in an individual contract of employment are applicable during the duration of the collective agreement.[689]
Italy	Article 2077 (2) and 2113 of the Civil Code	The clauses of an individual contract of employment that do not conform with the relevant collective agreement are automatically replaced by those of the collective agreement, unless they comprise more favourable conditions for the employee.[690] However, waivers and arrangements against irrevocable provisions of the law make contracts and collective agreements invalid.[691]

[687] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340).

[688] International Labour Organisation, *IRLEX – Belgium* (n486).

[689] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 320-321.

[690] Jurisprudence has considered the provision to apply only to relation between individual contracts of employment and collective agreements and to the relation between collective agreements at different levels. Accordingly, decentralised collective agreements can provide for conditions that are less favourable to workers. However, the idea according to which the normative component of the collective agreement is binding solely on the workers and employers that are members of the corresponding contracting parties carries problems for the application of collective agreements, namely company-wide agreements comprising *in peius* conditions. These terms would only apply to unionised workers. Therefore, a majority principle, stated in Article 8 of Act 148 of 2011 was adopted for some cases. Moreover, the prohibition of discrimination on the grounds of union affiliation and the principle of equality support the idea of a general effectiveness. See, Treu, 'Part II. Collective Labour Relations - Italy' (n436), pp. 222-226; International Labour Organisation, *IRLEX – Italy* (n574).

[691] Treu, 'Part II. Collective Labour Relations - Italy' (n436), pp. 223-226, 229; International Labour Organisation, *IRLEX – Italy* (n574).

Spain	Article 3 of the Workers' Statute	The rights and obligations concerning the employment relationship are governed through legal and regulatory provisions, collective agreements, and the individual contract of employment. However, the contract of employment cannot establish less favourable conditions than those provided in the law and collective agreements.[692]
Sweden	Section 27 of the Employment (Co-Determination in the Workplace) Act	*"Employers and employees bound by a collective agreement cannot with effect enter into an agreement that is in conflict with the collective agreement."* Moreover, in relation to statutory semi-compulsory provisions, a collective agreement can replace such provisions.[693]

Table 12. Examples of provisions referring to the normative effect.

Different measures may apply, with the aim of **extending** the scope of collective agreements. In other words, *"the ways in which their (collective agreements') effects may be universally extended, that is to say extended to cover all labour relations falling within the geographical and occupational field of application of an agreement, irrespective of whether the requirements normally necessary to make it applicable are satisfied (e.g., union affiliation of one or both parties; incorporation, etc)"*.[694] These include compulsory application, a presumption in the case another collective agreement does not exist, and a prohibition of withdrawal. Extension of collective agreements to workers who are not members of the organisations but are nonetheless included in the occupational or territorial scope of the agreement, includes different types of procedures. These can be automatic or enacted by administrative measures, conciliation, or arbitration. Through these measures, *"legislation has sought so far as possible to convert collective agreements which are normally limited to the members of the contracting organisations into regulations applicable throughout the occupation concerned"*.[695] The Committee on Freedom of Association has accepted as legitimate the situations in which collective agreements apply only to the parties and their members, as well as those in which a collective agreement applies to all workers.[696] Hence, the normative effect is reinforced through

[692] International Labour Organisation, *IRLEX – Spain* (n488).
[693] Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), p. 213.
[694] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 38.
[695] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 185-189.
[696] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1287* (n429); International Labour Organisation, *Freedom of*

the possibility of extension, usually in order to apply to all companies in a sector, even to those that are not members of the signing employers' organisations.[697] In a collective agreement, only provisions regarding the regulation of employment conditions can be extended. Differently, clauses concerning the relations between the contracting parties *"remain in their original form"*.[698] The extension of the normative effect stretches the agreement's coverage to outsiders, meaning those who are not members to one of the contracting parties. Such *erga omnes* mechanism is often provided for in legislation and performed by a governmental or administrative authority and used in specific circumstances (e.g., a collective agreement may be extended if it covers more than a certain percentage of workers in a given occupation).[699]

The following table provides a description in regard to the functioning of different countries where extension procedures exist.

Country	Provision	Reference
Belgium	Article 28, 31, 33, and 51 of the Law on Collective Agreements and Joint Committees	Only collective agreements concluded by a joint body can be extended or declared generally binding by Royal Decree. Extension must be requested and terminates when the agreement expires.[700]
Cambodia	Article 99 of the Labour Law	At the request of workers' or employers' organisations, the Labour Minister, after consultation with the Labour Advisory Committee, may extend all or part of a collective agreement to all who operate within the scope of agreement.[701]

Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO (n429), paragraph 911.

[697] Christophe Vigneau and André Sobczak, 'France: The Helping Hand of the State' in Roger Blanpain (eds) *Collective Bargaining and Wages in Comparative Perspective: Germany, France, The Netherlands, Sweden and the United Kingdom* (Kluwer 2005), p. 35.

[698] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 138.

[699] Despite some differences, the coverage of collective bargaining in Europe extensive. While Denmark, Norway, and Sweden comprise no general system of collective bargaining extension, Finland possesses such a structure. Similarly, the use of *erga omnes* mechanisms has allowed for a general applicably of collective agreements in Europe. Still, increasing issues in trade union density might affect the sustainability and legitimacy of the system. Bruun, 'The Autonomy of the Collective Agreement' (n406), p. 11.

[700] Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), pp. 403-405; International Labour Organisation, *IRLEX – Belgium* (n486).

[701] International Labour Organisation, *IRLEX – Cambodia* (n487).

France	Article L2261-22 and L2261-23 of the Labour Code	It is possible to legally extend (or enlarge) the scope of collective agreements beyond the scope agreed between the parties, provided that a minimum content is present. However, even when all the compulsory terms are not included in an agreement, the Minister of Labour can extend or enlarge a collective agreement after receiving a favourable opinion from the National Collective Bargaining Commission. After extension, a collective agreement binds all employers and employees within its scope in regard to the normative part. Thus, the contractual component of the agreement is not passible of extension.[702]
Germany	Section 5 of the Act on Collective Agreements	Extension is possible through an 'order imposing extension' or a governmental decree.[703]
Italy		Without the implementation of Article 39 of the Constitution, the extension of a collective agreement can be carried out through other methods.[704]

Table 13. Examples of provisions regulating extension procedures in different countries.

However, **even when this extension is not specified in legislation**, it is not uncommon for the social partners to make arrangements that achieve such extension. Differently from Germany, the Netherlands, Belgium, and France, the Nordic countries, namely Denmark, Norway, and Sweden do not possess legislation allowing for a declaration of universal validity or extended application of agreements. Finland and Iceland differ in this field. In Finland, it is possible for a committee, at the request of a national employer or employee organisation to declare a collective agreement to be generally valid, provided that the organisation is representative on a nationwide basis for the relevant industry. In Iceland, collective bargaining provisions on wages and working conditions are automatically applicable as mandatory minimum conditions for all workers in the field covered by the agreement.[705] In countries with a developed industrial relations system, strong unions, as well as centralised and standardised occupational organisation, in practice, collective agreements apply to all workers, even those who are not members

[702] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 350, 352, 355-356.
[703] Weiss and Schmidt, 'Part II. Collective Labour Law - Germany' (n625), pp. 202-204.
[704] Act No. 300 of 1970, Act No. 903 of 1977, Act 297 of 1982, Act 276 of 2003, Act 99/2013, Act 92 of 2012; Act 223 of 1991, Decree 368 of 2001, Act 863 of 1984, Decree 276 of 2003, Act 428 of 1990. See, Treu, 'Part II. Collective Labour Relations - Italy' (n436), pp. 221-229.
[705] (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), pp. 12-13.

of a trade union.[706] Only the normative content of a collective agreement can have a supplementary effect in regard to individual employment relations.[707] The Nordic countries have several alternatives of extending the legal effects of a collective agreement to 'outsiders'. Reference clauses are often used, through the incorporation of a provision in the contract of employment, with an explicit reference to the collective agreement. Furthermore, case law shows that, in the Nordic countries, the terms of a collective agreement have, as a default, a supplementary effect on individual contracts of employment of workers who are not union members. Thus, for example in Sweden, 'usage' of the collective agreement is viewed as a determining element when analysing whether an agreement has a supplementary effect. Hence, although it is not possible to extend a collective agreement based on law, collective agreements have an 'extended effect', since the provisions of an agreement could be considered as custom. Furthermore, as a general principle, the employer applies the agreement to 'outsiders', meaning non-unionised workers or members of another union, who would not be covered by the agreement. While allowing for non-members to benefit from a collective agreement, such principle is considered to prevent employers from profiting by contracting non-unionised workers. Still, when a collective agreement is considered to be the usage of the enterprise, an outsider employee is bound by both the favourable and unfavourable terms. Moreover, whereas an outsider cannot bring an action to the Labour Court based on a breach of a collective agreement when an employer does not apply it to outsiders, a trade union can start such action.[708] Accordingly, while in Sweden the collective agreement does not possess an *erga omnes* effect, they *"normally have a normalising effect that extends its effects far beyond the original members"*.[709] The employer is merely obligated to implement the agreement

[706] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 184; (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 13.

[707] For instance, as Malmberg stated, Swedish case law shows that only the normative provisions designed to be applied to all workers are can have a supplementary effect. See, Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), p. 206.

[708] Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), pp. 205-206; Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), pp. 203-204, 215.

[709] Westregård, 'Sweden' (n628), p. 555.

in relation to the union but not to individual workers, meaning it is not required to apply the agreement to unorganised workers and members of non-party trade unions. However, the principle of uniform working conditions works as a custom, meaning that a collective agreement is ultimately also applied to ununionised workers.[710] Furthermore, when a matter is not legally regulated, the conditions comprised in an industry wide collective agreement can be considered to have a supplementary effect and function as a norm.[711]

3.3.5. Enforcement

As required in Recommendation No. 91, collective agreements must be binding which, in turn, demands enforceability. In most countries, such enforceability is judicially-based, whereas in others collective agreements cannot be directly brought to court. Thus, while acknowledging that the enforcement of collective agreements is vastly based on the resort to court, it is possible to sustain this is not essential. Providing an overview of enforcement mechanisms in different countries, the focus of the following paragraphs is to highlight a distinction between judicial and non-judicial enforcement of collective agreements. The collective bargaining parties should be the ones responsible for the implementation, interpretation, and enforcement of the collective agreement.[712]

A) Legal Enforceability?

The fact that a collective agreement has a binding effect introduces a discussion on whether such bindingness unavoidably requires **legal enforceability**. The Freedom of Association Committee has stated *"that meaningful collective bargaining is based on the premise that all represented parties are bound by voluntarily agreed provisions"* and therefore it urged governments *"to ensure statutory enforceability of every agreement among*

[710] ibid, p. 555.
[711] ibid, p. 555.
[712] (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 14.

those represented by the contracting parties".[713] It is no uncommon for countries to establish courts for labour disputes, even if these differ and mostly address collective labour law issues.[714] However, the legal enforceability of collective agreements is not a feature of every single industrial relations system. These differ, with some countries allowing for the individual worker to access the labour court. In other cases, the individual employee only has access to ordinary courts.[715]

In **Great Britain**, collective agreements are not legally binding contracts, due to the parties' lack of contractual intent.[716] Thus, collective agreements are not enforceable in court, constituting a form of 'gentleman's agreements',[717] being *"rather 'a-typical' compared with the model most widely found which sees the collective agreement as an act endowed with legal effect, creating (legally) binding obligations"*.[718] If not translated into the employment relationship, collective agreements do not possess any legal value.[719] In regard to the British system, as Kahn-Freund explained, *"What, in the common parlance of employers and employees, is called an 'obligation', a 'right', a 'duty', a 'binding' or 'final' agreement is thus not necessarily an obligation, a right, a duty, or a contract in the eyes of the law. The binding nature of the mutual obligations incurred is often strongly emphasised in agreements concluded between trade unions and employers or their associations. This does not permit the conclusion that the agreement is a contract and that the rights and duties thus conferred and imposed could*

[713] International Labour Organisation, *NormLex – Compilation of Decisions of the Committee on Freedom of Association. Collective Bargaining p. 1335* (n429); International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (n429), p. 997.

[714] (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 15.

[715] ibid, p. 15.

[716] In 1968, the Donovan Royal Commission stated that *"collective agreements are not legally binding contracts in Britain"*, since that was not the parties' intention. See, Lord Wedderburn, Lewis, and Clark (eds), *Labour Law and Industrial Relations – Building on Kahn-Freund* (n351), p. 44.

[717] In 1969, in a judgment involving the Ford Motor Company, the court concluded that without express provisions making it legally enforceable, collective agreements were an undertaking only binding in honour. Lord Wedderburn, Lewis, and Clark (eds), *Labour Law and Industrial Reations – Building on Kahn-Freund* (n349), pp. 43-44; Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), pp. 36-37.

[718] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44), p. 245.

[719] Lord Wedderburn, *The Worker and the Law* (n417), p. 329.

be enforced in a court of law. (...) employers and employees have formulated their own codes of conduct and devised their own machinery for enforcing them."[720] Collective agreements *"are intended to yield 'rights' and duties', but not in the legal sense; they are intended, as it is sometime put, to be 'binding in honour' only, or (which amounts to very much the same thing) to be enforceable through social sanctions but not through legal sanctions"*.[721] Hence, there are two 'layers' of rules or norms, those enforced through moral and social sanctions and those enforced by law, with the latter being generally considered as less important than social sanctions.[722]

The understanding of the collective agreement in Britain as a gentleman's agreement, not legally binding except if incorporated in the individual employment contract, is widely agreed.[723] The binding effect is not denied, but legal enforceability as a general requirement is. This shows that, in the British context, the interpretation, application, and enforcement of the agreement is a task of the parties and not the courts.[724] In fact, Kahn-Freund viewed the British industrial relations system as mature *"to the point where there was little need for legal sanctions"*.[725] Thus, the main question regarding collective agreements is not so much about their binding character than it is about the **application of legal sanctions as an effective way of enforcement**.[726] Accordingly, the focus should be placed on whether the purposes of collective agreements are better accomplished if enforceable in court.[727] *"The question of social expediency is: are the social purposes of*

[720] Kahn-Freund, 'Legal Framework' (n473), p. 44.

[721] Freund, 'Legal Framework' (n473), pp. 57-58; Ruth Dukes, 'A Labour Constitution Without the State? Otto Kahn-Freund and Collective Laissez-Faire' in *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press 2014), p. 75.

[722] *"We thus have, as it were, two 'layers' of rules or norms, those fortified by purely customary, i.e., moral and social sanctions, and those enforced by law. The latter are, normally less important than the former."* See, Kahn-Freund, 'Legal Framework' (n473), p. 44.

[723] Dukes, 'A Labour Constitution Without the State? Otto Kahn-Freund and Collective Laissez-Faire' (n721), p. 77.

[724] Dukes, 'A Labour Constitution Without the State? Otto Kahn-Freund and Collective Laissez-Faire' (n721), p. 75; Kahn-Freund, 'Legal Framework' (n473), p. 44; Otto Kahn-Freund, 'Intergroup Conflicts and their Settlement' (1954) Vol. 5 British Journal of Sociology, pp. 202-210.

[725] Dukes, 'A Labour Constitution Without the State? Otto Kahn-Freund and Collective Laissez-Faire' (n721), p. 76; Kahn-Freund, 'Legal Framework' (n473), pp. 43-45; Kahn-Freund, 'Intergroup Conflicts and their Settlement' (n724), p. 195.

[726] Kahn-Freund, *Labour and the Law* (n398), p. 134.

[727] ibid, p. 134.

collective agreements more likely to be helped or to be hindered if they are enforceable in courts of law?"[728] Folke Schmidt and Alan Neal highlighted that collective agreements possess a different character at the national level but their distinguishing feature is the binding effect on the parties, irrespective of whether it is made effective through legal or extra-legal sanctions.[729] Lord Wedderburn argued that the distinction between legally binding and non-legally binding agreements was not the most important principle regarding collective agreements.[730] As he identified, besides this distinction, there are other 'useful' lines to draw.[731] Thus, the binding character places the question of knowing what is the most effective way of ensuring that an agreement fulfils its functions. Consequently, in some countries, collective agreements are legally binding (e.g., United States, Germany, Sweden, France), whereas in others they are not (e.g., Britain).[732] As mentioned, Kahn-Freund found that such differences were not based on legal traditions (i.e., civil law or common law), but on economic history and the resulting bargaining methods.[733]

After highlighting that bindingness merely requires enforceability, which can be achieved through legal or non-legal sanctions, the following paragraphs look into the topic of enforcement itself.

B) Collective and Individual Disputes

The report published by the International Labour Office on collective agreements in 1936, distinguished **two types of measures for the enforcement** of collective agreements. These could be measures for securing compliance and measures for settling disputes.[734] The first relate to the withdrawal of financial assistance, a prescription stating individual

[728] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), p. 162.
[729] Schmidt and Neal, *Collective Agreements and Collective Bargaining* (n412); Bruun, 'The Autonomy of Collective Agreement' (481), p. 35.
[730] Lord Wedderburn, 'Inderogability, Collective Agreements, and Community Law' (n44) p. 245.
[731] ibid, p. 258.
[732] Kahn-Freund, *Labour and the Law* (n398), p. 134.
[733] ibid, p. 134.
[734] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 63.

agreements cannot be contrary to the collective agreement, or declaring that a term through which a worker renounces a claim to a right or benefit is null and void. Furthermore, committees tackling specific technical tasks might be set up, as well as supervisory bodies. In particular, supervisory bodies might be established to inspect the observance of working conditions, which is often carried out by joint committees.[735] Still, notwithstanding the fact that one of the aims of a collective agreement is the prevention of industrial disputes, their implementation can create such conflicts. The interpretation of a collective agreement is performed by the signing parties and it is not uncommon that an agreement stipulates grievance procedures. Thus, to tackle possible conflicts arising from their application, dispute settlement provisions are often included in the text of a collective agreement. Sometimes the agreement contains a general statement that the parties should strive to reach an amicable, good faith, settlement. In other cases, provisions are more detailed and can refer to the submission to joint bodies, with conciliation or arbitration powers.[736] The same report described the different procedures existing at the time. These should start with an attempt to solve the matter with the employer and, either directly or after failed conciliation, apply to the trade union, which would try to reach a settlement at the local level. If this fails, a dispute could be brought to a joint conciliation board or a conference of organisations. Furthermore, it is referred that a succession of instances could be set up, with the dispute being brought, first to the committees or conferences at the local level, the district body, and finally a central body.[737] The description provided by the 1936 Labour Office's report, demonstrates that, although collective agreements are legally binding in most countries, it is common for an agreement to include dispute settlement provisions.

The description provided in the report includes mentions that resemble current global collective agreements. As developed in chapter 4, global framework agreements can include general statements in regard to the parties' endeavour to reach a commonly agreed solution. However, as

[735] ibid, pp. 63-65.
[736] ibid, pp. 65-67.
[737] ibid, p. 66.

demonstrated in chapter 5, for global collective agreements, more detailed provisions are required to ensure the agreement is indeed enforceable.

Breaches of a collective agreement can refer to either collective or individual claims. If a violation is committed by one of the contracting organisations, namely through its organs' acts, it is a case of **collective** responsibility. In regard to the organisation's responsibility for acts committed by its members, normally the organisation is not made liable, despite the fact that alternative options exist in some countries. For cases of collective responsibility, consequences include the payment of damages and public penalties, such as the loss of legal personality. Likewise, in some countries the collective agreement may be terminated based on a serious breach committed by one of the parties or even an individual worker, if it is deemed that compliance with the agreement is no longer demanded by one of the parties.[738] In terms of **individual** disputes, in many cases, domestic legislation provides for the payment of damages. This might be implied from the legal text, when it provides that a collective agreement is (legally) binding on workers and employers. The amount of damages can be limited, a percentage may be imposed, or exemptions can be granted. Normally, the sum will also vary, depending on whether it is imposed on the employer or the worker. Likewise, disciplinary measures may be imposed if the member of a contracting party (i.e., the worker or the employer) incurs in a breach related to the collective agreement. Penalties and fines can be included in the text of a collective agreement, in the corresponding law, or provided for in the penal code. If these responsibilities are invoked, the dispute is settled by the relevant body, according to national law. This body can be an ordinary, special, or labour court, as well as conciliation and arbitration bodies.[739] In several domestic frameworks it is also possible for the trade union to start an action on behalf of one of its members who has suffered losses based on a violation of the collective agreement committed by another contracting party. In some cases, it is also possible for the trade union to bring an action on behalf of someone

[738] ibid, pp. 194-195.
[739] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 192-194.

who is not its member, as long as that person is bound by the collective agreement.[740]

Workers' protection through collective agreements can be carried out at an administrative level, for instance by labour inspectorates, at a judicial level, by resorting to a court or arbitration panels, and through the use of the right to strike.[741] Most domestic focus is given to the settlement of individual and collective conflicts resulting from collective agreements, in most cases through litigation or alternative dispute resolution methods. Communication, consultation, and training at the workplace level are a fundamental part of the implementation of a collective agreement. Compliance monitoring and inspection are generally carried out by the social partners and sometimes entrusted to a third party. However, even when an agreement is negotiated and implemented in good faith and appropriate communication channels are in place, differences in regard to the interpretation of a collective agreement's terms and its application might arise. In most industrial relations systems, collective agreements are viewed as civil law contracts and a breach of the agreement can be brought to the competent court by one of the contracting parties. In other systems state associated requirements are made obligatory, including registration or an agreement's content, and compliance is monitored by the state and the social partners. Finally, in some countries, collective agreements are not legally enforceable meaning that legal action based on a violation of the agreement is not permitted.[742]

C) Judicial and Extra-Judicial Enforcement

As mentioned above, and urged by the Freedom of Association Committee, **legal enforceability is generally available** throughout different domestic systems. Hence, the most common enforcement options include resorting to either the competent judicial body, in the form of an individual claim or a

[740] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 194-195; Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 41.
[741] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 40.
[742] ILO, Factsheet No. 4 (November 2015).

collective lawsuit or, if determined in the agreement, to an arbitrator. Most attention regarding the enforcement of collective agreements has been focused on the possibility of attaining civil remedies in cases of violation. Accordingly, most systems are structured around the possibility of seeking enforcement through an individual claim or a collective lawsuit, depending on the parties involved and the matters at stake.[743] Sanctions normally take the form of a compensation based on the loss incurred due to the agreement's violation. It is usually possible for the agreement to comprise penalty clauses. As chapter 5 reveals, these are not included in global collective agreements and were in fact suggested by an interviewee as a possible way of improving compliance.

The configuration of the possibility to resort to a judicial body varies across countries. It is common that labour courts are established to deal with complaints concerning an agreement's normative content, whereas complaints regarding the obligatory content cannot be judicially enforced, unless that is explicitly stated in the agreement. However, even when the resort to court is provided, it is not uncommon for enforcement to be mostly carried out by the contracting parties, which can be more significant than legal sanctions.[744]

[743] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 41.

[744] That is the case of Sweden. *"The control exerted by them not only in relation to the opposite party but also in relation to their own members is far more important than legal sanctions. And furthermore, without their activity and assistance, legal sanctions, when utilised, would have been much less effective."* See, Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), p. 217.

Country	Provision	Reference
Belgium	Article 11 of Collective Agreement No. 5, Article 4 and 38 (2) of the Law on Collective Agreements and Joint Committees	Complaints can only be brought to court when related to the normative content of an agreement. The obligatory stipulations are, unless explicitly stated in the agreement, not enforceable in court. The settlement of individual disputes is carried out by the trade union committee and Labour Courts, with arbitration holding a minor role.[745]
France	Article L2521-1 to L2525-2 of the Labour Code Article 1103 of the Civil Code and Article L2262-9, L2262-10, L2262-11, and L8112-1 of the Labour Code	The normative terms are enforceable in court. A judicial action concerning the obligatory content can be brought by one of the contracting parties before civil courts. Individual disputes are brought before Labour Courts. Conflicts of interest are tackled by an optional system of conciliation, voluntary arbitration, and mediation.[746]
Italy	Article 1362 of the Civil Code	Enforcement is carried out as any private law contract, meaning that the rules of interpretation comprised in the Civil Code are applied to collective agreements. A dispute concerning the normative content of a collective agreement can be brought before an ordinary court by both individual workers and employers. A dispute regarding the obligatory content, a dispute can be brought by trade unions, employers' organisations, or individual workers. Still, the enforcement of an agreement is first taken by the parties through bargaining and grievance procedures settled by them.[747]
Sweden	Section 64 of the Employment (Co-Determination in the Workplace) Act, Section 2 of Chapter 2, Section 5 and 7 of Chapter 4 of the Labour Disputes Act	The Labour Court is the only resort for cases dealing with the interpretation of collective agreements and the corresponding sanctions. The Labour Court can deal with other conflicts. If the employee is represented by a union, the Labour Court is the only instance. In other cases, District Courts serve as the first and final instance and the Labour Court as the court of appeal.[748] Only collective parties have direct access to the Labour Court. A decision from the Labour Court cannot be appealed. A collective party entitled to make a claim in the Labour Court can choose to bring it before the district court instead. A decision of the district court can be appealed to the Labour Court. Individual disputes can be separated into those with union involvement or without union involvement. As for the first, organisations can start proceedings

[745] International Labour Organisation, *IRLEX – Belgium* (n486); Roger Blanpain, 'Part I. The Individual Employment Relation – Belgium' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2012), pp. 280-281; Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), pp. 406-407, 425-427.

[746] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 336-339, 381-385; Pascale Lagesse, '30. Resolution of Discrimination, Employment and Labour Disputes: Litigation, Arbitration, Mediation and Conciliation – France' in Robert Mignin and Salvador Del Rey (eds) *International Labour and Employment Compliance Handbook* (Kluwer Law International BV 2019), pp. 111-116.

[747] Treu, 'Part II. Collective Labour Relations - Italy' (n436), pp. 262-263.

[748] Westregård, 'Sweden' (n628), p. 558.

		before the Labour Court on behalf of any of its current or former members. With regard to cases with no union involvement, if a dispute cannot be brought before the Labour Court, it can be referred to the ordinary district courts. This can be claimed by an individual employee who is non-unionised or does not have trade union support, as well as an employer not bound by a collective agreement. A decision of the district court can be appealed to the Labour Court.[749]

Table 14. Examples of references regulating the legal enforcement of collective agreements in different countries.

In some countries, enforcement is **not structured around the possibility of bringing a complaint to court.** In Britain, although not excluding the possibility for the parties to give legal enforceability to the collective agreement, enforcement is generally carried out through social sanctions (e.g., industrial action) and managerial control.[750] Collective agreements are not legally enforceable and do not have an automatic effect in regard to individual contracts of employment, unless the agreement's terms are incorporated in the individual contract. The presumption is that collective agreements are not legally enforceable as contracts, unless the contracting parties express an intention to be bound in writing. Nevertheless, if incorporated into individual contracts of employment, the terms of a collective agreement attain legal effect.[751] This incorporation is not automatic, meaning that an express agreement is required. Hence, the terms of such an agreement are not applicable as minimum conditions. *"In this respect, British labour law stands in sharp contrast to that of other countries,*

[749] Adlercreutz and Nyström, 'General Introduction – Sweden' (n440); Axel Adlercreutz and Birgitta Nyström, 'Part I. The Individual Employment Relationship – Sweden' (n441), pp. 241-243.

[750] Paul Davies and Mark Freedland, *Labour Law: Text and Materials* (Weidenfeld and Nicolson 1979), p. 127.

[751] When legally enforceable or its terms are incorporated into the individual contract of employment, judicial settlement is attainable. In Britain, there is no labour court for all labour disputes. Employment tribunals deal with statutory employment rights and common law claims, whereas common law courts tackle contract and tort related issues. In regard to violations of individual rights attained under a collective agreement, employment tribunals will only have jurisdiction when the agreement's terms are incorporated in the contract of employment. If a case deals with contractual and statutory rights, the applicant will need to bring an action before both. In employment tribunals, the applicant can be represented by the union, whereas in courts the choice lies between legal representation and self-representation. Appeals are brought, for both, to the Court of Appeal and the Supreme Court. Still, most disputes are not tackled through state developed machinery. Instead, they are settled *"informally through workplace procedures and joint industrial bodies; and voluntary procedures are encouraged by legislation"*. See, Deakin and Morris, *Labour Law* (n472), pp. 75-88; Butler, 'Introduction – Great Britain' (n350), p. 64.

such as France, where the clauses of collective agreements apply to employment contracts except where there are provisions more favourable to the worker."[752]

Collective agreements constitute *"an important source of norms despite their independence from the formal legal system"*.[753] The analysis of the circumstances in which the terms of a collective agreement become legally enforceable as a part of the individual contract of employment raises several difficulties,[754] making the distinction between the obligatory and normative content of an agreement more challenging.

3.3.6. Scope

The next paragraphs discriminate a collective agreement's temporal, geographical, and occupational scope. While these elements do not raise complex questions in regard to global collective agreements, it is relevant to refer to particular issues, such as the provisions regulating the duration, termination, and revision of collective agreements. In regard to a collective agreement's geographical scope, the distinction between national, regional, local, and company level is relevant, particularly in terms of the degree of detail normally comprised in the different levels of agreements.

A) Temporal Scope

Depending on domestic legislation, certain legal requirements may need to be fulfilled for a collective agreement to **enter into force**. These can refer to the signature of the text, the deposit and registration, publication, among others. Normally the agreement enters into force when these requirements

[752] Mark Butler, 'Part I. The Individual Employment Relationship – Great Britain' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2018), p. 115.

[753] Deakin and Morris, *Labour Law* (n472), p. 904.

[754] These include the fact that collective agreements generally apply to both members and non-members of a contracting trade union, which is inconsistent with the contractual principle that parties should consent to the terms of their contract. Furthermore, the procedural terms of a collective agreement are not possible of individual enforcement and the fact that collective bargaining can be carried out at different levels entails a choice of which terms should be incorporated. See, Butler, 'Part I. The Individual Employment Relationship – Great Britain' (n752), p. 116.

are met. However, the parties may decide to create a retroactive agreement, making it applicable to employment contracts of workers to which the agreement applies at that time, those who conclude a contract of employment subsequently, and those whose contracts expired before the conclusion of the agreement but were valid during the period covered retroactively.[755]

In terms of an agreement's **duration**, the 1936 International Labour Office Report identified collective agreements with an undetermined duration, those with a fixed period, and those which are only valid for the duration of an undertaking. In the first case, the collective agreement may be terminated if the contracting parties give notice of withdrawal, which varies depending on the domestic framework. In the second form, the duration agreed by the parties must respect the limits established by law (i.e., minimum, maximum, or both). If a collective agreement exceeds the legal maximum, the limit will normally be considered to be the legally provided maximum. If the agreement was decided solely based on its duration, it will be considered as void. If a collective agreement expires without explicit termination, there is a tacit renewal. Finally, in the third form, legislation provides for a maximum period. However, if the undertaking has not been dissolved when the agreement expires, the agreement will be in force as having indeterminate validity.[756]

Country	Provision	Reference
Belgium	Article 16 (5) of the Law on Collective Agreements and Joint Committees	An agreement can be of definite, indefinite, or have a definite duration with a renewal clause. Partial withdrawal needs to be explicitly stated. The date of the agreement's entry into force must be specified, otherwise the agreement is considered to enter into force at the date of its conclusion or the date in which it was signed. The parties can give retroactive effect to normative stipulations Additionally, denunciation needs to be made into writing, under penalty of nullity.[757]
Cambodia	Article 96 of the Labour Law	A collective agreement is concluded for a definite term or an indefinite term. When concluded for a definite term, it cannot exceed three years. However, at the moment of its expiration, an agreement will remain in effect unless it has been cancelled, if a three-month notice has been

[755] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 172.
[756] ibid, pp. 172-173.
[757] Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), pp. 393, 406; International Labour Organisation, *IRLEX – Belgium* (n486).

		respected by either party. If an agreement is concluded for an indefinite term, it can be cancelled but it will continue in effect for a one-year period to the party wishing to cancel it.
France	Article L2222-5, L2222-4, L2222-6, and L2261-1 of the Labour Code	Unless stipulated otherwise, collective agreements are applicable from the day following the deposit. The agreement lays down the forms according to which the agreement can be renewed or revised, terminated,[758] and its period of duration. An agreement can be concluded for a definite period, not exceeding five years, or an indefinite period. If nothing is established between the parties, the duration is fixed at five years. [759]
Germany		A collective agreement can be concluded for a definite or indefinite period. Termination can happen when an agreement expires, by mutual agreement, by ordinary dismissal with respect to terms of notice, as well as through extraordinary dismissal as *ultima ratio*.[760]
Sweden		Collective agreements regarding wages and other terms of employment are concluded for definite periods, with the possibility of automatic renewal, whereas those regarding procedures are normally concluded with an indefinite duration. Both are subjected to prior notice of termination within a timeframe.[761]

Table 15. Examples of references regarding the duration of collective agreements in different countries.

The **termination** of a collective agreement can occur based on the will of the parties, by mutual agreement or withdrawal by one of the parties, or independently of such, after the passing of a specific period. Collective agreements with a fixed period of validity expire after that period. In some cases, there is a presumption of tacit renewal meaning that, without formal notice of termination the agreement is considered to have been renewed for an equal period of time or with undetermined validity. This presumption of tacit renewal intends to prevent industrial disputes, which are common in the period between the expiration of a collective agreement and the signature of a new one.[762] In a case of *force majeure*, the agreement is normally considered to be terminated, in whole or in part, before its end date. Differently, some causes of termination which are legally recognised do not apply in the case of collective agreements.

[758] Also, Articles L2261-7 to L2261-8 in regard to revision, Articles L2261-9 to L2261-13 in regard to termination.
[759] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), p. 328.
[760] Weiss, Schmidt, and Hlava, 'Part II. Collective Labour Law - Germany' (n625), pp. 201-202.
[761] Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (442), pp. 206-208.
[762] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 178.

The 1936 Report provides a list of examples, such as the loss of legal personality, dissolution of one of the contracting parties, cession, or transfer of the undertaking. Since the collective agreement is not merely a contract between the parties, regulating conditions of employment for the workers to which it applies, it is not considered to be terminated in these circumstances. Furthermore, the collective agreement is not intended to follow the individual employer, but the undertaking. Likewise, for a workers' organisation, the loss of legal personality or its dissolution merely affect the organisation's capacity to enter into agreements in the future.[763]

When a collective agreement expires, the terms it comprises are still applicable to the contracts of employment covered by the agreement, until these expire. Likewise, provisions, which are intended to be valid before the agreement expires, will also apply (e.g., obligation to pay a pension, no competition clauses).[764]

Country	Provision	Reference
France	Article L L2222-4 of the Labour Code	When a collective agreement expires, so do its effects.
Germany	Section 4 (5) of the Act on Collective Agreements	The normative terms of a collective agreement are still applicable after an agreement is terminated and until a new agreement is concluded. However, their force is modified, as it becomes possible to individually agree on lower conditions than those prescribed by the collective agreement.[765]
Italy		Collective agreements do not have any effects after expiring, due to their private nature. Still, if explicitly stated, an agreement can produce effects after expiration or termination.[766]
Sweden	Section 30 and 31 of the Employment (Co-Determination in the Workplace) Act	A gross breach of the collective agreement may deem the agreement as not applicable between the parties but that evaluation must be carried out by the Labour Court. Without it, it is not possible for one of the parties to cancel the agreement based on its violation. The contracting parties can expressly agree that, in the period between an agreement has expired and a new agreement has not been concluded, the terms of employment provided for in the expired collective agreement are still applicable. Still, such practice has been supported by the courts and considered as usage,

[763] ibid, p. 177.
[764] ibid, p. 178.
[765] Weiss, Schmidt, and Hlava 'Part II. Collective Labour Law - Germany' (n625), p. 202.
[766] Treu, 'Part II. Collective Labour Relations - Italy' (n436), p. 236.

		since these terms are thought to be incorporated in the employment contracts.[767]

Table 16. Examples of references regarding the termination of collective agreements in different countries.

In terms of a collective agreement's **revision**, it is possible for the agreement to regulate the matter, or the parties may choose to enter into a collective agreement valid for an indeterminate period of time from which they can withdraw at any time, provided they respect the notice period. Other collective agreements specify that conditions of employment, namely wages, are adjusted contingent on economic guidelines.[768] In some countries, legislation regulates the revision and termination of collective agreements.[769]

Country	Provision	Reference
France	Article L2222-5 and L2261-7 to L2261-8 of the Labour Code	Both renewal and revision procedures must be included in a collective agreement.
Italy		Wages and the normative component of the agreement are adapted to the economic and productive context, by plant and company-wide bargaining.[770]

Table 17. Examples of references regarding the revision of collective agreements in different countries.

B) Geographical and Occupational Scope

Legislation often requires that the contracting parties define the territorial and occupational scope of collective agreements, leaving them with a high degree of freedom in this definition. This is due to the great degree of variation in both an industry and the different economic regions, making it challenging for the law to create such construction.[771]

[767] Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), p. 207.
[768] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 173-174.
[769] ibid, pp. 174-176.
[770] Treu, 'Part II. Collective Labour Relations - Italy' (n436), p. 235.
[771] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 179-182.

In terms of the **geographical scope**, collective agreements can be concluded at the national, regional, local, company/factory, and at the level of a bargaining unit. In terms of the relationship between agreements concluded at different levels, some countries allow a lower-level agreement to take precedence over a higher-level one, if it comprises more favourable terms. Differently, in other countries, higher-level collective agreements lay down general guidelines which lower-level organisations affiliated to larger organisations are required to respect. These aspects are reminiscent of global collective agreements, which lay down minimum requirements. In this case, derogation is not allowed, based on clauses included in the organisations' constitutions. Since both local trade unions and federations can conclude collective agreements, these can cover one or several undertakings, a district or region, or be applied nationally.[772] This dimension is very much dependent on the domestic context. For example, in countries like Spain, it is possible to make a distinction between company level collective agreements, agreements at the local level, provincial level, interprovincial level, autonomous level, and national level. In Sweden legally binding collective agreements can be concluded at national level (intersectoral) level, industry-wide (national sector) level, and company level.[773] In some cases, an international scope can be included, referring to collective agreements that apply to work performed outside the country (e.g., the Netherlands, Finland, Sweden, the United States). An example of an agreement comprising such a clause can be found for instance in Sweden, in regard to the collective agreement signed between IKEM and IF Metall.[774]

The **professional scope** refers to whether the collective agreement concerns all workers in a specific industry or profession. The occupational scope of a

[772] ibid, p. 179.

[773] Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), p. 199.

[774] 'Collective Agreement concerning conditions for posted salaried employees from another country within EU/EES or Switzerland when work is assigned by companies affiliated to IKEM'. Available At: https://www.av.se/globalassets/filer/arbetsmiljoarbete-och-inspektioner/working-in-sweden/agreement-concerning-conditions-for-posted-salaried-employees-unionen-ikem2705593.pdf?_t_id=1B2M2Y8AsgTpgAmY7PhCfg%3d%3d&_t_q=IKEM+if+metall&_t_tags=language%3aen%2csiteid%3ae309af0f-0167-4bd4-b12b-961c55393fb9&_t_ip=130.235.136.12&_t_hit.id=AV_Web_Models_Media_GenericMedia/_b6107e3c-29ce-49f3-809e-68162d755b80&_t_hit.pos=13&hl=IKEM%20if%20metall [Accessed 7 October 2020].

collective agreement is normally based on the organisation of the trade union. If the trade union is organised based on occupation, the collective agreement will cover a trade or skilled occupation. Differently, if the trade union is organised on an industrial basis, the collective agreement will cover an entire industry.[775] In general, collective agreements aim at covering all workers and, while many countries tend to apply a collective agreement to all concerned workers, the above-mentioned description shows that other countries comprise extension procedures. However, it is possible for an agreement to exclude some categories (e.g., as in Spain, regarding company's top executives) or refer to specific professions.

Despite not regulating the territorial and occupational scope, it is common for the law to impose requirements on representativeness and recognition. Hence, the 'most representative' trade union requisite or legal recognition, granting the power to conclude collective agreements solely to federations and confederations or the largest trade union, can delineate these scopes.[776]

Country	Provision	Reference
Belgium	Article L2232-1 and Article L2232-5 of the Code	The occupational and territorial scope of a collective agreement is linked to the jurisdiction of the concluding joint body.[777]
France	Article L2222-1 and L2232-5 of the Labour Code	The territorial and professional scope is defined in the collective agreement. In terms of the territorial scope, commonly the parties agree on it being at the establishment, enterprise, region, industry, or national level. Generally, lower-level collective agreements provide for more favourable terms than those of higher-level agreements, despite a trend providing that, unless the superior level agreement excludes it, agreements at lower-level can contain less favourable terms for workers. The occupational scope of agreements concluded at industry level is freely agreed by the parties, including or excluding parts of an industry, which needs to be defined in economic terms. Agreements concluded at other levels can provide for cumulative coverage.[778]

[775] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 179.
[776] ibid, p. 180.
[777] Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), p. 392.
[778] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), p. 331.

Sweden		In Sweden, collective bargaining takes place at the federal, industry, and local level.[779] However, these levels are not territorially based.

Table 18. Examples of references regarding the territorial scope of collective agreements in different countries.

3.3.7. Form

A collective agreement's formal requirements are placed within the overall category of validity conditions.[780] In most countries, an agreement cannot be considered a collective agreement without fulfilling the corresponding formal requirements. The Spanish system makes an effect-based distinction between statutory (*estatutarios*) agreements, which fulfil the formal conditions set out by the Workers' Statute and therefore have a statutory character and an *erga omnes* effect, from non-statutory (*extraestatutarios*) agreements, referring to those that just possess mere contractual efficacy.[781] Still, a collective agreement's formal conditions usually refer to requirements regarding the agreement's form, notice period, registration, and publication.

In most countries, there is a requirement for the agreement to be put into **writing**, usually under the penalty of nullity, as well as deposited and registered. According to the International Labour Office Report from 1936 these conditions guarantee publicity and knowledge of the agreement.[782] This goes in line with ILO Recommendation No. 91, according to which collective

[779] Westregård, 'Sweden' (n628), pp. 560-561.

[780] Thus, alongside with formal, substantivity conditions may be placed on collective agreements. These concern the purpose of an agreement, which is subjected to same restrictions as contracts of employment, and the status of the contracting parties, which is dealt in the subsection on representativeness. See, International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 121.

[781] According to Article 37 (1) of the Constitution, both are legally binding, meaning the distinction is based on their nature and personal effects. Hence, by respecting the requirements of Title III of the Workers' Statute, the statutory agreements have, as stated in Article 82 (3) of the mentioned Statute, an *erga omnes* effect and constitute a source of law, according to Article 3 (1) (b). Differently, non-statutory agreements do not have an *erga omnes* effect. Hence, their effects are restricted to the contracting parties and their members. In regard to their nature, the Spanish Constitution perceives them as a legal source, although the Supreme Court has held they have a contractual nature. See, Consuelo Chacartegui, 'Spain' in Ulla Liukkunen (eds), *Collective Bargaining in Labour Law Regimes* (Springer 2019), pp. 535-536.

[782] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 123.

agreements are written agreements. The law can either expressly require the agreement to be put into writing or make its effects subject to it.

Country	Provision	Reference
Belgium	Articles 13, 14, 16, and 25 of the Belgium law on Collective Agreements and Joint Committees	Collective agreements are concluded in writing, under penalty of being declared null and void. The agreement needs to be drafted in French and Dutch, although it can be drafted only in the language of the relevant region. It must contain certain mandatory information. Additionally, an agreement needs to be signed by those who have concluded it on behalf of their corresponding organisation or in their own name. An agreement not drawn up in writing or without the obligatory information cannot be deposited at the Department for Employment and Labour and therefore will not be legally binding.[783]
Cambodia	Article 96 of the Labour Law	A collective agreement is a written agreement.[784]
France	Article L2231-3 and L2231-4 of the Labour Code	Collective agreements are required to made in writing, a notice period must be given and the agreement also needs to be registered. An agreement must be put into writing, under the penalty of being considered invalid, and in French. [785]
Norway	Labour Disputes Act and Section 11 of the Public Service Disputes Act	A collective agreement means a written agreement.[786]
Spain	Article 90 (1) of the Workers' Statute	Collective agreements must be in writing, under the penalty of being considered null and void.[787]
Sweden	Section 23 of the Employment (Co-Determination in the Workplace) Act	A collective agreement is a written agreement.
Viet Nam	Article 73 (1) of the Labour Code	According to the legal definition of collective agreement provided in, a collective agreement is an agreement in writing.[788]

Table 19. Examples of references requiring the collective agreement to be put into writing in different countries.

The fact that the agreement must be put into writing does not mean that everything connected to the agreement must be expressly provided for in its text. For instance, in Sweden, as stated in the Employment (Co-

[783] Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), pp. 389-390, 386; International Labour Organisation, *IRLEX – Belgium* (n486).
[784] International Labour Organisation, *IRLEX – Cambodia* (n487).
[785] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 326-327; International Labour Organisation, *IRLEX – France* (n573).
[786] International Labour Organisation, *IRLEX – Norway* (n578).
[787] International Labour Organisation, *IRLEX – Spain* (n488).
[788] International Labour Organisation, *IRLEX – Viet Nam* (n580).

Determination in the Workplace) Act, a collective agreement is a written agreement. However, such requirement does not demand for everything to be expressly regulated in the agreement. *"Some connection with the text is usually required, but through the application of rules of interpretation it is sometimes possible to incorporate into the collective agreement rules which do not in any way appear in text."*[789] In fact, in Sweden, implied terms can be included in a collective agreement. Hence, the Labour Court has considered that an agreement can include 'implied terms', referring, for instance, to the employer's prerogative on the right to direct work, workers' duty to work with the employers' area of activity and the collective agreement's scope of application, the employers' duty obligation to apply the collective agreement to non-union members, and the employee's loyalty obligation towards the employer.[790]

Differently, in some countries it is **not legally required** to conclude a collective agreement in writing. This is the case of Bangladesh,[791] Denmark,[792] India,[793] and Italy.[794] In the United Kingdom, Article 179 (1) of the Trade Union and Labour Relations Act requires that, if a collective agreement is intended to be legally enforceable, it must be put into writing a comprise a provision expressly stating the parties' intention to make the agreement a legally enforceable contract. From this it follows that, if the parties do not intend to make the agreement legally enforceable, they are not required to follow the written form. Hence, in the United Kingdom, collective agreements can be oral or written.[795]

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[789] Adlercreutz and Nyström, 'Part II. Collective Labour Relations – Sweden' (n442), p. 205.

[790] Westregård, 'Sweden' (n628), p. 558.

[791] In Bangladesh, no provisions on registration or written formalities are legally provided. See, International Labour Organisation, *IRLEX – Bangladesh* (n576).

[792] Denmark does not demand that the collective agreement must be put into writing nor registered.

[793] Differently, Indian law does not comprise any legal provision requiring that a collective agreement must be written or registered. However, Section 2 (p) of the Industrial Disputes Act defines a 'settlement' as *"a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to (an officer authorized in this behalf by) the appropriate Government and the conciliation officer"*. See, International Labour Organisation, *IRLEX – India* (n491).

[794] Likewise, in Italy there is no legal provision stating that a collective agreement necessarily be put into writing. See, International Labour Organisation, *IRLEX – Italy* (n574).

[795] International Labour Organisation, *IRLEX – United Kingdom* (n490).

It is also frequent for legislation to require the registration of collective agreements. However, the authority to which the agreement must be lodged and **registered** differs amongst countries (and sometimes in the same country within bargaining levels),[796] from conciliation and arbitration authorities to the Ministry of Labour or inspection authorities, among others.[797] However, registration is not always required. For instance, in Sweden and in the United Kingdom[798] there are no provisions regulating the registration of collective agreements.

Country	Provision	Reference
Belgium	Article 13, 14, 16, and 18 of the Law on Collective Agreements and Joint Committees	Registration is a prerequisite of validity. Collective agreements must be filled with the Ministry of Employment and Labour. Registration can be rejected, if the agreement does not comprise the mandatory references.[799]
Cambodia	Article 101 (c) of the Labour Law	A Prakas from the Ministry in charge of Labour will determine the methods for registering, filing, publishing, and posting collective agreements.[800]
France	Article L2231-6 and D2231-2 of the Labour Code	The agreement enters into effect, regardless of registration. A collective agreement must be deposited according to the specifications of the Labour Code, to the Registry of the Labour Relations Tribunal. Unless otherwise stipulated, the agreement is applicable from the day after its deposit.[801]
Germany	Section 6 of the Act on Collective Agreements	The agreement enters into effect, regardless of registration. Collective agreements are registered by the Federal Ministry of Labour, but it is not a formal requirement.[802]
Italy	Article 7 (1) of the Rules on the National Council for Economy and Labour	The agreement enters into effect, regardless of registration. Collective agreements have to be registered with the National Council of Economy and Labour within 30 days of the

[796] For instance, in Viet Nam a collective agreement must be submitted to the state management authority within ten days of its signature. Collective agreements are submitted by the employer or the employer's representative. For agreements at the enterprise level, the submission is done with the provincial labour management authority, whereas for other types of collective agreements the submission is done with the Ministry of Labour, Invalids and Social Affairs. See, International Labour Organisation, *IRLEX – Viet Nam* (n580).

[797] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 122.

[798] In the United Kingdom there are no legal requirements on notice or registration of collective agreements. See, International Labour Organisation, *IRLEX – United Kingdom* (n490).

[799] International Labour Organisation, *IRLEX – Belgium* (n486).

[800] International Labour Organisation, *IRLEX – Cambodia* (n487).

[801] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 327, 331; International Labour Organisation, *IRLEX – France* (n573).

[802] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 23; Weiss, Schmidt, and Hlava 'Part II. Collective Labour Law - Germany' (n625), p. 201; XIVth Meeting of European Labour Court Judges (n111).

		agreement's conclusion. However, registration does not influence the agreement's validity. Furthermore, territorial and enterprise agreements do not need to be to registered.[803]
Spain	Article 90 (2) of the Workers' Statute	Registration is a prerequisite of validity. Collective agreements must be filed with the competent labour authority for registration, within fifteen days of the agreement's signature.[804]

Table 20. Examples of references regulating the registration of collective agreements in different countries.

In terms of an agreement's **publication**, such condition is normally imposed when the agreement applies to both union and non-union members. Likewise, decisions such as arbitration awards and those of labour courts are required to be published in official bulletins of the Ministry or legislative enactments.[805] Hence, for instance, in Belgium, according to Article 25 of the Law on Collective Agreements and Joint Committees, the object, date, duration, scope, and place of filing of a collective agreement concluded within a joint body is published through a notice in the moniteur belge.[806] Differently, in Germany for instance, collective agreements do not need to be published.[807]

In terms of **dissemination**, connected to the publication of a collective agreement, in some countries a notice must be posted and the agreement must be mentioned in the pay slip. For instance, in France the courts have considered that, if such information is not made available to the employees, the agreement is not opposable to them.[808] Hence, knowledge of collective agreements can be disseminated through a requirement for the agreement to be posted in company sites or making employers keep a copy available for employees.[809] In Germany, according to Section 8 of the Collective Agreements Act, the employer has to place the text of the collective

[803] International Labour Organisation, *IRLEX – Italy* (n574).
[804] International Labour Organisation, *IRLEX – Spain* (n488).
[805] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 123.
[806] Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), pp. 388-389; International Labour Organisation, *IRLEX – Belgium* (n486).
[807] XIVth Meeting of European Labour Court Judges (n111).
[808] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), p. 327.
[809] Perone, *The Law of Collective Agreements in the Countries of the European Community* (n124), p. 23.

agreement at the employees' disposal.[810] As chapter 6 demonstrates, dissemination of the agreement to workers constitutes on of the main issues affecting their adequate implementation and enforcement.

3.3.8. Relation to Statutory Law, Employment Contracts, and Other Collective Agreements

The idea of a hierarchy of norms is present throughout different systems, with the possibility of exceptions, which need to be based on a case-by-case analysis and are framed around the aim of achieving the best protection for workers.[811] The collective agreement is sometimes not explicitly listed as a legal source. Regardless, and even when given a contractual status, the collective agreement's intrinsic value as a source of law is based on constitutional and legal grounds regarding freedom of association and the right to collective bargaining, which are widely recognised throughout different legal systems. These are repeatedly referred in the UDHR, the International Covenant on Civil and Political Rights (ICCPR), ILO Conventions No. 87 and 98 and, at the European level, the European Convention of Human Rights, and the European Social Charter. Consequently, in order to analyse the collective agreement's placement in the hierarchy of norms one needs to identify the sources that shape the employment relationship and create the parties' rights and obligations. These arise, in particular, from statutory law, the employment contract, and collective agreements.[812]

[810] Weiss, Schmidt, and Hlava 'Part II. Collective Labour Law - Germany' (n625), p. 201.

[811] Bernd Waas, 'Statues, Collective Agreements and Contracts of Employment: A Look into the Hierarchy of Labour Law Norms - A Thematic Working Paper for the Annual Conference of the European Centre of Expertise (ECE) in the Field of Labour Law, Employment and Labour Market Policies: 'Perspectives of Collective Rights in Europe' (European Commission 2018). Available At: https://eu.eventscloud.com/file_uploads/0e5d94f88991f3895d8450e8e5cf00df_Waas_Final_EN.pdf [Accessed 26 March 2018].

[812] XIVth Meeting of European Labour Court Judges (n111); Waas, 'Statues, Collective Agreements and Contracts of Employment: A Look into the Hierarchy of Labour Law Norms - A Thematic Working Paper for the Annual Conference of the European Centre of Expertise (ECE) in the Field of Labour Law, Employment and Labour Market Policies: 'Perspectives of Collective Rights in Europe' (n811).

As a basic principle of law, **mandatory legislation has a prevailing role** in relation to both the employment contract and collective agreements. In other words, collective agreements are ranked below mandatory statues (e.g., Belgium,[813] Denmark,[814] France,[815] Finland, Germany, Italy, Sweden, the United Kingdom). *"As a general rule, then, even if the text of the law makes no provision on the subject, laws take precedence over agreements just as collective agreements take precedence over individual contracts of employment"*.[816] However, since labour law is constructed around the overall aim of worker protection, a favourability principle is permitted. Therefore, when the law comprises **semi-compelling provisions**, it is possible for an employment contract to include more favourable terms than those comprised in statutory law. The same can be said in regard to the relation between collective agreements and half-mandatory statues. *"It is a general principle of labour legislation that agreements, whether individual or collective, may not depart from the imperative provisions of social legislation except in so far as they are more favourable to workers"*.[817] The favourability principle entails that a collective agreement cannot contain less favourable terms than those legally provided. Hence, an agreement can take precedence over statutory provisions if it provides more favourable terms for the workers.[818] Still, some exceptions can be provided, namely for public order reasons, discrimination, trade union rights, among others. Hence, it is possible for legal statues to explicitly prohibit such *in melius* derogations.

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[813] Article 51 of the Law on Collective Agreements and Joint Committees determines the hierarchy of sources within labour law. According to Article 9, a provision of an agreement is void if it is contrary to the mandatory provisions of the laws and decrees, the compulsory international treaties and regulations in Belgium, or if entrusts the settlement of individual disputes to arbitrators. See, International Labour Organisation, *IRLEX – Belgium* (n486).

[814] Hasselbalch, 'General Introduction – Denmark' (n658), pp. 61-62.

[815] Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 317-320.

[816] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 131.

[817] ibid, p. 131.

[818] In Bangladesh, the relationship between collective agreements and statutory provisions is regulated in Section 336 of the Labour Act, under the epigraph *"Protection of existing conditions of employment"*. According to Section 336, the Act does not affect any right or privilege the worker was entitled to, at the time the Act entered into force, and which was repealed by the Act, if such right or privilege is more favourable. In Viet Nam, the Labour Code states that a collective agreement cannot contradict the law and must provide for more favourable terms and conditions (Article 73 (2)). See, International Labour Organisation, *IRLEX – Bangladesh* (n576); International Labour Organisation, *IRLEX – Viet Nam* (n580).

Differently, in Sweden, collective agreements can comprise **less favourable** conditions than those comprised in semi-dispositive provisions of statutory law. Swedish labour law is characterised by a semi-discretionary law, with collective agreements composing *"the most important instrument for regulation of the labour market; these agreements offer a high degree of coverage"*.[819] In fact, *"collective agreements are the most important instrument of regulation of the labour market, as most of labour-related legislation consists of semi-discretionary law"*.[820] These can be derogated by collective agreements, but not by individual employment contracts. Differently from a vast majority of countries, legislative regulations can be improved, but also made worse through collective agreements.[821] Hence, in Sweden it is possible for the parties to regulate less favourable conditions than those provided in statutory law, in semi-dispositive provisions.[822] Similarly, in the Netherlands, statutory law allows for collective agreements to contain deviations *in peius*. Moreover, in Norway, Sweden, and somewhat in Denmark, less favourable terms of a collective agreement are also applied to non-union members. In Norway, provisions in detriment to the employee are invalid. However, contrarily to other countries, employment contracts that contain *in melius* provisions in contradiction to the collective agreement are also considered invalid.[823] Differently, in Finland, notwithstanding some exceptions, a collective agreement only bears rights for an outsider, and no duties. These are semi-mandatory statue provisions, meaning they allow for derogation through collective agreements but not through contracts of employment and they allow the employer to apply the agreement to outsiders.[824] In fact, in several other countries, such as in Germany, France, and Portugal a favourability principle is prevalent.[825]

[819] Westregård, 'Sweden' (n628), p. 553.
[820] ibid, p. 554.
[821] ibid, p. 554.
[822] Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), pp. 203-210.
[823] (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 13.
[824] Malmberg, 'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), pp. 205-206.
[825] (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 14.

Country	Provision	Reference
France[826]	Article L2251-1 of the Labour Code	A collective agreement can contain more favourable stipulations for employees than those provided for in the law but it cannot derogate from provisions of public policy and public order. According to the courts, the principle of favourability in regard to conflicting norms must be based on the employees' interest, using a juridical (i.e., non-economical) analysis, through an objective comparison when it concerns two agreements, and a subjective one when it concerns legal and conventional provisions. The principle of favourability has been restricted in France, through the possibility to derogate from legal provisions in regard to certain matters, even when this is not done in favour of employees. Similarly, and although limited, there is the possibility that collective agreements at the enterprise level can derogate from agreements at branch or sectoral level, also if this is not in favour of employees.[827]
Germany		It is possible to provide for other terms than those provided by higher ranking legal sources, if done in the employee's favour.[828] Hence, unless an exception is allowed, legislation establishing a minimum standard can only be improved through a collective agreement, but not reduced. When legislation does not set a minimum standard, the collective agreement can improve or reduce the regulation. Finally, legislation might be compulsory, meaning that it can neither be improved or reduced by a collective agreement. Interpretation determines whether a provision sets out a minimum standard or it is compulsory.[829]
Italy		Collective agreements can modify the law in a more favourable way to workers, *in melius*, but not *in peius*. However, in some cases, *in peius* derogations by collective agreements in relation to imperative legal norms are possible.[830]
Norway	Section 1-9 of the Working Environment Act	*"This Act may not be departed from by agreement to the detriment of the employee unless this is expressly provided"*.[831]
Spain	Article 3 of the Workers' Statute and Article 27 of the Royal Decree-Law on Labour Relations	According to the Workers' Statute, conflicts between state and agreed provisions are solved according to a favourability principle. The Law-Decree provides that collective agreements have legal force and are binding during their validity, to all

[826] Michel Despax, Jean-Pierre Laborde, and Jacques Rojot, 'General Introduction – France' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2017), pp. 74-76; Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 316-320.

[827] Public policy and public meaning texts with an imperative nature or regarding guarantees that are not able to be contractually agreed or which go beyond labour law. See, Despax, Laborde, and Rojot, 'Part II. Collective Labour Relations – France' (n433), pp. 317-320; International Labour Organisation, *IRLEX – France* (n573).

[828] Eurofound, 'Favourability Principle'. Available At: https://www.eurofound.europa.eu/efemiredictionary/favourability-principle-0 [Accessed 28 November 2019]; OECD, 'Collective Bargaining in OECD and Accession Countries – Germany' (September 2017). Available At: http://www.oecd.org/employment/emp/collective-bargaining-Germany.pdf [Accessed 28 November 2019].

[829] Weiss, Schmidt, and Hlava, 'General Introduction – Germany' (n663), p. 42.

[830] Treu, 'General Introduction - Italy' (n368), p. 26.

[831] International Labour Organisation, *IRLEX – Norway* (n578).

		employers and workers falling within its application scope.[832] Still, the hierarchy is grounded on the application of the principle of the most favourable norm and the principle of *minima*. Thus, higher level norms set a minimum, which cannot be breached. However, more favourable working conditions take precedence when analysing which rule is to be applied, meaning the maximum within the minimum set by the higher-ranking norm.[833]

Table 21. Examples of references to a favourability principle in the relationship between collective agreements and legislation.

In the British context, no equivalent provision is found.[834] Thus, in some countries this relationship is not legally regulated. Similarly, in Japan,[835] Myanmar,[836] the Philippines,[837] and South Korea[838] the matter is not legally regulated.

In regard to the relationship between collective agreements and **individual contracts of employment**, in some cases, a favourability principle can be mentioned. In fact, according to Section 3 (3) of ILO Recommendation No. 91:

> Stipulations in contracts of employment which are more favourable to the workers than those prescribed by a collective agreement should not be regarded as contrary to collective agreement.

[832] International Labour Organisation, *IRLEX – Spain* (n488).
[833] Manuel Alonso Olea, Fermín Rodríguez-Sañudo, and Fernando Elorza Guerrero, 'Introduction – Spain' in Frank Hendrickx (ed.) *IEL Labour Law* (Kluwer Law International BV 2018), p. 42.
[834] International Labour Organisation, *IRLEX – United Kingdom* (n490).
[835] In Japan, the Labour Union Act does not contain any provision in regards to the relationship between collective agreements and statutory provisions. See, International Labour Organisation, *IRLEX – Japan* (2021). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:JPN,,2015:NO [Accessed 9 September 2019].
[836] International Labour Organisation, *IRLEX – Myanmar* (2016). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:MMR,,2015:NO [Accessed 9 September 2019].
[837] International Labour Organisation, *IRLEX – Philippines* (2016). Available At: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:PHL,,2015:NO [Accessed 9 September 2019].
[838] International Labour Organisation, *IRLEX – Republic of Korea* (n492).

When referring to the legal effect of collective agreements and the prohibition of departing from the provisions comprised in a collective agreement, the 1936 International Labour Office Report linked it with a dual minimum legal effect. Accordingly, those covered by the collective agreement cannot conclude individual contracts of employment in non-conformity with the collective agreement, with the consequence of these being declared null and void. Furthermore, there is an automatic substitution of such clauses in the individual employment contract with those of the collective agreement.[839] However, as a rule, the parties to an individual contract of employment can agree on different terms, in the benefit of the worker. This is based on idea of the collective agreement as setting minimum conditions. However, in some countries, it is allowed for the parties of a collective agreement to prohibit such a departure.[840] Thus, employment contracts agreements can allow for deviations, which are not considered to conflict with the collective agreement. Understanding whether a clause is in contradiction with the agreement varies among countries. In Finland, interpretation is based on the protective objective of collective agreements and the notion according to which they set out minimum standards. Hence, if lower protection is agreed in an individual employment contract, this would generally be in conflict with a collective agreement. In some countries, however, such as in Spain,[841] the favourability principle does not apply, or is a matter for the contracting parties to negotiate, like in Sweden,[842] and Denmark.[843] Differently, in other countries, collective agreements are viewed as protective instruments for employees, but also for employers, in terms of competition.[844]

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[839] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 125-126.

[840] ibid, pp. 127-130.

[841] OECD, 'Collective Bargaining in OECD and Accession Countries – Spain' (September 2017). Available At: http://www.oecd.org/employment/emp/collective-bargaining-Spain.pdf [Accessed 28 November 2019].

[842] OECD, 'Collective Bargaining in OECD and Accession Countries – Sweden' (September 2017). Available At: http://www.oecd.org/employment/emp/collective-bargaining-Sweden.pdf [Accessed 28 November 2019].

[843] OECD, 'Collective Bargaining in OECD and Accession Countries – Denmark' (September 2017). Available At: http://www.oecd.org/employment/emp/collective-bargaining-Denmark.pdf [Accessed 28 November 2019].

[844] For instance, in a case 1989 case the Norwegian Labour Court was of the view that higher pay than what provided in the collective agreement was not allowed, although in 2002 Jonas Malmberg questioned the relevance of this assessment. In Sweden, collective agreements are individually examined. See, Malmberg,

Country	Provision	Reference
France	Article L2254-1 of the Labour Code	The provisions of a collective agreement apply to all employment contracts concluded with the bound employer, except when the individual contract of employment comprises more favourable provisions.[845]
Italy	Article 2077 (2) the Labour Code	Non-conforming provisions in individual contracts of employment are automatically replaced by the collective agreement's relevant terms, unless they are more favourable to the workers.[846]

Table 22. Examples of references to a favourability principle in the relationship between collective agreements and employment contracts.

As for the **relation between collective agreements**, it is worth differentiating those **concluded at different levels** (e.g., at national or local level; at central, industry-wide, or company level) from those concluded at the same level. In regard to the first, there can either be a detailed hierarchical structure or a functional hierarchy in practice. However, it is worth noting *"there is no uniform way of regulating the relationship between collective agreements (…)"*.[847]

Country	Provision	Reference
Belgium	Article 10 of the Law on Collective Agreements and Joint Committees	Distinction between collective agreements according the joint body.[848] When a higher-level agreement does not regulate certain matters, a lower-level agreement which provides for more favourable terms prevails. Nevertheless, when a higher-level collective agreement establishes maximum standards, it prevails over a lower-level collective agreement providing for more favourable terms.[849]
Denmark		Lower-level collective agreements that do not comply with the terms of a higher-level collective agreement are null and void, meaning that sectoral collective agreements must respect the

'The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions' (n443), pp. 199-200.

[845] International Labour Organisation, *IRLEX – France* (573); OECD, 'Collective Bargaining in OECD and Accession Countries – France' (September 2017). Available At: https://www.oecd.org/employment/emp/collective-bargaining-France.pdf [Accessed 28 November 2019].

[846] International Labour Organisation, *IRLEX – Italy* (n574); OECD, 'Collective Bargaining in OECD and Accession Countries – Italy' (September 2017). Available At: http://www.oecd.org/employment/emp/collective-bargaining-Italy.pdf [Accessed 28 November 2019].

[847] Bruun and Hellsten (eds), *Collective Agreement and Competition in the EU – The Report of the COLCOM-project* (n435), p. 65.

[848] Article 10 of the Law on Collective Agreements and Joint Committees lists those provisions which, being contrary to those of collective agreements concluded by higher level joint bodies, are null and void. See, Blanpain, 'Part II. Collective Labour Relations – Belgium' (n623), p. 389.

[849] Patrick Humblet and Marc Rigaux, *Belgian Industrial Relations Law* (Intersentia 2005), pp. 99-100.

		conditions determined by basic agreements. Likewise, local agreements must comply with the terms of a sectoral agreement., with some exceptions.[850]
Finland		It is not possible for an employer to conclude local collective agreements containing weaker terms, unless the nationwide collective agreement allows it.
Italy		A hierarchy between different level agreements is not acknowledged and lower-level collective agreements can contain less favourable provisions than those provided in nation-wide agreements.
France		Collective agreements concluded by works councils are ranked under agreements concluded by trade unions, but only when such derogation is done *in melius*. It is possible for a local collective agreement to include provisions that are more favourable than those comprised in a higher ranked agreement. As for *in peius* provisions, it is also possible for local collective agreements to contradict higher ranked agreements, if such is expressly provided for.

Table 23. Examples of references to a favourability principle in the relationship between collective agreements concluded at different levels.

Differently, in the United Kingdom there is no collective agreement hierarchy nor *in melius* nor *in peius* principles.

Finally, in cases where **collective agreements concluded at the same level** are considered to be applicable it is key to resort to interpretation rules regarding the agreements' scopes. Consequently, it is possible to resort a speciality principle, meaning that the agreement comprising more specific rules, either geographically, personally, or materially is considered to be applicable (e.g., Germany). In other cases, a priority principle is applied and the agreement that was signed first prevails (e.g., Finland or Sweden, where a priority doctrine is used[851]). Similarly, and despite distinguishing collective agreements based on their territorial scope, the Spanish system constructs its hierarchical structure based on a temporal criterion, with some exceptions (Article 84 of the Workers' Statue).[852]

[850] Hasselbalch, 'General Introduction – Denmark' (n658), p. 62.

[851] (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 18.

[852] Bruun and Hellsten (eds), *Collective Agreement and Competition in the EU – The Report of the COLCOM-project* (n435), p. 88.

3.4. Final Remarks

Hopefully the previous sections have demonstrated the complexity surrounding the concept of collective agreement. Labour law and collective labour law in particular, are very much dependent on the economic, social, and political setting, which is often too dissimilar for a comprehensive comparison between countries.[853] Still, the described industrial relations theories illustrate the commonality in regard to the relevance of collective bargaining, its actors and, more or less autonomously, its resulting rules. As shown above, stated in ILO Recommendation No. 91, and generally present when a statutory definition exists, collective agreements regulate working conditions. The previous sections also illustrate that generally an agreement comprises a normative content, referent to working conditions and terms of employment, and an obligatory part, which regulates the relationship between the contracting parties. The particular content of an agreement might be more or less imposed by law. In some countries the agreement is required to cover specific matters, whereas in others the content can be freely agreed by the parties. An agreement's functioning is dependent on its voluntary character and, as the ILO has referred, it cannot be compulsory for the parties to conclude a collective agreement. Moreover, even when not explicitly required in legislation, collective bargaining must be carried out in good faith and the collective agreement must be implemented comparably. Taking into account the protective goal of the collective agreement, the workers' side must necessarily be a collective. Accordingly, knowing which workers' organisations are entitled to participate in collective bargaining and, hence, conclude a collective agreement is a concern in a variety of different legal frameworks. Representativeness criteria exist, which are differently regulated. This can be more or less left to the bargaining parties, or imposed by state, in a more or less restrictive manner. Furthermore, as some of the mentioned theories illustrate, industrial relations entail a system of rules,

[853] Xavier Blanc-Jouvan, *Les Rapports Collectifs du Travail aux États-Unis* (Dalloz 1957).

namely those emanating from the state and from the activity of the social partners. The hierarchy applied to these norms means rules resulting from collective bargaining, while autonomously created, function within the state's framework and imposed limits. This can be viewed in the relationship between collective agreements and statutory law, but also in an agreement's normative and mandatory effect. Frequently, although not always statutorily determined, collective agreements are binding. This bindingness is most often enforced within the judicial system, which can be comprised of specialised courts. However, as it shown, in some countries judicial enforcement is not structured around the possibility of bringing a claim to court, such as in Belgium, or such possibility is, as a matter of principle, not available, like in the United Kingdom. In terms of formal requirements, in almost all countries collective agreements must be put into writing, with more variances in regard to registration, publication, and the dependency of an agreement's validity to the fulfilment of these.

As Jean de Givry sharply highlighted in 1958, there seems to be a shift from questions focused on the collective agreement's legal nature to the sociological context framing collective bargaining. Consequently, the study of the collective agreement should go beyond a purely legal approach.[854] The next chapters intend to underline these issues while keeping in mind the developments on collective bargaining in the international context. The collective agreement has different meanings depending on the national context. It can either refer to legally binding documents or agreements with no legal effects that only create moral obligations. Likewise, the issues covered by legislation or collective agreements, the existence of a legal obligation to bargain or legally promote the process, the possibility to resort to legal or social sanctions, and the collective agreement's legal nature vary considerably among countries.[855] Notwithstanding the differences in the way these features are regulated, they constitute core features of the concept of collective agreement. As identified by Folke Schmidt and later Alan Neal, collective bargaining and the collective agreement possess an array of

[854] Jean de Givry, 'Legal Effects of Collective Agreements' (n456), p. 508.
[855] ibid, pp. 504-506.

functions. They function as a cease-fire agreement to ensure industrial peace, as an instrument for the employee to control the supply of labour and protect the individual employee, as form to set standardised conditions, as an instrument of co-operation, and as an industrial code that regulates working conditions. The current chapter shows, to some extent, the presence of these functions, while demonstrating that, while different particularities can be identified in different national contexts, the 'distinguishing phenomenon' of a collective agreement is its binding effect. Chapter 5 unveils how the functions listed by Schmidt and Neal are not exhaustive but still remain present in global collective agreements. Furthermore, chapter 5 demonstrates that these global agreements' binding effect is backed up by extra-legal sanctions in most cases. Finally, while statutory labour legislation has become more detailed and the space given to collective autonomy is distinctive from decades ago, it still takes a key role in industrial relations systems. Globalisation has also impacted collective autonomy. However, the development of global collective agreements demonstrates that adaption fears might not be as worrying as one could initially consider. Still, while initially perceived as a private law system, collective autonomy has developed into a company-based co-determination, complemented with social partners at the global level and the influence of local trade unions.[856]

[856] Bruun, 'The Autonomy of Collective Agreement' (481), pp. 34-36.

4. Global Framework Agreements

The phenomenon of international collective bargaining has taken expression in the form of global framework agreements,[857] whose number and content have evolved into instruments that, more than akin to collective agreements, can indeed be considered as such. Chapter 3 and 4 provide the basis for the analysis carried out in chapter 5. Based on the emergence and development of various agreements, designated in literature as 'global/international framework agreements', a new generation of documents can be identified and their categorisation as collective agreements can indeed be discussed. The development in the content and, in particular, enforcement mechanisms comprised in global framework agreements enables the identification of a further concept, that of global collective agreements, addressed in chapter 5. Hence, section 4.1. defines global framework agreements based on a set of four requirements. This list of requirements is intended to be descriptive and not prescriptive. It is based on a content analysis of a broad number of agreements and elements continuously referred in literature. While the parties are awarded with their own private autonomy, deciding the content, implementation mechanisms, and references to the supply chain comprised in an agreement, the listed requirements provide a systematisation that facilitates the understanding and identification of these agreements. Besides providing a general introduction to context in which global framework agreements have emerged and developed, this chapter intends to distinguish these instruments from other initiatives addressing the conduct of multinational enterprises. For this, a general description of key initiatives, endorsed by states, states and businesses, or a multiplicity of stakeholders is delivered. Section 4.2. provides both a definition and clarification of global framework agreements, based on the description of the four elements mentioned in the previous section. These relate to these agreements' global scope, aims, and bilateral character. Thus, while recognising variances in the

[857] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 224.

extension and importance given to each element, these are comprised in all global framework agreements. Section 4.3. takes two agreements as examples of how these elements are included in such documents. Section 4.4. portrays possible ways of framing global framework agreements and intends to demonstrate how an alternative is inadequate to the nature, goals, and structure of global framework agreements.

4.1. Development and Content

Already in 1936, the ILO recognised the importance of collective agreements in the standardisation and coordination of working conditions. While acknowledging the large differences among the different countries, the International Labour Office Report on collective agreements stated there was a *"marked tendency towards reduction of inequalities"*.[858] The report highlighted this standardisation of working conditions has mostly happened nationally. The report also illustrated how national collective agreements can set uniform standards, applied in the whole country, establish variable wages and working conditions for different regions, or comprise general principles adept of being applied according to the various regions' conditions. According to the report, this *"permits adaption to local circumstances while it has the advantage of bringing each area under review from the standpoint of the needs of a larger unit than that of any one locality. It is particularly suited to the requirements of larger countries which are made up of distinct economic regions, and its success within various countries suggests that it might provide a possible basis for international collective agreements"*.[859] More than eighty years later, it seems these developments can now be seen at the international level.

[858] International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), p. 206.
[859] ibid, p. 207.

The following section demonstrates how the content of global framework agreements refers to labour standards, intended to be applied uniformly in all of a company's worldwide operations, as well as general principles, which can be tailored in practice and according to the national context.

4.1.1. Emergence of Global Framework Agreements

Collective agreements emerged in the **'vacuum'** left by the downfall of the regulative framework governing labour law in nineteenth century Europe.[860] Global framework agreements also appeared in the context of a political and regulatory 'vacuum', quickly being filled by a set of unilateral and undefined, employer-initiated programmes. Although transnational labour has been able to have some participation in the construction of codes of conduct and the development of a 'social clause' in trade agreements,[861] these have had very limited effects. Widely considered as ineffective, certain initiatives might have addressed 'more notorious abuses' such as child labour, but have not improved overall working conditions and workers' rights.[862] Hence, when multinational companies' increasing power and corporate social responsibility strategies began to waive out social partnership, organised labour realised multinational enterprises could resort to corporate social responsibility as a way to avoid dealing with unions and escape political regulation.[863] Addressing the failure of international labour law to create binding standards applicable to multinational enterprises and its own decline, unions engaged in the negotiation of global framework agreements as a strategic tool for transnational social dialogue.[864] They have emerged in the context of transnational industrial relations organising and campaigning,

[860] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340).

[861] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 514.

[862] Anner, Balir, and Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (n158), p. 13.

[863] Burkett, 'International Framework Agreements: An Emerging International Regulatory Approach for a Passing European Phenomenon?' (n128).

[864] Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), pp. 591-636; Manuel Antonio García- Muñoz Alhambra, Beryl ter Haar, and Attila Kun, 'Soft on the Inside, Hard on the Outside: An Analysis of the Legal Nature of New Forms of International Labour Law' (2011) Vol. 27 No. 4, pp. 337-363.

supported by a wide and continued organising at the local, national, and regional level.[865]

Global framework agreements as a broader concept and global collective agreements in particular represent the **response developed by global union federations** to the multiplication of codes of conduct and initiatives unilaterally set by multinational enterprises. Thus, they *"constitute an alternative attempt by GUFs to address the inefficacy of existing national and international mechanisms for labour governance and also to enhance their own independency and capacity as global social actors"*.[866] By devising joint implementation mechanisms they embody more accountability on the part of companies. In fact, every global framework agreement comprises references to dissemination and exchange of information as a responsibility of both parties, often stating the agreement's implementation is carried in cooperation/collaboration. Moreover, these agreements often regulate their own monitoring, which is carried out by the parties or a joint body established for such. Also, numerous agreements now comprise dispute settlement procedures. These are founded on a principle of settlement at the local level, with a possible intervention of local trade unions or workers' representatives, and the opportunity to refer a complaint to the national level, international level and, eventually, to arbitration, mediation, or even to court. Accordingly, the implementation of the standards set out through these agreements are under higher scrutiny and represent an advancement in the role and strategy of global union federations and their legitimacy as global actors. At the national level, collective agreements represent the temporary outcome of a conflict situation and a way to counteract the imbalance of power between employers and employees. The same can be said in regard to international collective bargaining, with the key difference of an entirely inexistent international legal framework.[867] This means global collective agreements are entirely voluntary, resulting from the construction of a trust

[865] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 231.
[866] Wintersberger (ed.), *International Human Resource Management: A Case Study Approach* (n180), p. 103.
[867] Dan Gallin, 'International Framework Agreements: A Reassessment' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Office 2008), pp. 25-26.

relationship and forming an agreement between global union federations and multinational enterprises. However, as in national contexts, there are strong and weak agreements.[868] Such distinction can be based on the scope of application, the labour standards and general human rights instruments referred, and the type of implementation mechanism.

The **origins** of global framework agreements can be traced back to the work of international trade union secretariats (ITCs) in the sixties and the rising power of multinational enterprises. Furthermore, as listed in the previous chapter, starting in the seventies, there were some attempts to tackle the negative consequences of multinational enterprises' impact on human rights and the environment. These include the OECD Guidelines (1976) and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977). Several developments enabled the increase in the number and content of global framework agreements, namely the transformation of international trade secretariats to global union federations, the increasing regional integration, particularly in Europe, a change from multi-employer to single-employer bargaining, and a development in both workers' and management's views on the interaction with global union federations.[869]

In essence, international coordination was a tool for unions to **counteract multinational enterprises' massive power**. *"From that perspective, IFAs although a logical outcome of international negotiations, were not the principal objective"*, but a way to build union strength.[870] In reality, and despite the meetings carried out between international trade secretariats and companies, no global framework agreements were concluded during the sixties and the seventies. Still, this did not stop union organising and the construction of coalitions at the multinational enterprise level. As the operations of multinational enterprises became increasingly global, the necessary involvement of workers' representatives at the international level

[868] ibid, p. 26.
[869] Papadakis, 'Introduction' (n142), pp. 5-7; Gallin, 'International Framework Agreements: A Reassessment' (n867), p. 16.
[870] Gallin, 'International Framework Agreements: A Reassessment' (n867), p. 25.

ultimately led to the negotiation and signing of global framework agreements. Currently, and despite varying degrees of leverage, these agreements have functioned as a tool for strengthening union influence.[871]

4.1.2. Definition

Generally defined, global framework agreements are agreements concluded between individual multinational enterprises and global union federations, which are international organisations that normally operate at sectoral level.[872] Global framework agreements intend to establish minimum labour standards, applicable to all of a multinational enterprise's worldwide operations, and promote global social dialogue.[873] In other words, they aim to establish an institutionalised and continuous relationship between multinational enterprises and global union federations for them to cooperate and solve problems in the interest of both parties.[874] As in codes of conduct, they comprise voluntary commitments but also include legislative standards at the ILO level, as well as structures and forms of action existing in the labour movement, while addressing the flaws of these codes through the use of multilateral social dialogue.[875]

They constitute a particular type of transnational company agreements, thus falling within that broader concept. However, global framework agreements comprise **four constitutive elements**. The identification is based on a

[871] Based on the analysis of four cases of transnational industrial relations in the United Kingdom and the broader concept of transnational company agreements, which include international framework agreements and European framework agreements, Mustchion and Martínez Lucio stated that *"In all the cases, TCAs served as a tool, albeit in varying and often informal ways, for strengthening union influence; however, unions were more able to derive leverage from these agreements where they derived additional power resources from workplace- and firm-level industrial relations institutions and had access to headquarter management"*. See, Mustchin and Martínez Lucio, 'Transnational Collective Agreements and the Development of New Spaces for Union Action: The Formal and Informal Uses of International and European Framework Agreements in the UK' (n46), pp. 578-579.

[872] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 68.

[873] Schömann, Sobczak, Voss, and Wilke, *Codes of Conduct and International Framework Agreements: New Forms of Governance at Company Level* (n129).

[874] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 68.

[875] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), pp. 514-515.

content analysis of an array of different agreements and elements consistently identified in literature, but mainly on Drouin's categorisation.[876] These are the necessary involvement of a global union federation as signatory party to the agreement, a benchmark ILO based content grounded on the ILO Declaration on Fundamental Principles and Rights at Work, some form of implementation mechanism(s), and a (variable) reference(s) to the supply chain. These are explained in section 4.2. In fact, as explained in the mentioned section, not all transnational company agreements signed by global union federations are global framework agreements. For example, Media Prima's memorandum of understanding, signed between TV3 System Televisyen Malaysia Berhad and UNI Global Union, is a transnational company agreement but it is not a global framework agreement, as it does not fulfil all of the constitutive elements. In particular, it does not contain any dispositions on implementation. In fact, it does not refer to dissemination, review, or monitoring. Furthermore, as the following sections demonstrate, global framework agreements as a concept encompass numerous documents under the most varied headings, the most common being 'international framework agreements' and 'global framework agreements'. This makes the analysis of an agreement's content necessary to conclude whether a particular agreement constitutes a global framework agreement or not.

4.1.3. Quantitative and Qualitative Development

The **first agreement** of this type was signed by the **Danone** group and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) in 1988.[877] The agreement can be viewed as the first global framework agreement, although very rudimentary in terms of the four constitutive elements.[878] Danone's

[876] Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), pp. 591-636.

[877] The first international framework agreement was entitled 'Common Viewpoint IUF/BSN'. It was applicable to all the company's operations. According to the agreement the parties agree to promote coordinated activities on training, information, equality and trade union rights. Later on, several follow-up agreements were signed on specific matters such as information and equality, trade union rights and changes of business activities. See, Gallin, 'International Framework Agreements: A Reassessment' (n867), pp. 26-29.

[878] The agreement is indeed signed by the multinational enterprise and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations. However, the

agreements begun in 1988 by addressing social standards. Later on, and renewed in 2005, the agreements addressed the equality of men and women in 1989, economic and social data in 1989, skills training in 1992, trade union rights in 1994, changes in business activities in 1997, and information and consultation in 1999.[879] The agreement was not concluded in a contentious context and it can be envisaged within the Danone's chief executive officer (CEO) and founder personal beliefs, the company's view of IUF as a legitimate international counterpart, and its consideration of the agreement as a *"smart business move"*.[880] The **Accor** agreement followed, in 1995. Similarly, although not matured in regard to the four constitutive elements, particularly the ILO based content and implementation mechanisms, Accor's agreement fulfils the four preconditions and it is therefore considered to be a global framework agreement. **IKEA's** agreement, signed in 1998 and greatly based on the company's code of conduct, 'The IKEA Way on Purchasing Home Furnishing Products', followed. In 1999 **Faber Castell** signed a global framework agreement, which has since then been renewed. Subsequently, agreements have expanded to other sectors, such as banking and the garment industry. Still, as it is viewed in throughout the following sections, agreements in the textile and garment sector are scarce.[881]

Several other agreements were signed with **now extinct global union federations that merged** into either UNI Global Union (e.g., which incorporated the International Federation of Commercial, Clerical, Professional and Technical Employees, the Media and Entertainment

agreement does not explicitly refer to the four core labour principles and rights and it. In regard to implementation, it is simply stated that *"A policy aiming to achieve the same level and the same quality of information"*. Finally, in regard a reference to the supply chain, it refers that the mentioned information policy will exist in all subsidiaries. See, BSN Group (Danone), 'Common Viewpoint IUF/BSN'. Available At: https://ec.europa.eu/employment_social/empl_portal/transnational_agreements/Danone_viewpoint_EN.pdf [Accessed 2 February 2020].

[879] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 181.

[880] Gallin, 'International Framework Agreements: A Reassessment' (n867), pp. 29-31.

[881] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 182.

International, the International Graphical Federation, and the Communications International) or IndustriALL (e.g., which merged the International Metalworkers' Federation, the International Federation of Chemical, Energy, Mine and General Workers' Unions, and the International Textile, Garment and Leather Workers' Federation). As it explained in Annex 3, these agreements are considered to be still applicable, unless the duration of the agreement has expired. Currently, the most important global union federations in regard to the negotiation and signature of global framework agreements are IndustriALL and UNI Global Union.

Some global union federations have, at a certain point, drawn up **'model agreements'**, based on their own particular sectors. The now extinct International Textile Garment and Leather Workers' Federation (ITGLWF) provided for such a model. Likewise, the International Metalworkers' Federation specified a 'Model International Framework Agreement'. Similarly, the Building and Wood Workers' International presents a 'New BWI Model Framework Agreement' in its website.[882] The International Federation of Journalists mentions a list of clauses in its website.[883] IndustriALL currently provides, in its website, guidelines for global framework agreements.[884]

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[882] Building and Wood Workers' International, 'New BWI Model Framework Agreement' (December 2010). Available At: http://bwiconnect.bwint.org/default.asp?index=47&Language=EN [Accessed 5 May 2020].

[883] International Federation of Journalists, 'International Framework Agreements' (June 2018). Available At: https://www.ifj.org/who/rules-and-policy/resolutions/detail/category/resolutions-1/article/international-framework-agreements.html [Accessed 22 April 2020].

[884] The Guidelines are indeed comprehensive and at the same time somewhat specific. According to the global union federation, global framework agreements have specific aims, including the development of cross-border recruitment and organising campaigns and the use of union networks in multinational enterprises, establish mechanisms of regular social dialogue at global and regional level as a way to form constructive industrial relations, build organisational procedures for the conclusion of global framework agreements and use all available tools including both global framework agreements and the OECD Guidelines. As for regards to global framework agreements' content, IndustriALL's guidelines state they must include explicit references and recognition of the rights comprised by the ILO and its Conventions and jurisprudence, in particular those included in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Furthermore, the guidelines state that *"The core Labour Standards and relevant jurisprudence of the ILO must take precedence over national laws in case the latter are less favourable than the respective ILO Conventions"*. The guidelines also refer to the importance of formal recognising fundamental international labour and human rights standards (e.g., the Universal Declaration of Human Rights, the revised OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, UN Guiding Principles on Business and Human Rights, and the UN Global Compact). Moreover, the guidelines determine that global framework agreements must *"cover all*

Since the conclusion of the first agreement, the **number of similar documents has increased** considerably, particularly after the turn of the century.[885] Up until 2002, twenty-three agreements were signed whereas in between 2003 and 2006, thirty-three new agreements emerged. After 2006, the number continued to grow, but at a lower rate. However, during this period, several agreements were renewed and expanded to new industries, particularly the garment sector,[886] with five agreements being signed and renewed, namely by H&M, Tchibo, Asos, Esprit, Inditex, and Mizuno.

Content wise, the **qualitative development** of global framework agreements is particularly visible through a comparison of the mentioned agreements' content. The following table shortly illustrates how the content, implementation, enforcement mechanisms, and references to the supply chain have tremendously developed throughout time. As it is seen in section 4.2.4., regarding references to the supply chain as a constitutive element of global framework agreements, these diverge considerably. The differences are based on the extent of the scope, the language used, and the extension of

company operations throughout the world without exception", *"include a strong and unequivocal commitment by the multinational company concerned that suppliers and subcontractors adopt these standards for their workers"*, *"guarantee a commitment from the company to treat unions positively, and refrain from all anti-union activities and to remain strictly neutral concerning employee preference to join, remain with, transfer, or abandon their relationship with a union representative"*. The multinational must ensure the agreement is disseminated in the appropriate languages to workers, managers, suppliers and subcontractors. Additionally, education and training about the agreement must be organised for these groups. As for the implementation, this must be carried out together with the affiliated organisations. In regard to complaints or violations of a provision of the agreement, *"along with the agreed mechanisms, IndustriALL Global UNION's Chapter of Solidarity in Confronting Corporate Violations of Fundamental Rights shall be applied"*. Additionally, the guidelines possess a brief section on procedure in the negotiation and signature of global framework agreements. A relevant reference in this regard refers to the fact that *"The President and/or the General Secretary shall sign a global framework agreement when a majority of the affiliated trade unions which represent the majority of the unionised workers at the operation of the multinational company concerned, on behalf of IndustriALL Global Union*". See, IndustriALL, 'IndustriALL Global Union's Guidelines for Global Framework Agreements (GFAs)' (6 March 2017). Available At: http://www.industriall-union.org/sites/default/files/uploads/documents/GFAs/industriall_gfa_guidelines_final_version_exco_12-2014_english.pdf [Accessed 27 January 2020].

[885] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 515.

[886] Papadakis, 'Introduction' (n142), pp. 2-3.

the commitments.[887] More recent agreements contain a range of standards that go way beyond the minimum references to the ILO core labour standards, broad scopes of application, clear implementation mechanisms, and often dispute settlement procedures. All agreements in the garment industry contain, even if only in their renewed versions, a reference to mediation or arbitration.

Company + Country + Year	Scope	Standards	Dispute Settlement
H&M (Sweden, 2015)[888]	The term 'employer' includes suppliers or their subcontractors and the term 'employee' relates to anyone who performs work directly for a supplier or their subcontractor	Besides the ILO fundamental conventions, an array of international instruments and ILO conventions and recommendations	Sections 9 to 14 of deal with dispute settlement and set a defined procedure starting with an attempt for resolution at the local level, the national monitoring committee level, and by the joint industrial relations development committee. If a solution is not found at the development committee level, the parties can appoint an independent mediator
Tchibo (Germany, 2016)	Section 10 - the company's supply chain, with all its vendors, suppliers, producers, and subcontractors; it applies to all employees, regardless of whether employed directly or indirectly by Tchibo's business partners and regardless of the contractual basis of this employment, in the formal or the informal sector	Section 6 – besides the ILO fundamental conventions, a variety of ILO conventions and recommendations and other international instruments	Sections 17 to 20 establish a dispute settlement procedure, based on resolution at the local and national levels, with the implementation of a remediation action plan. However, if the parties cannot find a solution, they agree to seek assistance from the ILO. The parties agree to abide the ILO's final recommendations
Asos (United Kingdom, 2017)[889]	Section 3 – workers employed by suppliers, three tiers	Annex 1 – several ILO Conventions and Recommendations and other international instruments	Section 6 (2) enables the parties the seek the expert advice of the ILO when attempts to solve an issue through consultation between the signatories is not possible. The parties agree to abide the ILO's final recommendations

[887] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 152-153.
[888] H&M, 'H&M makes its Global Framework Agreement with IndustriALL and IF Metall Permanent' (n97).
[889] According to information attained in interviews the agreement is still applied and in the process of being renewed.

Esprit (Germany, 2018)	Section 3 - covers workers employed by suppliers contracted by Esprit to provide products on its own label textile, footwear and apparel manufacturing supply chain	Annex 1 – besides the ILO fundamental conventions, several other ILO conventions and recommendations and other international instruments	Section 6 (2) - questions of interpretation are resolved through consultation. When that is not possible the parties can seek the expert advice of the ILO or another mutually agreed neutral party. The recommendations must be abided by the parties to the agreement Section 7 (3) – possibility to bring the case to the competent judiciary body in Germany
Inditex (Spain, 2019)[890]	All workers throughout the entire supply chain, regardless of whether they are directly employed by Inditex or by its manufacturers and suppliers	Annex 1 – fundamental ILO conventions, several other ILO conventions and recommendations, and other international instruments	Questions of interpretation are resolved through consultation but where that is not possible the parties can seek the expert advice of the ILO or an agreed neutral third party, whose recommendations the parties shall abide by
Mizuno (Japan, 2020)[891]	Article 1 – the corporation and its relevant companies	Refers to the ILO's four core labour standards, their eight corresponding Conventions, and other international instruments	Article 4 – Dispute Settlement Mechanism Requires a complaint to first be referred to local management, the national union, which will raise the issue with the local company. If still unresolved, IndustriALL will advice the local complainant and/or national union and Mizuno will advice local management Article 7 – Arbitration Final settlement by arbitration, conducted by the Swiss Chambers' Arbitration Institution in Switzerland if IndustriALL is the respondent and conducted by the Japan Commercial Arbitration Association in Tokyo if Mizuno is the respondent. The award is binding

Table 24. Evolution of global framework agreements in the garment industry.

Both the signature and these agreements' implementation[892] constitute a substantial development since agreements in the garment industry, due to the

[890] IndustriALL, 'IndustriALL and Inditex Create a Global Union Committee' (n38).

[891] Agreement renewed on 1 October 2020. See, IndustriALL, 'Mizuno' (n106).

[892] IndustriALL, 'Inditex GFA in New Phase with Pilot Project in Turkey' (9 May 2013). Available At: http://www.industriall-union.org/inditex-gfa-in-new-phase-with-pilot-project-in-turkey [Accessed 29 January 2019]; IndustriALL, 'IndustriALL Global Union Supports Cambodian Workers at ExCo in Phnom Penh' (10 December 2015). Available At: http://www.industriall-union.org/industriall-global-union-supports-cambodian-workers-at-exco-in-phnom-penh [Accessed 29 January 2019]; IndustriALL, 'Agreement with H&M Proves Instrumental in Resolving Conflicts' (n14); IndustriALL, 'ThyssenKrupp Launches Online Violations Reporting System' (n27); IndustriALL, 'IndustriALL Pulp and Paper Work Agenda Sets Active Agenda' (12 April 2016). Available At: http://www.industriall-union.org/industriall-pulp-and-paper-work-group-sets-active-agenda [Accessed 29 January 2019]; IndustriALL, 'Ensuring that the Global Framework

complexity of the sector's supply chain, are considered to be particularly difficult to negotiate.[893] As discussed by Hammer, global framework agreements possess a 'dual face', being directed at both the multinational enterprise and its value chain. Accordingly, agreements tend to focus on established institutions of industrial relations in lead firms, which are linked to their suppliers through interdependent coordination and operate in the formal labour market. Still, as Hammer argues, global framework agreements can be useful in buyer driven contexts. *"The initial problem is to negotiate IFAs in the first place."* [894]

4.1.4. Global Framework Agreements and Codes of Conduct

Before moving on to section 4.2. and examining the constitutive elements of global framework agreements, these agreements should be separated from similar initiatives, particularly codes of conduct and the broader category of

Agreement with H&M is Effective' (22 April 2016). Available At: http://www.industriall-union.org/ensuring-that-the-global-framework-agreement-with-hm-is-effective [Accessed 29 January 2019]; IndustriALL, 'Experts to Boost Trade Union Rights in Inditex Supply Chain' (25 April 2016). Available At: http://www.industriall-union.org/experts-to-boost-trade-union-rights-in-inditex-suppy-chain [Accessed 29 January 2019]; IndustriALL, 'Empowering Bulgarian Affiliates in the Inditex Supply Chain' (3 July 2017). Available At: http://www.industriall-union.org/empowering-bulgarian-textile-workers-in-the-inditex-supply-chain [Accessed 29 January 2019]; IndustriALL, 'Middle East and North African Textile and Garment Unions Discuss Inditex Agreement' (6 September 2017). Available At: http://www.industriall-union.org/middle-east-and-north-african-textile-and-garment-unions-discuss-inditex-agreement [Accessed 29 January 2019]; IndustriALL, 'Committees Implementing GFA with H&M Meet to Strengthen Industrial Relations' (2 October 2017). Available At: http://www.industriall-union.org/implementation-arm-of-hm-gfa-meet-to-strengthen-industrial-relations [Accessed 29 January 2019]; IndustriALL, 'IndustriALL and Inditex Celebrate 10th Anniversary of GFA' (4 October 2017). Available At: http://www.industriall-union.org/industriall-and-inditex-celebrate-10th-anniversary-of-gfa [Accessed 29 January 2019]; IndustriALL, 'Inditex Supplier Unions Meet in Hanoi to Boost Industrial Relations' (13 October 2017). Available At: http://www.industriall-union.org/inditex-supplier-unions-meet-in-hanoi-to-boost-industrial-relations [Accessed 29 January 2019]; IndustriALL, 'Effective Implementation of GFAs in the Garment Industry' (27 March 2018). Available At: http://www.industriall-union.org/effective-implementation-of-gfas-in-the-garment-industry [Accessed 29 January 2019]; IndustriALL, 'Bangladesh: Garment Unions Trained for Effective Implementation of GFAs' (1 November 2017). Available At: http://www.industriall-union.org/bangladesh-garment-unions-trained-for-effective-implementation-of-gfas [Accessed 29 January 2019]; IndustriALL, 'Bulgaria: GFAs in Garment Sector Promoting Rights' (11 April 2018). Available At: http://www.industriall-union.org/bulgaria-gfas-in-garment-sector-promoting-rights [Accessed 29 January 2019]; IndustriALL, 'Inditex Suppliers from India Meet to Pledge Social Dialogue' (20 June 2018). Available At: http://www.industriall-union.org/inditex-suppliers-from-india-meet-to-pledge-social-dialogue [Accessed 29 January 2019].

[893] Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), pp. 591-636; Williams, Davies, and Chinguno, 'Subcontracting and Labour Standards: Reassessing the Potential of International Framework Agreements' (n30), pp. 181-203.

[894] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 98-104.

transnational company agreements. Global framework agreements differ from other initiatives within the field of corporate social responsibility and from codes of conduct in particular.[895] As a private initiative adopted by multinational enterprises, corporate codes of conduct have been adopted *"as a response to consumer campaigns and gradually as a response to demands for socially responsible corporate behaviour"*.[896] However, the proliferation of these instruments, mostly beginning throughout the nineties, is often viewed as a strategy to avoid regulation and a true engagement in social dialogue with workers' representatives, working as public relations and image-improvement tools, in which multinational enterprises are not required to commit to actual changes.[897] Using the terminology presented in chapter 2, as an expression of symbolic management.

Both **global framework agreements and corporate codes of conduct** can comprise a similar content. In 1996, the then existing, International Confederation of Free Trade Unions (ICFTU) developed an explicit distinction between codes of conduct and framework agreements of both a European and an international scope.[898] Codes of conduct are voluntary, not legally binding guidelines that *"often have neither enforcement mechanisms nor recognised bodies that control, mediate and/or evaluate fulfilment of the objectives"*.[899] Presented as an alternative or a supplement to codes of conduct, global framework agreements represent an advancement, based on

[895] See, for instance, Peter Fairbrother and Nikolaus Hammer, 'Global Unions – Past Efforts and Future Prospects' (2005) Vol. 60 No. 3 Industrial Relations, p. 414; Schömann, Sobczak, Voss, and Wilke, *Codes of Conduct and International Framework Agreements: New Forms of Governance at Company Level* (n129); Claire Marzo, 'From Codes of Conduct to International Framework Agreements: Contractualising the Protection of Human Rights' (2011) Vol. 62 No. 4 NILQ, pp. 469-484.

[896] Christina Niforou, 'Global Labour Governance and Core Labour Standards' in Daniel Wintersberger (ed.), *International Human Resource Management: A Case Study Approach* (Kogan Page 2017), p. 102.

[897] ibid, p. 102.

[898] As mentioned above, based on this, some global union federations have constructed their own models for global framework agreements. See, Isabel da Costa and Udo Rehfeldt, 'Transnational Collective Bargaining at Company Level: Historical Developments' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Office 2008), pp. 61-62; IndustriALL, 'IndustriALL Global Union's Guidelines for Global Framework Agreements (GFAs)' (884).

[899] Schömann, Sobczak, Voss, and Wilke, *Codes of Conduct and International Framework Agreements: New Forms of Governance at Company Level* (n129), p. 7.

their bilateral character and better implementation references. Thus, there are numerous **fundamental differences** between the two.

Companies, particularly in the field of consumer goods, have adapted to the increasing public interest in social and environmental impact and the ethical standards of industry through the adoption of codes of conduct. While innovative and important for the promotion of fundamental human, labour, and environmental rights, as well as anti-corruption practices, they also pose pose fundamental issues. Hence, the Commission believes that codes of conduct should be built on the ILO fundamental conventions and the OECD Guidelines for multinational enterprises as a common minimum standard. Furthermore, they should include appropriate mechanisms for evaluation, verification, implementation, and compliance systems. Additionally, they should involve the social partners and relevant stakeholders. Finally, they should disseminate the experience of good practices of European countries. Chapter 4 and 5 reveal how global collective agreements cover these recommendations and even go beyond them.[900]

First, codes of conduct are unilateral, whereas global framework agreements are bilateral, resulting from an understanding between the management and labour sides. Consequently, the communication and social dialogue carried out within the context of codes of conduct can be more elusive. In fact, it is easier for codes of conduct to be used as a public relations tool in comparison to global framework agreements. The latest tend to contain a more comprehensive coverage and references to labour rights when compared to corporate codes of conduct. Also, codes of conduct do not necessarily recognise all the core labour standards, whereas global framework agreements do. In fact, global framework agreements are based on fundamental principles and rights at work and international instruments, whereas codes of conduct refer to environmental and general ethical corporate principles.[901] These instruments also differ in terms of monitoring

[900] COM(2002) 347 final (n122), pp. 13-14.
[901] Papadakis, Casale and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 72-73.

mechanisms. Codes of conduct often create their own monitoring framework or contract companies or non-governmental organisations to carry out such task. Differently, global framework agreements contain their own implementation mechanisms, in the form of dissemination and exchange of information, monitoring, and review, with significant variances among different agreements. Moreover, global framework agreements refer to the agreement's application in relation to the enterprise's subsidiaries, suppliers or subcontractors, whereas codes of conduct seldomly cover suppliers. Finally, either explicitly stated in the agreement or implied through the negotiation and implementation, global framework agreements represent a recognition of global union federations as a legitimate counterpart at the international level.[902] As Tonia Novitz highlights, *"the whole point of IFAs is that they are not merely corporate 'codes of conduct' or unilateral statements of intent, but are jointly negotiated texts"*, moving from the field of corporate social responsibility to the sphere of collective bargaining.[903]

However, it is also worth noting that some global framework agreements **place the company's code of conduct** within its framework of corporate responsibility. For instance, Electrolux's agreement specifies that all employees and management have a responsibility to ensure compliance with the agreement and the company's workplace code of conduct. Furthermore, it is stated that the agreement *"contains the following provisions which are a summary of the Electrolux Code of Conduct"*. Likewise, in the paragraph concerning 'suppliers and subcontractors', the agreement asserts that suppliers agree to comply with the enterprise's code of conduct. Similarly, IKEA's agreement incorporates and repeatedly refers to the company's code of conduct, 'The IKEA Way on Purchasing Home Furnishing Products'.[904] Inditex's renewed agreement lists the company's 'Code of Conduct for Manufacturers and Suppliers' as an annex. Also, it is also important to note that some global framework agreements refer to the **agreement itself as a**

[902] Gallin, 'International Framework Agreements: A Reassessment' (n867), pp. 32-34.
[903] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 231.
[904] IKEA, 'The IKEA Way on Purchasing Home Furnishing Products' (1st edition 10 January 2000). Available At: https://www.ikea.com/ms/en_CA/about_ikea/pdf/IWAY_purchasing_home_furnishing_products.pdf [Accessed 30 May 2020].

code of conduct. In particular, Hochtief's agreement, although being designated as a 'framework agreement' under the heading, it is termed throughout the agreement's text as a code conduct. For instance, in its preamble, it is referred that *"the Code of Conduct being signed here today will have an impact that goes far beyond the boundaries of Hochtief"*. When dealing with the substantive provisions of the agreement, the document comprises a heading titled as 'Hochtief Code of Conduct'. Hence, for instance, Section 6 refers to unions' acknowledgement that *"this Code of Conduct is a self-imposed obligation on the part of Hochtief"*. However, the agreement comprises the constitutive elements of a global framework agreement and it is not a code of conduct. Finally, some global framework agreements are **built on the company's previously developed code of conduct**, entailing a development to joint instruments that results from the input of both the multinational enterprise and workers' representatives and carries more legitimacy that unilateral codes of code of conduct.

4.1.5. Other Types of Transnational Agreements

Besides global framework agreements, there is a different type of transnational agreements, concluded for specific countries, but applicable to multinationals and their supply chains. Previously, union involvement was excluded from a plethora of private governance systems. More recently, a number of multi-firm transnational industrial relations agreements, involving multiple brands and unions have emerged.[905] These include the well-known **Accord on Fire and Building Safety in Bangladesh**,[906] a legally binding agreement signed after the Rana Plaza collapse. Differently from the dominant CSR approaches, which assume that violations are merely factory-

[905] Building on the definition of global framework agreements and defining transnational industrial relations agreements as those in which *"organised labour – local and/or global - is included in devising and implementing an agreement signed by the union(s) and one or more lead firm(s)"*. See, Markus Helfen and Michael Fichter, 'Building Transnational Union Networks Across Global Production Networks: Conceptualising a New Arena of Labour-Management Relations' (2013) Vol. 51 No. 3 British Journal of Industrial Relations, pp. 553-576; Sarah Ashwin, Chikako Oka, Elke Schuessler, Rachel Alexander, and Nora Lohmeyer, 'Spillover Effects Across Transnational Industrial Relations Agreements: The Potential and Limits of Collective Action in Global Supply Chains' (2020) Vol. 73 No. 4 ILR Review, pp. 995-1001.

[906] Vincenzo Pietrogiovanni, 'Global Responsibility, Global Fashion Brands, and the Bangladesh Accord' (2018) International Labour Rights Case Law Vol. 4, pp. 271-276.

based and that supplier factories are the sole entities that need to be regulated, the Accord places responsibility at the top of the supply chain, making buyers and suppliers jointly responsible for factory conditions. Buyers are imposed with 'substantive obligations', namely financial support for safety upgrades which, unlike unilateral codes of conduct, impose contractually binding obligations.[907] Also, contrarily to unilateral CSR initiatives and global framework agreements,[908] the Bangladesh Accord tackles buying practices and contract stability.[909] The 2018 Transition Accord,[910] which came into effect after the 2013 Accord expired, was signed by almost 200 apparel brands, IndustriALL, UNI Global Union, and some of their Bangladeshi affiliates. It applies to the garment sector and covers all suppliers of the signatory companies. While such agreement is not considered to be a global framework agreement since it does not fulfil the constitutive elements described in the following section,[911] its legally binding character represents an important development in the field of international industrial relations. Moreover, it includes an important novelty, comprising a 'choice of law' provision according to which the agreement shall be governed by the law of the Netherlands. In 2019, the Steering Committee of the Accord and the Bangladesh Garment Manufacturers and Exporters Association, with the endorsement of the government and the approval of the Appellate Court, signed a Memorandum of Understanding. According to the Memorandum, the functions of the Accord office will transition to the ready-made garment safety body (RMG), the RGM sustainability council (RSC), before the 31st of May 2020.

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[907] Anner, Bair, and Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (n158), p. 2.

[908] An exception can be found in Esprit's agreement, which refers to a joint commitment of Esprit and IndustriALL in developing a methodology to periodically assess the impact of purchasing practices at the worker level of the supply chain – Section 4 (3) (5).

[909] Anner, Bair, and Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (n158), p. 28.

[910] 2018 Accord on Fire and Building Safety in Bangladesh: May 2018. Available At: https://admin.bangladeshaccord.org/wp-content/uploads/2018/08/2018-Accord.pdf [Accessed 9 December 2019].

[911] Some considered it to be an international framework agreement, as well as other agreements focusing on a particular topic. See, Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), pp. 183-184.

The competing initiative, entitled the **Alliance for Bangladesh Worker Safety**, was formed in 2013, for a five-year period. Primarily composed of North American buyers, it was defined as a legally binding commitment to improve safety in Bangladeshi ready-made garment factories.[912] The Alliance's board of directors can seek binding arbitration against a member and publicly expel them for failure to abide by the commitments. Despite having ceased its operations,[913] the Alliance was criticised based on a lack of enforcement mechanisms, monetary contributions by the members, and lack of worker participation.[914]

A similar initiative refers to the **Indonesian Freedom of Association Protocol**, signed in 2011 between Indonesian textile, clothing, and footwear unions, major supplier factories, and sportswear brands. The Protocol possesses implementation mechanisms. However, and although some global union federations were involved in early negotiations,[915] the Protocol was not signed by a global union federation. Moreover, and similarly to the Bangladesh Accord, the Protocol does not have a global scope, being limited to the Indonesian context. Accordingly, and despite the significance of these instruments, particularly in regard to enforcement mechanisms, they are not global framework agreements and therefore fall outside the scope of this dissertation. Also, and although Zimmer identifies the Freedom of Association Protocol as a global framework agreement, the Protocol emerged from a bottom-up approach. Differently, global framework agreements constitute a top-down approach.[916]

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[912] Alliance for Bangladesh Worker Safety, 'About the Alliance for Bangladesh Worker Safety'. Available At: http://www.bangladeshworkersafety.org/who-we-are/about-the-alliance [Accessed 21 July 2020].

[913] Alliance for Bangladesh Worker Safety, 'The Alliance for Bangladesh Worker Safety Has Ceased Operations as planned on December 31, 2018'. Available At: http://www.bangladeshworkersafety.org [Accessed 21 July 2020].

[914] Jaakko Salminen, 'The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers' Liability in Global Supply Chains?' (2018) Vol. 66 No. 2 The American Journal of Comparative Law, pp. 411-451.

[915] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 194.

[916] ibid, p. 194.

Finally, and despite not being discussed throughout this dissertation, in some multinational enterprises, progressive trust relations have been established between employee representatives from various national systems of industrial relations. An example of so called transnational collective bargaining can be found at the European level, in the agreements signed at company level by Ford and GM Europe.[917] Workers' representation through European Works Councils and world works councils have also played a key role in this progress.

4.2. Designation and Constitutive Elements

As mentioned in chapter 1, the term global framework agreement refers to a particular type of **transnational company agreements**. The dissertation focuses on **global framework agreements** as a narrower concept within the category of transnational company agreements that must comprise four constitutive elements. These four key components constitute preconditions for the identification of global framework agreements. As a benchmark, these agreements need to be signed by a global union federation(s), have a minimum ILO based content, comprise some type of implementation mechanism(s), and a reference(s) to the supply chain. Differently, transnational company agreements merely need to cover working and employment conditions and/or relations between employers and their representatives.[918] Transnational company agreements do not have to refer to ILO standards, be signed by a global union federation(s), comprise provisions on implementation, or have a specific reference(s) to the supply chain. This dissertation further attempts to identify an even narrower concept, that of **global collective agreements**. Based on the four constitutive elements, global framework agreements are identified and analysed

[917] da Costa and Rehfeldt, 'Transnational Collective Bargaining at Company Level: Historical Developments' (n898), p. 55.
[918] European Commission, 'Commission Staff Working Document, Transnational Company Agreements: Realising the Potential of Social Dialogue' (n47).

according to the core features described in chapter 3. Thus, a framework for the identification of the global framework agreements fitting into the concept of collective agreement is constructed. These, besides the four constitutive elements, must possess the core features of the concept of collective agreement, identified in chapter 3.

Besides this classification, transnational company agreements and global framework agreements have been categorised in various ways. As mentioned in the terminology section of chapter 1, **Eurofound has erected an origin-based distinction**, according to which transnational company agreements can be divided into global/international framework agreements and European framework agreements.[919] Eurofound defines the first based on their aim *"to establish an ongoing relationship between a multinational enterprise and a global union federation (GUF) to ensure that the company adheres to the same standards in every country in which operates"*.[920] European framework agreements, which cover the European operations of multinational enterprises,[921] are often signed by multinational enterprises and their corresponding world or European Works Council,[922] and are commonly not placed within the literature on global framework agreements. However, *"the vast majority of those agreements have been signed with European MNEs"*.[923] In fact, European multinational enterprises are *"more likely to sign agreements with (...) global union federations after decades of refusing to acknowledge them as bargaining partners"*.[924] Several factors have had a role to play in a company's evolution into signing such agreements. For instance, the development of codes of conduct and the personality of some CEOs have had a determining role in this development. In fact, that was the

[919] Teljohann, da Costa, Müller, Rehfeldt, and Zimmer, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (n48).
[920] Eurofound, 'International Framework Agreement' (n50).
[921] ILO, 'Cross Border Social Dialogue and Agreements'. Available At: https://www.ilo.org/ifpdial/information-resources/cross-border-social-dialogue-and-agreements/lang--en/index.htm [Accessed 29 January 2020].
[922] Dominique Bé, 'A Report on the European Commission Initiative for a European Framework for Transnational Collective Bargaining' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Office 2008), p. 223.
[923] da Costa and Rehfeldt, 'Transnational Collective Bargaining at Company Level: Historical Developments' (n898), p. 55.
[924] ibid, p. 55.

case for Danone's agreement, the first agreement to be signed.[925] Still, whereas global framework agreements are global documents intending to guarantee compliance with international labour standards throughout all of the company's worldwide operations, European framework agreements are *"generally limited in their geographical scope to European countries and cover a broader range of more concrete and focused topics and arrangements"*.[926] However, the topic of European framework agreements and the development of a possible framework at the European level is not the focus of this dissertation, which centres around global collective agreements as a particular type of global framework agreements.

Papadakis refers to a distinction between a **narrower definition of global framework agreements**, which need to be signed by a global union federation, and a wider definition, referent to all agreements signed between workers' organisations or workers' representatives at the enterprise level, such as European trade unions or European Works Councils.[927] Despite being based on Papadakis' distinction, the chosen approach for the identification of global framework agreements differs to the extent it places the involvement of a global union federation as a necessary requirement.

Besides the distinction between international and European framework agreements, other divisions have been constructed. Under the epigraph of international framework agreements, Nikolaus Hammer built another **(analytical) distinction between rights and bargaining agreements**. The first agreements, such as Danone's and Accor's, belong to the first group and are therefore considered to be **rights agreements**.[928] These set the conditions

[925] ibid, p. 55.

[926] However, as Stefan Clauwaert has argued, *"Although this seems a logical way of clarifying a relatively straightforward situation, it might still create confusion, in particular when juxtaposing this definition with less official yet regularly used terms found in documents on European industrial relations"*. See, Stefan Clauwaert, 'European Framework Agreements: 'Nomina Nuda Tenemus' or What's in a Name? Experiences of the European Social Dialogue' in Isabelle Schömann, Romuald Jagodzinski, Guido Boni, Stefan Vlauwaert, Vera Glassner, and Teun Jaspers (eds), *Transnational Collective Bargaining at Company Level: A New Component of European Industrial Relations?* (European Trade Union Institute 2012), p. 117.

[927] Papadakis, 'Introduction' (n142), p. 3.

[928] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 515.

for building up continuous social dialogue and bringing claims to management. Rights agreements are *"based on the premise that IFAs can be used to establish a platform for union strength, which, in turn, is the basis for seeking further advances"*.[929] Also, they *"establish the very basis for organisation in the first place, rather than explicitly recognising and extending the minimum standards of home country industrial relations"*.[930] Similarly, agreements with a list of ILO conventions, such as H&M's, would be placed within the same group. Hammer connects rights agreements with organising attempts against hostile employers. However, this connection does not apply to all agreements. For instance, Danone's agreement, the first to be signed, was not developed in such an environment. Differently, **bargaining agreements** emphasise other aspects, focusing on specific procedures, such as the realisation of periodic meetings and dispute resolution. Hammer places Skanska's agreement within the second group.[931] Despite the methodological value such distinction conveys, it is not central to the examination carried out. In fact, for the construction of an identification framework of global collective agreements, both the possibility of bringing claims to management and the existence of dispute resolution procedures are identified as crucial elements in the examination of a binding effect and the enforcement of these agreements.

The **four requirements are considered to be the most pertinent**, not only in terms of an agreement's objectives, but also in regard to the analysis linked to the concept of collective agreement. The four components allow for a narrower spectrum of documents to be comprised within the concept of global framework agreements. Furthermore, they avoid the placement of any transnational company agreement in this category. In particular, the identification of these elements prevents the inclusion of instruments that are more akin to corporate codes of conduct and suffer from the same deficits.

[929] ibid, pp. 519-520.
[930] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), p. 99.
[931] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), p. 97; Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 519.

This enables a more detailed analysis of agreements possibly fitting within the concept of collective agreement at the international level.

The identification of the agreements to be considered as global framework agreements is based on the recognition of their constitutive elements through a content analysis. Accordingly, the designation given to the documents is not significant. In fact, the agreements analysed **encompass a variety of different headings**. In general, they are titled as international framework agreements (e.g., Electrolux's and ThyssenKrupp's), or global framework agreements (e.g., H&M's, Inditex's, Renault's, Elanders', and Lomis'). However, there are numerous other headings. Some agreements are designated as declarations of social rights, charters on labour relations, joint declarations on human rights and working conditions, basic principles of social responsibility, among others. BMW's agreement uses the term 'Joint Declaration on Human Rights and Working Conditions', while Bosch's agreement refers to 'Basic Principles of Social Responsibility'. DaimlerChrysler's agreement is named 'Principles of Social Responsibility at Daimler'. IKEA names its agreement as 'Framework Agreement'. Differently, Securitas uses the term 'Global Agreement', while Lafarge named its agreement as 'Global Agreement on Corporate Social Responsibility and International Industrial Relations'. Due to these variations, **one cannot rely on the name given to an agreement.** Therefore, knowing whether an instrument, regardless of its heading, constitutes a global framework agreement, is dependent on a content analysis of the relevant document.

Globalisation has created an imbalance in labour relations. While multinational enterprises operate globally, workers' representatives and their intervention in regard to the negotiation of employment conditions are still mainly conducted at the national level. This, together with national variations in collective bargaining can lead to a drawback, with some countries providing inadequate labour protection in an attempt to attain foreign investment. "*One may add that in such conditions, workers and their trade*

unions may be not be in a position to bargain effectively, if at all."[932] Global framework agreements represent a formal recognition of global union federations by multinational enterprises and establish a dialogue-based relationship, through which the parties implement and solve problems in cooperation. Hence, the principles and rights comprised in a global framework agreement are applied throughout the company's worldwide operations, covering subsidiaries and often subcontractors and suppliers.[933] Based on an examination of the content of various global framework agreement and following Drouin's[934] categorisation, a global framework agreement can be said to **possess four constitutive elements:**[935]

1) a global union federation must be involved in the agreement's negotiation and signature;
2) the agreement must have an ILO rights-based content;
3) it should possess an implementation mechanism(s); and
4) the agreement needs to comprise a provision addressed to the scope, usually referring to suppliers and other business partners.

These elements are considered to be required for an agreement to be identified as a global framework agreement. They allow a distinction between these agreements and other types of documents and initiatives. In relation to other initiatives, particularly in the context of corporate social responsibility, global framework agreements are bilateral and necessarily involve the workers' side, creating a higher sense of ownership by the social partners. In fact, initiatives addressing the conduct of multinational enterprises are often endorsed by states, businesses, or a multiplicity of stakeholders but often do not address the lack of worker representation. Given the social dialogue and workers' protection aim of global framework

[932] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 67-70.
[933] ibid, pp. 67-70.
[934] Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), pp. 591-636.
[935] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 231; Similarly, Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 183.

agreements, these need to be signed by a global workers' representative. Otherwise, significant representativity issues would arise. Several agreements include a statement, mostly in the preamble, in which they explicitly recognise the global union federation as a legitimate counterpart. While several global framework agreements have also been signed by national trade unions, a global union federation necessarily needs to be involved in the negotiation and signing of a global framework agreement. Transnational company agreements, which represent a broader category,[936] can be signed by any workers' representatives. Documents merely signed by national trade unions, works councils, or European Works Councils can be considered as transnational company agreements. In terms of content, given the aim of basic labour rights protection and the connection to the ILO Declaration on Fundamental Principles and Rights at Work, global framework agreements must, at least, refer to the four core labour principles and rights. Differently, transnational company agreements can refer to one or a set of specific labour rights. Some agreements make an explicit reference to the four core labour principles and rights identified by the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the eight corresponding conventions. Besides the 1998 Declaration, several agreements mention the MNE Declaration, the OECD Guidelines, the Decent Work Agenda, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, among others. Nowadays, besides the fundamental conventions, most agreements refer to numerous other ILO conventions, particularly in regard to remuneration, working hours, as well as health and safety standards. Also, and although considered in a broad sense, global framework agreements must comprise some type of implementation mechanism. This can include references to the agreement's dissemination, cooperation/collaboration, strengthening of social dialogue,

[936] According to the European Commission, a transnational company agreement is *"an agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives"*. See, European Commission, 'Commission Staff Working Document, Transnational Company Agreements: Realising the Potential of Social Dialogue' (n47), p. 2.

sharing of information, the establishment of a joint body for review of the agreement, among others. Some agreements tackle enforcement, setting up dispute settlement procedures and/or referring to the application of warnings, corrective measures, and relevant sanctions. Several other instruments, adopted in the context of corporate social responsibility, also address implementation. However, transnational company agreements do not have to refer to implementation in specific. Finally, global framework agreements necessarily address the supply chain, which differs in terms of comprehensiveness and precision, with more or less advanced commitments.[937] It is not frequent that other initiatives include such references. These elements are further explained in the following sections.

4.2.1. Bilateral Character – The Involvement of GUFs

One of the major features that distinguishes global framework agreements from traditional corporate social responsibility instruments is their **bilateral** character. Global framework agreements are negotiated instruments, involving both sides of the employment relationship.[938] This constitutes the main difference between these agreements and codes of conduct: codes are unilateral, whereas global framework agreements are bilateral. While the trade union movement remains mostly focused on the national level, the progressive increase of economic integration means that *"confining trade union activity to it is self-defeating."*[939] Thus, focused on strategies capable of influencing globalisation through worker representation and mobilisation,[940] global union federations have followed a tendency of abandoning the promotion of codes of conduct, engaging in the negotiation and signature of global framework agreements instead.

[937] Jesper Nilsson, 'A Tool for Achieving Workers Rights' (2002) Vol. 4 Metal World, pp. 22-27, as cited in Hammer, 'International Framework Agreements in the Context of Global Production' (n237), p. 97.
[938] Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), pp. 591-636.
[939] Ford and Gillan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (n145), p. 457.
[940] ibid, p. 457.

Adopting a definition of global framework agreements as a narrower type of transnational company agreements, means these necessarily have to be co-signed by a global union federation.[941] Global union federations are international federations of national trade unions, organised according to different industry sectors. Although global union federations represent workers on a transnational basis, their impact is very much dependent on the capacity of local and national trade unions. Hence, their role is mostly facilitating and coordinating, instead of directing or dictating.[942] As the representatives of workers at the global level, only they have the legitimacy to negotiate such agreements.[943] Since global framework agreements have a global scope, it would be difficult to accept they could be signed by the national trade unions of the multinational enterprises' headquarters and still be applicable worldwide.

In January 2002, **international trade union secretariats** changed their name to global union federations. The previously named international trade secretariats (ITSs) first emerged in 1889, in a context of industrial capitalism and the countering socialist labour movement. Initially their role was mostly related to dissemination and a resource network. Their part began to change, when the increasing influence of multinational enterprises required a coordinated international stance to industrial relations. Along with the possibility of internationalisation of local conflicts and the dissemination of campaign and organising information, global union federations engage in education and training, particularly of union representatives, and provide formal representation and workers' participation at the international level, which is visible in global institutions. Global union federations work is based

[941] Papadakis, 'Introduction' (n142), pp. 1-10.

[942] Ford and Gillan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (n145), p. 458.

[943] According to Article VI (a) of the international trade union confederation constitution, the organisation *"recognises the autonomy and responsibility of the global union federations with regard to representation and trade union action in their respective sectros and in relevant multinational enterprises, and the importance of sectoral action to the trade union movement as a whole"*. Also, global union federations and the international trade union confederation through the global unions' partnership, work closely. See, Global Unions, 'Global Unions – Standing Together for Rights of Workers'. Available At: http://www.global-unions.org/?lang=en [Accessed 29 June 2020].

on a subsidiarity principle, meaning they play a coordination and monitoring role, instead of a directive power over their affiliates.[944]

Most global union federations are **funded** through their affiliates' member fees and sometimes donor organisations, namely solidarity funds.[945] For instance, according to Article 8 of the statues of the Building and Wood Workers' International, the global union is financed mainly by annual affiliation fees.[946] The same can be said in regard to IndustriALL, as stated in Article 8 of the global union's statues.[947] Section X of International Federation of Journalists' constitution also deals with membership fees.[948] Similarly, Article 4 of the Public Services International's Constitution regulates the payment of membership fees.[949] Article 7 of UNI's statues also refers to the payment of affiliation fees.[950]

A) Relevant Global Union Federations

Initially, the **most active global union federations in this context were** the International Federation of Building and Wood Workers (IFBWW), the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM), the International Federation of Journalists (IFJ), the International Metalworkers' Federation (IMF), the International Textile, Garment and Leather Workers' Federation (ITGLWF), the International

[944] Ford and Gillan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (n145), pp. 462, 464-465.

[945] Elizabeth Cotton and Rebecca Gumbrell-McCormick, 'Global Unions as Imperfect Multilateral Organisations: An International Perspective' (2012) Vol. 33 No. 4 Economic and Industrial Democracy, p. 715; Torsten Müller, Hans-Wolfgang Platzer, and Stefan Rüb, 'Global Union Federations and the Challenges of Globalisation' (2010) Friedrich-Ebert-Stiftung, p. 6.

[946] Building and Wood Workers' International, 'BWI Statues'. Available At: https://www.bwint.org/web/content/cms.media/1812/datas/EN_BWI_Statutes_FINAL.pdf [Accessed 29 June 2020].

[947] IndustriALL', 'Statues of IndustriALL Global Union'. Available At: http://admin.industriall-union.org/sites/default/files/uploads/documents/Statutes/2016-2020/industriall_global_union_statutes_-_5_october_2016_english.pdf [Accessed 29 June 2020].

[948] International Federation of Journalists, 'IFJ Constitution'. Available At: https://www.ifj.org/who/rules-and-policy/constitution.html [Accessed 29 June 2020].

[949] Public Services International, 'PSI Constitution'. Available At: http://www.world-psi.org/sites/default/files/en_constitution_new_annex_58_15_march_2019.pdf [Accessed 29 June 2020].

[950] UNI Global Union, 'Statues'. Available At: https://uniglobalunion.org/sites/default/files/imce/en_statutes.pdf [Accessed 29 June 2020].

Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the Public Services International (PSI), the then designated Union Network International (UNI), and the World Federation of Building and Wood Workers (WFBW). The **global union federations existing today** are the Building and Wood Workers' International (BWI), the International Transport Workers' Federation (ITF), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations (IUF), the Public Services International (PSI), the International Arts and Entertainment Alliance (IAEA), the International Federation of Journalists (IFJ), and UNI Global Union. Not all global union federations have signed global framework agreements. **Currently, the relevant global union federations** in the negotiation, signing, and renewal of global framework agreements are the Building and Wood Workers' International (BWI), IndustriALL, the International Federation of Journalists (IFJ), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations (IUF), the Public Services International (PSI), and UNI Global Union. Some agreements have been signed by more than one global union federation.

The vast **majority of global framework agreements have been signed** by the Building and Wood Workers' International (BWI), IndustriALL, and UNI Global Union. The Building and Wood Workers' International was created in 2005, resulting from the merger of the International Federation of Building and Wood Workers (IFBWW) and the World Federation of Building and Wood Workers (WFBW). The global union represents about twelve million workers in 127 countries, in the building, materials, wood, forestry, and allied sectors.[951] Similarly, in 2000, the then named Union Network International, merged the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET), the Media and Entertainment International (MEI), the International Graphical Federation (IGF), and the Communications International (CI). In 2009 the Union

[951] Building and Wood Workers' International, 'About BWI'. Available At: https://www.bwint.org/cms/about-2 [Accessed 14 May 2020].

Network International changed its name to UNI Global Union. UNI represents more than twenty million workers in over 150 countries, in the following sectors: cleaning and security, commerce, finance, gaming, graphical and packaging, hair and beauty, information, communication, the technology and services industry, media, entertainment and arts, post and logistics, private care and social insurance, sport, temporary and agency work, tourism, professionals and managers, and women and youth.[952] Finally, one of the most active global union federations in regard to global framework agreements is IndustriALL, which in 2012 gathered the affiliates of the International Metalworkers' Federation (IMF), the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), and the International Textiles Garment and Leather Workers' Federation (ITGLWF) into one global union. IndustriALL represents fifty million workers in 140 countries in the mining, energy, and manufacturing sectors.[953]

A comprehensive list of the existing global framework agreements according to the corresponding global union federation(s) is provided in Annex 3. Through a content analysis and based on the four constitutive elements mentioned, this dissertation **identifies, at the time of its writing, all global framework agreements** whose text is available and are currently in force. The explanation for the selection of the listed agreement is provided in the same annex.

B) Developing Social Dialogue

Global unions' views on global framework agreements vary but in general there is a tendency to see them as long-term, developing arrangements. Several agreements refer to the improvement of social dialogue, cooperation, and participation in regard to their implementation. This is particularly true

[952] UNI Global Union, 'About Us'. Available At: https://www.uniglobalunion.org/about-us-0 [Accessed 8 June 2020]; UNI Global Union, 'FAQs'. Available At: https://www.uniglobalunion.org/about-us/faqs [Accessed 8 June 2020].

[953] IndustriALL, 'Who we are'. Available At: http://www.industriall-union.org/who-we-are [Accessed 2 May 2020].

for companies whose headquarters are located in countries characterised by a constructive, trust-based industrial relations system, such as the Nordic countries and within the European Union in general.

Company + Company Origin + Year	Provision	Reference
Besix (Belgium, 2017)	Issues Resolution	*"The signing parties understand that the Agreement is an aspiration of continuous improvement."*
Enel (Italy, 2013)	Introduction	*"An industrial relations policy based on social dialogue offers a robust foundation for building and implementing a system that incorporates the Group's values and international culture which allows all employees to feel they are citizens in the countries where it operates, accepted and integrated in local communities, while retaining full respect for the specific conditions in each country."*
Eni (Italy, 2019)	Section 7 (1) – Improving Social Dialogue	*"The Parties recognise the importance of developing constructive industrial relations at various levels that reflect the different socio-economic contexts in which Eni operates with the necessary respect of different cultures and social and economic aspirations.*" The agreement refers to a 'participatory approach', based on the development of consolidated relations with trade unions and their representatives, through a constant process of engagement on corporate objectives.
H&M (Sweden, 2015)	Structure and Implementation of Well-Functioning Industrial Relations	*"The guiding principle of the Agreement is the shared belief that cooperation and oversight of the Parties is the best way to fulfil the Agreement and to ensure good working conditions in the industry (...)."*
Renault (France, 2013)	Chapter 2 – Encouraging Social Dialogue	*"Renault strives to ensure that employees are represented in all Group companies by employees working in those companies who have been elected to represent them or who belong to the relevant labour organisations."*

Table 25. Examples of global framework agreements referring to social dialogue.

Accordingly, for global union federations, global framework agreements could contribute to the development of communication and membership and be a first step in the internationalisation of industrial relations. Long-term goals include the creation of a framework of formal cross-border industrial relations and collective bargaining.[954] Furthermore, they can have a spill-

[954] Burkett, 'International Framework Agreements: An Emerging International Regulatory Approach for a Passing European Phenomenon?' (n128).

over effect and pressure other multinational enterprises into signing such agreements.[955] Hence, these agreements can contribute to the development of the trade union movement by improving communication with affiliates, attracting new affiliates, and be a stepping stone for the development of international industrial relations and collective bargaining.[956] For global union federations, global framework agreements are an organising tool to increase membership but also living documents,[957] that can be improved through implementation and practice.[958] For instance, according to the then existing International Metalworkers' Federation, framework agreements would allow core labour standards to be guaranteed, particularly in emerging nations, where labour legislation is often insufficient or poorly implemented. UNI Global Union stated that one of its strategic objectives for 2002-2005 was to identify potential companies to negotiate global agreements since it viewed global framework agreements as a way to democratise multinationals, viewing the relationship between ILO standards and global union federations as a parallel to the relationship between industrial legislation and national industrial unions. For the then existing International Federation of Chemical, Energy, Mine and General Workers' Unions, the crucial difference between these global agreements and companies' codes of conduct is the aim to ensure worldwide labour standards through the engagement and involvement of its member unions in the monitorisation of companies' performance on them.[959]

Finally, **indications regarding the purposes** or goals guiding the signature of global framework agreements can generally be found in the preamble or the initial provisions of several agreements. The majority of these references

[955] International Organisation of Employers, 'International Framework Agreements: An Employers' Guide' (2007).
[956] ibid, p. 5.
[957] Volker Telljohann, Isabel da Costa, Torsten Müller, Udo Rehfeldt, and Reingard Zimmer, 'European and International Framework Agreements: New Tools of Transnational Industrial Relations' (2009) Vol. 15 European Review of Labour and Research, p. 515; Telljohann, da Costa, Müller, Rehfeldt, and Zimmer, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (n48).
[958] International Metalworkers' Federation, 'The Power of Framework Agreements' (January 2003). Available At: http://library.fes.de/pdf-files/gurn/00257.pdf [Accessed 15 May 2020]; International Organisation of Employers 'International Framework Agreements: An Employers' Guide' (n955).
[959] International Organisation of Employers 'International Framework Agreements: An Employers' Guide' (n955), p. 3.

denote a goal focused on the establishment of good industrial relations, grounded on the implementation of international labour standards, sustainability, and conflict reduction. While not explicitly addressing purchasing practices, these references denote an aim of long-term relations with suppliers and subcontractors. Clear references to the establishment of lasting relations, therefore addressing the problem of predatory purchasing practices, would contribute to the regulation of working conditions in supply chains.

Company + Company Origin + Year	Provision	Reference
H&M (Sweden, 2015)	Preamble	*"This GFA is founded upon a shared belief that well-structured industrial relations are an essential component of stable and sustainable social relations in production. (...) The Parties agree to work together actively to implement well-functioning industrial relations at H&M's direct suppliers own operations and their subcontractors producing merchandise/ready made goods sold throughout H&M's groups retail operations. The parties agree that well-functioning industrial relations are best achieved by ensuring the application of International Labour Standards including (...)."*
Inditex (Spain, 2019)	Preamble	*"The main purpose of the Agreement remains ensuring respect of Human Rights within the labour and social environment, by promoting respect for international labour standards throughout Inditex's supply chain. This Agreement recognises the crucial role that freedom of association and collective bargaining play in developing mature industrial relations. Accordingly, it is appropriate to establish a framework to reaffirm the engagement with trade union organisations, which represent the workers in the textile, footwear and garment supply chain. The guiding principle of this Agreement is the shared belief that cooperation and collaboration are key to strengthen Human Rights within Inditex's supply chain."*
Mizuno (Japan, 2020)	Article 1 - Purpose	*"The purpose of this agreement is to establish a global relationship among Mizuno Corporation, IndustriALL Global Union and the relevant affiliates, to promote the sound employment relationships within Mizuno Corporation and its relevant companies, and to put in place mechanisms for the solution and reduction of conflicts."*
Tchibo (Germany, 2016)	Preamble (4) and (5)	*"This Agreement aims to ensure the effective application of all International Labour Standards (...) throughout the Tchibo Non Food supply chain (...), with a particular focus on strengthening the right to organise and to bargain collectively. The parties understand that the application of International Labour Standards can only be achieved on a permanent basis and in a sustainable manner, if (i) employees have the right to organise and bargain collectively and if (ii) workers have the mechanisms and tools to monitor and enforce International Labour Standards at their workplace. The Parties believe that mature industrial*

		relations will benefit businesses both on an industry-wide as well as on a factory level."

Table 26. References to the purposes of global framework agreements.

C) Formal Recognition of Global Union Federations

As Drouin recognises, ILO Convention No. 87 provides for the right of trade unions to affiliate with international organisations. However, Convention No. 98, on the Right to Organise and Collective Bargaining, is envisaged for the national context, meaning there is no recognition or encouragement for transnational social dialogue and collective bargaining, which is entirely voluntary.[960] Through global framework agreements, multinational enterprises **formally recognise global union federations as legitimate workers' representatives at the global level**. In fact, some agreements explicitly refer to such recognition.

Company + Year	Provision	Reference
H&M (2015)	Preamble	*"By this GFA, H&M recognises IndustriALL as its legitimate partner for discussions regarding human and trade union rights in the workplace.*"
Inditex (2019)	Preamble	*"Inditex recognises IndustriALL, (…) as their trade union counterparts for workers engaged in the production of textile, garments and footwear (…)."*
Securitas (2012)	Section 1 - Preamble	*"Securitas recognises the important role that unions play in representing employees' interests and recognises UNI as its global partner and the unique role of the Swedish Transport Workers' Union as the largest union in the home market of Securitas."*

Table 27. Examples of references to the recognition of the global union federation as a legitimate counterpart in global framework agreements.

D) Multinational Enterprises

Global framework agreements are considered to be predominantly a European initiative, since most companies signing these documents have their headquarters in countries located within Europe. Non-European companies that have signed global framework agreements include the United States (e.g., Ford), Japan (e.g., Mizuno), South Africa (e.g., Anglogold,

[960] Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), pp. 591-636.

Nampak, Shoprite Checkers), and New Zealand (e.g., Fonterra). A dialogue culture developed within Europe, domestic hostility to trade unions in the United States, and the absence of a corporate culture committed to social responsibility and dialogue have been presented as justifications.[961] However, chapter 6 exposes that, even among companies with a European origin and similar agreements, there can be noticeable implementation and enforcement differences.

Regardless of their origin, these agreements benefit companies in regard to the improvement of communication and relations with trade unions and improvement of social dialogue. Moreover, the current trend of financial institutions to include social and environmental criteria in their assessments for access to credits makes global framework agreements beneficial for multinational enterprises.[962] Since most agreement have a European 'origin', it is not uncommon that **European Works Councils** (EWCs) also sign these agreements, although in some cases, world works councils have signed agreements too. For example, Besix's, BMW's, Essity's, GEA's, Leoni's, Mann+Hummel's, Pfleiderer's, Prym's, SCA's, and Vallourec's agreements were also signed by a European Works Council.

The idea according to which companies that have signed global framework agreements already possessed a history of communication and dialogue, with most having already constructed a code of conduct is not incorrect. However, affirming this did not represent *"a significant leap"* is.[963] Global framework agreements are unique, not only due to their bilateral character, but also in terms of the remaining constitutive elements.

[961] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 232.
[962] International Organisation of Employers 'International Framework Agreements: An Employers' Guide' (n955), pp. 8-9.
[963] ibid, p. 9.

4.2.2. Rights Based Content

As a **minimum content**, global framework agreements include the core labour rights in reference to the corresponding ILO conventions. This minimum content relates to the core labour standards, identified in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which identifies freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation as fundamental principles and rights at work. These are the essence of eight fundamental ILO conventions, specifically the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention (No. 111). These references can be done explicitly, by mentioning the ILO 1998 Declaration on Fundamental Principles and Rights at Work and the eight corresponding conventions, or implicitly, by generally mentioning ILO standards or merely referring to the four core labour principles and rights, with no explicit indication of the corresponding fundamental conventions. Thus, global framework agreements functioning is based on a reference to minimum labour standards, while respecting the applicable legislation and industry regulation of country where they operate. Accordingly, despite variations, it is possible to identify a minimum and common content among global framework agreements.[964]

Company + Year	Core labour right	Reference
SKF (2012)	Freedom of association and the effective recognition of the right to collective bargaining	*"SKF respects the right of all employees to form and join trade unions of their choice and to bargain collectively. SKF will ensure that official representatives of such trade unions are not subject to discrimination and that such*

[964] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), p. 99.

		representatives have access to the union members and their work place."
	Elimination of all forms of forced or compulsory labour	*"SKF does not engage in or support the use of forced labour, nor shall any employee be required to lodge 'deposits' or identify papers when commencing employment with SKF."*
	Effective abolition of child labour	Explicit reference to the Minimum Age Convention (No. 138)
	Elimination of discrimination in respect of employment and occupation	According to the agreement, the leadership and relationship between employees within SKF requires that, *"all employees be treated equally, fairly and with respect of race, gender, age, national origin, disability, caste, religion, social orientation, union membership or political affiliation"*.

Table 28. Example of implicit references to the four core labour rights in global framework agreements.

Company + Year	Four core labour rights	Eight corresponding conventions	Other ILO conventions and recommendations
H&M (2015)	X	X	I.e., employment, fair living wage and benefits, working hours, health and safety
Inditex (2019)	X	X	E.g., Convention No. 135, 155, 159, 190
Impregilo (2014)	X	X	I.e., Convention No. 135, 155, 167 Recommendation No. 14, it also refers to the matter of living wages, working hours, the environment, skills training, and the welfare of workers
Tchibo (2016)	X	X	I.e., Convention No. 135, 159, 79, 146, 26, 131, 1, 14, 155, Recommendation No. 143, 116, 164

Table 29. Examples of explicit references to the ILO core labour standards and corresponding conventions in global framework agreements.

The **prominence given to freedom of association and the effective recognition of the right to collective bargaining** is connected to the bilateral character of these agreements.[965] In fact, even agreements that include a small number of ILO conventions tend to expressly refer to Convention No. 87, No. 89, and No. 135 in particular.[966] Hence, measuring

[965] Older agreements might not clearly mention all of the four core labour rights. For instance, while referring that *"nothing that, in the global economy, all social and economic progress is contingent upon the maintaining of a society based on democratic values and respect for human rights; further noting that the hotel industry needs peace and social consensus in order to grow"*, Accor's agreement simply mentions the fundamental ILO Conventions No. 87, No. 98, and No. 135. It is not uncommon for agreements that do not explicitly refer to the eight fundamental conventions, to mention the ILO Declaration on Fundamental Principles and Rights at Work.

[966] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), p. 99.

the increase in trade union membership and trade union structures of the company can be relevant ways of measuring the impact of global framework agreements.[967] More and more agreements also focus on training and education regarding the content of the agreement based on the idea that, for freedom of association to be implemented, active trade unions are required.[968] However, although global framework agreements give particular relevance to freedom of association and the right to collective bargaining, consumers often give greater regard to issues surrounding other fundamental labour rights, namely child labour and forced labour.[969]

Since the first agreement was signed in 1988, the **content has developed** and nowadays most agreements go beyond the minimum content and include provisions on a number of working conditions, including wages, restructuring, environment, and health and safety. Besides the core labour standards, the number and standards referred vary considerably among agreements. These variations can be based on the sector, the country where the company's headquarters are located, and the countries where the enterprise operates. As more agreements are signed and expand to new industries, their content also develops and the idea according to which these agreements' improvement of basic labour standards *"is mainly valid for the core conventions dealing with fundamental rights; that is, nondiscretionary freedoms or protection"*[970] has transformed. Nowadays global framework agreements cover an array of different 'more traditional bargaining issues'.[971]

Besides this minimum content, Hammer identified **four levels of provisions**: establishing minimum labour and human rights standards, delimiting the employment relationship, dealing with softer negotiation issues (e.g., health

[967] Schömann, Sobczak, Voss, and Wilke, *Codes of Conduct and International Framework Agreements: New Forms of Governance at Company Level* (n129), p. 22.
[968] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 190.
[969] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 186.
[970] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 520.
[971] ibid, p. 520.

and safety, training and restructuring), and matters based on private standards.[972] This categorisation is useful in structuring the content of global framework agreements and illustrating it as a rights-based content. The first level includes agreements referring to **internationally recognised human rights standards**. Hence, besides the ILO core labour principles and rights, agreements often refer to the United Nations Declaration of Human Rights, the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights. Other references include the Rio Declaration on Sustainable Development, the United Nations Declaration on the Elimination of All Forms of Discrimination Against Women, or the United Convention on the Rights of the Child. Some agreements also include other ILO instruments, such as codes of practice and guidelines. For instance, ILO codes of practice addressing HIV/AIDS and guidelines regarding health and safety are frequently referred.

Company + Year	UDHR	ILO. Decl. on Fundamental Principles and Rights at Work	ILO Tripartite Decl.	UN Global Compact	OECD Guidelines	UN Guiding Principles	Other References
Besix (2017)	X	X	X		X	X	
IKEA (2001)	X	X					
Inditex (2019)	X		X	X	X	X	UN Convention on the Rights of the Child, OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and

[972] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 98-104; Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 520

							Footwear Sector
H&M (2015)			X	X	X	X	UN Convention on the Rights of the Child
Lafarge (2013)		X	X	X	X	X	
Lukoil (2018)	X	X	X	X	X	X	
Royal BAM (2006)	X	X	X		X		
SCA (2013)	X						
Securitas (2012)	X				X		
Impregilo Salini (2014)	X	X	X		X		
Staedtler (2006)	X	X	X		X		
Tchibo (2016)	X	X	X	X	X	X	UN Convention on the Rights of the Child
Veidekke (2017)	X	X	X		X	X	
VolkerWessels (2007)	X	X	X		X		

Table 30. Examples of internationally recognised human rights standards in global framework agreements.

A second level refers to employment issues regarding **wages and working time**, placed within national frameworks. Several agreements specifically address the matter of a **living wage**. Some explicitly state that those covered by the agreement should be paid a living wage, whereas others implicitly refer to such requisite. However, and although several agreements address the matter of wages and working time, these are merely placed within national standards. In most cases, it is referred that **wages and benefits** must, at least, conform to the minimum required by domestic legislation, collective agreements, and industry standards applicable to the industry. Similarly, in terms of **working hours**, the vast majority of agreements refer to a definition in accordance to national legislation, collective agreements, and regulations applicable to the relevant industry. However, some global framework agreements explicitly refer to the company's commitment to improve the

minimum standards provided by the law and collective agreements. For instance, Salini Impregilo's agreement asserts that *"The company shall seek to enhance the minimum conditions prescribed by law for the members of the most disadvantaged groups, including through collective bargaining"*.

Company + Year	Provision	Compliance with domestic legislation, collective agreements and applicable industry standards	Living Wage Reference
ABN AMRO (2015)	'Decent and living wages are paid'	X	X
Acciona (2014)	Section 6 – 'Living wages are paid'	X	
Aker (2012)	Section 2 (j) – 'Living wages'	X	X
Besix (2017)	Section 6 – 'in relation to fair remuneration	X	X
BMW (2005)	Section 1 (5) – 'Remuneration'	X	
Brunel (2007)	Section 3 (2) – 'Remuneration'	X	X
Electrolux (2010)	'Compensation'	X	
H&M (2015)	'Fair Living Wage and Benefits'	X	X
Lafarge (2013)	'Living wages'	X	
Lukoil (2018)	Section 3 (1) (6)	X	
Nampak (2006)	'Remuneration'	X	
Norske Skog (2013)	Section 2 (f) – 'Wages'		X
Royal BAM (2006)	'Living Wages are paid'	X	
Salini Impregilo (2014)	'Living Wages'	X	X
Schwan Stabilo (2005)	Section 5 – 'Payment of decent wages'	X	
Securitas (2012)	Section 3 – 'Employment Standards'	X	X
Skanska (2001)	Section E – 'Fair compensation'	X	
Staedtler (2006)	Section 5 – 'Payment of Decent Wages'	X	
Veidekke (2017)	Section 2 (f) – 'Wages'	X	X
VolkerWessels (2007)	'Living wages are paid'	X	

Table 31. Examples of provisions referring to wages in global framework agreements.

Company + Year	Provision	Compliance with domestic legislation, collective agreements and applicable industry standards	Overtime	Rest Period
ABN AMRO (2015)	'Reasonable and legitimate rules relating to working hours are being observed'	X	X	X
Acciona (2014)	Section 7 – 'Hours of work are not excessive'	X		
Aker (2012)	Section 2 (h) – 'Working hours'	X	X	
Besix (2017)	Section 7 – 'in relation to hours of work and rest periods'	X	X	X
BMW (2005)	Section 1 (6) – 'Working time'	X		X
Brunel (2007)	Section 3 (3) 'Negotiated organisation of work scheduling'	X		X
Electrolux (2010)	'Working hours'			
H&M (2015)	'Working hours'	X	X	X
Lafarge (2013)	'Working hours'	X	X	X
Lukoil (2018)	Section 3 (1) (7)	X		
Nampak (2006)	'Hours of work'	X	X	
Royal BAM (2006)	'Working hours are not excessive'	X	X	X
Salini Impregilo (2014)	'Working Hours'	X	X	X
Schwan Stabilo (2005)	Section 6 – 'Working hours'	X		
Skanska (2001)	Section F – 'Reasonable working hours'	X		
Staedtler (2006)	Section 6 – 'Elimination of Excessive Working Hours'	X		
Veidekke (2017)	Section 2 (h) – 'Working hours'	X	X	
VolkerWessels (2007)	'Hours of work are not excessive'	X	X	

Table 32. Examples of working hours provisions in global framework agreements.

Some agreements explicitly refer to **work and life balance**, as well as a **respectful working environment**.

Company + Year	Provision	Reference
ABN AMRO (2015)	Work Life Balance is being observed	*"Working arrangements and policies should be consistent with work life balance and assist workers in combining employment with other aspects of their lives. Parties regard such an approach as a way of helping to develop a more committed and productive workforce."* A respectful working environment is ensured *"ABN AMRO ensures a respectful working environment on all levels. All levels of management are held to actively guarantee this climate."*
Aker (2012)	Section 2 (h)	*"Aker actively supports the creation of an appropriate balance between work and life outside work*."
Electrolux (2012)	Working hours	*"Electrolux recognises the need for a healthy balance between work and free time for all employees."*
Renault (2013)	Chapter 2 – Social Responsibility: Actions regarding health, safety and quality of life in the workplace	*"In addition to the aforementioned actions, the company takes steps to promote the initiatives of its entities in accordance with four guidelines: health and safety, environment and workplace, work-life balance, day-to-day management."*

Table 33. Examples of references to work and life balance.

In the third level, Hammer pinpoints agreements' provisions on **health and safety**, **training**, the **environment**, and **restructuring**. Provisions linked to either particular issues such as HIV prevention, to the enterprise's specific sector, and environmental protection can also be added in this level.[973] Several agreements refer to occupational safety and health, although not all explicitly mention Convention No. 155. Differently from the vast majority of agreements, Telefonica's agreement does not explicitly list all of the ILO fundamental conventions. However, it explicitly refers to Convention No. 155 in regard to the need to contribute to an improvement of working conditions. As for training, the majority of agreements comprise a broad provision referring that all workers have the opportunity to participate in education and training programmes to improve their skills, particularly in regard to the use of new technologies and equipment. Multinational enterprises dealing with hazardous environmental activities often include

[973] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 520.

clauses on environmental issues.[974] This normally refers to enterprises in the energy, water supply and waste management, and chemical sectors.

Company + Year	Provision	ILO Convention No. 155	ILO Convention No. 167	ILO Guidelines for Occupational Health Managements System	Other References
ABN AMRO (2015)	'Working Conditions are decent'				
Acciona (2014)	Section 8 – 'Health and safety of workers'	X	X		
Aker (2012)	Section 2 (e) – 'Health & Safety'	X	X	X	ILO HIV/AIDS Code of Practice
Besix (2017)	Section 8 – 'in relation to fair labour standards and workers' health and safety	X	X	X	
BMW (2005)	Section 1 (7) – 'Occupational health and safety'				
Brunel (2007)	Section 3 (3) – 'Safety, working conditions and health'	X			
EDF (2018)	Section 5 – 'Being a benchmark for occupational health and safety'				European Framework Directive on Safety and Health at Work
Electrolux (2010)	'Health and safety'				
H&M (2015)	'Health and Safety'	X			Recommendation No. 164, Protocol 155
Lafarge (2013)	'Health, safety and working conditions'	X		X	ILO HIV/AIDS Code of Practice
Lukoil (2018)	Section 4 – 'Health, Safety and Environment'				ILO HIV/AIDS Code of Practice

[974] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 236.

Nampak (2006)	'Working conditions are decent'	X			
Salini Impregilo (2014)	'Working Conditions'	X	X	X	OECD Guidelines
Norsk Hydro (2018)	Section 2 (e) – 'Health & Safety'	X			
Norske Skog (2013)	Section 2 (c) – 'Health and safety'				
Renault (2013)	Chapter 2 – 'Actions regarding health, safety and quality of life in the workplace'				
Royal BAM (2006)	'Working conditions are decent'	X	X	X	ILO HIV/AIDS Code of Practice
Schwan Stabilo (2005)	Section 7 – 'Safety at work and decent working conditions'				
Skanska (2001)	Section G – 'Working conditions'				
Staedtler (2006)	Section 7 – 'Safe and Health Working Conditions'	X		X	ILO HIV/AIDS Code of Practice
Telefonica (2001)	Section 3	X			
Veidekke (2017)	Section 2 (e) – 'Health & Safety'	X	X	X	ILO HIV/AIDS Code of Practice
VolkerWessels (2007)	'Working conditions are decent'	X	X	X	ILO HIV/AIDS Code of Practice

Table 34. Examples of occupational safety and health provisions in global framework agreements.

Company + Year	Provision	Reference
ABN AMRO (2015)	'Training and education is important'	Culture of continuous learning, to develop staff's skills, satisfy their professional aspirations, and fulfil the company's needs. All employees have the opportunity to participate in education and training to improve occupational skills
Acciona (2014)	Section 10 – 'Skills training'	Learning and training for employees to update their knowledge and skills for professional progress and more value to customers and society

Besix (2017)	Section 9 – 'in relation to development'	Necessary training programmes to ensure that employees and workers can fulfil their tasks in qualitative and secure manner, access to training programmes to increase their competences and knowledge of new technologies and equipment
Brunel (2007)	Section 3 (1) – 'Develop the skills of the future through continuing training'	Company's commitment to the development of skills through continuing training
EDF (2018)	Section 8 – 'Enabling every employee to develop their skills and advance their careers'	Mobility, transfers, training programmes, cooperation
Lafarge (2013)	'Skills training'	All employees have the opportunity to participate in education and training programmes, including the use of new technology and equipment
Nampak (2006)	'Education and Training'	All workers have the opportunity to participate in education and training programmes, for example IT and technical skills development
Royal BAM (2006)	'Skills training'	All workers have the opportunity to participate in education and training programmes, including training to improve the level of skills to use new technology and equipment
Salini Impregilo (2014)	'Specialised Vocational Training'	All workers have the opportunity to take part in educational and training programmes, including special training to develop skills about new technologies and machinery
Staedtler (2006)	Section 8 – 'Professional Training'	Employees are given the opportunity to participate in educational and training programmes, which include training procedures to improve employees' proficiency with respect to the use of new technologies and machinery
Veidekke (2017)	Section 2 (l) – 'Skills training'	All workers have the opportunity to participate in education and training programmes, including training to improve skills in the use of new technologies and equipment
VolkerWessels (2007)	'Skills training'	All workers have the opportunity to participate in education and training programmes, including training to improve workers skills to use new technology and equipment

Table 35. Examples of training provisions in global framework agreements.

Company + Year	Sector	Provision	Reference
Aker (2012)	Energy (oil, gas, electricity, and nuclear)	Section 2 (j) – 'Environment issues'	Fullest regard for the environment and taking of a precautionary approach
Besix (2017)	Construction	Section 10 – 'in relation to service providers, suppliers and subcontractors'	Positive impact on people and the environment
EDF (2018)	Energy (oil, gas, electricity, and nuclear)	Preamble, Section 4, Section 10	Socially responsible relations with suppliers and subcontractors, aim of reducing carbon dioxide

			emissions, company's contribution to local economic and social development
Enel (2013)	Energy (oil, gas, electricity, and nuclear)	Section 9 (9) – 'Environmental protection'	Group managers and employees take part in Enel's sustainability objectives, including working actively and responsibly to protect the environment, and to consider the environmental and social impacts of production processes and operations
Eni (2019)	Energy (oil, gas, electricity, and nuclear)	Section 6 – 'Sustainable Development and Environmental Protection'	Greatest possible attention to the environment and ecosystems affected by business operations, compliance with guidelines set out in the international development conventions Italy has signed, support for the goals of the 2015 Paris Agreement, reduction of the carbon intensity of operations, investment in the development of low carbon energy products, partnership with the UN Development Programme, support for the principle of a 'just transition' towards economies and companies that are environmentally sustainable
Equinor (2016-2018)	Energy (oil, gas, electricity, and nuclear)	Section 3 – 'Environmental Issues'	Precautionary approach to environmental challenges, initiatives to promote greater environmental responsibility, encouraging the development and diffusion of environmentally friendly technologies
Lukoil (2018)	Energy (oil, gas, electricity, and nuclear)	Section 4 – 'Health, Safety and Environment'	Initiatives focusing on the development of responsible attitudes to health, safety, and the environment, promotion of development and dissemination of safe and environmentally friendly technologies, listing of measures taken by the company based on its status as a major subsoil user and awareness of its responsibility toward the public in terms of preservation of the favourable environment and efficient use of natural resources
Nampak (2006)	Packaging	Section 4 (4) - 'Respect for the environment'	Commitment to continuously improving the company's environmental performance
Norsk Hydro (2016)	Energy (oil, gas, electricity, and nuclear)	Section 5 – 'Environmental Conditions'	Precautionary approach to environmental challenges, compliance with national environmental legislation, work to minimize harmful discharge, emissions and waste production
Röchling (2004)	Plastics Engineering	Section 2 (5) – 'Environment'	Protection of the environment and improvement in living and environmental conditions are company objectives, cooperation with local institutions to achieve and maintain environmental standards
Salini Impregilo (2014)	Construction, Civil Engineering	'Environmental Issues'	Respect for international conventions on environmental impact and to safeguard workers and local people who might be impacted by the effects of the activities and projects carried out by the company, its contractors, or subcontractors
Siemens Gamesa (2019)	Energy (oil, gas, electricity, and nuclear)	Section 5 – 'Environmental Protection'	Use of sustainable resources, culture of respect for the natural environment, fight against climate change by reducing the environmental impact of the company's activities, defending biodiversity, encouraging

			information and training on sustainable culture, life-cycle approach, ISO 14001 certification, performance related to energy and resource efficiency as well as substance management, just transition towards economies and companies that are environmentally sustainable in line with the ILO Guidelines
Solvay (2017)	Chemical	Section 6 – 'Risk and Management and Environmental Protection: Environment'	Compliance with national and international environmental laws and regulations, adherence to the chemical industry's commitment to progress in environmental protection, use of best existing technologies allowing to reduce greenhouse gas emissions, employee awareness
Veidekke (2017)	Construction and Civil Engineering	Section 2 (k) – 'Environmental issues'	The company ensures that its activities are conducted in the best way possible and with the fullest regard for the environment, including taking a precautionary approach to environmental challenges
Umicore (2019)	Industrial and Environmental Services	Section 3 – 'Environment'	Sustainable development considerations in decision making, risk management strategies, management and remediation of risks resulting from historical operations, facilitation and encouragement of responsible design, re-use, recycling and disposal, cooperation with relevant local institutions

Table 36. Examples of environment protection provisions in global framework agreements.

Sustainable development is also addressed in several global framework agreements. While enabling participation in decision making and therefore contributing to sustainable development through a participatory approach, sustainable development provisions are often vague.[975] Furthermore, as chapter 6 unveils, this participation is sometimes tainted by training and enforcement issues.

Company + Year	Provision
ABN AMRO (2015)	Sustainable development is integral part of ABN AMRO's business *"ABN AMRO's recognises that its business has an impact on people, industry and society. It is ABN AMRO's aim to be positively recognised for its position on sustainability and transparency. In striving to achieve this goal, ABN AMRO is guided by its sustainability strategy, which consists of four key elements (…)."*
ThyssenKrupp (2015)	*"The Group is committed to the aims of sustainable development. Sustainable development is conceived to be a continuous process comprising, in addition to the economic performance of the company, social benefits, use of resources, jobs and further training."*

[975] ibid, pp. 225-226, 229, 235-236.

Volker Wessels (2007)	*"Royal Volker Wessels Stevin nv and BWI recognise that sustainable industrial development of the construction industry/wood industry is in the company's and workers' interest."* *"Commit themselves to work in this direction to achieve social justice and sustainable development in the activities and undertakings of VolkerWessels and its contractors, subcontractors and suppliers."*

Table 37. Examples of sustainable development provisions in global framework agreements.

Company + Year	Provision
ABN AMRO (2015)	Restructuring is being carried out carefully *"In the context of its responsibilities toward staff and the local economies, ABN AMRO endeavours to anticipate change and restructuring in order to minimise as far as possible any negative consequences on employment, to avoid or limit layoffs and mitigate financial damage for workers. ABN AMRO will integrate employment and social consequences in strategic decisions and will – where relevant – provide training to facilitate the necessary changes. ABN AMRO will pro-actively engage in dialogue with local union organisations and elected staff representatives on economic issues, the consequences and suitable of decisions and suitable individual and collective support."*
EDF (2018)	Refers to restructuring in regard to the agreement's scope and occupational health and safety *"In the event of a merger, acquisition or restructuring leading to the creation of new entities controlled by the Group, if these new entities fall within the scope of this agreement, they must comply with its provisions according to the terms and conditions set out above."* *"EDF Group must ensure that their investment and restructuring projects will not compromise the health and safety of workers (...)"*
Fonterra (2002)	Changes in Business Activities Affecting Employment

Table 38. Examples of restructuring provisions in global framework agreements.

Moreover, some agreements contain specific provisions tackling **sector related issues**.

Company + Year	Sector	Provision
Besix (2017)	Construction	Section 4 – in relation to migrant workers' protection (in conformity with ILO Conventions No. 97 and 143)
Renault (2013)	Automotive	Chapter 4 – Promoting road safety

Table 39. Examples of sector specific provisions in global framework agreements.

The author isolates a fourth level, referent to **private standards**, such as those arising from the International Standards' Organisation and the enterprise's own codes of conduct. According to Hammer, this suggests that some agreements are based on corporate codes of conduct. As mentioned in section 4.1.4., some global framework agreements are based on the company's code of conduct. Others refer to both the agreement and the company's corporate conduct within the same framework. Finally, other global framework agreements refer to the agreement itself as a corporate code of conduct.

Consequently, global framework agreements have a **rights-based content**, which persistently refers to the four core labour standards, either explicitly or implicitly. Nowadays, this rights-based content includes many other labour standards, depending on the specific company, the sector, and the industrial relations context in which the agreement is signed. The levels identified by Hammer convey a **complex system** composed of several layers, with fundamental human and labour rights being set as minimum standards, supplemented with national and private frameworks, and thus connected to collective agreements and domestic legislation.[976] Filling a gap in the regulation of the conduct of multinational enterprises, global framework agreements construct a more or less comprehensive framework that functions as a minimum set of standards. These are applied in all the countries where the company operates and throughout its supply chain, in accordance with the agreement's scope.

4.2.3. Implementation Mechanism(s)

As mentioned above, global framework agreements are negotiated between a multinational enterprise and a global union federation, with the aim of ensuring fundamental workers' rights within the company's worldwide operations and according to the agreement's scope of application. They possess a global scope but are fundamentally implemented at the local level. Hence, in terms of implementation, these agreements are grounded on the

[976] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 98-104.

notions of **cooperation/collaboration** and the settlement of issues locally, in first instance. The involvement of workers' representatives is a reaction to some of the criticism raised against unilateral codes of conduct. Global framework agreements are *"based on the concept of social dialogue, that is on the importance of establishing channels through which parties can exchange, with the aim of working together to resolve problems and design innovative solutions to improve the protection of core labour rights and working conditions throughout an enterprise's production network"*.[977] Virtually all agreements possess some sort of reference to dissemination, translation, or training. Moreover, several agreements contain provisions on review and monitoring, as well as dispute settlement and sanctions for the violation of an agreement. This section describes implementation mechanisms and leaves a more detailed analysis of dispute settlement in the section concerning enforcement, in chapter 5. Agreements with dispute settlement mechanisms create enforceable commitments, being more akin to collective agreements. Based on the division established by the database developed by the European Commission and the ILO, a global framework agreement can tackle 1) implementation and dissemination, 2) review and monitoring, and 3) dispute settlement and sanctions.[978]

[977] Drouin, 'Promoting Fundamental Labour Rights through International Framework Agreements: Practical Outcomes and Present Challenges' (n51), p. 595.

[978] As structured in the European database on transnational company agreements. See, European Commission and the ILO – Employment, Social Affairs & Inclusion, 'Database on Transnational Company Agreements' (n41).

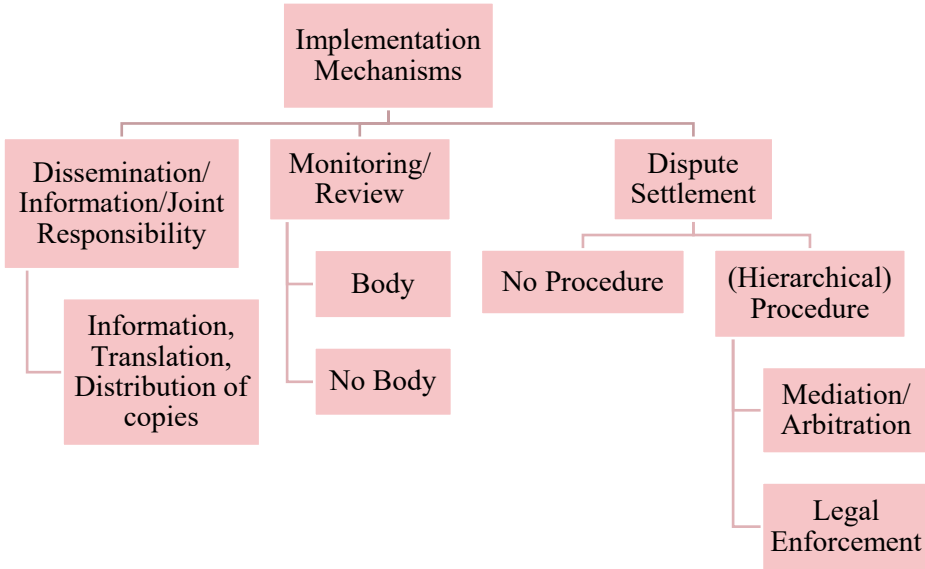

Figure 2. Implementation mechanisms of global framework agreements.

A) Cooperation and Subsidiarity

The implementation of global framework agreements is grounded on the development of social dialogue, intended to create *"a managerial culture respectful of the IFAs"*.[979] Multinational enterprises and global union federations enforce global framework agreements *"**cooperatively** against each other and enable each other to mitigate breaches"*.[980] References to a cooperative environment and the development of social dialogue are repeatedly comprised in these agreements.

Company + Company Origin + Year	Reference	Provision
Acciona (Spain, 2014)	Parties' willingness to cooperate actively in	Implementation *"Both organisations will actively support this voluntary commitment and express their willingness to cooperate actively in eradicating violations of the agreement as to avoid any future infringement."*

[979] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 74.
[980] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 54.

	eradicating violations	
Enel (Italy, 2013)	Participatory approach, emphasis on social dialogue	Section 2 - Aims *"The participatory approach adopted by the Parties translates, in reality, into a system of information, consultation that includes the normal negotiating process while broadening the scope of the issues to be dealt with and the goals that can be achieved."* Section 6 – Aims *"Social dialogue is the main way to prevent and manage potential conflicts in labour relationships. This agreement refers to and sets standards and values that are the guiding principles of this social dialogue, to be performed in cooperation between the Parties, which mutually acknowledge and recognise one another, with the aim of finding common solutions and resolve any problems that may arise according to the provisions hereof."*
Eni (Italy, 2019)	Participatory model, Constructive industrial relations, participatory model	Section 7 (1) – Improving Social Dialogue *"The Parties recognise the importance of developing constructive industrial relations at various levels that reflect the different socio-economic contexts in which Eni operates with the necessary respect of different cultures and social and economic aspirations. The participatory model that has always characterised the system of Eni industrial relations has allowed it to consolidate relations with trade unions and their representatives over time, through a constant process of engagement on corporate objectives to encourage the development of resources and organisational systems. Therefore, Eni and its companies pledge, to the extent of their responsibilities, to continue or build a constructive relationship with workers' representatives and trade unions, established on a democratic basis and recognised by international labour bodies. Against this background, Eni is committed to, jointly with the signatory trade unions, reviewing and improving the involvement of and social dialogue with the workers' representatives at global, European and national level."*
Inditex (Spain, 2019)	Importance of local involvement	Implementation *"Under the lines established by the Coordination, the local trade union representatives will participate in the implementation of the Agreement in their respective countries."*
Siemens Gamesa (Spain-Germany, 2019)	Social dialogue, importance of the local level, complemented with a global dimension	Section 2 – Social Dialogue and Employment *"The Siemens Gamesa Group is committed to social dialogue as the backbone of the relationships between the management of the company, the people employed therein, and the labour representatives wherever such exist. This dialogue should be mainly based on the relationships at the local level, which has to be developed in alignment with the global policy of the Group".* Section 9 – Agreement Implementation and Monitoring *"Management and labour representatives of the Siemens Gamesa Group, together with IndustriALL Global Union, shall jointly oversee the effective implementation of this agreement*."

Table 40. Examples of provisions referring to a cooperative implementation of global framework agreements.

Papadakis, Casale and Tsotroudi interestingly proposed a possible application of the **principle of subsidiarity**, developed in the context of EU law, in regard to the monitoring and implementation of global framework agreements. According to this, "*the central authority has a central subsidiary function, performing only those tasks that cannot be performed effectively at a more immediate or local level"*.[981] Thus, the implementation and resolution of disputes is carried out, in first instance, at the local level.

Company + Country + Year	Reference	Provision
Acciona (Spain, 2014)	Involvement of local management, workers and their representatives, health and safety representatives, and local trade unions	Implementation *"Both parties recognise that effective local monitoring of this agreement must involve the local management, the workers and their representatives, health and safety representatives and local trade unions."*
Danske Bank (Denmark, 2008)	Principle that a local solution should be sought	Section 4 – Conflict Resolution *"Should UNI Global Union or one of the unions represented and recognised within Danske Bank Group consider that this agreement or one of its principles is not applied in one of the Group's entities, they undertake to contact Danske Bank Group management before any outside communication so that the necessary discussions and actions can take place – based on the principle that a local solution should be sought."*
Eni (Italy, 2016)	Principle that problems should be settled at the level closest to the workplace	Section 8 (6) – Dispute Settlement *"The parties recognise the principle that emerging problems between workers and the company have to be settled at the level closest to the workplace. In cases of difficult situations, Eni in coordination with the competent HR functions and the signatories to this agreement, will facilitate the solution of the issue at local level."*
FCC Construcción (Spain, 2012)	Involvement of local management, workers and their representatives, health and safety representatives, and local trade unions	Implementation *"Both parties recognise that effective local monitoring of this agreement must involve the local management, the workers and their representatives, health and safety representatives and local trade unions. To enable local and national union representatives of BWI affiliated unions to play a role in the monitoring process, the company assures that they will be given appropriate access to the workers and the necessary rights to information."*
H&M (Sweden, 2015)	Primacy for workplace negotiation and local	Section 9 – Resolution of Industrial Relations Issues *"It is a key principle of this Agreement that well-functioning industrial relations are best achieved if industrial disputes and*

[981] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 75.

	law or industry agreement procedures	*related issues ('Industrial Relations issues') are resolved through workplace negotiation, and when needed with support of appropriate national trade union or dispute resolution procedures provided for in industry agreements and/or local law."*
Inditex (Spain, 2019)	Role of local trade unions in the implementation and enforcement of the agreement	Resolution of Potential Breaches of the Agreement *"When a local trade union detects any potential breach regarding the enforcement of this Agreement in any of Inditex's suppliers that cannot be resolved at factory level, this shall be notified (...)."*

Table 41. Examples of provisions illustrating a subsidiarity principle in global framework agreements.

B) Implementation and Dissemination

In regard to the implementation and dissemination, almost all agreements refer to a **cooperative/collaborative spirit**, making both management and trade unions responsible for its implementation. Moreover, the vast majority of agreements refer to an interexchange of information between the parties. Virtually all global framework agreements commit the parties to inform and encourage suppliers to respect the agreement and promote its **dissemination** throughout the supply chain,[982] referring to the publication and translation of the agreement, local involvement, as well as proactive strategies and the creation of a managerial culture of respect and compliance with the agreement.[983] Within the same set of obligations and besides a requirement to inform, various agreements refer to a requirement for the subsidiaries to encourage compliance.

Company + Year	Provision	Reference
ABN AMRO (2015)	Section 1 of Implementation	*"Parties are jointly responsible for the implementation and communication of this framework agreement."*

[982] E.g. Acciona, AEON, Aker, Anglogold, ASOS, Auchan, Besix, Daimler, Danske Bank, Dragados, EDF, Elanders, Electrolux, Enel, Esprit, Essity, FCC Construcción, Ferrovial, Fonterra, Ford, France Telecom, G4S, GEA, H&M, Hochtief, IKEA, Indosat, ISS, Italcementi, Leoni, Mann+Hummel, Merloni, Nampak, Norske Skog, OHL, Pfleiderer, Quebecor World Inc, Rheinmetall, Royal BAM, Röchling, Saab, Sacyr, Safran, Salini Impregilo, SCA, Schwan Stabilo, Securitas, Shoprite Checkers, Siemens Gamesa, Skanska, Sodexo, Solvay, Staedler, Takashimaya, Tchibo, Telkom Indonesia, Umicore, Volker Wessels, WAZ, Wilkhan, ZF.

[983] García- Muñoz Alhambra, ter Haar, and Kun, 'Soft on the Inside, Hard on the Outside: An Analysis of the Legal Nature of New Forms of International Labour Law' (n864), pp. 337-363.

AEON (2014)	Section 3 – Implementation of the Agreement	*"All the parties recognise the importance of industrial harmony and trust between the employees and the management in implementing the Agreement."*
BMW (2005)	Section 2 (1) - Dissemination	*"The contents of this joint Declaration will be disseminated within the BMW Group in the appropriate manner."*
Bosch (2004)	Section 11 – Implementation	*"Following consultation with the respective associate representatives, associates will be informed about the content of the above principles."*
Brunel (2007)	Section 6 – Monitoring and implementation of the agreement	*"Brunel agrees to widely inform corporation employees about the content of this agreement."*
Eni (2019)	Section 8 (1) – Information and communication	*"The Parties undertake to disseminate knowledge of this agreement by providing information and communication in their respective fields."*
	Section 8 (2) - Publication of the agreement	*"Eni and the signatory Labour Organisations commit to disseminate and promote the content of this agreement, in the appropriate local languages, particularly to workers, managers and suppliers. After signing of this agreement, Eni, will ensure that it is translated into the languages of the main countries where Eni operates (...). The agreement will be made available on Eni's intranet and internet websites. The company will produce materials explaining the content of the agreement for HR directors, managers and employees, using all available communication channels. IndustriALL will publish the agreement on its website and circulate it among its affiliates."*
	Section 8 (3) – Training	*"The Parties agree that training represents a fundamental leverage for increasing awareness among Eni employees on the content of the Agreement. In this regard, Eni is committed to constantly update the dedicated and open e-learning course, available on Company's intranet."*
Esprit (2018)	Section 4 (3) (3) (5) (7) – Implementation/Structure and Organisation	List of Esprit's tasks, sharing of information, terms on its use, translation of the agreement
	Section 5 (1) – Information and Access	*"The Parties to this Agreement shall establish and maintain procedures to communicate data and other information regularly regarding performance against the requirements of this Agreement, including, but not limited to, the results of management reviews and monitoring activities."*
Faber Castell (2008)	Section 4 (1) – Communication	*"The agreement (...) shall be made accessible to all employees in their respective language."*
Inditex (2019)	Preamble	*"Inditex undertakes to inform its suppliers about the contents and intent of the Agreement while IndustriALL will do likewise with its trade union affiliates and other relevant trade unions as appropriate."*
Lafarge (2013)	Implementation and Follow-Up	*"The Lafarge Group will provide information concerning this agreement in written or verbal form in all countries where this agreement is applicable."*
Loomis (2013)	Section 6 – Implementation	*"The Parties will communicate this Agreement and the commitment to its principles throughout their respective organisations and will each have a responsibility for the implementation of the agreement in good faith. Loomis will*

		make the Policy public by way of posting it on the Loomis' intranet and external webpage."
Lukoil (2018)	Section 6 (1) – Information	*"The Parties agree that it is critical to raise awareness of all employees about the content and the binding status of the Agreement, and promote proper understanding at all management levels."*
	Section 6 (1) (1)	*"LUKOIL makes the translation of this Agreement and disseminate copies hereof to all LUKOIL Group organisations where they are located."*
	Section 6 (1) (2)	*"IndustriALL shall publish the text of this Agreement in English on the website and keep its member organisations that are a part of LUKOIL Group well informed of the existence of this Agreement and provide clarifications as to the meaning hereof."*
Mizuno (2020)	Article 3 – Dialogue	*"Mizuno Corporation shall disseminate the Mizuno Code of Conduct for Suppliers provided in the Article 2, in the appropriate local languages, to workers, management, suppliers and subcontractors to the extent possible. All the Parties including Mizuno Corporation may commit jointly in their own account to ensure that education and training on the Mizuno Code of Conduct for Suppliers take place in regards to its contents."*
PSA (2017)	Chapter 1 – Implementation and Monitoring	*"The global framework agreement is applied in every country where entities falling within the scope of the agreements are represented. (…) This agreement is translated into languages of the countries in which the Group is present. Information about this agreement shall be given to all the line managers and employees. Its dissemination will be facilitated by publication on Live'in, the Group's intranet portal, and by local spin-offs. Its principles and the good practices resulting from its application will be subjects of a communication and promotion among all personnel. New employees will be informed of the existence of this agreement. This agreement shall be available on the website of the IndustriALL Global Union and the IndustriALL European Trade Union."*
Renault (2013)	Chapter 6 – Terms for the Implementation and Follow-Up of the Agreement	*"The management and members of the Renault Group Works' Council jointly oversee the effective implementation of the agreement, in liaison with IndustriALL Global Union."*
Securitas (2012)	Section 5 – Implementation	*"Securitas accepts responsibility for implementation of this agreement across its business. It shall ensure that its managers respect the principles set out in this agreement and that they communicate them to the employees through appropriate communication channels, including but not limited to the Securitas intranet and its external webpage. UNI STWU and Securitas commit to publicise this agreement, in writing, throughout their worldwide union affiliate and corporate structures, respectively, and to stress that this agreement is to be supported in principle and in practice at all levels of both organisations."*

ThyssenKrupp (2015)	Section 11 – Execution and Implementation	*"ThyssenKrupp shall act to ensure that these fundamental principles are made available to all employees and their representatives in suitable form. Responsibility for the implementation shall be borne by the Management Boards and Directors of the subsidiaries. (…) ThyssenKrupp ensures that this framework agreement shall be translated in 8 most spoken languages."*

Table 42. Examples of provisions referring to the dissemination and joint responsibility for the implementation of global framework agreements.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
ABN AMRO (Netherlands, 2015)	UNI Global Union	Actively recommend	Section 1 of Implementation *"ABN AMRO's shall communicate it to its national and local management teams and make the agreement yearly known to its employees and will actively recommend the practices in this agreement to the suppliers and subcontractors with whom the company has contractual relationships."*
Lukoil (Russia, 2018)	IndustriALL	Shall advice and request to abide	Section 1 – Preamble *"Lukoil shall advice its contractors and major suppliers of the existence of this Agreement and request them to abide by the requirements and principles outlined herein."*
Norske Skog (Norway, 2013)	IndustriALL	Notify and encourage compliance	Section 1 – Preamble *"Norske Skog will notify its subcontractors and suppliers of this Agreement and encourage compliance with the standards set out in paragraph 2 below."*
ThyssenKrupp (Germany, 2015)	IndustriALL	Inform and encourage to consider the principles	Section 10 – Suppliers *"ThyssenKrupp ensures that its suppliers shall be informed in a suitable manner about these fundamental principles. ThyssenKrupp encourages its suppliers to consider these principles in their own company policy."* Section 11 – Execution and Implementation *"The principles agreed in this framework shall be valid worldwide for all subsidiaries."*

Table 43. Examples of provisions referring to subsidiaries' requirement to inform and encourage compliance in global framework agreements.

However, there is little evidence that these agreements are adequately disseminated and translated, even when their text explicitly requires it. This was confirmed by the interviews conducted, which showed a tendency to carry out training with trade union leaders and company management, while excluding workers. These seemed to be left out of training activities and the global union federation's relevant affiliates do not normally publicise the

agreement to workers in most cases. Furthermore, according to the interviews, the text of the agreement is not easily available in workplaces and often not translated in at the company site. Additionally, company websites give little emphasis to the agreements. This inadequate dissemination can be especially problematic in terms of suppliers and subcontractors' respect for the agreement, since their relation to the enterprise and the global union federation is frailer. [984] While it is true that company's websites do not patently advertise the agreements, that is also the case for some global union federations. IndustriALL's website provides a list and the updated text of the agreements signed. However, UNI Global Union's website merely provides a list, requiring the user to search the text of the agreements through its website, with some agreements' texts seemingly missing. In the Building and Wood Workers' International's website, a list of agreements signed is not found, although some agreements are discovered by using the search engine in the website.

C) Review and Monitoring

In regard to review and monitoring, several agreements provide for the exchange of information, visits to production sites, and training for workers' representatives and management at the local level. The majority of global framework agreements refer to the constitution of a body comprised by both employers' and workers representatives to monitor the implementation of the agreement, which can often be used for dispute settlement. Hence, implementation is conducted, in first instance, at the local level and also through a joint forum, typically named monitoring committee, reference group, or review committee. Other agreements do not set up such a body. Instead, they allow for the possibility to report a problem to the senior management or executive board. Accordingly, monitoring can be conducted within the company's internal corporate audit, through a body created by the agreement, or through the reporting to senior management.[985] Some agreements also provide for whistle-blower protection in relation to non-

[984] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 79-80.
[985] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 98-104.

compliance with the agreement.[986] When established, **monitoring bodies** meet on a regular basis, usually once or twice a year. Many global framework agreements also include dispute settling bodies and incentive workers to complain to their representatives on violations of the agreement. Some agreements establish a body for monitoring of the agreement at the global level, leaving internal audits and monitoring to conducted at the local level.[987]

Company + Year	Body	Periodical Meetings	Provision
ABN AMRO (2015)	Monitoring Group	Once a year	Section 2 and 3 of Implementation *"Parties commit themselves to create a monitoring group, consisting of a balanced representation of parties, with the role of looking into the divergences of interpretation and application of this framework and to present conclusions and suggestions to resolve them, the monitoring group will at least consist of representatives from ABN AMRO including HR, business, Corporate sustainability and FNV and UNI."*
Esprit (2018)	Joint Group	Twice a year	Section 5 (2) – Information and Access *"A joint group shall meet twice a year, either in person or via teleconference as the Parties deem and agree to be appropriate, to review the implementation of this Agreement and any related issues. The members of this joint group shall consist of representatives of Esprit, IndustriALL Global Union including the Director of Textile, Garment, Leather and Shoe and as and when necessary, representatives from the relevant regions of IndustriALL Global Union and Esprit. This group shall, amongst other things: (...)"*
H&M (2015)	National Monitoring Committee and Joint Industrial Relations Development Committee	Regularly/ At least once a year	Section 1, 3, and 4 *"The Parties shall each designate two representatives to participate as members of each NMC, or more if the Parties so agree."* *"At the national level, the NMCs shall: i. create, monitor and evaluate strategies for implementation of this Agreement in countries where H&M direct suppliers and their subcontractors (...) are located; ii. collaborate with trade unions/worker representatives and H&M direct suppliers and their subcontractors (...) to provide general guidance and advice on achieving well-functioning industrial relations, with particular reference to dispute prevention and resolution, and collective bargaining agreements; iii. if necessary, assist with the resolution of industrial relations issues and disputes as set*

[986] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 56.
[987] E.g., Acciona, AEON, Aker, Anglogold, ASOS, Besix, Dragados, EDF, Elanders, Eni, FCC Construcción, Ferrovial, Fonterra, IKEA, Italcementi, OHL, Pfleiderer, Renault, Royal BAM, Sacyr, Safran, Salini Impregilo, Schwan Stabilo, Siemens Gamesa, Solvay, Staedler, Umicore, Volker Wessels, WAZ, Wilkhan.

			out in paragraphs [10-11] of this Agreement and; iv. discuss/explore/implement other activities as agreed to by the Parties in writing." *"NMC shall meet regularly ay times agreed on by the Parties. In between meetings, matters may be dealt with by correspondence or telephone. Special meetings can be held on an ad hoc basis depending on the matter."* Section 7 and 8 *"Each Party shall appoint a Co-Chairperson as one of its representatives who shall preside over the proceedings of the JIRDC on an alternating basis. The JIRDC shall meet as and when agreed, but in any case, at least once a year. In between meetings, matters may be dealt with by corresponding or telephone."* *"The JIRDC shall have responsibility for: i. planning and overseeing practical implementation of this Agreement at global level; ii. exploring opportunities for joint cooperation initiatives aimed at achieving and maintaining well-functioning industrial relations in H&M direct suppliers and their subcontractors (...); iii. if necessary, providing support and guidance to the National Monitoring Committee; iv. discussing, exploring and implementing other activities as agreed by the Parties in writing; v. giving advice on matters referred to it by NMC."*
Inditex (2019)	Global Union Committee/ Coordination	At least twice a year	Implementation *"For implementation of the Agreement, the Parties have agreed on a specific structure. At global level, a Global Union Committee (...) shall be established and it will be composed according to what is established in Annex II by: i) an agreed number of representatives of IndustriALL affiliates representing workers with presence in factories of Inditex's clusters, and ii) representatives of the Spanish Trade Union mentioned (...) on behalf of Inditex workers. This Committee shall meet once a year to review the implementation of the Agreement. IndustriALL will be invited to the meetings of the Committee. Inditex, (...) could designate a representation to attend the Committee, in any case request from their members and whenever it is understood necessary by the Coordination of the Agreement (...)."*
Lafarge (2013)	Reference Group	At least once a year	Implementation and Follow-Up *"A reference group consisting of representatives of the Lafarge management and of the signatory international federations will meet at least once a year, or whenever necessary, to follow up and review the implementation of this agreement. (...) The annual review of the present agreement should be incorporated into the Lafarge's Group's reporting with the consent of all signatories."*
Securitas (2012)	Implementation Group	At least twice a year	Section 5 – Implementation *"An Implementation Group consisting of senior representatives of all three parties will meet at least twice a*

			year to discuss progress and to resolve disputes under this Agreement."
Thyssen Krupp (2015)	International Committee	Report to the Committee at least once a year	Section 12 – International Committee *"A so called International Committee shall be established with the purpose of additional control and for regular exchange on adherence to and implementation of this agreement. This Committee shall be composed of the chairperson of the Group Works Council and two deputies of the chairman of the Group Works Council, the chairperson of the European Works Council, IG Metall officer responsible for ThyssenKrupp and a representative of the IndustriALL Global Union. The Member of the Executive Board of ThyssenKrupp AG responsible for human resources shall report on basis of suitable documents to the International Committee on the status of implementation and adherence to the framework agreement at least once a year. The Member of the Executive Board of ThyssenKrupp AG responsible for human resources informs the International Commitee about reported violations of essential significance, which could not be solved at local level. The International Committee can propose appropriate measures to be taken to remedy such violations, if local or national mediation possibilities have been used without success. It can also make proposals for preventive measures."*

Table 44. Examples of provisions referring to monitoring of global framework agreements through a specifically created body.

Differently, some agreements do **not establish bodies** for monitoring of the agreement.[988] Instead, they can refer to regular meetings between the parties, the report of violations to senior management or to the executive board or within a private compliance mechanism. There can also be cases in which monitoring is carried out by existing bodies, namely works councils. Still, even when the company's auditing mechanisms are used for monitoring, these are not conducted by external parties.[989]

Company + Year	Measure	Provision
Aker (2012)		Section 5 – Annual Review

[988] E.g., Antara, Auchan, BMW, Brunel, Danske Bank, Electrolux, Enel, Essity, Ford, France Telecom, G4S, GEA, ISS, Leoni, Loomis, Lukoil, Man, Man+Hummel, Nampak, Norske Skog, Röchling, Saab, SCA, Skanska, Sodexo, Stora Enso, Tchibo, Telkom Indonesia, ZF.

[989] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 188.

	Meetings between the parties	*"Each of the signatories to the agreement can ask for a meeting when deemed necessary in order to review principles, effectiveness, and impact of the agreement. The aim shall be to exchange views regarding the current situation, and jointly develop further good working relations in Aker. As a minimum, such meetings shall be held at least every second year. At these meetings leading IndustriALL/Fellesforbundet/Tekna/Nito representatives, the Chief Shop Stewards and deputy shop steward of Aker and representatives of Aker Corporate Management will participate."*
AEON (2014)		Section 3 – Implementation of the Agreement *"To monitor the stage of implementation, all the parties shall meet once a year to hear reports from each other about situations related to the Agreement and discuss how to improve the situation if there is any need to do so."*
PSA (2017)		Communication and Monitoring of the Agreement: Chapter 1 – Implementation and Monitoring *"The PSA Group reconfirms its commitment to continuously monitor the agreement and assess its application. It also undertakes to deal with recourse and claims filed in reference to application of this agreement and to ensure due diligence vis-à-vis suppliers in its supply chain. The monitoring of this agreement is carried out at two levels. In each country an annual monitoring of application of the global framework agreement is carried out by company management and the trade unions or employee representatives. This monitoring of application will be incorporated into the customary functioning of local social dialogue. A document is jointly prepared by the signatories to this agreement which allows each trade union to offer its opinion in the context of the annual monitoring of application of this agreement in their subsidiary. At the Group level, monitoring of the agreement will be performed by the Global Works Council in the presence of representatives of IndustriALL Global Union and IndustriALL European Trade Union, signatories to this agreement. The application of this agreement will be monitored and assessed annually on the basis of a consolidation and summary document containing a status report, key indicators and main contractual provisions adopted locally, based on each commitment set out in this agreement."*
Bosch (2012)	Reporting violations	Section 11 – Implementation *"Complaints regarding possible breaches of the above principles will be investigated; any action required will be discussed and implemented by the senior management and associate representatives responsible. The Executive Committee of the Europa Committee of the Bosch Group will be informed about any complaints cannot be dealt with satisfactorily at a national level. If necessary, the implementation of this Declaration will be discussed at the meetings between the Board of Management and the Europa Committee."*
Hochtief (2000)		Section 3 *"Should the IFBWW, the IG BAU or the employees' representations within Hochtief or the companies with contractual ties with Hochtief become aware of any contravention of the spirit or the letter of this Code of Conduct, they will report this contravention to the Executive*

		Board of Hochtief. This body will examine and introduce suitable measures to remedy the issue. To this end, Hochtief appoints an Officer for the application of this Code of Conduct."
Daimler (2012)	Company Audit Mechanisms	Implementation Procedure *"Corporate Audit will also examine compliance with these principles in its audits and will include them in audit criteria. In addition, Corporate Audit has established a central hotline as a point of contact for reports of non-compliance with these principles at a decentralised level. Upon indication of violations, Corporate Audit will take appropriate action."*
Faber Castell (2008)		Section 4 (2) – Multistage Monitoring Procedure *"The multistage monitoring procedure comprises a self-assessment of every company, internal and external audits."*
Leoni (2012)		Section 2 (2) – Realisation *"During internal audits, the Internal Auditing Department will monitor compliance with these principles and will include them in its criteria."*

Table 45. Examples of provisions referring to the monitoring of global framework agreements through other measures.

Finally, in some agreements, monitoring is carried out by **existing bodies**, sometimes in the context of European Works Council. The central role given to European Works Council is a specificity of agreements by the then existing International Metalworkers' Federation.[990] Differently, and although referring to the establishment of an implementation group, Section 5 of Securitas' agreement states this body will meet in conjunction with the annual meeting of Securitas' European Works Council. The involvement of already existing bodies and European bodies in particular are problematic. In specific, European Works Council *"only have a mandate for Europe and as their members are coming from European countries, so that in most cases they will not be aware in depths of the problems outside Europe"*.[991]

Company + Year	Body	Provision
BMW (2012)	Euro-Forum	Section 2 (3) – Periodic Consultations *"Consultations on compliance with the goals and implementation of the principles will take place periodically via EURO-Forum."*

[990] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 98-104.
[991] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 187.

GEA (2003)	European Works Council and its presiding committee	Section 2 (5) – Execution and Implementation of the Agreement *"The parties to the agreement will ensure the observation of the agreement to the extent that they are able to do so. Information with respect to problems, deviations or necessary changes of the codes will be exchanged and discussed at least once a year between the parties to the agreement. This exchange of information will take place in the EWC and in the EWC presiding committee."*
Leoni (2012)	European Works Council	Section 2 (4) – Realisation *"Implementation and compliance with these principles will be reported on and discussed during the annual European Works Council meetings."*
Prym (2004)	European Works Council	Section 2 (3) – Execution *"The group management annual informs the EWC in its meeting on the realisation and will discuss with the EWC on the procedure in case of violations."*
Röchling (2012)	European Works Council	Section 4 (5) – Execution and Implementation of the Agreement *"The parties to the Agreement shall act to ensure that the Agreement is respected. Information regarding problems, differences or required changes in the basic principles shall be exchanged and discussed by the partners on an annual basis. This exchange of information is currently taking place in the European Works Council of Gebr. Röchling KG."*

Table 46. Examples of provisions referring to the monitoring of global framework agreements through already existing bodies.

In some cases, the agreement makes the company responsible for the **costs** arising from its implementation. This, as it is developed in chapter 5, in the section regarding the core components of the concept of collective agreement, is an indication of good faith on the part of the multinational enterprise.

Global framework agreements dealing with **dispute settlement** and referring to the application of sanctions are discussed in relation to their inclusion within the concept of collective agreement. Notwithstanding the different developments in regard to implementation mechanisms, the impact of an agreement will greatly depend on the prospect of complaints reaching the agreement's parties in the end. This can be problematic if no local or national trade unions are available.[992] Another key factor regarding the impact of global framework agreements concerns the extensiveness of the references to the supply chain and the company's capability to influence its subsidiaries, suppliers, and subcontractors.

[992] ibid, p. 189.

4.2.4. References to the Supply Chain

On the enterprise's side, global framework agreements are normally signed by the CEO of the company. The question of whether subsidiaries of the holding company should explicitly allow a representation so that the agreement is effectively binding on them is a concern. Hence, for clarity and conflict avoidance, it is not meaningless to include a reference defining who is bound by the agreement. Still, the holding company is always capable to exert its authority and influence over the subsidiaries' working conditions. In some agreements, the scope in reference to the supply chain is not mentioned, whereas in others the application to subsidiaries is dependent on the existence of a controlling interest. Finally, another group of agreements possess a wide scope of application. As Hadwiger's research has shown, a vast number of agreements comprise a reference to suppliers and subcontractors.[993] This dissertation considers the reference to the supply chain as a constitutive element of global framework agreements, meaning that **documents that not contain such element** are placed within the broader category of transnational company agreements. Global framework agreements, constitute a narrower concept and can include references to the holding company's controlling interest or comprise a wide application scope. The provisions addressing the supply chain can be more or less comprehensive and more or less precise. Some agreements contain a very precise definition of their scope, whereas others include a vaguely defined reference. Still, some type of reference to the supply chain must be present, even if considered in a broad sense. In fact, even agreements merely referring to their application within the company and their relevant companies, are considered to comprise such reference. A clear example is found in the text of Mizuno's agreement. According to Article 1 of the agreement, *"The purpose of this agreement is to establish a global relationship among Mizuno Corporation, IndustriALL Global Union*

[993] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 144, 147.

and the relevant affiliates, to promote the sound employment relationships within Mizuno Corporation and its relevant companies (...)".

The following paragraphs divide global framework agreements' scope of application into **four categories of references**. These are based on whether an agreement applies to the totality of the supply chain or merely to the company and its subsidiaries, as well as the degree of detail of the definition. While recognising the possibility of overlap, the division allows for a functional classification. Accordingly, there are agreements with a broad or comprehensive scope, which are applicable to the entirety of the supply chain, as well as agreements merely applicable to the company itself and its subsidiaries. The latest diverge based on different control levels. Some of these agreements are applicable outside the scope of direct control, grounded on the use of the company's influence. In terms of detail, some agreements are very thorough whereas others are extremely vague.

A) Comprehensive References

Although most agreement solely refer to direct suppliers and subcontractors, some comprise comprehensive references to the supply chain. These have a **broad/wide character**. Hence, some global framework agreements cover the entirety of the supply chain, including subsidiaries, suppliers, and subcontractors, regardless of whether they are directly employed by the enterprise. Examples of broad/wide allusions to the supply chain are found in several agreements signed in the garment sector, mostly in reference to garment production.

Company + Year	Sector	Provision
Enel (2013)	Energy	Section 9 (1) (2) – Sharing on Subsidiaries, Contractors, and Supply Chain *"Enel Group shall ensure full compliance of applicable laws and international standards in its relationships with contractors and suppliers and will promote this agreement towards the entire supply chain."*
H&M (2015)	Garment	*"The terms and conditions of the GFA shall cover all production units where H&M's direct suppliers and their subcontractors produce merchandise/ready made goods sold throughout H&M group's retail operations, and trade unions/worker representatives present at these production units. Non-affiliated unions may participate in the implementation of this GFA by mutual agreement with*

		IndustriALL. (…) The term 'employer' is used to refer to supplier or their subcontractor covered under the terms of this agreement. The term 'employee' refers to any individual who performs work directly for a supplier or their subcontractor under the terms of this agreement."
Inditex (2019)		International Labour Standards and Conventions *"The terms and conditions of the Agreement shall apply throughout the Inditex supply chain including workplaces not represented by IndustriALL affiliated unions."*
Esprit (2018)		Section 3 (1) and (3) – Scope *"This Agreement covers workers employed by Suppliers contracted by Esprit to provide products in its own label textile, footwear and apparel manufacturing supply chain."* *"Under the terms of this Agreement, Esprit recognises its obligations to workers for the conditions under which Esprit's products are manufactured and that these obligations extend to all workers producing products for Esprit, whether or not they are employees of Esprit. In order to meet these obligations, the signatories will observe and require their contractors, subcontractors, and principal Suppliers to observe the internationally recognised standards as set down in Annex 1 and 2 of this Agreement."*
Tchibo (2016)		Section 10 – Scope *"This Agreement shall cover the Tchibo Non Food supply chain with all its vendors, suppliers, their producers, and subcontractors and applies to all employees, regardless whether employed directly or indirectly by Tchibo's business partners and regardless of the contractual basis of this employment, whether in the formal or the informal sector."* Section 11 – Scope *"For workplaces within Tchibo's Non Food supply chain that are represented by trade unions not affiliated to IndustriALL Global Union, IndustriALL Global Union and Tchibo shall undertake to inform these trade unions about this Agreement. Trade unions not affiliated to IndustriALL Global Union may participate in this Agreement, provided mutual consent is given by the Parties."*

Table 47. Examples of comprehensive references to the supply chain in global framework agreements.

B) Control or Influence

Allusions to **control or influence** can also be found in some agreements. In fact, some state that the agreement only applies to subsidiaries or those over which the multinational enterprise holds a certain degree of power. Commonly, the terminology used refers to 'controlling interest', 'direct control', 'operational control', or 'influence'.

Company + Year	Reference	Provision
Aker (2012)	Leading shareholder	Section 1 – Preamble

		"This agreement relates to all companies that are part of Aker, i.e. companies that have Aker ASA as the leading shareholder."
Danske Bank (2008)	Companies controlled, i.e., majority of capital or voting rights	Scope of the Agreement "*This agreement applies to companies directly controlled by Danske Bank A/S, i.e. companies in which Danske Bank A/S holds the majority of the capital or a majority of voting rights or in which it appoints more than half the members of the administrative, management or monitoring bodies. The agreement will not automatically apply to companies that Danske Bank Group controls as a capital investment only temporarily. Further, Danske Bank will apply its best efforts in order to ensure that the same basic principles apply in any company to which Danske Bank Group has or should in the future outsource any parts of its activities and to any major supplier."* Section 5 – Implementation and Monitoring of the Agreement *"In companies where Danske Bank Group has a significant presence without exercising direct control, the signatories undertake to promote the present agreement and to encourage its implementation, while respecting the independence of those companies."*
EDF (2018)	Direct or indirect control	Scope *"The agreement applies to every company that is directly or indirectly controlled by EDF. In these companies, the agreement applies to every employee regardless of their employment contract."*
Eni (2019)	Majority control	Section 2 – Scope of Application *"This global framework agreement covers all Eni's subsidiaries throughout the world. In case of a merger or an acquisition of a new company where Eni holds majority control, this new entity will be covered by the provisions set out in this agreement."*
France Telecom (2002)	Direct control, i.e., majority of the capital or voting rights	Scope of the Agreement *"The present agreement applies to companies directly controlled by the France Telecom Group, i.e. companies in which France Telecom Group holds the majority of the capital or a majority of voting rights in which it appoints more than half the members of the administrative, management or monitoring bodies."* Section 5 – Implementation and Monitoring of the Agreement *"In companies where France Telecom Group has a significant presence without exercising direct control, the signatories undertake to promote the present agreement and to encourage its implementation, while respecting the independence of those companies.".*
Loomis (2013)	Direct control as an owner, i.e., controlling interest	Section 2 – Scope *"This Global Agreement applies to companies, over which Loomis has direct control as an owner, i.e., in which it has a controlling interest."*
Norske Skog (2013)	Direct control as an owner	*"This Agreement relates to all Norske Skog operations where the company has a direct control as an owner. Where Norske Skog does not have a controlling interest it will use its fullest influence in order to secure compliance with the standards set out in this Agreement."*
PSA (2017)	Dominant influence	Scope *"This global framework agreement applies directly to the entire consolidated automotive division (research and development, manufacturing, sales and support functions), to current and future subsidiaries over which the Group exercises a dominant influence. In those subsidiaries or companies in which it*

		participates but does not exercise operational control, the PSA Group undertakes to promote the same norms and principles. (…) Furthermore, certain provisions are directed to suppliers, subcontractors, industrial partners and distribution networks."
Renault (2013)	Direct or indirect hold of over half of the share capital	Chapter 7 – Final Provisions *"This agreement (…) is applicable to the entire Renault Group, i.e. to any company in which Renault a.s.a.s. holds, directly and indirectly, over half of the share capital."*
Securitas (2012)	Direct control as an owner, i.e., controlling interest/ sphere of influence	Section 2 – Scope *"This Global Agreement applies to companies over which Securitas AB has direct control has an owner, i.e. in which it has a controlling interest. Within Securitas sphere of influence, but where Securitas does not have a controlling interest or cannot exercise effective control for reasons of local legislation, Securitas will use its influence to seek to secure compliance with the standards set out in this Agreement."*
Total (2015)	Direct or indirect hold of over half of the share capital	Article 1 – Scope of Application *"This Agreement applies to Total S.A. and affiliates in which it holds, directly or indirectly, more than 50% of the share capital. Beyond that scope, in affiliates where it is present but does not control operations, the Group will make ongoing efforts to promote the principles of this agreement."*
Umicore (2019)	Operational control	Section 6 (1) – Implementation of the Agreement *"The Agreement applies to all companies of the group in which Umicore has operational control".* Section 6 (2) – Implementation of the Agreement *"In the subsidiaries where Umicore has a significant presence, but does not exercise control, Umicore undertakes to use all the resources at its disposal in order to promote the principles stated in this agreement."*

Table 48. Examples of references to control or influence in global framework agreements.

In terms of an agreement's scope of application **when a subsidiary joins or leaves** the enterprise's group, the general rule is that the agreement is still applicable to companies joining the group, although most agreements do not explicitly refer to the matter.[994]

Company + Year	Reference	Provision
EDF (2018)	Company no longer fulfilling the set criteria	Scope *"In the event that a company no longer fulfils the criteria defined above, this Agreement shall then cease immediately to be applicable."*[995]

[994] ibid, p. 146.

[995] However, referring to a study from Sobczak and Harvard, Hadwiger has showed that for a subsidiary leaving the group, the agreement continued to be applied during a transition period of three years. See, Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 169.

Eni (2019)	Merger or acquisition with majority control	Section 2 – Scope of Application *"In case of a merger or an acquisition of a new company where Eni holds majority control, this new entity will be covered by the provisions set out in this agreement."*
Solvay (2017)	Merger, acquisition, restructuring	I – Scope of the Agreement *"In the event of merger, acquisition or corporate restructuring of any kind leading to the creation of new entities controlled by Solvay or in the event of similar changes affecting IndustriALL Global Union, these new entities shall automatically be deemed party to the global agreement and subject to its provisions until such time as the agreement its renegotiated."*
Siemens Gamesa (2019)	Merger, acquisition, restructuring with Group control/ Company no longer fulfils the criteria	Scope of Application *"In the event of a merger, acquisition or restructuring leading to the creation of new entities controlled by the Group, if these new entities fall within the scope of this agreement, they must comply with its provisions according to the terms and conditions set out therein. If a company no longer meets the criteria defined (...), the agreement will cease to apply at the end of the current accounting period."*
Umicore (2019)	Merger of employee organisations	Section 10 – Validity of the Agreement *"In case of merger of the signing employee organisations or merger of one of the signing employee organisations with another employee organisation, the new entity/entities shall automatically be deemed as party to this agreement and subject to its provision until such time as the agreement is renegotiated."*

Table 49. Examples of references to subsidiaries that join or leave a group in global framework agreements.

Some agreements specify the way in which it applies to **subsidiaries not placed within the company's direct control**.

Company + Year	Reference	Provision
Anglogold (2002)	Best effort to secure compliance	Section 2 (4) – Application *"In instances where AngloGold does not have direct control or in the case of subsidiaries the company will exercise its best effort to secure compliance with the standards and principles set out in this agreement in accordance with the economic, labour and cultural realities specific to each country in a spirit of continuous progress."*
PSA (2017)	Undertake to promote the same norms and principles	*"In those subsidiaries or companies in which it participates but does not exercise operational control, the PSA Group undertakes to promote the same norms and principles."*
Securitas (2012)	Use of influence to secure compliance	*"Within Securitas sphere of influence, but where Securitas does not have a controlling interest or cannot exercise effective control for reasons of*

		local legislation, Securitas will use its influence to seek to secure compliance with the standards set out in this agreement."
Total (2015)	Ongoing efforts to promote the principles	Article 1 – Scope of Application *"Beyond that scope, in affiliates where it is present but does not control operations, the Group will make ongoing efforts to promote the principles of this agreement."*

Table 50. Examples of references to subsidiaries over which the company does not have direct control.

C) Precise References

Finally, some global framework agreements comprise a precise definition of their scope of application in relation to the company's supply chain. Differently, other agreements are vague, referring in general terms to 'associates', 'business partners', and 'subsidiaries'.

Company + Year	Sector	Provision
PSA (2017)	Automotive	*"This global framework agreement applies directly to the entire consolidated automotive division (research and development, manufacturing, sales and support functions), to the current and future subsidiaries over which the Group exercises a dominant influence."*
H&M (2015)	Garment	*"The terms and conditions of the GF shall cover all production units where H&M's direct suppliers and their subcontractors produce merchandise/ready made goods sold throughout H&M group's retail operations, and trade unions/worker representatives present at these production units. Non-affiliated unions may participate in the implementation of this GFA by mutual agreement with IndustriALL."*

Table 51. Examples of precise references to the supply chain.

D) Vague References

Company + Year	Provision	Reference
Bosch (2012)	Section 1 – Human Rights	*"We respect and support compliance with internationally recognised human rights, in particular as regards those of our associates and business partners."*
Lafarge (2013)	Preamble	*"This agreement applies to all activities of Lafarge and of its subsidiaries."*
Mann+Hummel (2011)	Section 2 – Implementation Principles	*"The goals and principles of implementation set out in this joint declaration apply for the Mann+Hummel Group worldwide."*

ThyssenKrupp (2015)	Section 11 – Execution and Implementation	*"The principles agreed in this framework agreement shall be valid worldwide for all subsidiaries."*

Table 52. Vague references to the supply chain in global framework agreements.

E) Issues and Systematisation

As the name indicates, global framework agreements are intended to be applied globally, in different domestic contexts, *"both in terms of the industrial and employer structures, as well as the trade union capacities and strategies"*.[996] Thus, multinational enterprises need to be concerned with the application of the agreement within the company but also along their supply chains. As the previous paragraphs have described, global framework agreements can contain more or less detailed and more or less comprehensive references regarding the multinational enterprise's subsidiaries, suppliers, and subcontractors. **Such differences** can be linked to various reasons, from the company's managerial background to the complexity of its supply chain. In fact, many multinational companies are connected to an assortment of workplaces that are not regulated by the companies' policies or regulations and are frequently placed within the informal economy.[997] For those involved in the negotiation, implementation, and monitoring of the agreement, *"the best possible means of putting them to good use is raising awareness of violations within the local or central management of the MNE, so as to obtain progressive changes in MNE management's conduct (and of its subcontractors and suppliers). The possibility of having resource to 'name and shame' strategies remains, in the last resort, key to obtaining compliance"*.[998] These matters are developed in chapter 5, in the section regarding enforcement. The listed agreements demonstrate how the margins of these agreements' scopes of application are sometimes not clearly defined. The **lack of clarification** in regard to the meaning of some of these concepts, namely group and influence related notions, creates a fertile ground for

[996] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), p. 90.
[997] ibid, p. 90.
[998] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 78-79.

complications in the interpretation of global framework agreements. Examples involve general references to business partners, activities, and subsidiaries, with no delimitations mentioned in the agreement. The listed agreements enable for the identification of some linkages. In fact, broad references to the supply chain seem to be more common in buyer driven supply chains, whereas references to control and influence are more abundant in other sectors. Also, newer agreements are more prone to include provisions with a higer level of precision. The above-mentioned sections enable a systematisation of supply chains.

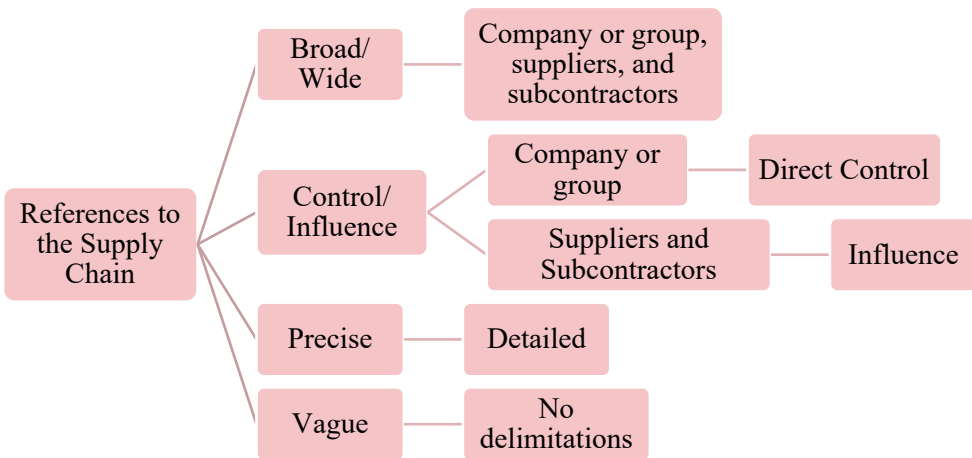

Figure 3. References to the supply chain.

4.3. Analysis of Two Agreements Based on the Constitutive Elements

Considering that the empirical work analysed in chapter 6 tackles two global collective agreements in the garment sector, the current section examines the broader category of global framework agreements placed in a different industry. The global collective agreements selected as the focus of the

empirical work and analysed in chapter 6 are placed in buyer driven chains, whereas the agreements examined in the present section are placed in producer driven chains, namely in the automotive industry. This illustrates the diversity of global framework agreements, making the comparison more comprehensive and interesting. The agreements signed by BMW and Ford constitute the selected agreements, which are described in relation to the four constitutive elements previously identified.[999] As mentioned above, the heading given to a document should not influence its characterisation as a global framework agreement. This should be based on a content analysis and an examination of whether the document fulfils the four core features referred. **BMW's** agreement, signed in 2005 and entitled 'Joint Declaration on Human Rights and on Working Conditions in the BMW Group', covers the ILO fundamental standards. Under the 'goals' epigraph, the document explicitly refers to Convention No. 29, 87, 98, 100, 105, 111, 138, and 182. Furthermore, it includes several other issues, from remuneration, working time, occupational safety and health, and qualifications. In terms of implementation the agreement refers to dissemination. Section 2 expressly determines that *"The goals and principles of implementation set out in this joint declaration apply for the BMW Group worldwide. Like the human resources guidelines and the model for the workforce and the management these are an integral part of the corporate culture of the BMW Group"*. In particular, Section 2 (1) states that *"The contents of this joint declaration will be disseminated within the BMW Group in the appropriate manner."* In terms of the relation with business partners and suppliers, the document states these *"will be encouraged to introduce comparable principles in their corporate structures and to apply them in the context of their own corporate policy"*. While using a soft language, this statement can be considered as a condition in terms of the obligations imposed on business partners and suppliers. In fact, the agreement further states that *"it expects its business partners and suppliers to use these principles as a basis in their mutual dealings and regards them as a suitable criterion for lasting business*

[999] While PSA's and Renault's agreements would also be interesting to examine in the automotive industry, these are to be considered to fit within the narrower category of global collective agreements and are therefore excluded from the analysis focused on global framework agreements.

relationships". Although not expressly denoting a requirement, this sentencing suggests that the respect for the agreement can be considered as a criterion for initiating and maintaining business relations. In terms of monitoring, Section 2 (3) refers to periodic consultations. No dispute settlement provisions are comprised. **Ford's** agreement, signed in 2012 and entitled 'International Framework Agreement – Ford Motor Company and Global IMF/Ford Global Information Sharing Network Agreed upon Social Rights and Social Responsibility Principles', refers to several international instruments in the field of human rights and multinational enterprises' responsibility. These include the Universal Declaration of Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises, and the Global Sullivan Principles of Social Responsibility. Referring to these standards, the document expressly determines that *"The universe in which Ford operates requires that these Principles be general in nature."* Also, in regard to the relation between the principles comprised in the agreement, national law, local legal requirements, and collective agreements, the agreement determines that, "*If these principles set higher standards, the Company will honour these Principles to the extent which does not place them in violation with domestic law"*. The agreement explicitly refers to the four fundamental principles and rights at work but it does not always explicitly mention the corresponding conventions. While the agreement refers to freedom of association and collective bargaining, harassment and unfair discrimination, forced or compulsory labour, as well as child labour, it does not refer to the corresponding ILO fundamental conventions. The document further mentions a range of other relevant matters, from wages, hours of work, vacation, occupational safety and health, education, training, and development. As in BMW's document, a section focused on suppliers and business partners is comprised, stating that the company *"will encourage business partners to adopt and enforce similar policies to those contained in these principles as the basis for establishing mutual and durable business relationships. The Company will seek to identify and utilise business partners who aspire in the conduct of their business standards that are consistent with this document and will provide the network*

an opportunity to raise issues for discussion and resolution". Hence, as in BMW´s agreement, and although not explicitly mentioned, an implicit requirement of respect with the agreement is perceived as a criterion for the establishment of business relations. Sustainability and protection of the environment are further included. In terms of monitoring, the principles are to be reviewed at an annual meeting with management. In particular, the agreement determines that *"The ongoing compliance of these Principles can be raised and discussed (…). When issues are identified, the Parties will work together to find mutual solution"*. A clear dispute settlement procure is, similarly to BMW's agreement, inexistent.

Both BMW's and Ford's agreements have been signed by global union federations. In the case of BMW, the agreement was signed by the president of the existing International Metalworkers Federation (IMF), which now merged into IndustriALL. Similarly, on the workers' side at the international level, Ford's agreement was signed by IMF. Both agreements have an ILO based content, and implementation mechanisms, in the form of dissemination, training, and monitoring. Both agreements refer to business partners and suppliers, therefore including references to the multinationals' global supply chains. Based on the lack of a clear binding intent, the lack of dispute settlement mechanisms, and the weak commitments applied to suppliers and business partners, along with other elements further described in chapter 5 that are considered to be necessary elements of a collective agreement, neither BMW's nor Ford's agreement can be considered as global collective agreements. This brief description of BMW's and Ford's agreements illustrates how the presence of the four identified constitutive elements can be granted in a certain document. Both agreements have been signed by global union federations. However, differently from Ford's agreement, which has merely been signed by IMF and the multinational, BMW's agreement has also been signed by the European Works Council. Both agreements refer to the ILO core labour standards, as well as other international labour standards and human rights instruments, even if not always explicitly mentioning the corresponding conventions. Despite not including dispute settlement procedures both agreements refer to

implementation in relation to dissemination and monitoring. Finally, the two documents include a reference to the supply chain. Hence, they represent clear developments in comparison to previous unilateral and multilateral instruments. As chapter 5 demonstrates, global collective agreements go a step further, comprising a broader material scope, clearer references to the supply chain, as well as to implementation and monitoring of the agreement. And, most importantly, global collective agreements comprise clearer (binding) commitments, capable of being enforced.

4.4. Legal Status

Analogously to domestic collective bargaining, the development of global frameworks preceded the law. There is no legal framework regulating global framework agreements or transnational collective bargaining. Likewise, there is no power explicitly conferred by labour law to the parties of a global framework agreement,[1000] which is particularly challenging in regard to global union federations. The fact there is currently **no legal framework** governing the negotiation and signing of these agreements makes their legal character unclear.[1001] Some argue that a regulatory framework is required since these agreements cannot be placed within any of the known categories of labour law, developing in a 'no man's land'. However, even in the absence of a legal framework, global framework agreements have gradually increased in number, sectors covered, and content. Recently signed and renewed agreements, mostly emerging after the beginning of the twenty first century, often contain a broad content, a comprehensive scope, and dispute settlement procedures. While it is true no explicitly conferred power is given to multinational enterprises and global union federations, the status of such agreements is very much dependent on the power given by its actors and their

[1000] García-Muñoz Alhambra, Haar, and Kun, 'Soft on the Inside, Hard on the Outside: An Analysis of the Legal Nature of New Forms of International Labour Law' (n864), pp. 337-363.
[1001] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 232.

legal capacity.[1002] Multinational enterprises' activities in this context are placed within the field of corporate social responsibility, as unilateral, voluntary based and driven initiatives, carried out due to public pressure or philanthropical goals. However, such unilateral actions have lacked both legitimacy and credibility. Turning such instruments into 'more committed actions' required the involvement of other actors, namely global union federations, allowing for the participation of both parties in the social costs of globalisation, complementing national and international labour standards, and boosting trade union representation.[1003]

Literature has categorised global framework agreements as private contracts, governed by private international law, as possible clauses in private contracts with business partners, or unilateral commitments within the field of consumer law. In this context, Hadwiger makes a distinction between direct and indirect enforcement.[1004] According to the author, direct enforcement relates to the analysis of whether a global framework agreement in itself can be enforced, namely as a private contract. Differently, indirect enforcement refers to the possibility of considering global framework agreements in another legal context, viewing the provisions of a global framework agreement as, for instance, unilateral commitments within the field of consumer law. The discussion regarding the legal status of global framework agreements refers to the enforcement of an agreement in itself and therefore to direct enforcement. This dissertation complements this discussion, by including direct enforcement of global framework agreements as collective agreements. Furthermore, it demonstrates how a consideration of global framework agreements as private contracts is not adequate in regard to their effective enforcement and the aims envisaged by these agreements. However, as the following sections illustrate, not all global framework agreements can possibly be enforced as collective agreements.

[1002] Isabelle Schömann, 'Transnational Collective Bargaining: In Search of a Legal Framework' in Isabelle Schömann, Romuald Jagodzinski, Guido Boni, Stefan Clauwaert, Vera Glassner, and Teun Jaspers (eds) *Transnational Collective Bargaining at Company Level: A New Component of European Industrial Relations?* (ETUI, 2012), pp. 219-220.
[1003] ibid, p. 219.
[1004] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 64.

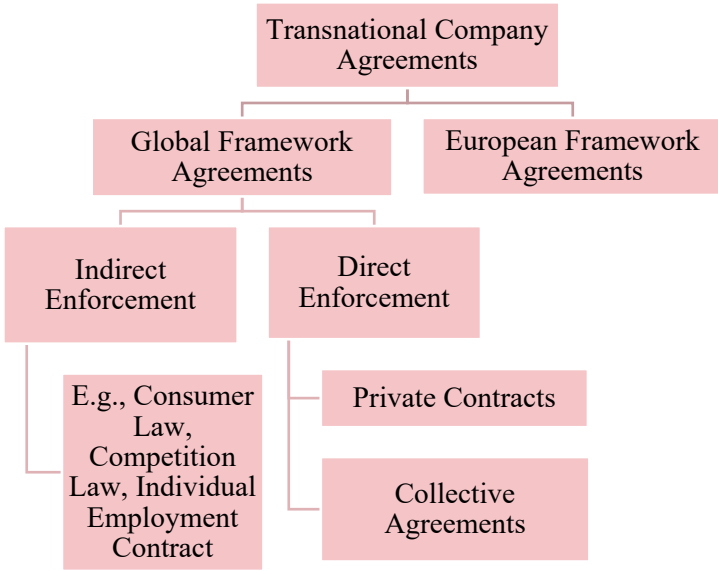

Figure 4. Legal status of global framework agreements.

4.4.1. Private Contracts?

The present section analyses the possibility of viewing global framework agreements as private contracts. It begins by disregarding agreements that explicitly exclude a legal effect. Subsequently, it describes the consequences of considering global framework agreements as private contracts, both in regard to third parties and the applicable rules. Based on recognition that private international law rules would apply, judicial enforcement is then analysed.

A) Explicit Exclusion of Legal Effects

The term agreement *"carries with it a 'legal' character"*.[1005] However, it is worth noting that **some agreements clearly exclude any legal effects**.

[1005] International Organisation of Employers 'International Framework Agreements: An Employers' Guide' (n955), p. 9.

Company	Reference	Provision
ThyssenKrupp (2015)	No legal effects between the parties	Section 13 – Closing Provisions *"No individual or third-party claims may be based on this Framework Agreement. This applies also to the undersigned parties of the Framework agreement, i.e. the Framework Agreement has no legal effects between the undersigned parties thereof."*
Renault (2013)	No legal responsibility for its suppliers and subcontractors	Chapter 3 – Relationships with Suppliers and Subcontractors *"Such a commitment does not entail the Renault Group to step in to assume the legal responsibility of said suppliers and subcontractors."*

Table 53. Examples of provisions excluding legal effects in global framework agreements.

Hence, although some agreements explicitly exclude legal effects, it is pertinent to look into the possibility of viewing the agreements without such clause as private contracts.[1006]

B) Consequences

If one sees global framework agreements as private contracts, (1) the agreement would not be binding towards third parties (i.e., subcontractors and suppliers), unless the multinational enterprise is given a mandate. Also, (2) the company's liability over its subcontractors and suppliers would be limited to providing information and influencing/encouraging their respect for the agreement. Some agreements already provide for a similar level of commitments. Thus, the level of commitments in respect to suppliers and subcontractors is reduced. Furthermore, (3) global union federations would have limited remedies and could not claim damages since they would not be the one suffering pecuniary losses.[1007] Finally, (4) private international law rules would be applied.

[1006] Hadwiger has posed a set of questions in regard to these agreements' legal enforcement that systematise the problems. The author asks if a global union federation could sue a German company in a German court based on violations of the agreement in the company's operations in Bangladesh, if a US trade union could sue a US subsidiary of a German company in US courts based on violations of the global agreement, if global union federations are capable of entering binding contracts and enforcing them in court, and what is the content of the obligations under such agreements. See, Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 61-62.

[1007] Matthew Finkin, Joel Cutcher-Gershenfeld, Taskashi Araki, Philip Fischinger, Roberto Fragale Filho, Andrew Stewart and Bernd Waas, *Multinational Resource Management and the Law: Common Workplace Problems in Different Legal Environments* (Edward Elgar Publishing Limited 2013), pp. 376-389.

C) Judicial Enforcement

The possibility of legal enforcement of global framework agreements is mostly **academic** since the parties *"do not enforce and do not intend to enforce GFAs in courts"*.[1008] Considering there is no international legal framework, Hadwiger stated that, *"It might be unsatisfactory to apply only one national law to this kind of agreement when assessing a GFA's legal literature"*.[1009] Literature has previously analysed the legal status and effects of these agreements in relation to particular domestic legal frameworks, but not properly taking into account their collaborative nature.[1010] While highlighting that the debate over these agreements' legal status is mostly academic, with minor practical implications, Hadwiger affirms, *"When enforced through courts, their cooperative framework has already failed, something neither of the bargaining partners is interested in"*.[1011] As mentioned above, global framework agreements are based on a **cooperative** implementation and, when sanctions are provided, these are considered to be a last resort. In fact, most agreements firstly refer to the implementation of corrective measures which, if unsuccessful, can lead to the termination of contractual relations, an eventual reference to mediation or arbitration, or even to the competent court. Still, as several agreements explicitly state, the aim is to cooperate in the implementation of the agreement and the finding of common ground solutions. Global framework agreements intend to apply a minimum set of rights throughout a multinational enterprise's worldwide operations, improving working conditions in a sustainable and lasting manner, based on social dialogue. Hence, enforcement is an important component, and essential if a global framework agreement is to be considered a collective agreement. Still, such enforcement should be placed within a collaborative resolution framework, which does not necessarily entail judicial enforcement.

[1008] ibid, p. 62.
[1009] ibid, p. 64.
[1010] For instance, the works listed by Hadwiger – i.e., Coleman (2010), Krause (2011), Goldman (2011), Banks, and Shilton (2011), Pigott (2011). See, Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 62-63.
[1011] ibid, pp. 62-63.

Viewing global framework agreements as pure private law contracts has been **contemplated in literature**. If considered a contract, a global framework agreement carries with it legally binding rights and obligations for the parties, both in civil and common law. As a contract, it possesses a binding value and creates a duty of good faith. In civil law, it entails an ability to contract, a lawful object, cause, and fair contractual price, whereas common law structures it around an offer, either implicit or explicit, and an acceptance, by words or conduct. According to the last, for a global agreement to be considered a contract it needs to contain a promise that creates a reasonable belief of an offer and requires a corresponding dissemination and acceptance. Such acceptance, for employees, can be implied through the beginning or continuation of work.[1012] Within this background, literature has analysed the possibility of considering global framework agreements as contracts and award them with legal effects in regard to **some domestic contexts**. In the US, global framework agreements could be considered as a labour agreement, passable of being enforced in court under the Labour Management Relations Act. Hence, these agreements would be classified as contracts, based on the assumption that the parties had an intention to be bound.[1013] Differently, in Germany, global framework agreements have been viewed as not capable of being legally enforced and only relevant for the interpretation of general clauses. Nevertheless, the possibility of viewing these agreements as enforceable in court has been defended, despite considerable legal impediments, based on the absence of an international or European framework.[1014] Global framework agreements have been considered as susceptible of being legally enforced in Canada, under certain

[1012] Duldulao v. St. Mary of Nazareth Hospital Center, 505 N.E.2d 314 (Ill. 1987); Marzo, 'From Codes of Conduct to International Framework Agreements: Contractualising the Protection of Human Rights' (n895), pp. 476-477.

[1013] Sarah Coleman, 'Enforcing International Framework Agreements in U.S. Courts: A Contract Analysis' (2010) Vol. 41 No. 2 Columbia Human Rights Law Review, pp. 601-634; Alvin L. Goldman, 'Enforcement of International Framework Agreements under US Law' (2011) Vol. 33 Comparative Labour Law and Policy Journal, pp. 632-634; Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 64.

[1014] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 64-65.

conditions.[1015] In Spain, based on the Fundamental Law on the Judiciary, courts were argued to be capable of dealing with global framework agreements signed by multinational enterprises domiciled in Spain.[1016]

As for global framework agreements, the possibility of judicially enforcing **codes of conduct** as contracts has been considered. Claire Marzo has referred to two cases in which the legal status of Wal-Mart's code of conduct as a possible contract was questioned.[1017] In the first case, workers from China, Bangladesh, Indonesia, Swaziland, and Nicaragua, as third-party beneficiaries to the company's supply contracts with garment factories, sued Wal-Mart in the Los Angeles Superior Court. This was based on the company's obligations arising from its code of conduct in regard to the employees of its subcontracting firms. The suit was brought by the International Labour Rights Fund and argued that the company's code of conduct created contractual obligations between Wal-Mart and the workers employed by its suppliers who had signed and agreed to comply with the code of conduct. According to the suit, Wal-Mart was obligated to ensure supplier compliance and adequate monitoring of working conditions and the company had failed in using its economic position and actual control over its supplier factories. However, even though the company had obliged its subcontractors to sign and disseminate the code, the instrument was not considered to be a binding contract between Wal-Mart and its subcontractors. The main question concerned whether the code comprised a clear enough

[1015] Christopher D. Pigott, 'Freedom of Association in Private Transnational Law: How Enforceable Are the Commitments of European Companies in North America?' (2012) Vol. 33 No. 4 Comparative Labour Law and Policy Journal, pp. 775-780; Kevin Banks and Elizabeth Shilton, 'Corporate Commitments to Freedom of Association: Is There a Role for Enforcement Under Canadian Law?' (2012) Vol. 33 No. 4 Comparative Labour Law and Policy Journal, pp. 495-553; Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 65.

[1016] Wilfredo Sanguineti Raymond, 'Global and European Framework Agreements: Counterpoint and Legal Elements for Discussion' in Salvo Leonardi (ed.), *The Transnational Company Agreements - Experiences and Prospects* (Istituto di Ricerche Economiche e Sociali – IRES 2015), pp. 286-291. Available At: http://irep.ntu.ac.uk/id/eprint/30289/1/PubSub8044_Whittall.pdf [Accessed 27 May 2020]; Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 65.

[1017] Also, in relation to whether a code of conduct contains promissory language or merely general statements and guidelines referent to the employer and employee relationship, and vague language. See, Duldulao v. St. Mary of Nazareth Hospital Center, 505 N.E.2d 314 (Ill. 1987) (n1012); Weber Shandwick Worldwide v. Reid, 05 C 709 (Ill. May 12 2005); Katherine E. Kenny, 'Code or Contract: Whether Wal-Mart's Code of Conduct Creates a Contractual Obligation Between Wal-Mart and the Employees of its Foreign Suppliers' (2007) Vol. 27 No. 2 Northwestern Journal of International Law & Business, pp. 459-460.

promise that could be understood as an offer and the vagueness of the language used, particularly in regard to disciplinary action. Differently, in the second case, the complaint was filed by the German workers' council and based on the code's provisions regarding employees' private and sexual relationships, which were considered violations of the German Constitution, German law, and the right of co-determination. A local court ruled in favour of the employees and the code of conduct was considered a contract. Wal-Mart viewed the code as binding on employees in regard to a termination ground, creating a binding obligation and not merely a suggestion.[1018] The referred cases differ in regard to the code of conduct's scope, as the German code concerns Wal-Mart employees, whereas the American case refers to the company's code of conduct for foreign suppliers. Moreover, the German code set out rules for employees which, if not followed, would result in termination. Differently, in regard to the suit brought forward in Los Angeles, violations by suppliers do not necessarily entail a termination of the supplier contract and no specific remedies are defined.[1019] These cases highlight possible indications of bindingness, also relevant in the analysis of global framework agreements, namely the language used and references to sanctions.

De Koster and Van den Eynde have examined the possibility of viewing global framework agreements as contracts, governed by private international law. The authors showed how the existing judicial enforcement mechanisms regarding contractual rights and obligations in the international context are **complicated, unpredictable, and sometimes unreliable**.[1020] Assuming there is a judicial action brought up against a company on the basis of a global framework agreement's violation, the general idea is that the national law that is most closely connected to the legal obligations at stake should be

[1018] Kenny, 'Code or Contract: Whether Wal-Mart's Code of Conduct Creates a Contractual Obligation Between Wal-Mart and the Employees of its Foreign Suppliers' (n1017), pp. 453-473; Marzo, 'From Codes of Conduct to International Framework Agreements: Contractualising the Protection of Human Rights' (n895), p. 477.

[1019] Kenny, 'Code or Contract: Whether Wal-Mart's Code of Conduct Creates a Contractual Obligation Between Wal-Mart and the Employees of its Foreign Suppliers' (n1017), p. 467.

[1020] Pieter De Koster and Peter Van den Eynde, 'International Framework on Corporate Social Responsibility: Conflict of Laws and Enforcement' (2009) Vol. 10 No. 2 Business Law International, pp. 128-155.

applied. In order to avoid large inconsistencies between countries and legal systems, a number of conventions have been adopted but their scope is limited in terms of subject matter. In Europe, if one considers global framework agreements as a civil or commercial matter, the Brussels Regulation is applicable when it comes to the **establishment of jurisdiction**. According to Article 1:

> This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal.

Hence, the Brussels Regulation will always be applicable when the defendant is domiciled in the EU, regardless of where the event has taken place. Moreover, the member state where the defendant is domiciled will almost always have jurisdiction. As stated in Article 4:

> Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

According to Article 63, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration, or principal place of business. Article 25 allows the parties to agree on a jurisdiction, by stating that:

> If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction (…).

However, outside Europe, the Brussels Ia Regulation generally does not apply. This means that, if the company's headquarters are located outside Europe, the Regulation is not applicable. Hence, and despite the fact that most global framework agreements have been signed by companies whose

headquarters are located in Europe, the Regulation is not always pertinent. Also, and notwithstanding the importance these agreements can have in Europe, particularly in avoiding social dumping among European countries, key actions would most likely come from outside of Europe, regardless of the enterprise's headquarters.

Erik Sinander has analysed these matters from a Swedish perspective. In Sweden, jurisdiction is based on whether there is a Swedish interest in the administration of justice. Sinander mentions that, in regard to labour disputes, this interest refers to a connection to the Swedish labour market. Sinander presents global framework agreements as examples of instances in which a Swedish court may need to rule on its jurisdiction. If contractual liability is asserted before a Swedish court and the defendant is domiciled outside the EU and objects to Swedish jurisdiction, the court needs to determine whether it is competent. Differently, Sinander argues that, if the agreement has no other connection to Sweden besides the defendant's domicile, this would represent a weak connection to the Swedish labour market and it would be difficult to justify Swedish jurisdiction. Still, Sinander argues that the assessment should consider whether the defendant could have foreseen having to answer before a Swedish court. As he concludes, a forum selection clause in an agreement clause should be preferred. For agreements that do not contain jurisdiction clause, the interpretation of an agreement may involve problems. Sinander argues that the parties seldom desire to attach a global framework agreement with the effects of a collective agreement under national law.[1021]

The **choice of the applicable law** can also determine whether the agreement was intended to be legally binding.[1022] Article 1 (1) of the Rome I Regulation, referent to the material scope, states that:

[1021] Erik Sinander, *Internationell Kollektivavtalsreglering* (Juridiska Institutionen, Stockholm Universitet 2017), pp. 96-98, 222.
[1022] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 64-65.

> This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

The application of the Rome I Regulation to collective agreements has been rejected by some scholars, and defended by others, considering that *"Agreements which contain obligations of the contracting parties can thus be categorised as contractual agreements and described as expressions of the general principle of contractual freedom"*.[1023] Hence, the Rome I Regulation could also apply to global framework agreements, based on a direct or analogous application and on a wide interpretation of contractual obligations.[1024] However, both jurisdiction and the determination of the applicable law, which constitutes the second step in the process, present equivalent problems. According to the Rome I Regulation the parties choose the applicable law. Article 3 (1) states the following:

> A contract shall be governed by the law chosen by parties.

If the parties have not chosen the applicable law,[1025] Article 4 (4) of the Rome Regulation determines that the law governing the contract is determined on the basis of a closest connection criteria. Relevant factors include the subject matter of the contract, the domicile, nationality, and the parties' place of business. However, the global scope of global framework agreements makes the application of the closest connection criteria challenging.[1026] As it is viewed in chapter 5 in the section regarding enforcement, in some cases, the agreements explicitly state what the parties have agreed to be the applicable law. As a way of counteracting the unclear landscape and numerous choices of jurisdiction, it would be advantageous if all global framework agreements

[1023] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 202.
[1024] ibid, pp. 202-203.
[1025] As demonstrated in chapter 5, some agreements include a provision determining the applicable law.
[1026] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 203.

contained a jurisdiction clause.[1027] In Europe, the Rome Regulation would be applicable, but **outside the European context inconsistencies are greater**. Moreover, according to Article 28, the Rome I Regulation only applies to contracts concluded after 17 December 2009. Additional problems entail the possibility of ineffective legal systems being considered competent to deal with judicial actions and difficulties in enforcing foreign judicial decisions. Even if one is able to attain a judicial decision, its impact will be dependent on enforcement, which requires a system of recognition and execution that is scarce outside the European context or international arbitration. Hence, to avoid confusion and a lack of legal security, it is advantageous if the parties determine the applicable law.

Still envisioning the possibility of making global framework agreements' obligations legally enforceable, the option of **incorporating the agreements into contracts with business partners** has been considered.[1028] However, the obligations would be binding but solely between the parties. Furthermore, considering the main objective of global framework agreements is the implementation of minimum standards in all of a multinational enterprise's worldwide operations, this would entail a dependence on each supplier's or subcontractor's goodwill. Finally, the source of obligations would be the contract and not the global agreement, excluding workers and falling in one of the critiques raised against codes of conduct.

Hence, viewing global framework agreements as private law contracts, apt of being judicially enforced lacks legal security and does not fit these agreements' cooperative aims. While some agreements explicitly allow for the possibility of judicial enforcement, that alternative is not banned for other global framework agreements, except when this is explicitly excluded. The judicial enforcement of these agreements can indeed be complex, but it is not impossible, especially when a multinational has its headquarters within the

[1027] Goldman, 'Enforcement of International Framework Agreements Under US Law' (n1013), pp. 605-634; Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 64-65.

[1028] Sobczak, 'Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility' (n164), p. 126.

EU. The argument made is that judicial enforcement is not required for these agreements to possess a binding character and it is less apt to their goals and global nature. Given these elements and their bilateral character, the comparison of global framework agreements to collective agreements is more pertinent. For instance, within the British framework, collective agreements have no legal effect on the individual employment relation, unless explicitly stated and incorporated into the employment contract. Thus, judicial enforcement is not required. The fact some global framework agreements explicitly state that the agreement does not change or amend any individual employment contract is taken into consideration.[1029] For instance, Section 8 of Securitas' agreement states that *"nor will this Agreement in any way change or amend any individual Securitas employee's terms and conditions of employment"*.

4.4.2. Collective Agreements in International Labour Law?

Article 4 of ILO Convention No. 98, on the Right to Organise and Collective Bargaining, refers to collective agreements as a means of regulating terms and conditions of employment but it does not provide a legal definition. At the domestic level, the concept varies according to a country's political regime, socio-economic system, and historical specificities. As described in chapter 3, these variables are the outcome of countries' diverse economic history and resulting bargaining methods.[1030] However, even if a definition of collective agreement is not provided in a convention, the essential core of the concept is enshrined in international labour law and one can identify some typical traits. **Paragraph 2 (1) of the Collective Agreements Recommendation (No. 91)** defines a collective agreement as:

> Any agreement in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, or, in the

[1029] Matteo Fornasier, 'Transnational Collective Bargaining: The Case of International Framework Agreements – A Legal Analysis' (2015) Vol. 8 No. 1 Europäische Zeitschrift für Arbeitsrecht – EuZA, pp. 281-296; Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 65.
[1030] Kahn-Freund, *Labour and the Law* (n398).

absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.

Thus, *"at first sight IFAs satisfy this enumeration of the essential constitutive elements of collective agreements"*.[1031] Generally speaking, and based on an ILO perspective, global framework agreements are in fact similar to collective agreements.[1032] They are concluded in writing and jointly negotiated by the social partners, constituting agreements, even if the name does not always expressly denote that element.[1033] Also, according to Paragraph 2 (1), a collective agreement focuses on working conditions and terms of employment. Similarly, global framework agreements, as a minimum, comprise clauses on fundamental principles and rights at work, as stated in the 1998 ILO Declaration, and tend to include other working conditions, namely training, subcontracting, restructuring, among others.[1034] Hence, global framework agreements encompass various key elements of the concept of collective agreement. However, some of the elements mentioned in Recommendation No. 91, particularly in regard to legislation for the negotiation of collective agreements, laws on dispute settlement, and national supervision bodies *"cannot be transposed to IFAs"*.[1035]

Still, such **differences might not be as striking as initially considered**. Paragraph 1 (1) refers to the establishment of a machinery by agreement of the parties in regard to the negotiation, conclusion, revision, and renewal of collective agreements. This also relates to global framework agreements, *"all of which contain provisions on the establishment of such*

[1031] Konstantinos Papadakis, Giuseppe Casale, and Katerina Trostroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Framework' (n16), p. 69.

[1032] Konstantinos Papadakis, Giuseppe Casale, and Katerina Trostroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Framework' (n16), p. 71; Romuald Jagodzinski, 'European Works Councils and Transnational Company Agreements – Balancing on the Thin Line Between Effective Consultation and Overstepping Competences' in Isabelle Schömann, Romuald Jagodzinski, Guido Boni, Stefan Vlauwaert, Vera Glassner, and Teun Jaspers (eds), *Transnational Collective Bargaining at the Company Level: A New Component of European Industrial Relations?* (ETUI 2012), pp. 162-164.

[1033] Konstantinos Papadakis, Giuseppe Casale, and Katerina Trostroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Framework' (n16), pp. 69-70.

[1034] ibid, p. 71.

[1035] ibid, p. 73.

machinery".[1036] Paragraph 7 emphasises that a collective agreement's supervision should be safeguarded by the parties, which also pertains to global frameworks agreements. In fact, as previously noted, global framework agreements differ from other instruments, namely codes of conduct, due to the control given to the parties in the implementation, monitoring, and problem-solving of the agreement. Nevertheless, mechanisms for the negotiation and renewal of global framework agreements differ from those of traditional collective agreements. The revision of collective agreements focuses on wages and other conditions of employment, whereas the revision of global framework agreements is centred around improving identified flaws or inadequacies regarding the agreement's implementation and monitoring. As Papadakis, Casale, and Tsotroudi highlighted, the renegotiation of such agreements is intimately linked to the agreement's monitoring.[1037]

Besides fitting global framework agreements in the ILO definition of collective agreement, it is necessary to look into overall criteria generally comprised in national laws. As addressed in chapter 3, there is no complete uniformity in regard to the concept of collective agreement throughout different legal systems. Nevertheless, general key features of the concept have been identified and developed. These are either essential in all countries or validity features in the majority and are addressed in various ways in different national frameworks. Hence, in order to identify whether, and the extent to which, a set of global framework agreements can indeed be considered to fit within the concept of collective agreement, the analysis of global framework agreements in reference to the core identified features is carried out in chapter 5.

[1036] ibid, p. 73.
[1037] ibid, pp. 73-74.

4.5. Final Remarks

Through global framework agreements, global union federations are established as legitimate actors within the context of international industrial relations and company agreements are used as a way to regulate supply chains, linked to ILO conventions and soft law instruments addressing the conduct of multinational enterprises. The fact these agreements are co-signed by workers' representatives at the international level and the key role given to local worker organisations awards global framework agreements with a greater legitimacy.[1038] However, the validation given to global union federations through the signature of global framework agreements is 'merely the point of departure'. The substantive clauses and procedures set up for implementation and enforcement must be carefully analysed.[1039] Actual implementation, in the form of training, adequate dissemination, and monitoring are among the activities that must be carried out for an agreement to be effective.[1040] The content of global framework agreements shows a marked tendency to include a broader range of labour standards. While these are still minimum standards, they are especially relevant in countries where legislation does not include them or they are weakly implemented. These instruments allow *"for the introduction of decent labour conditions, especially for the workers in the supply chain"*.[1041] This is particularly true for an increasing number of agreements, which include a content that defines concrete obligations for the parties, also applicable throughout the agreement's scope, including subsidiaries, suppliers, and subcontractors. Likewise, more and more agreements now comprise dispute settlement provisions, intended to tackle complaints, first at the local level and subsequently to the national and international levels. The regulative needs brought by globalisation led to the development of soft law instruments and

[1038] Mustchin and Martínez Lucio, 'Transnational Collective Agreements and the Development of New Spaces for Union Action: The Formal and Informal Uses of International and European Framework Agreements in the UK' (n46), p. 579.
[1039] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 226.
[1040] Guarriello, 'Transnational Collective Agreements' (n107), p. 13.
[1041] ibid, p. 15.

unilateral corporate social responsibility initiatives. These, in turn, have laid the floor for the emergence of global framework agreements and their development into a new generation of documents. These more advanced agreements, containing both a mandatory and a normative content and, besides implementation, dispute settlement provisions, can indeed be analysed as possible collective agreements. In fact, more recent agreements overcome previous critiques, which portrayed them as *"general recitations of the core ILO labour standards"*.[1042] The agreements examined in the next chapter overthrow the critique over a lack of dispute resolution and enforcement mechanisms. Likewise, the idea of contract stability and long-term commitments with suppliers is clearly implied in recently signed or renewed agreements. Still, while their material and subjective scope has extended, some of their flaws ought to be recognised, namely the vagueness of some provisions and the fact they do not address pricing practices.[1043] Based on a content analysis, chapter 5 enables the identification of agreements containing a certain set of features as collective agreements at the international level. This categorisation is further complemented with insights disclosed through the empirical work conducted and comprised in chapter 6. Besides providing empirical support to the analysis comprised in chapter 5, the empirical findings offer proof of these agreements' current and actual potential in securing change at the local level.[1044]

[1042] Anner, Bair, and Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks' (n158), p. 26.
[1043] ibid, pp. 26-27.
[1044] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 225.

5. Global Collective Agreements

Global framework agreements are evocative of collective agreements and collective bargaining. Their negotiation, content, and implementation are akin to collective bargaining and introduce an industrial relations dimension to corporate social responsibility within an international context.[1045] Still, as a reaction to globalisation, global framework agreements are original *"in relation to traditional notions of industrial relations, collective bargaining, international labour law and legal obligations."*[1046] Their progressive development into instruments with features that are clearly analogous to those of domestic collective agreements illustrates a development that, although parallel to that of purely private initiatives, goes beyond them, based on worker involvement and the existence of enforcement procedures. In fact, existent labour law at the international level seems insufficient to tackle all the mentioned challenges. Hence, similarly to the developments occurred at the domestic level, labour law is supplemented by collective agreements.[1047] The following sections examine whether, and to what extent, global framework agreements can be considered as collective agreements. Furthermore, these sections intend to thoroughly clarify what is meant by global collective agreement. Based on the core features described in chapter 3, the possibility of placing global framework agreements within the concept of collective agreement is analysed. Agreements that fulfil the four constitutive elements described in chapter 4 and further meet the core identified elements of the concept of collective agreements are considered, for the purposes of this study, to be global collective agreements.

[1045] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 68.
[1046] ibid, p. 68.
[1047] Davies and Freedland (eds), *Kahn-Freund's Labour and the Law* (n399), pp. 19-20.

5.1. Core Features of the Global Collective Agreement

As presented in chapter 3, eight key features can be distinguished in regard to the identification of collective agreements. These are (1) the representativeness of the parties, (2) the existence of free and voluntary negotiation, (3) carried out in good faith, (4) that the agreement produces certain effects and a binding effect in particular, (5) that the agreement is enforceable, (6) possesses a more or less detailed scope, (7) respects certain formal requirements, and (8) relates to law and other collective agreements, as well as employment contracts in different ways. For a global framework agreement to fit within the concept of collective agreement, it should meet, in a more or less rigid way, all of the above-mentioned features.

5.1.1. Representativeness

Global collective agreements are bilateral, being signed between the management of a multinational enterprise and a global union federation. This goes in accordance with the requirement comprised in ILO Recommendation No. 91, according to which, a collective agreement must be concluded by, at least, one employer and a workers' organisation(s).[1048] *"However, certain unresolved questions arise as to the representativeness of the parties to such negotiations."*[1049] Recommendation No. 91 refers to 'representative' workers' organisations and Convention No. 163 mentions that the parties to collective bargaining should provide the counterparty with **appropriate mandates**.[1050] However, while ILO Convention No. 97 on freedom of association and the right to collective bargaining allows for unions to engage in collective bargaining at the domestic level, the same is not envisaged at the international level. Likewise, in the European context, there is no legal framework regulating transnational company agreements, global framework

[1048] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 69-70.
[1049] ibid, p. 70.
[1050] ibid, p. 70.

agreements, and global collective agreements in particular.[1051] Thus, there is no international or European mandate given to global union federations and the negotiation of such agreements without local trade union involvement creates problems[1052] in regard to their representativeness and the possibility of considering some global framework agreements as collective agreements.

Despite their bilateral nature, global collective agreements are **union-initiated** instruments. The decline in union control over their domestic context, combined with the limited scope of labour law and the growing number of unilateral corporate social responsibility initiatives, required the labour movement to engage in a different strategy.[1053] As John Logue argued, the stronger the national trade union movement is, the less likely it is to internationalise its strategy.[1054] As 'reactive organisations',[1055] faced with globalisation and its inherent challenges, unions turned to internationalise their policies and global collective agreements represent one of its most noticeable outcomes. The development of a labour movement at the international level, the increased role of global union federations, and the development of more polished strategies was necessary to counteract urgent consequences of transnational companies' influence. According to Levinsson, the size, capacity, and policy coordination of multinational enterprises highlighted how national trade unionism was outdated.[1056] In fact, as stated by Richard Hyman, the growing impact of multinationals has made internationalism a necessity. The scholar also distinguished an idea of

[1051] Schömann, 'Transnational Collective Bargaining: In Search of a Legal Framework' (1002), p. 219.

[1052] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 70.

[1053] *"In many countries, a decline in trade union 'control' over the national environment – a measure of which has been the increase in outsourcing, offshoring, flexibilization, and casualization of work – has been one of the marks of economic globalisation. The academic literature is full of analyses indicating that, locally and nationally, trade unions are increasingly unable to deal adequately with the demands of TNC managements, especially regarding labour costs, and that they are increasingly affected by developments in other countries."* See, Fitcher, Helfen, and Sydow, 'Regulating Labour Relations in Global Production Networks – Insights on International Framework Agreements' (n163), p. 69.

[1054] John Logue, *Towards a Theory of Trade Union Internationalism* (1980) University of Gothenburg Press.

[1055] Lindberg, 'Varieties of Solidarity: An Analysis of Cases of Worker Action Across Borders' (n219); Fitcher, Helfen, and Sydow, 'Regulating Labour Relations in Global Production Networks – Insights on International Framework Agreements' (n163), p. 69.

[1056] Charles Levinson, *International Trade Unionism* (Routledge 2013); Richard Hyman, 'Shifting Dynamics in International Trade Unionism: Agitation, Organisation, Bureaucracy, Diplomacy' (2005) Vol. 46 No. 2 Labour History, p. 142.

international trade union action necessarily based on solid national labour movements against the possibility of international organisations fostering the development of unionisation at the national level. However, as Hyman emphasised, without a willingness to act from the trade unions' bases and a connected strategy to improve knowledge, understanding, and identification of common interests, effective transnational solidarity is not possible.[1057] Accordingly, unions attain relevance within the transnational industrial relations system through solidarity and the strategic negotiation of international instruments that require their involvement in both the negotiation and implementation. In this sense, unions can combat their decreasing membership and weakened relevance at the international level.

Still, despite their emergence and rising momentum, global collective agreements are still stained by the lack of a legal framework governing collective bargaining at the international level. If global collective agreements are to be more than mere corporate social responsibility statements and public relations stunts, a real involvement by global union federations is fundamental. These represent workers outside the regional context and give unions a voice,[1058] supporting the global scope of these instruments. Hence, besides being a union initiative and allowing for a global representation of different national unions, the representative character of global union federations is supported by the mutual recognition expressed in these agreements. In fact, several agreements explicitly refer to a recognition of the parties' legitimacy. However, even when there is no explicit statement recognising the legitimacy of the global union federation, the negotiation, signature, implementation, and enforcement of the agreement, carried out in good faith, denotes such legitimacy. The fact that global union federations are the sectoral representatives of workers at the international level essentially provides them with an endorsement to negotiate and sign these agreements. Furthermore, the representativeness requirement is often fulfilled in global collective agreements through an explicit recognition

[1057] Hyman, 'Shifting Dynamics in International Trade Unionism: Agitation, Organisation, Bureaucracy, Diplomacy' (n1056), pp. 142, 144, 149.
[1058] Richard Croucher and Elizabeth Cotton, *Global Unions Global Business: Global Union Federations and International Business* (Middlesex University Press 2009), pp. 61-62.

stated in the agreement. Likewise, the necessary involvement of a global union federation in the implementation, monitoring, and enforcement of an agreement is an additional indicative element of global union federations' representative character. As explained in chapter 4, implementation of an agreement is greatly carried out at the local level. However, training and information exchange in regard to its affiliates and the multinational enterprise respectively, necessarily involve the global union federation. Moreover, global union federations are repeatedly engaged in the periodical review and monitoring of global collective agreements and are involved in the settlement of disputes that cannot be resolved at the local or national levels.

On the **workers' side**, global collective agreements are signed by a global union federation, although it is possible to include **national trade union** federations, national trade unions, and works councils[1059] in the negotiation and signing of an agreement. The inclusion of national unions is particularly common, for instance, within agreements signed by companies domiciled in the Nordic countries.

Company + Company Origin + Year	Representatives of Workers	
	Global Union Federation	National Trade Union
Aker (Norway, 2012)	IndustriALL	Fellesforbundet, Tekna, and NITO
H&M (Sweden, 2015)	IndustriALL	IF Metall
Loomis (Sweden, 2013)	UNI Global Union	Swedish Transport Workers' Union
Securitas (Securitas, 2012)	UNI Global Union	Swedish Transport Workers' Union
Norsk Skog (Norway, 2013)	IndustriALL	Fellesforbundet

Table 54. Examples of global collective agreements that include the national trade union of the country where the company has its headquarters.

[1059] The involvement of European Works Council is not developed in this dissertation, since its focus is on global framework agreements and not European framework agreements. However, European Works Councils are sometimes involved in the negotiation and signature of transnational company agreements. *"Whereas EC involvement as (co-) signatory party could solve the issue of asymmetry between management and workers representatives, the legal issue of its representativeness remains open in respect of workers employed in subsidiaries located outside the European Union"*. See, Schömann, 'Transnational Collective Bargaining: In Search of a Legal Framework' (n1002), pp. 222-223.

As illustrated in table 27 of chapter 3, global collective agreements often comprise an explicit **recognition of global union federations' legitimacy**. Accordingly, for global collective agreements, representativeness is based on **mutual recognition**. The fact these agreements are signed by global union federations, meaning sectoral worker representation bodies, is the most suitable option in legal terms since these represent workers in all companies operating within the corresponding sectors. Still, following the conventional divisions of collective agreements according to the bargaining level, global collective agreements cannot be considered as sectoral collective agreements, due to an asymmetry on the multinational enterprise's side, since they are signed by an individual enterprise, instead of an employers' association. The fact global union federations possess no international (or even European) mandate to negotiate such instruments means that the participation of domestic trade unions and their co-signature can be viewed as a way of ensuring that these agreements comply with national labour law legislation, *"giving them the legal status of national collective agreements insofar as national collective bargaining procedures have been respected"*.[1060]

On the **employers' side**, the negotiation of global collective agreements takes place at the top level, between the headquarters of the multinational enterprise, often through the company's CEO. The concluded agreement frequently is intended to cover all of the multinational enterprise's subsidiaries, suppliers, and subcontractors. However, local management, subsidiaries, and subcontractors, to whom the agreement often applies, do not take part in negotiations. Consequently, it is possible to identify an imbalance and it is problematic whether these commitments can be applied to third parties. Even if the hierarchical structure of the corporation is followed, this contradicts the *"legal autonomy of subsidiaries in terms of their legal personality, meaning that corporate headquarters have no legal liability for the social consequences of subsidiary's activities"*.[1061] Normally, the multinational enterprise commits to inform and encourage these

[1060] ibid, p. 222.
[1061] ibid, p. 221.

subsidiaries and subcontractors to respect the agreement. Thus, global collective agreement would not be (legally) binding on the companies' subsidiaries. Schömann presents two ways of overcoming the problem, *"forcing subsidiaries to apply TCAs"*.[1062] The author suggests either a mandate, making the agreement legally binding for subsidiaries, subcontractors, and suppliers, or resorting to commercial clauses in contracts with subcontractors and suppliers.[1063] These alternatives are placed within the perspective of making these agreements legally enforceable. However, as it is argued in this dissertation, the narrower category of global collective agreements does not require legal bindingness as neither an aim nor a condition for their classification as collective agreements and the inherent implications of such categorisation. While judicial enforcement is often possible, the following sections unveil how commonly agreed enforcement mechanisms should be favoured. Finally, while all global collective agreements are company-based, the signature of a basic agreement by a global union federation and a global employer federation could create a broader minimum standard framework agreement and a level playing field.

Most legal literature is opposed to framing global framework agreements as collective agreements,[1064] sometimes emphasising there is only one universally agreed global collective agreement,[1065] signed between the

[1062] ibid, p. 221.
[1063] ibid, p. 221.
[1064] Isabelle Schömann, 'Transnational Company Agreements: Towards an Internationalisation of Industrial Relations' in Isabelle Schömann, Romuald Jagodzinski, Guido Boni, Stefan Vlauwaert, Vera Glassner, and Teun Jaspers (eds), *Transnational Collective Bargaining at the Company Level: A New Component of European Industrial Relations?* (ETUI 2012), pp. 197-217; Aukje van Hoek and Frank Hendrickx, 'International Private Law Aspects and Dispute Settlement Related to Transnational Company Agreements' (Brussels: European Commission 2009), pp. 1-106. Available At: www.ec.europa.eu/social/BlobServlet?docId=4815&langId=en. [Accessed 2 January 2019].
[1065] *"It should be emphasised that IFAs are by no means the most advanced industrial relations instrument at cross-border level. So far, one sector – the maritime sector – has been endowed with a fully fledged international collective agreement on seafarers' terms and conditions of employment. The latest negotiated collective agreement in this sector covers increases in wage levels as well as changes in contractual clauses to reflect the provisions of the ILO Maritime Labour Convention, 2006. The adoption and periodical renegotiation of a collective agreement in this sector since 2003 have taken place against the background of the institutional background of the institutional framework of the ILO serving to seafarers' minimum wages and to define other terms and conditions of employment for the sector through ILO Conventions and Recommendations. Compared to such fully fledged collective agreement at cross-border level, IFAs are still an imperfect industrial relations instrument and their effectiveness remains to be proved empirically."* See,

International Maritime Employers' Committee and the International Transport Workers' Federation.[1066] Sobczak argued that the signature of a global framework agreement by a national trade union changes the agreement into a national collective agreement in the country of the holding company's headquarters, provided that the national rules are followed.[1067] Likewise, the option of transforming these agreements *"into a series of national collective agreements, each signed by at least one national union and local MNC management"*[1068] has been considered. If an agreement complies with the domestic labour legislation, the involvement of national trade unions could transform it into a collective agreement under national law and, in the majority of domestic legal frameworks, into a legally binding instrument.[1069] There has been an increasing involvement of national trade unions as co-signatories of global framework agreements since 2007, which demonstrates these agreements' evolution path.[1070] Furthermore, some agreements contain an explicit provision regarding formal requirements, which normally have to be followed for collective agreements.[1071] Yet, in general, global framework agreements are not signed by neither national trade unions nor national subsidiaries of the multinational enterprise. The questions posed by Hadwiger in regard to global union federations' **legal capacity** to sign binding contracts and the possibility of being sued, which is dependent on national laws, are entirely placed within the context of judicial enforcement.

Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 79-80.

[1066] Konstantinos Papadakis, 'Introduction and Overview' in Konstantinos Papadakis (ed.), *Shaping Global Industrial Relations: The Impact of International Framework Agreements* (Palgrave Macmillan 2011), pp. 16-17; Ford and Gillan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (n145), p. 468.

[1067] Sobczak, 'Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility' (n164), p. 121.

[1068] Schömann, 'Transnational Company Agreements: Towards an Internationalisation of Industrial Relations' (n1064), p. 206.

[1069] Telljohann, da Costa, Müller, Rehfeldt, and Zimmer, 'European and International Framework Agreements: New Tools of Transnational Industrial Relations' (n957), pp. 505-525; Stefania Marassi, 'Globalisation and Transnational Collective Labour Relations: International and European Framework Agreements at Company Level' in Roger Blanpain (ed.) (Alphen aan den Rijn: *Wolters Kluwer*, 2015).

[1070] Marassi, 'Globalisation and Transnational Collective Labour Relations: International and European Framework Agreements at Company Level' (n1069).

[1071] As Marassi unveils, if registration is the only procedure required for national collective agreements, as in France, then the global framework agreement will be regarded as a collective agreement under national law. See, Marassi, 'Globalisation and Transnational Collective Labour Relations: International and European Framework Agreements at Company Level' (n1069), p. 193.

Due to the international scope of global framework agreements, these questions demonstrate the weaknesses of requiring the signature of national trade unions, subsidiaries, and subcontractors. In fact, while in some countries a global union federation could enforce a global framework agreement in court, in other cases the involvement of a national trade union would be required. Similarly, in regard to a multinational's independent subsidiaries, it would be problematic to contract legally binding commitments, especially without an express reference to them. Moreover, as Hadwiger mentions, both the language used in global framework agreements and the obligations comprised in regard to the termination of supplying contracts could be rejected by national courts. Accordingly, the judicial enforcement of global framework agreements possesses significant challenges in relation to global union federations' legal capacity. However, dispute resolution procedures comprised global collective agreements are not tainted by the same issues. Since the enforcement and binding character of global collective agreements are mainly extra judicial, the involvement of national trade unions, company subsidiaries, and business partners with the aim of making these legally binding instruments is unnecessary. Hence, in the context of global collective agreements, the capacity and representative character of global union federations and multinational enterprises is not problematic.[1072] Moreover, ensuring that all the domestic affiliates of the signing global union federations sign these agreements is virtually unfeasible and, in a sense, undermines the 'international' character of global collective agreements. In its 2008 'Mapping of Transnational Texts Negotiated at the Corporate Level', the European Commission stated these transnational texts could not have the status of collective agreements due to representativeness, negotiation, form, content, and registration issues.[1073] Still, the European Commission recognised the **lack of legal status as a collective agreement does not prevent the signatories from considering the agreement as such.**

[1072] Goldman, 'Enforcement of International Framework Agreements Under US Law' (n1013), pp. 605-634; Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 66.
[1073] European Commission, 'Mapping of Transnational Texts Negotiated at Corporate Level' (2008) EMPL F2 EP/bp 2008 (D) 14511, p. 21.

Furthermore, it acknowledged that some transnational texts have such status under national legislation.[1074]

Given the international character, the mutual recognition facet, and the lack of legal bindingness as a requirement, even if it could be useful to involve the signature of national trade unions or include commercial clauses in the contracts with suppliers and subcontractors, that does not necessarily mean the global collective agreement will be more effective in the implementation of labour standards within the enterprise's operations. This is particularly true in countries where the judicial system is mistrusted.[1075] Furthermore, for the remaining countries where the multinational enterprise operates and for the remaining global collective agreements, the debate would persist. Consequently, as Sobczak also recognises, the great differences among national rules make it unlikely for an agreement to be considered a collective agreement according to all the relevant countries' legislation.[1076] Adequate dispute resolution mechanisms jointly agreed by the parties are preferable meaning that, in terms of representativeness, global collective agreements fulfil the requisite.

Existing global collective agreements are company-based, which is in accordance with ILO Recommendation No. 91, meaning that representativeness is mostly contentious in regard to the workers' side. Explicit references to the parties' mutual recognition are considered as 'best examples' of global collective agreements that clearly fulfil the requirement of representativeness. For instance, both H&M's and Inditex's agreements explicitly recognise the relevant global union federation as a legitimate counterpart. Other elements can be viewed as indications of representativeness and mutual recognition in particular. These include the actual practice in regard to the implementation of the agreement and the

[1074] ibid, p. 21.

[1075] Cambodia, for example, the country used for the empirical studies, is ranked on the 162nd place out of 180 countries, having a score of 20 out 100, according to the Corruption Perceptions Index 2019. See, Transparency International, 'Cambodia – Country Data'. Available At: https://www.transparency.org/country/KHM [Accessed 11 February 2020].

[1076] Sobczak, 'Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility' (n164), p. 121.

added involvement of national trade unions, which act as a bridge in the relationship between the global union federation and the multinational enterprise. Furthermore, they provide an added legitimacy to the global union federation. The involvement of national unions from the country where the company has its headquarters is not uncommon, bridging the relation between the global union federation and the company, while providing an added legitimacy and pressure within the multinational's national context. As the interviews unveil in chapter 6, the parties do not contest the legitimacy of global union federations for the negotiation and signature of these global agreements.

5.1.2. The Principle of Free and Voluntary Negotiation

While globalisation has undermined the national capability to regulate labour relations, the matter of industrial relations is still very much limited to the national context. Given the lack of a legally binding framework and the fact there is no obligation for the parties to negotiate and sign such agreements, global collective agreements constitute a compromise, concluded in the interest of both parties. Accordingly, even if the parties pursue different goals, these are complementary.[1077] As in collective agreements at the national level, the parties to a global collective agreement are neither obliged to engage in collective bargaining nor to come to an agreement, meaning that *"the outcome or agreement depends on the acceptance of the parties themselves and not on prescription by some external authority"*.[1078]

For global union federations, the negotiation of global collective agreements is a response to globalisation and the multiplication of corporate social responsibility instruments lacking worker representation. In fact, global collective agreements allow for the participation of workers' representatives in the implementation and monitoring of labour standards within an enterprise's worldwide operations. Also, these agreements denote

[1077] Guarriello, 'Transnational Collective Agreements' (n107), pp. 8-9.
[1078] Paul Smit, 'International Framework Agreements Taking Sting Out of Transnational Collective Bargaining' (2018) Vol. 54 No. 2 The Indian Journal of Industrial Relations, pp. 261.

a strategy aimed at the development of collective bargaining at the international level. Since they are based on a cooperative spirit and social dialogue, global collective agreements are considered as a long-term development process, which enables the growth of the union movement at the international level.

For multinational enterprises, the negotiation and signing of global collective agreements can be based on various motives, from an avoidance of legal responsibility and improvement of the company's public image to a genuine interest and commitment towards the improvement of industrial relations throughout its supply chain. Multinational enterprises can feel pressured to sign these agreements for either reputational reasons or to compete with other enterprises that have signed such documents. Thus, on the employers' side, reputational and consumer pressure, competition, and economic interests can be substantial reasons for companies to negotiate and sign global collective agreements. The reasons listed by Hadwiger in regard to global framework agreements can also be mentioned for global collective agreements. Thus, besides outside pressure, multinational enterprises sign global collective agreements to reduce and privatise conflicts, for public relations reasons, promoting equal competition conditions, and avoid public regulation. The social dialogue basis of global collective agreements, while avoiding trade union campaigns and work stoppages, enables the development of industrial relations and the establishment of a trust relationship between the multinational enterprise and trade unions. Additionally, global collective agreements can work as a form of risk management, allowing for the resolution of issues within a collaborative framework jointly agreed by the parties. Also, they simplify and legitimatise enterprises' decision-making by dealing with a smaller range of actors. Global collective agreements further enhance the company's public image stance in regard to its investors, business partners, consumers, and the media. They create an equal competition ground, even if several agreements state that the economic viability of the company must be considered.[1079] However,

[1079] A specificity can be found in Securitas' agreement. Section 3 provides that, *"If improvements in terms and conditions of employment appear to result in a loss of market share or margins to Securitas, the local union*

for some multinationals, engaging in private rule making might be a way to avoid public regulation. Finally, they allow for companies to fulfil requirements comprised in other international initiatives, which are frequently mentioned in text of the agreements.[1080]

The similarity of standards comprised, at least in regard to references to the fundamental principles and rights at work, can support a restriction of the parties' will and autonomy, particularly for multinational enterprises. Still, these pressures and content similarities do not denote the absence of a free and voluntary character of negotiations. As for collective agreements at the national level, outside pressure and a company's interest in both industrial peace and good industrial relations are part of the negotiation landscape. In fact, as *"instruments of voluntary cooperation and coordination between the management of an MNC and a GUF"*, global collective agreements *"symbolise the parties' free and autonomous will to reach bilateral agreements of mutual interest"* and must, therefore, be mutually beneficial.[1081] Moreover, the developmental trend associated with these agreements content demonstrates an actual commitment. The fact global collective agreements have displayed a substantive evolution in terms of content, implementation, and enforcement is indicative of the parties' free and voluntary engagement in the negotiation and signing of an agreement. Furthermore, newly signed and renewed agreements comprise more and more international labour standards, a broader scope of application, and sounder implementation and enforcement procedures. Likewise, more and more agreements comprise an indefinite duration. Finally, the existence of enforcement mechanisms, jointly agreed and applied by the parties, is a strong indicator of an agreement's free and voluntary character in relation to both parties.

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and company management will develop a joint strategy and action plan to monitor and raise standards among all the key companies in the market, or submarket, to attempt to create an environment in which Securitas will be able to raise standards without compromising its competitive position".

[1080] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 88-97.

[1081] ibid, pp. 85-87.

5.1.3. The Principle of Good Faith

As mentioned in chapter 3, the preparatory work for Convention No. 154 emphasised that collective bargaining requires good faith from both parties. Furthermore, as the ILO has determined, **good faith cannot be imposed by law**, being *"only achieved as a result of the voluntary and persistent efforts of both parties"*, meaning that *"collective bargaining could only function effectively if it was conducted in good faith by both parties (which) could not be imposed by law, but could only achieved as a result of the voluntary and persistent efforts of both parties"*.[1082] Hence, the mere existence of a global collective agreement can be suggestive of the parties' voluntary and persistent efforts, as well as their intention to collaborate/cooperate in regard to the agreement's implementation. As it has been stated, *"This in and of itself might provide an indication that the element of 'good faith' is present and, therefore, that such an arrangement does indeed constitute a genuine commitment."*[1083]

The **resources allocated by the multinational enterprise to promote** an agreement are also a key indicator of its intention to *"be bound in good faith by the agreement"*.[1084] When the enterprise does not provide enough resources for the agreement's implementation and monitoring, the burden lays on global union federations and their affiliates, which often do not have enough resources. The fact these agreements' effective implementation and positive impact are dependent on awareness-raising tools and campaigns, instead of legally binding and sanction-based procedures, makes this matter especially relevant.[1085] Besides the existence of the agreement itself, dissemination is a key element for assessing the 'voluntary and persistent efforts of both parties' to apply the agreement and, in many respects, the

[1082] International Labour Conference, 'Record of Proceedings' (Geneva 1981), p. 11, as cited in Bernard Gernigon, Alberto Odero and Horacio Guido, 'ILO Principles Concerning Collective Bargaining' (2000) Vol. 139 No. 1 International Labour Review, p. 43.
[1083] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 78-79.
[1084] ibid, pp. 75-76.
[1085] ibid, pp. 75-76.

'good faith' of the parties to implement it. [1086] However, although most agreements refer to dissemination and publicising of the agreement, the interviews carried out have found that dissemination is sometimes not adequately carried out. While training to management and trade union leaders was indeed conducted, transmission of the agreement to workers could be perfected, particularly in regard to the posting of the agreement in workplaces. In regard to **monitoring**, the obligation to meet regularly and bear the connected costs is an indicator of the commitment taken by the parties. In most cases, the multinational enterprise takes on the obligation to cover the costs arising from the monitoring of the agreement. This is explicitly referred in several agreements and is an indicator of good faith.

Company + Company Origin + Year	Reference	Provision
EDF (France, 2018)	EDF is responsible for the costs directly linked to the monitoring of the agreement	Appendix – Responsibility for Costs *"EDF SA bears the costs directly linked to the monitoring of the corporate social responsibility agreement (CDRS meetings, Steering Committee meetings, conference calls and webinars, and interpreting and translation). Transport costs are borne by Group Companies".*
Eni (Italy, 2019)	Eni's commitment to pay the organising costs of the annual meeting	Section 10 (1) – Organisation *"Eni is committed to paying, within normal limits, the organising costs of the annual meeting."*
Inditex (Spain, 2019)	Establishment of a Coordination, elected to be a link with Inditex; the costs for the Coordination's annual meeting and activities will be assumed by Inditex	Implementation *"The costs of the annual meeting and the activities of the Coordination will be assumed by Inditex according to its internal policies where applicable, and against the budget that is established in the Trade Union Expert Framework Agreement above referred."*
ISS (Denmark, 2008)	Jointly managed fund; ISS' commitment to donate an annual amount	Section 5 – Resources *"(…) the parties agree to create a jointly managed fund which will aim to monitor and raise standards in specific markets. The parties will make good faith efforts to determine the basic principles for the purpose, decision-making, activities and financing of the fund within 3 (three) months of the signing of this global agreement. ISS intends to donate an annual amount of Euro 100,000 to the fund."*
Lafarge (France, 2013)	Lafarge makes resources available to	Implementation and Follow Up *"The Lafarge Group will make available to the reference group the resources needed for its missions."*

[1086] ibid, pp. 79-80.

	the monitoring body (the reference group)	
Nampak (South Africa, 2006)	Division of the costs for the realisation of regular meetings – UNI bears the costs for its delegation and Nampak will do the same	Section 5 (i) – Implementation *"UNI will bear all costs arising out of this agreement for its delegation and Nampak will do likewise. These costs include the necessary travel costs, accommodation and other expenses of an agreed number of UNI delegates, the facilities necessary to hold the joint and preparatory meetings, and the costs of the contact persons. Any UNI delegates who are Nampak employees will receive their normal pay during their absence to attend meetings in line with local agreements on such leave. The Nampak employees are limited only to the National Co-ordinators of the UNI affiliated unions."*
Pfleiderer (Germany, 2010)	Pfleiderer will bear the costs from the tasks related to the monitoring body (PMC)	Section 15 (c) – Practical Implementation *"A PASOC-Monitoring Committee (PMC) will be set up (...). PMC will meet once each year at the domicile of the company to review reports on compliance with the agreement and its practical implementation. All members of PMC shall be provided with the information necessary for carrying out their assignment (monitoring and audit reports). Pfleiderer shall bear the costs arising in the context of carrying out tasks related to PMC."*
Siemens Gamesa (Spain-Germany, 2019)	Siemens Gamesa bears the monitoring costs	Section 9 – Agreement Implementation and Monitoring *"The Siemens Gamesa Group bears the costs linked to the monitoring of the agreement."*
Solvay (Belgium, 2017)	Solvay is responsible for paying expenses by members of the monitoring body (the Panel)	Chapter VI – Monitoring and Annual Review – Terms of Organisation *"Solvay shall pay travelling and accommodation expenses incurred by the members of the Panel in addition to those related to the organisation of meetings."*
Veidekke (Norway, 2017)	Veidekke makes the necessary resources available for the annual review meeting	Section 5 – Annual Review *"The signatories to the agreement will hold an annual meeting to review the principles, practice, effectiveness, and impact of the agreement. The aim shall be to exchange views regarding the current situation and jointly develop further good working relations in Veidekke. (...) Veidekke will make the necessary recourses available for these meetings."*

Table 55. Examples of provisions indicative of good faith, either making the multinational enterprise responsible for bearing the costs arising from the monitoring of the global collective agreement or splitting the financial responsibility.

Enforcement provisions further demonstrate the existence of good faith. By setting up proper dispute settlement procedures, capable of enforcing the agreement, either within a structure jointly agreed by the parties or taken to

a neutral, commonly agreed, third party, global collective agreements reveal an acceptance of binding obligations arising from the agreement. Still, more than conflict resolution, global collective agreements aim at conflict prevention. Accordingly, the improvement of social dialogue constitutes a key element of such agreements. Since these agreements are intended to be applied at the global level, they address cross-border social dialogue.[1087] Similarly to monitoring, the commitment for both **parties to cover enforcement expenses** is a good faith indicator.

Company + Company Origin + Year	Reference	Provision
Auchan (France, 2017)	Joint responsibility for arbitration costs	VII – Dispute Resolution *"The costs of arbitration will be supported in equal parts."*[1088]
Besix (Germany, 2017)	Facilitation expenses covered by all signing parties	Issues Resolution *"If the issue remains unresolved, the parties may jointly decide to involve a third-party facilitator. This facilitator will be chosen jointly by all the members of the reference group. The facilitation expenses will be covered by all signing parties."*

Table 56. Examples of provisions referring to a joint responsibility for enforcement expenses in global collective agreements.

Finally, **some agreements explicitly state a good faith requirement** in regard to the implementation of the agreement and the relation between the parties. The fact some agreements expressly refer to its implementation in good faith can be linked to the company's domestic background and a tradition of cooperation between the social partners.

Company + Company Origin + Year	Reference	Provision
Loomis (Sweden, 2013)	Implementation of the agreement in good faith	Section 3 – Loomis Commitment *"Upon recognition of a union, Loomis will work to ensure that the managers of Loomis engage in good faith collective bargaining and*

[1087] International Labour Organisation, *Cross-Border Social Dialogue – Report for Discussion at the Meeting of Experts on Cross-Border Social Dialogue* (International Labour Office 2019). Available At: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/meetingdocument/wcms_663780.pdf [Accessed 31 January 2020].

[1088] Translation from French by the author.

		make reasonable efforts to reach agreement with the representative of employees, as defined by the local laws of the country governing recognition or certification." Section 4 – UNI and STWU Commitment *"UNI agrees to take concrete steps to avoid risk of unofficial industrial action by its affiliates and shall encourage its affiliates to exhaust good faith communication and local dispute resolution procedures before engaging in industrial action, media or corporate campaigns."* Section 6 – Implementation *"The Parties will communicate this Agreement and the commitment to its principles throughout their respective organisations and will each have a responsibility for the implementation of the Agreement in good faith."*
SCA (Sweden, 2013)	Good faith in the relation with employees and their representatives	Section 6 of Principles *"SCA will demonstrate good faith and mutual respect in dealings with its employees and their representatives in the workplace."* Section 7 of Principles *"SCA has a long tradition and positive experience of relations with trade unions".*

Table 57. Examples of provisions explicitly referring to good faith in global collective agreements.

Thus, in respect to good faith, the mere existence of a global collective agreement is an indicator of its presence. Furthermore, the fact all global collective agreements must include some type of implementation mechanism and enforcement procedure is a further display of good faith. Most agreements refer to obligations for both parties in regard to dissemination and frequently include an explicit reference to a cooperative implementation. Agreements establishing monitoring procedures, carried out in cooperation by the parties, constitute an added sign in terms of the manifestation of good faith. Another indication refers to taking on the costs arising from the application of these mechanisms. Finally, agreements comprising dispute settlement procedures, making their enforcement a reality is a further tangible indicator. The same can be said in regard to the coverage of dispute settlement costs. However, as chapter 6 addresses, one of the major issues in regard to the implementation of global collective agreements relates to their adequate dissemination. While monitoring and dispute settlement procedures are indeed used, some criticism can be raised. Consequently, all global collective agreements seem to fulfil the good faith requirement, at least at the

formal level. For agreements that explicitly refer to good faith that is unequivocal. For others, the aforesaid indicators display its existence.

There are several examples of global collective agreements that explicitly require for its implementation to be carried out in good faith. Likewise, numerous factors are indicative of good faith, namely a joint responsibility of the parties for the agreement's implementation and coverage of costs for its monitoring or enforcement. As for the examination regarding the existence of a 'free and voluntary character', the inclusion of enforcement procedures is also a sign of good faith. Mere references to a common effort for immediate resolution of issues are indicative of good faith but they are not enough for an agreement to be enforceable and therefore considered as a global collective agreement. Accordingly, both the free and voluntary character and good faith can be inferred from several different elements contained in a global collective agreement. These elements, core features of a collective agreement, can be explicitly mentioned or implicitly inferred from the agreement.

The free and voluntary character and the good faith requirement are interconnected. As any collective agreement, the free and voluntary character can be inferred from these agreements' general content, which represents a compromise between the parties. This ensures the application of minimum labour standards and the development of good industrial relations, preventing possible delays or stoppages in productivity and promoting the development of long-term social dialogue. Implementation structures, putting a 'burden' on both signatories further denote a voluntary compromise. As required in several agreements, the creation of specific bodies, the realisation of periodical monitoring meetings, and the coverage of monitoring and enforcement related costs are additional indications of both voluntariness and good faith. While related to the free and voluntary character of a global collective agreement, a good faith requirement is often not explicitly mentioned. Furthermore, although some agreements refer to a joint application and enforcement efforts by both parties, the actual implementation of the agreement is far more relevant when assessing

whether a good faith component is indeed present. Hence, agreements like Loomis' or SCA's, which explicitly refer to implementation in good faith, clearly fulfill the good faith requirement. Clear obligations placed on the parties, namely the coverage of enforcement and monitoring related costs, referred in, for instance, EDF's, Inditex's, and Siemens Gamesa's agreements, among others, further denote the existence of good faith.

5.1.4. The Content and Effects

The present section presents the essential content of global collective agreements, while pointing out how currently most agreements' scope is much vaster than the mandatory references to the ILO core principles and rights. The main subject addressed in the present section concerns the discussion on these agreements' binding effect. In terms of effects, global collective agreements must be binding, as required by ILO Recommendation No. 91. This means that the agreements explicitly excluding a legally binding effect are not necessarily barred from the concept of collective agreement. However, for the agreement to be binding, it must possess some type of enforcement mechanism.

A) Content

As developed in the section 4.3., all global framework agreements, and consequently all global collective agreements, refer to the **core labour standards**, often comprising an explicit reference to the corresponding ILO conventions. Besides the minimum content, in reference to the ILO core labour standards, more recent agreements include an array of other standards from the ILO and other key international instruments, particularly those addressing the responsibility of multinational enterprises for their global activities such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises, the UN Global Compact, and the UN Guiding Principles on Business and Human Rights. Global collective agreements are based on the same minimum content and often refer that the agreement is not intended to substitute national legislation and collective agreements. In fact, global

collective agreements are intended to be minimum standards, applicable to all of the multinational enterprise's worldwide activities. Hence, they do not regulate working conditions in detail, providing for general standards that are further implemented according to the different national and legislative contexts. Also, in regard to the employment contract, a favourability principle is often referred, meaning that the more favourable terms of an agreement will be applicable, unless these contradict the relevant national legislation. These are equally applied in all of the agreement's scope. In the majority of cases these include the multinational enterprise's employees and those of its subsidiaries, as well as those employed by the company's business partners. Global collective agreements address the relationship between the contracting parties in connection to an array of obligations, relating to exchange of information, access to facilities, the review and monitoring of the agreement, establishment of special bodies, trade union action and campaigns, termination, among others.

B) Effects

In terms of an agreement's effects, the main question concerns a global collective agreement's binding effect. In order to know whether a global framework agreement can be comprised within the concept of collective it is paramount to assess *"the degree to which the parties feel bound by these agreements and to take the steps necessary in practice to implement them in good faith"*.[1089]

i. No Legally Binding Effect

It is often argued the parties of global collective agreements cannot rely on them before national courts.[1090] In fact, some agreements expressly state the document has **no legally binding character**.

[1089] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 78.
[1090] ibid, p. 77.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
G4S (Belgium, 2008)	UNI Global Union	No part of the agreement is legally enforceable	Section 9 – Status *"G4S and UNI recognise that this agreement must be applied within the framework of laws and regulations that apply in each country and accept that no part of the agreement is legally enforceable, either by the parties or by any third party, or in any way changes or amends any individual G4S employee's terms and conditions."*
Rheinmetall (Germany, 2018)	IndustriALL	No third-party claims and the agreement does not have any legal effect between the parties	Section 5 (4) – Final Provisions *"No individual claims or third-party claims may be derived from this Agreement. This also applies to the Parties to this agreement, i.e. this Agreement shall not take on any legal effect with regard to the relationship between the Parties."*
ThyssenKrupp (Germany, 2015)	IndustriALL	No third-party claims and the agreement has no legal effects between the parties	Section 13 – Closing Provisions *"No individual or third-party claims may be based on this Framework Agreement. This applies also to the undersigned parties of the Framework Agreement, i.e. the Framework Agreement has no legal effects between the undersigned parties thereof."*

Table 58. Examples of provisions explicitly excluding the global collective agreement's legally binding character.

As it is argued throughout this dissertation, global collective agreements do not appear to be adequate for judicial enforcement at the present moment. For agreements that do not explicitly exclude the possibility of legal enforcement, this is greatly dependent on the relevant national jurisdiction and the agreement's text.[1091] However, **judicial enforcement is neither essential** for such agreements to be considered as collective agreements, nor necessarily and currently appropriate, given their international scope. Also, as argued throughout this thesis, the question of bindingness is distinct from the question of legal bindingness.

[1091] As Hadwiger argues in regard to global framework agreements but also applicable to global collective agreements, *"There is no definite answer to the question whether GFAs are legally enforceable. Everything depends on the national jurisdiction and on the concrete wording of the GFA in question as well as other circumstantial factors"*. See, Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 65.

ii. Binding Effect

Some agreements **seem to acknowledge a binding effect**, even if not in a legal sense. This dissertation considers bindingness based on the possibility of enforcement and the creation of binding obligations. This matter is developed in chapter 6, in connection to the interviews carried out.

In fact, even when interviewees did not consider a global collective agreement as binding in a legal sense, they acknowledged its ability to create both rights and obligations for the parties.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Total (France, 2015-2019)	IndustriALL	The French version is binding	Section 8 – Duration, Effective, Date, Revision, Termination *"The French version shall be binding on the parties."*
Securitas (Sweden, 2012)	UNI Global Union	Possibly binding, within the laws and regulations applicable in each operation country, governed by Swedish law	Section 8 – Term *"Securitas and UNI recognise that this Agreement must be applied within the framework of laws and regulations that apply in each country and accept that no specific provision of the Agreement is legally enforceable if it violates such laws. However, in the event of this Agreement is invalid in any country, the remainder of the Agreement that is legally enforceable will remain in full force and effect. (...) This Agreement shall be governed and construed in accordance with the laws of Sweden."*
Lukoil (Russia, 2018)	IndustriALL	Reference to obligations, to its binding status, the English and Russian versions are equally binding	Section 1 – Preamble *"The obligations set out in this Agreement represent the free will of Lukoil and are supplementary to the applicable law of the relevant countries in which Lukoil Group organisations operate."* Section 6 (1) – Information *"The Parties agree that it is critical to raise awareness of all employees about the content and the binding status of the Agreement, and promote proper understanding at all management levels."* Section 9 – Miscellaneous

			"This Agreement is executed in the English and Russian languages, the Russian and English versions being equally binding."

Table 59. Examples of provisions implicitly acknowledging a global collective agreement's binding effect.

Additionally, some agreements **recognise the possibility of legal bindingness**.

Company + Company Origin	Global Union Federation	Reference	Provision
Arcelor (Luxembourg, 2005-2008)	(Then) International Metalworkers' Federation (IMF)	Judicial enforcement in Luxembourger courts	Article 10 – Validity of the Agreement *"This agreement is governed by Luxembourg law. Consequently, any disputes will fall within the competence of Luxembourg courts."*
EDF (France, 2018)	IndustriALL	Resort to the competent court as a final alternative	Implementing and Monitoring the Agreement – Dispute Resolution *"As a last resort, they will have the possibility to bring the case to the competent tribunal in the location of the EDF Group headquarters."*
PSA (France, 2017)	IndustriALL	Resort to court as a final alternative	Chapter 2 – Interpretation and Settlement of Disputes *"Failing a resolution, the parties will have the possibility to bring the case to the competent tribunal in the location of PSA headquarters, notwithstanding the place of execution of the agreement or/and the intercession of a third party."* Chapter 3 – Final Provisions *"In the event of a problem of interpretation or legal dispute, the French text is authentic and binding."*
Solvay (Belgium, 2017)	IndustriALL	Legal force	Section VII – Validity of the Agreement *"The English version of the agreement shall have legal force for the signatories."*

Table 60. Examples of global collective agreements recognised as legally binding.

Although only a small number of agreements explicitly allow for the possibility of judicial enforcement, the binding effect of an instrument is distinct from the parties' reliance on judicial enforcement. When a global collective agreement explicitly allows for legal enforcement that avenue can evidently be used as a last resort. However, the fact that the majority of agreements do not envisage such possibility is **not an obstacle to its**

placement within the concept of collective agreement. As Papadakis, Casale, and Tsotroudi argue, the fact these agreements *"are not intended to be relied upon by the parties in judicial proceedings does not mean that the parties do not have the intention to be bound in good faith by their commitments as reflected in these agreements"*.[1092] The United Kingdom is the textbook example of such an argument. In the British industrial relations system, collective agreements are not legally binding, unless the parties explicitly state so. The enforcement of a collective agreement is entirely placed on the voluntary good will of the parties. Consequently, *"the distinguished feature of (the collective agreement) is its binding effect on the parties to the agreement, irrespective of whether that binding effect (is) made effective and backed by legal or extra-legal sanctions"*.[1093]

Accordingly, identifying whether an agreement is binding will depend on whether enforcement provisions are provided. **Different levels of global collective agreements** can be distinguished, based on the type of enforcement. Inversely, agreements that merely regulate implementation in terms of dissemination, exchange of information, and monitoring cannot be considered as global collective agreements, based on the inexistence of enforcement references and a consequent lack of a binding character. Some agreements refer to the possibility of legal enforcement. Others, despite not recognising a possibility of legal enforcement, contain clear dispute settlement mechanisms and consequent sanctions. Somewhat differently, other agreements contain sanctions for the violation of the agreement, but do not contain a clear dispute settlement body and procedure. Finally, some agreements refer to dispute settlement and enforcement in a soft manner, merely mentioning the parties' commitment to find a common ground solution, without unveiling any type of procedure or sanctions. These

[1092] The argument is done in relation to international framework agreements but it is equally applicable to the analysis of these agreements as global collective agreements. See, Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 77.

[1093] Niklas Bruun, 'The Autonomy of Collective Agreement' in Roger Blapain (ed.), *Collective Bargaining, Discrimination, Social Security and European Integration* (Kluwer Law International 2003), p. 39, as cited in Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 77.

agreements, similarly to those without any dispute settlement references, are not collective agreements. Hence, although all global framework agreements are akin to collective agreements in the traditional sense, some are closer than others.

In regard to the binding character, agreements like EDF's, PSA's, and Solvay's, which explicitly recognise the documents' legal bindingness, are the least controversial. Agreements that implicitly recognise a binding effect, referring to 'obligations', the 'binding status', or the 'binding version', such as Total's, Lukoil's, and Securitas', provide strong indications of bindingness, which can be complemented through actual implementation and enforcement. Differently, provisions that explicitly exclude the possibility of awarding the agreement with a legally binding effect are more problematic. In these cases, the parties' perception and actual use of the agreement's enforcement mechanisms are especially relevant for proving the document's binding character. Hence, while the inclusion of a clause recognising an agreement's binding character is preferable to avoid interpretative issues, the absence of such reference does not exclude an agreement's binding character, even if placed outside the legal scope. This binding character will be dependent on how enforcement is carried out. While representing framework agreements, comprising minimum standards that can be improved by legislation or industry agreements, global collective agreements regulate employment conditions and include a set of obligations taken by the normative parties.

5.1.5. Enforcement

Based on the definition of global framework agreement provided in chapter 4, it is enough that the agreement comprises some type of implementation mechanism. Dissemination, training, and monitoring mechanisms fit into this category. As provided in most agreements, implementation is carried out at the local level, while periodic meetings and assessments are conducted by the parties or specific bodies, established by the global agreement. The fact that a global framework agreement contains implementation provisions gives

an actual role to local and national affiliates in regard to the immediate application of the agreement. Likewise, it also gives a concrete role to the global union federation, in terms of periodic evaluations, problems, and consideration of good practices regarding the implementation of the global agreement. For global framework agreements that go beyond implementation and truly comprise dispute settlement provisions, their categorisation as collective agreements at the international level can indeed be discussed, provided that the other core features are present. Given the characteristics and weaknesses (e.g., lack of a legal framework, issues surrounding their genuine implementation, scope, among others) of global collective agreements, enforcement is a fundamental component of both effectiveness and an evidence of their binding character. Bindingness should be viewed as an initial requirement, made operational through enforcement.

When a global collective agreement is signed, the rights comprised in the agreement should be complied with and the obligations taken should be enforced. Still, violations of the agreement will most likely occur and ought to be anticipated and sanctioned. This is possible when the agreement comprises enforcement mechanisms. These can vary considerably among different agreements. While highlighting the unessential character of judicial enforcement, the following paragraphs identify the enforcement mechanisms considered to be sufficient for an agreement to be enforceable and sort out the different means of enforcement.

The risk that global collective agreements might entail some type of **legal liability** is a major concern for many multinational enterprises, which might view them as a self-regulation instrument, fitting in the company's corporate social responsibility initiatives. In some cases, the agreement explicitly asserts that it does not carry any legal effect. The intent of avoiding litigation can be perceived as a way of companies to avoid 'hard' consequences and open a 'pandora box' for legal responsibility. However, avoiding judicial enforcement can be based on these agreements' foundational principles of developing social dialogue throughout the company's operations. In fact, if an agreement comprises dispute settlement procedures that are actually used

in an effective manner and ultimately allow for an issue to be resolved through the involvement of a neutral third party, judicial enforcement is entirely unfitted to the dialogue basis and worldwide scope of these agreements.

As discussed in chapter 4, it is **complex and sometimes problematic** to determinate the jurisdiction and legislation applicable to global framework agreements. These conclusions are also applicable in regard to the narrower category of global collective agreements. Furthermore, domestic legislation might sometimes not offer adequate solutions. This is particularly relevant, as most issues will refer to cross-border disputes. In countries where the minimum standards included in an agreement are not comprised in national legislation or are not effectively implemented, dispute settlement mechanisms set up by the agreement will take precedence in this regard.[1094] In terms of the ILO fundamental conventions, dispute settlement procedures jointly agreed by the signatories will also be greatly significant, since not all countries have ratified these conventions.[1095] Additionally, as described in chapter 4, previous research carried out in regard to the legal effects of global framework agreements (and consequently also in regard to global collective agreements) demonstrates the complexity and conflicting problems this question poses. The choice of jurisdiction and the applicable law can be particularly problematic outside the European Union and, while the possibility of bringing a complaint to court in specific jurisdictions havs been addressed in some literature, these have not found any definitive solutions. And, although explicitly allowed in some agreements and considered as valuable throughout relevant literature, global collective agreements have never been used in court. Accordingly, and since global collective agreements are constructed around a cooperative, social dialogue-based approach, it seems that, even if explicitly allowed, the parties seem not to

[1094] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 190.
[1095] International Labour Organisation, *Normex – Ratifications of Fundamental Conventions by Country*. Available At: https://www.ilo.org/dyn/normlex/en/f?p=1000:10011:::NO:10011:P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F [Accessed 11 July 2020].

choose judicial enforcement.[1096] Hence, although the **resort to court is not excluded, it is not the primary way of enforcing** a global collective agreement.

While legal liability might seem to (normally) be excluded, through the express or implicit exclusion of legal effects, this is not as problematic as one might initially think. First, as illustrated in the table with listed examples of dispute settlement mechanisms in global collective agreements, presented further ahead in the present chapter, some agreements and more recent ones in particular, demonstrate a trend of enabling judicial settlement as a last resort alternative of settling a dispute. Second, as argued in the present chapter, the possibility of judicial enforcement is not required for the successful implementation of a global collective agreement or for demonstrating its binding character. Literature on global collective agreements is grounded on the idea that, in order to be effective, they should be legally enforceable. However, at the current moment, judicial enforcement seems highly unlikely and inadequate, given the scope and purpose of global collective agreements. In fact, litigation is not the only *"strategy to address human rights violations"*.[1097] The fact these agreements can be said to be 'soft law'[1098] does not mean they cannot create binding and enforceable commitments,[1099] and it does not exclude the possibility of viewing them within the concept of collective agreement. The fact the parties cannot rely on these agreements in judicial proceedings does not mean they did not wish to be bound in good faith by their commitments.[1100] Similarly to collective agreements in the British context, they are still intended to

[1096] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 186-187.

[1097] Colin Fenwick and Tonia Novitz, 'Conclusion: Regulating to Protect Workers' Human Rights' in Colin Fenwick and Tonia Novitz (eds), *Human Rights at Work: Perspectives on Law and Regulation* (Hart Publishing 2010), p. 612.

[1098] Sobczak, 'Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility' (n164), p. 125; Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 77.

[1099] André Sobczak, 'Ensuring the Effective Implementation of Transnational Company Agreements' (2012) Vol. 18 No. 2 European Journal of Industrial Relations, p. 141.

[1100] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 77.

generate 'rights' and 'duties' in a non-legal sense, 'binding in honour' and enforceable, but through social sanctions, instead of legal ones.[1101]

What characterises a collective agreement is its binding effect on the parties, regardless of whether it is enforced through legal or extra-legal sanctions.[1102] The binding character places the question of knowing what is the most effective way of ensuring a global collective agreement fulfils its functions, which does not necessarily require legal enforceability.[1103] In fact, as Kahn-Freund emphasised, the main question regarding collective agreements is not so much about their binding character than it is about the application of **legal sanctions as a way of effective implementation**.[1104] Hence, one needs to look at the implementation procedures comprised in the agreement. According to Kahn-Freund, this lack of legal bindingness means the parties and not the courts are responsible for the interpretation, application, and enforcement of the agreement.[1105] However, and differently from what Kahn-Freund stated regarding British industrial relations, which evolved into a system that did not require legal sanctions,[1106] the idea of global collective agreements as a legally enforceable instrument could indeed represent a later development. At the present moment, most global collective agreements are indeed *"akin to UK collective agreements, in that they are seldom legally enforceable"*.[1107]

[1101] Kahn-Freund, 'Legal Framework' (n473), pp. 57-58; Dukes, 'A Labour Constitution Without the State? Otto Kahn-Freund and Collective Laissez-Faire' (n721), p. 75.

[1102] Bruun, 'The Autonomy of Collective Agreement' (n1093*)*, pp. 81-114.

[1103] Schömann, 'Transnational Collective Bargaining: In Search of a Legal Framework' (n1002), pp. 219-232.

[1104] Even at the time of the 1936 report, it was stated that the International Labour Conference had not excluded enforcement methods based on the collaboration of organisations and, when referring to the Placing of Seamen Convention, the Hours of Work (Industry) Convention, the Sheet-Glass Works Convention and the Reduction of Hours of Work (Glass-Bottle Works) Convention, the report declares that in industries where workers are strongly organised, respect for collective agreements is high. See, International Labour Office, *Collective Agreements – Studies and Reports Series A (Industrial Relations) No. 39* (n409), pp. 262-263.

[1105] Kahn-Freund, 'Legal Framework' (n473), p. 44; Kahn-Freund, 'Intergroup Conflicts and their Settlement' (n724) pp. 202-210, 212; Dukes, 'A Labour Constitution Without the State? Otto Kahn-Freund and Collective Laissez-Faire' (n721), p. 75.

[1106] Kahn-Freund, 'Legal Framework' (n473), p. 43; Kahn-Freund, 'Intergroup Conflicts and their Settlement' (n724), p. 195.

[1107] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 231.

For multinational enterprises, a possible path to the legal enforcement of global collective agreements is a concern, since they can result in unplanned responsibilities. Still, enforcement is required and *"a complete absence of enforceability would undermine the effectiveness of GFAs to deal with difficult issues, rapidly eroding their credibility if disputes cannot be solved in a legitimate way"*.[1108] Hence, these agreements can be **privately enforced** by the parties, in cooperation, through disputes settlement procedures and sanctions comprised in the agreement. These can include reputational damages, termination of contractual relations, or the termination of the agreement itself. Moreover, several agreements allow for a final referral to arbitration or mediation by a neutral party, agreed by the signatories and whose recommendations the parties must abide. The following paragraphs present a comprehensive description of enforcement measures and mechanisms comprised in global collective agreements. This narrative allows for a selection of agreements that provide for clear dispute settlement and enforcement procedures and are therefore closer to the traditional concept of collective agreement.

A) Types of Measures

The **extension of commitments** among agreements can vary significantly.[1109] Some make respect for the global collective agreement a condition for initiating and maintaining a business relation, stating that the company will not work with subcontractors or suppliers who violate it. Accordingly, some agreements contain an explicit reference to termination of the contractual relationship, the agreement, or both, whereas others imply that violations could lead to a possible termination.

i. Recommendations

Some global collective agreements refer to recommendations as a dispute settlement solution. These can be referred within the procedure commonly

[1108] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 61.
[1109] Telljohann, da Costa, Müller, Rehfeldt, and Zimmer, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (n48).

agreed by the parties or in looser terms, in connection to the parties' joint examination of an issue.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
FCC Construcción (Spain, 2012)	Building and Wood Workers' International (BWI)	If a matter is not resolved, the reference group will provide recommendations	Conflict Resolution *"c) If the issue is not resolved, the reference group will deal with the matter with the goal of providing recommendations to the parties involved with a view to resolving the dispute."*
Ferrovial (Spain, 2012)	Building and Wood Workers' International (BWI)	If a matter is not resolved, the consultation group will provide recommendations	Conflict Resolution *"c) If the issue is not resolved, the consultation group will discuss this matter with the goal of providing recommendations to the involved parties aimed at resolving the dispute."*
Sacyr (Spain, 2014)	Building and Wood Workers' International (BWI)	If a matter is not resolved, the consultation group will provide recommendations	Dispute Resolution *"c) If the matter is not resolved, the consultation group will deal with the matter with the aim of giving recommendations to the parties involved in order to resolve the dispute."*[1110]
VolkerWessels (Netherlands, 2007)	Building and Wood Workers' International (BWI)	Joint examination and recommendations to the signatory concerned	Implementation and Evaluation *"Signatories agree that any difference arising from the interpretation or implementation of this agreement will be examined jointly, for the purpose of making recommendations to the signatory concerned."*

Table 61. Examples of provisions referring to recommendations in regard to the settlement of disputes in global collective agreements.

ii. Business Relations Condition

The respect for a global collective agreement is often made a **condition for initiating or maintaining a business relation**. Some agreements make it a clear condition, determining the termination of contractual relations as a consequence for non-compliance[1111] or by using a solid terminology, referring to respect with the agreement as a 'determining criterion'. Other agreements refer to compliance as a business relations condition with fuzzier contours, mentioning that the company will consider terminating the contractual relationship, without making it a clear condition. In the case of

[1110] Translation by the author.
[1111] Hammer, 'International Framework Agreements in the Context of Global Production' (n237), pp. 1021-03.

persistent breeches of an agreements' terms, termination is viewed as a last resource to tackle violations. In fact, even in agreements where the termination is explicitly mentioned, this measure is only performed after an attempt to cooperatively enforce the agreement. Thus, in most cases, corrective action plans or recommendations are put in place but continuous violations of the agreement will lead to termination of contractual relations. Regardless, it is relevant that some agreements explicitly assert the termination of the contractual relationship as a possible (and last alternative) sanction for violations.[1112]

Some agreements make adherence or compliance an implicit criterion for initiating or maintaining a business relation. However, the existence of this element is not enough for a global framework agreement to fit into the narrower category of global collective agreements. BMW's and Leoni's agreements include such criterion. According to Section 2 (2) of BMW's agreement, *"The BMW Group expects its business partners and suppliers to use these principles as a basis in their mutual dealings and regards them as a suitable criterion for lasting business relationships"*. Similarly, Section 2 (3) of Leoni's agreement, states that *"Leoni supports and encourages its business partners to take this declaration into account in their own respective corporate policy. It views this an advantageous basis for mutual relationships"*. However, these agreements contain no dispute settlement provisions or explicit sanctions and are therefore not enforceable and cannot be perceived as collective agreements at the international level. Somewhat differently, Röchling's agreement, while dealing with dispute settlement, does it in very loose terms. Section 4 (3) states that *"Gebr. Röchling KG expressly supports and encourages its business partners to apply and take into account the agreed-upon principles in their respective company policy. It views this to constitute a positive basis for future business relationships"*. According to Section 4 (4), *"All the employees have the right to address topics and problems in connection with the agreed-upon principles. This shall not result in any disadvantages or sanctions as a result thereof"*.

[1112] In fact, *"many GFAs foresee, as a first step, sanctions in the case of GFA violations"*. See, Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 148.

Differently, Elanders' agreement, while broadly referring to dispute settlement, it establishes the appointment of a contact person for UNI Global Union and Elanders. Furthermore, it asserts compliance with the agreement as a clear condition to engage in a supplier business relation and can therefore be discussed as a global collective agreement. The following table illustrates how compliance with the agreement as a criterion for initiating or maintaining business relations is expressed in different global collective agreements.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Bosch (Germany, 2004)	(Then) International Metalworkers' Federation (IMF)	The company will not work with suppliers that have demonstrably failed to comply with basic ILO standards	Section 11 – Implementation *"Bosch will not work with any suppliers who have demonstrably failed to comply with basic ILO standards."*
Daimler (Germany, 2012)	IndustriALL	Favourable basis for maintenance of business relations	Suppliers and Sales Partners *"Daimler regards the above as a favourable basis for enduring business relations."*
Elanders (Sweden, 2009)	UNI Global Union	Not knowingly use business partners who wilfully violate the principles comprised in the agreement	Section 7 – Suppliers *"The Company will not knowingly use vendors or suppliers who* wilfully *violate the principles of this Global Agreement."*
Mann+Hummel (Germany, 2011)	(Then) International Metalworkers' Federation (IMF)	Criterion for lasting business relationships	Section 2 (2) – Business Partners and Suppliers *"The Mann+Hummel Group expects its business partners and suppliers to use these principles as a basis in their mutual dealings and regards them as a suitable criterion for lasting business relationships."*
Renault (France, 2013)	IndustriALL	Selection criterion	Chapter 3 – Relationships with Suppliers and Subcontractors *"Respect for fundamental rights is a determining criterion in the selection of suppliers and subcontractors."*
Rheinmetall (Germany, 2018)	IndustriALL	Compliance with the principles should be taken into account in the evaluation and selection of business partners	Section 4 (3) – Respect for and Adherence to the Principles of Social Responsibility by Business Partners *"Compliance with the principles contained in this Agreement should be taken into account in the selection and evaluation of suppliers, subcontractors and service providers. If these principles, fundamental labour standards or health and safety requirements are violated,*

			Rheinmetall Group should consider taking steps against the respective company concerned."
Royal BAM (Netherlands, 2006)	Building and Woodworkers' International (BWI)	Will refrain from using the services	Implementation and Follow-Up of the Agreement *"Royal BAM Group nv considers the respect for workers' rights to be crucial element in sustainable development and will therefore refrain from using the services of those trading partners, subcontractors and suppliers which do not respect the criteria listed above."*
Schwan Stabilo (Germany, 2005)	(Then) International Federation of Building and Wood Workers (IFBWW)	Basis for enduring business partnerships	Inclusion of Supplier Companies *"Schwan Stabilo expects of its suppliers to apply similar principles and regards this as being a basis for any enduring business partnership."*
Securitas (Sweden, 2012)	UNI Global Union	Consider not doing business with business partners that fail to comply with the standards	Section 2 – Scope *"Securitas shall endeavour to work with business partners who conduct their business in a way that is compatible with the terms of this agreement, and it shall consider not doing business with any partner that fails to comply with these standards."*

Table 62. Examples of provisions making compliance with a global collective agreement a criterion for the establishment and maintenance of a business relation.

Each agreement needs to examined as a whole. While some agreements might refer to compliance in an implied manner, requiring supplier violations to be known to the company or for these violations to be demonstrable and in connection to basic labour standards, the existence of added elements demonstrating enforcement enable these documents' categorisation as collective agreements. This adds a binding dimension and is attached to a commitment meaning that characterises collective agreements. Hence, for instance, Securitas' agreement refers that the company *"shall consider not doing business any partner that fails to comply with these standards"*, meaning that a contract termination can or not happen. However, the agreement further includes a clear complaint procedure with a final possibility of mediation.

iii. Termination of the Contract

It is important that **contract termination** as a sanction for non-compliance with a global collective agreement is solely used as a last resort solution, taken after attempts to solve the problem through cooperation/collaboration, social dialogue, and the implementation of recommendations or corrective plans. Contract termination means the enterprise will not have any further influence over the supplier or subcontractor. This could be damaging for workers, since the enterprise's business partner could respond in the form of dismissals or decrease of working conditions.[1113] As briefly addressed in the previous section, contract termination relates to compliance as a condition for initiating or maintaining business relations. References to a possible contract termination vary among the different agreements. Some agreements denote that the company will not work with companies that do not respect the standards comprised in the agreement or that companies in a contractual relationship with the signatory enterprise 'will have' to observe to these principles. Other agreements use a faint language, referring to termination in terms of a consideration by the company or as an ill-defined possibility. Finally, some global collective agreements relate a possible termination of the contractual relationship to violations of any standards comprised in the agreement, whereas others link termination to serious breaches or breaches of basic labour standards.

The first group of agreements often use a **mild terminology**, referring to expressions such as 'shall consider', 'may lead', or 'may go'.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
EDF (France, 2018)	IndustriALL	Repeated breaches that are not rectified after notification may result in the termination of business relations	Section 4 – Fostering Socially Responsible Relations with Our Suppliers and Subcontractors *"Any repeated breaches of the provisions of this agreement, the law, the rules relating to health and safety, the principles governing customer relations, and the environmental regulations in force, that are*

[1113] ibid, pp. 148-149.

			not rectified following notification, may result in the termination of relations with the supplier or subcontractor, in accordance with the relevant contractual obligations."
Loomis (Sweden, 2013)	UNI Global Union	'Shall consider'	Section 2 – Scope *"Loomis shall endeavour to work with business partners who conduct their business in a way that is compatible with the terms of this agreement and it shall consider not doing business with any partner that fails to comply with these standards."*
Renault (France, 2013)	IndustriALL	'May lead' to termination	Chapter 3 – Relationships with Suppliers and Subcontractors *"Once, identified, any failure not corrected may lead to various measures, including Renault Group terminating its relationship with the company concerned."*
Securitas (Sweden, 2012)	UNI Global Union	'Shall consider'	Section 2 – Scope *"Securitas shall endeavour to work with business partners who conduct their business in a way that is compatible with the terms of this agreement, and it shall consider not doing business with any partner that fails to comply with these standards."*
Total (France, 2015-2019)	IndustriALL	'May go as far'	Section 2 (5) – Contractor and Supplier Relations *"If the principles are not respected, the Group will take the necessary action, which may go as far as terminating the contract."*

Table 63. Examples of provisions referring to the termination of business relations as a possible consequence for the violation of a global collective agreement.

The second group of agreements refer to **termination for breaches of particular standards or violations of basic labour standards**. It is often referred that these breaches must be serious and repeated.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Bosch (Germany, 2004)	(Then) International Metalworkers' Federation (IMF)	'Demonstrably failed' to comply with 'basic ILO standards'	Section 11 – Implementation *"Bosch will not work with any suppliers who have demonstrably failed to comply with basic ILO labour standards."*
Eni (Italy, 2019)	IndustriALL	May result in the termination	Section 4 – Relations with Suppliers, Subcontractors and Business Partners *"Any repeated breach of the provisions of the Supplier Code of Conduct, particularly in the*

			context of this agreement, may result in the termination of the contractual relationship with the supplier concerned."
Lafarge (France, 2013)	Building and Woodworkers' International (BWI) and IndustriALL	Serious breach of legislation concerning health and safety, protection of the environment or basic human rights, which is not corrected after a warning	Employment Relationship and Subcontractors *"Any serious breach of the legislation concerning the health and safety of direct or indirect employees, the protection of the environment or basic human rights, which is not corrected after a warning, will result in the termination of relations with the concerned enterprise, subject to contractual obligations."*
Solvay (Belgium, 2017)	IndustriALL	Any serious violation of health and safety legislation, environmental protection or basic human rights that is not remedied after a warning shall lead to termination	Section 5 – Responsible with Suppliers, Contractors and Subcontractors *"Any serious violation of employee health and safety legislation, environmental protection or basic human rights that is not remedied despite previous warning shall lead to termination of relations with the company concerned in compliance with contractual obligations."*

Table 64. Examples of provisions referring to the termination of business relations as a consequence for the violation of specific or basic standards comprised in global collective agreements.

In Bosch's case, the requirement for suppliers to have 'demonstrably failed' to comply with basic ILO standards implies that violations of other ILO standards and international instruments referred in the agreement would not lead to the termination of the contractual relationships. Also, a possible contractual termination is not explicitly stated. Instead, respect for the agreement as a condition to begin and maintain a contractual relationship and a reason for a possible contractual termination is implied, trough the expression 'will not work'. Lafarge's agreement refers to any breach of a set of standards, relating to health and safety legislation, the protection of the environment, or basic human rights which, if not corrected after a warning, will result in the termination of business relations.

Finally, some documents entail a possible termination of the contractual relation based on the **violation of any standards** comprised in agreement.

Hence, it is often expressly stated that 'any violation', which is not remedied after warnings, can lead to contract termination.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Aker (Norway, 2012)	IndustriALL	Non-compliance with these standards	Section 1 – Preamble *"Non-compliance with these standards will ultimately result in sanctions and potential termination of contractual relationship."*
SCA (Sweden, 2013)	IndustriALL	Any proven violation that is not remedied despite warnings will lead to the termination of business relations	Section 9 of Principles *"At the same time any proven violation of the principles contained in the Agreement that is not remedied despite warnings will lead to termination of relationships with the company concerned."*

Table 65. Examples of provisions referring to the termination of business relations based on the violation of any standards comprised in global collective agreements.

Finally, although the termination of a contractual relationship as a sanction for non-compliance with a global collective agreement increases their credibility and effective enforcement, it also presents some relevant **concerns**. As referred in literature, when a multinational enterprise signs these agreements, it takes on two kinds of obligations. First, the obligations comprised in the agreement, taken in relation to other signatory, meaning the global union federation. Second, the obligations arising from the contract signed with suppliers and subcontractors. Hence, some agreements expressly refer that the obligation to end a commercial contract is placed with the respect for contractual obligations.[1114]

Company + Company Origin + Year	Global Union Federation	Reference	Provision
EDF (France, 2018)	IndustriALL	'In accordance with the	Section 4 – Fostering Socially Responsible Relations with Our Suppliers and Subcontractors

[1114] ibid, p. 150.

		relevant contractual obligations"	*"Any repeated breaches of the provisions of this agreement, the law, the rules relating to employee health and safety, the principles governing customer relations, and the environmental regulations in force, that are not rectified following notification, may result in the termination of relations with the supplier or subcontractor, in accordance with the relevant contractual obligations."*
Lafarge (France, 2013)	Building and Woodworkers' International (BWI) and IndustriALL	'Subject to contractual obligations'	Employment Relationship and Subcontractors *"Any serious breach of the legislation concerning the health and safety of direct or indirect employees, the protection of the environment or basic human rights, which is not corrected after a warning, will result in the termination of relations with the concerned enterprise, subject to contractual obligations."*

Table 66. Examples of provisions referring to the termination of a global collective agreement as a consequence of violations placed within the company's contractual obligations.

iv. Termination of the Agreement

Besides termination of the contractual relationship, some agreements refer to a possible **termination of the agreement itself**.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Aker (Norway, 2012)	IndustriALL	Last resort	Section 4 (e) of Infringements of the Agreement *"After this process has been exhausted failure to reach a consensus will mean a termination of the agreement."*
Lafarge (France, 2013)	Building and Woodworkers' International (BWI) and IndustriALL		Settlement of Disputes *"If a dispute is not resolved and (...) the provisions of this agreement continued to be breached, the termination of the global framework agreement will occur only as a last resort."*
Pfleiderer (Germany, 2010)	Building and Woodworkers' International (BWI)		Section 16 (d) – Conflict Resolution *"If the conflict also cannot be resolved within the PMC and breaches of the agreement continue, cancellation of the agreement will be considered the final option."*
Umicore (Belgium, 2019)	IndustriALL		Section 9 – Dispute Resolution *"In case of a deadlock, Umicore or IndustriALL Global Union may as a last resort terminate the agreement."*

Table 67. Examples of provisions referring to a possible termination of global collective agreements.

B) Types of Dispute Settlement

The majority of agreements establish non-judicial, non-state, dialogue-based international dispute resolution mechanisms.[1115] The fact that most agreements create *"a specific standing forum for dialogue between a company's management and GUF representatives"*[1116] demonstrates a qualitative development as more recent agreements tend to include similar bodies and/or a clearer definition of dispute settlement procedures, hierarchically framed and often referring to the possibility of mediation, arbitration, or even to the competent court. As the four constitutive elements demonstrate, all global framework agreements must contain some type of implementation mechanism. However, these can simply refer to information exchange, dissemination of the agreement, or a review obligation and a monitoring procedure, described in the preceding chapter. Agreements that do not comprise any type of dispute settlement or sanction reference[1117] cannot be enforced and are not relevant for an analysis as collective agreements. Global collective agreements contain a more developed content and, besides implementation, also address enforcement. However, while some agreements merely include references to the parties' commitment to carry out efforts to commonly settle issues, others create actual dispute settlement bodies and/or procedures. The latest are the focus of this analysis. As a minimum, agreements establishing dispute settling bodies capable of applying corrective measures and/or comprising dispute resolution procedures can be viewed as more mature instruments, **more closely fitting in the concept of collective agreement**. The ensuing paragraphs exemplify different types of dispute settlement references present in different global collective agreements and demonstrate the existing variations.

Dispute resolution procedures comprised in global collective agreements are conducted in a **cooperative manner**, used when a matter cannot be resolved

[1115] ibid, p. 55.
[1116] ibid, p. 58.
[1117] See the table in Annex 4, E.g., Quebecor World Inc, Shoprite Checkers, Telkom Indonesia which merely comprise implementation mechanisms. Staedler refers to a monitoring team but it does not contain any references to neither sanctions nor dispute settlement.

through dialogue.[1118] Hence, regardless of whether an agreement sets up a dispute settlement procedure, the vast majority refer to mutual notification, occurring as soon as possible, cooperation, and the parties' joint effort to find an effective and constructive solution in the interests of all parties, through dialogue and within a reasonable time.

Company + Company Origin + Year	Global Union Federation	Provision
H&M (Sweden, 2015)	IndustriALL	Structure and Implementation of Well Functioning-Industrial Relations *"Any disagreement on the interpretation and implementation of the Agreement shall be raised with the Parties and solved within the provisions and spirit of the Agreement by the Parties."*
Lukoil (Russia, 2018)	IndustriALL	Section 3 (2) (3) – Rights and Obligations of Trade Unions and Human Rights at the Workplace *"Resolution of potential conflicts between personnel and Lukoil Group organisations on the basis of constructive cooperation".*

Table 68. Examples of references to cooperative resolution of disputes in global collective agreements.

Agreements that contain a dispute settling body normally provide for a **hierarchical procedure**, according to which a complaint can be brought, in first instance, to the local and national levels and which, if not resolved, can be addressed by the body established by the global agreement. These bodies are composed of representatives of the multinational enterprise's management and the global union federation and/or its relevant affiliates. They are often given the designation of 'committee', 'monitoring group', or 'reference group'. While several agreements allow for the possibility of carrying out meetings whenever needed, they normally provide for annual or biannual meetings. Finally, some agreements refer to, in last instance, the possibility to resort to mediation or arbitration and, in some cases, judicial enforcement.

Some agreements merely refer to recommendations or the implementation of remediation plans, whereas others explicitly indicate **sanctions**, normally in

[1118] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), pp. 57-58.

the form of contractual termination or termination of the agreement. Still, it is not uncommon that agreements establishing dispute settlement procedures merely refer to appropriate measures or solutions, **without denoting any specific sanction**. The same can be said in regard to mediation/arbitration and the resulting recommendations, which are binding for the parties.

The table below enables a selection of relevant points, namely the sanctions provided for, the possibility for mediation or arbitration, resort to court, and links to the ILO. A more comprehensive table, also referent to the broader category of global framework agreements and with further variations of dispute settlement procedures is provided in Annex 4.

Company + Year	Monitoring Body	Dispute Settlement			
		Hierarchy	Mediation/ Arbitration	Judicial Enforcement	Explicit Measures
Aker (2012)	Parties' meeting, at least every second year	Local site management, National union and the company's regional president, Aker's chief shop steward and Aker's chairman and CEO, Monitoring group, Arbitration	Arbitration by the ILO or a neutral agreed party		Potential termination of the contractual relationship Termination of the agreement *"After this process has been exhausted failure to reach a consensus will mean a termination of the agreement"*
ASOS (2017)	Joint group, meeting twice a year	*"Questions concerning the interpretation of this Agreement shall be resolved through consultation between the signatories. Every effort will be made to find common agreement but where this is not possible the Parties to this Agreement shall in appropriate instances seek the expert advice of the ILO. The Parties shall mutually agree to abide by the final recommendations of the ILO"*			Recom-mendations
EDF (2018)	Global committee (the Dialogue Committee on	Local resolution, Management and the relevant social partners at national level and the	Mediation	*"As a last resort, they will have the possibility to*	Termination of the contractual relationship

	CSR), supported by a steering committee	at the headquarter level, Global monitoring committee, Mediation, Competent tribunal		*bring the case to the competent tribunal in the location of the EDF Group headquarters"*	*"Any repeated breaches of the provisions of this agreement, the law, the rules relating to employee health and safety, the principles governing customer relations and the environmental regulations in force, that are not rectified following notification, may result in the termination of relations with the supplier or subcontractor, in accordance with the relevant contractual obligations"*
Eni (2019)	Global monitoring committee, meeting once a year	Local level, Management and relevant national unions, Global level (Eni's headquarters, IndustriALL and the coordinator of the agreement)	*"In case of need for interpretation of this agreement, the Parties may agree to seek the expert advice of the ILO or any other agreed third party"*	*"This agreement is governed by Italian legislation"*	
Esprit (2018)	Joint group, meeting twice a year	Consultation between the signatories, expert advice	The parties can seek the expert advice of the ILO or other mutually agreed upon neutral party,	The agreement is governed in line with the relevant legislation in Germany	Recom-mendations

			whose recommendations the parties must abide	Possibility to bring the case to the competent judiciary body in Germany, notwithstanding the place of execution of the agreement and/or the intercession of a third party	
H&M (2015)	Joint industrial relations development committee, meeting at least once a year	Workplace negotiation, National monitoring committee, Joint industrial relations development committee, Mediation	Mediation		
Inditex (2019)	Global union committee, meeting once a year	Factory level, Trade union expert and the relevant global union committee member or the general coordinator who will inform the representative of Inditex and IndustriALL that will take actions for resolution	Consultation, where that is not possible the parties can seek the expert advice of the ILO or an agreed third party for mediation, whose recommendations the parties agree to abide		
Lafarge (2013)	Reference group, meeting at least once a year or when necessary	Local management, National union and local company, Reference group and regional coordinators			Termination of the contractual relationship *"Any serious breach of the legislation concerning the health and safety of direct or indirect employees, the protection of the environment*

					or basic human rights, which is not corrected after a warning, will result in the termination of relations with the concerned enterprise, subject to contractual obligations" Termination of the agreement
Loomis (2013)	Implementa-tion group, meeting once a year	Local grievance procedures, Country or regional manager, Loomis group vice president for human resources, Implementation group, Mediation	Mediation	*"This Agreement is governed by the substantive laws of Sweden"* The agreement *"does not confer any contractual rights upon third parties (including UNI affiliates) or upon any employee of the Loomis group, nor shall this Agreement undermine labour relations practices or agreements with other unions (non-UNI affiliates) operating within Loomis"*	

Lukoil (2018)	Parties' meeting, once a year	*"Should any difficulty be observed in implementing this Agreement, the Parties hereto undertake to inform each other at the earliest opportunity in order to find a solution in the shortest possible time"*		*"The obligations set out in this Agreement represent the free will of Lukoil and are supplementary to the applicable law of the relevant countries in which Lukoil Group organisations operate"* *"The Parties agree that it is critical to raise awareness of all employees about the content and binding status of the Agreement"* *"This Agreement is executed in the English and Russian languages, the Russian and English versions being equally binding"*	
Mizuno (2020)	Joint industrial relations committee, at least an annual meeting	Local management, National union and local company, IndustriALL will advise the local complainant or national trade union and Mizuno will advise the local management, Arbitration	Arbitration		
PSA (2017)	National level – annual	Local management, Signatories in liaison		*"Failing a resolution, the*	

	monitoring by company management and trade unions Group level – global works council	with local management and trade unions, Court		*parties will have the possibility to bring the case to the competent tribunal in the location of PSA headquarters, notwithstand-ing the place of execution of the agreement or/and the intercession of a third party"*	
Renault (2013)	Parties' meeting, once a year, Every three years a global report	Local social dialogue, National/regional/ company level		*"This agreement is subject to French law"* *"In the event of any discrepancy between the various translated versions, the French version is binding"*	Termination of the contractual relationship *"If necessary, corrective action plans may be set up with the Renault Group's support. Once identified, any failure not corrected may lead to various measures, including the Renault Group terminating its relationship with the company concerned"*
Safran (2017)	Global monitoring committee	Local, National trade union and general directorate of the group, Global monitoring, Jurisdiction		*"This agreement is subject to French law"* *"In the absence of agreement between the parties,*	

				jurisdiction may be exercised"	
Securitas (2012)	Implementa-tion group, meeting at least twice a year	Complaints by UNI affiliates – Local management, Country manager, UNI implementation group Complaints by Securitas – Local union, National union, UNI property services representatives Mediation	Mediation	*"This Agreement shall be governed and construed in accordance with the laws of Sweden"*	Termination of the contractual relationship *"Securitas shall endeavour to work with business partners who conduct their business in a way that is compatible with the terms of this agreements, and it shall consider not doing business with any partner that fails to comply with these standards"*
Siemens Gamesa (2019)	Local level – regular social dialogue Global level – global monitoring committee, meeting once a year	Local resolution, Management and social partners at national level and the group headquarters, Global monitoring committee, Mediation, Competent court	Mediation *"Failing a resolution, the signatories will have the option to jointly appoint a mediator, e.g. the ILO and/or any other jointly agreed third party, to facilitate the settlement of the case"*	*"As a last resort, they will have the possibility to bring the case to the competent tribunal in the location of the Siemens Gamesa Group headquarters"* *"This agreement is subject to Spanish legislation"* *"In case of discrepancy between the*	

				various language versions, the Spanish version shall have legal value"	
Skanska (2001)	Application group	The application group reports a violation to the responsible member of the group management staff who takes the relevant corrective measures	Arbitration If an agreement cannot be reached in the application group the issue will be referred to an arbitration board, whose rulings are binding for both parties	*"The original Swedish version of this agreement will apply in all parts to all interpretations of the agreement"*	
Stora Enso (2018)	Parties' meeting, every two years	Workplace level (union and management), National level (relevant union and management), Global level (committee), Mediation	Mediation	*"No individual or third party claims may be based on this Global Framework Agreement"*	
Tchibo (2016)	GFA committee	Tchibo and IndustriALL contact persons which in consultation assess and investigate the potential breach and when needed directly address the Tchibo non-food suppliers and producers, if a breach is confirmed implementation of a remediation plan, Mediation	Mediation If the parties fail to find a mutual solution, they agree to seek the assistance of the ILO for mediation and dispute settlement whose final recom-mendations the parties must abide		Remediation plan
Umicore (2019)	Joint monitoring committee,	Local level (union(s) and management), National level (union(s) and management), Joint		*"This agreement is governed by Belgian law.*	Termination of the agreement

	meeting once a year	monitoring committee, Termination of the agreement		*Consequently, any disputes will fall within the exclusive competence of the Belgian courts"*	*"In case of a deadlock, Umicore or IndustriALL Global Union may as a last resort terminate the agreement"*

Table 69. Examples of dispute settlement in global collective agreements.

While the negotiation and signature of global collective agreements is carried out through a top-down approach, their enforcement is mostly conducted at the local level. As Hadwiger describes, these agreements' rule-making occurs globally but enforcement happens locally, based on a **subsidiarity principle**.[1119] The table above illustrates how often local management is the first to address a breach. If the matter is not settled, it can usually be brought before the union and management representatives at the national level. Still, if the issue remains unresolved, the body established by the agreement can make recommendations on how the matter should be solved, produce warnings, or apply correction/remediation plans. In some cases, a sanction is explicitly referred, normally in the form of termination of the contractual relations. In certain agreements a dispute resolution body is not established but a complaint procedure still exists. Finally, if a consensus cannot be reached, some agreements provide for the possibility of resorting to a neutral mediator or arbitrator and, sometimes, to court.

The existence of clear dispute settlement procedures, references to mediation and arbitration, and/or the possibility to resort to court evidently place global collective agreements within the concept of collective agreements. Still, for an agreement to fit within this conceptual framework, it does not necessarily need to comprise a hierarchical complaint procedure. It is **enough that a grievance mechanism** exists. These mechanisms can differ considerably among different agreements. For instance, ThyssenKrupp's agreement, establishes a complaint procedure based on the report of violation related information via email through internal company communication. This is

[1119] ibid, p. 59.

done in parallel to reporting to the responsible person on site. The agreement further allows for the enterprise to investigate complaints or information of essential significance that cannot be solved through local procedures, in dialogue with the body created by the agreement. The agreement has received an award for its *"ground-breaking conflict resolution model"*.[1120]

The following sections categorise the types of dispute settlement references comprised in global collective agreements. Some agreements merely comprise broad references to joint efforts for the resolution of disputes, whereas others provide for tangible procedures and sanctions.

i. Broad References to Dispute Settlement

Some agreements refer to dispute settlement in very broad terms. Accordingly, even if detailed monitoring is provided, no dispute settlement procedure is included. While a detailed hierarchically structured procedure, is not required for a global collective agreement to cover enforcement, general references to joint cooperation are **not enough** to fulfil the enforcement feature, as they are overly connected to symbolic management. Thus, these are not collective agreements. The following table provides examples of such references.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
AEON (Japan, 2014)	UNI Global Union	Joint efforts for early resolution	Section 3 – Implementation of the Agreement *"In the event that a problem arises in regard to the implementation of the Agreement, all the parties will jointly make efforts for early resolution."*
GEA (Germany, 2012)	IndustriALL	Information regarding problems, deviations will be discussed on an annual meeting	Section 2 (5) – Execution and Implementation of the Agreement *"The parties to the agreement will ensure the observation of the agreement to the extent they are able to do so. Information with respect to problems, deviations or necessary changes of the codes will be exchanged and discussed at least once a year between the parties to the agreement."*

[1120] IndustriALL, 'Global agreement with ThyssenKrupp Receives Award' (n27).

Italcementi (Italy, 2008)	Building and Wood Workers' International (BWI)	Joint examination of interpretation or implementation differences	Section 11 – Follow Up *"Signatories agree that any difference arising from the interpretation or implementation of this agreement will be examined jointly, for the purpose of clarification."*
Lukoil (Russia, 2018)	IndustriALL	Mutual information to find a solution	Section 8 – Dispute Resolution and Handling Potential Difficulties *"Should any difficulty be observed in implementing this Agreement, the Parties hereto undertake to inform each other at the earliest opportunity in order to find a solution in the shortest possible time."*
Nampak (South Africa, 2006)	UNI	Meeting at the request of either party	Section 5 b) – Implementation *"Nampak and a UNI delegation shall meet at the request of either party to resolve any dispute or disagreement regarding the implementation of this agreement."*
Salini Impregilo (Italy, 2014)	Building and Wood Workers' International (BWI)	Joint discussion	Implementation of the Agreement *"The Parties agree that any dispute arising from the interpretation or execution of the Agreement will be jointly discussed for the purpose of its settlement."*

Table 70. Examples of provisions referring to dispute settlement in broad terms.[1121]

ii. Sanctions but No Dispute Settlement

Some agreements do **not provide for a dispute settlement procedure** but implicitly refer to a **sanction** in the case of a violation. These agreements also rely on enforcement capabilities but do not depend on a specifically set procedure where a complaint can ultimately be brought before a committee set up through the agreement or submitted to mediation and/or arbitration. However, differently from the agreements mentioned above, agreements with such references are enforceable and, depending on a holistic examination, can indeed be considered as collective agreements.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Bosch (Germany, 2004)	(Then) International Metalworkers'	No procedure but complaints will be investigated	Section 11 – Implementation *"Complaints regarding possible breaches of the above principles will be investigated; any action required will be discussed and implemented by*

[1121] Other examples include Ford, France Telecom, IKEA, Saab.

	Federation (IMF)		*the senior management and associate representatives responsible."*
Elanders (Sweden, 2009)	UNI Global Union	No procedure but no use of business partners who wilfully violate the agreement	Section 7 – Suppliers *"The Company will not knowingly use vendors or suppliers who wilfully violate the principles of this Global Agreement."*
Royal BAM (Netherlands, 2006)	Building and Woodworkers' International (BWI)	No procedure but refrain from using business partners that do not respect the agreement, and examination of complaints	Implementation and Follow-Up of the Agreement *"Royal BAM Group nv (…) will therefore refrain from using the services of those trading partners, subcontractors and suppliers which do not respect the criteria listed above."* *"If a serious breach of the agreement should be brought to the attention of either party Royal Bam Group nv will undertake an examination of the reported breach and shall report to the BWI thereof."*
Röchling (Germany, 2004)	(Then) International Metalworkers' Federation (IMF)	No procedure but possibility of complaints by employees	Section 4 (3) – Execution and Implementation of the Agreement *"Gebr. Röchling KG expressly supports and encourages its business partners to apply and take into account the agreed-upon principles in their respective company policy. It views this to constitute a positive basis for future business relationships."* Section 4 (4) – Execution and Implementation of the Agreement *"All the employees have the right to address topics and problems in connection with the agreed-upon principles."*

Table 71. Examples of provisions referring to sanctions but without dispute settlement in global collective agreements.

iii. Hierarchical Dispute Settlement

Several agreements contain a **hierarchical dispute settling procedure**. If an issue arises, a first attempt to resolve it is conducted at the local level, in the workplace. If the matter remains unresolved, it can be referred to the national level, meaning the issue is brought by the national trade union affiliate to corporate management. The third step in the process allows for the matter to be referred to the monitoring body created by the agreement.[1122]

[1122] Examples include ABN AMRO, Aker, Besix, Dragados, EDF, FCC Construcción, Ferrovial, H&M, Lafarge, Pfleiderer, Sacyr, Safran, Securitas, Siemens Gamesa, Stora Enso, Umicore.

Some agreements provide for an added step. These allow for the issue to be brought before a higher management level before referring it to the body established by the agreement, to the parties' scheduled meeting, or just in the case of serious violations.[1123] In some cases, if the matter remains unresolved, the parties can refer to a mediator/arbitrator, commonly agreed and, as a final alternative, to court.

Company + Company Origin + Year	Global Union Federation	Provision
ABN AMRO (Netherlands, 2015)	UNI Global Union	Section 4 of Implementation National or regional management, HR director, Monitoring group, Mediation, Higher jurisdiction
Acciona (Spain, 2014)	Building and Woodworkers' Federation (BWI)	Conflict Resolution Local site management, BWI Coordinator with BWI affiliates and the responsible manager, Reference group
Aker (Norway, 2012)	IndustriALL	Section 4 of Infringements of the Agreement Local site management, Company regional president, Aker's chief stop steward and Aker's chairman and CEO, Monitoring group
Besix (Belgium, 2017)	Building and Woodworkers' Federation (BWI)	Issues Resolution Local management, National level, Besix Group chief human resources director and the Besix Group CSR officer, Reference group
Dragados (Spain, 2014)	Building and Woodworkers' Federation (BWI)	Conflict Resolution Local management of the workplace, BWI coordinator with BWI national affiliates and the responsible manager, Reference group
EDF (France, 2018)	IndustriALL	Dispute Resolution Local resolution, National level, Global monitoring committee, Mediation, Tribunal
FCC Construcción (Spain, 2012)	Building and Woodworkers' Federation (BWI)	Conflict Resolution Local site management, National level, BWI coordinator with BWI national affiliates and the responsible manager, Reference group
Ferrovial (Spain, 2012)	Building and Woodworkers' Federation (BWI)	Conflict Resolution Local management, BWI coordinator with BWI national affiliates and the responsible manager, Consultation group

[1123] Examples include Acciona, Fonterra, G4S, Inditex, ISS, Mann + Hummel, Norske Skog, OHL, PSA, Renault, Rheinmetall, SCA, Schwan Stabilo, Sodexo, Solvay, Tchibo, ThyssenKrupp.

G4S (Belgium, 2008)	UNI Global Union	Section 7 – Dispute Resolution Local management/union, National level, Company director of employee relations/UNI representatives, Review meeting, Mediation
H&M (Sweden, 2015)	IndustriALL	Structure and Responsibilities Factory level, National monitoring committees, Joint industrial relations development committee
Inditex (Spain, 2019)	IndustriALL	Resolution of Potential Breaches of the Agreement Factory level/Trade union expert and global union committee or general coordinator, Mediation
Lafarge (France, 2013)	Building and Woodworkers' International (BWI) and IndustriALL	Settlement of Disputes Local management, National level, Reference group, Termination of the agreement
Pfleiderer (Germany, 2010)	Building and Woodworkers' International (BWI)	Section 16 – Conflict Resolution Local employee representatives and management, Monitoring committee, Cancellation of the agreement
PSA (France, 2017)	IndustriALL	Chapter 2 – Interpretation and Settlement of Disputes Local management, Signatories and local management and trade unions in liaison, Tribunal
Renault (France, 2013)	IndustriALL	Chapter 3 – Relationships with Suppliers and Subcontractors Local social dialogue, Renault Group level
Sacyr (Spain, 2014)[1124]	Building and Woodworkers' International (BWI)	Conflict Resolution Workplace, BWI coordinator with BWI affiliates and the responsible manager, Consultation group
Safran (France, 2017)	IndustriALL	Section 17 – Settlement of Disputes Local resolution, National level, Global monitoring committee, Legal jurisdiction
SCA (Sweden, 2013)	IndustriALL	Grievance/Complaint/Procedure Local trade union and local site management, National trade union and human resource department or regional level, IndustriALL and SCA corporate management
Securitas (Sweden, 2012)	UNI Global Union	Section 7 – Dispute Resolution Local management/Local union, National level, Implementation group, Securitas/UNI, Mediation
Siemens Gamesa (Spain-Germany, 2019)	IndustriALL	Settlement Disputes Local resolution, Management and social partners at national level, Global monitoring committee, Mediation, Tribunal
Solvay (Belgium, 2017)	IndustriALL	V – Application of the Agreement; Methodology Local resolution, National management and trade unions, Solvay headquarters and possibility of a third-party intervention
Tchibo (Germany, 2016)	IndustriALL	Local level, Tchibo and IndustriALL, Direct address to suppliers and producers, Mediation

[1124] Translation by the author.

Umicore (Belgium, 2019)	IndustriALL	Section 9 – Dispute Resolution Local resolution, National level, Joint monitoring committee, Termination of the agreement

Table 72. Examples of provisions referring to a hierarchical dispute settlement procedure in global collective agreements.

iv. Mediation and Arbitration

Several global collective agreements explicitly refer to the possibility of resorting to an independent **mediator or arbitrator**, sometimes referring to the ILO, as a possible (and often final) way to resolve a dispute.

Company + Company Origin + Year	Global Union Federation	Mediation	Arbitration	Provision
Asos (United Kingdom, 2017-2019)	IndustriALL	X		Section 6 (2) – Registration and Term of the Agreement *"Questions concerning the interpretation of this Agreement shall be resolved through consultation between the signatories. Every effort will be made to find common agreement but where this is not possible the Parties to this Agreement shall in appropriate instances seek the expert advice of the ILO. The Parties shall mutually agree to abide by the final recommendations of the ILO."*
Auchan (France, 2017)	UNI Global Union		X	VII – Dispute Resolution *"All disputes stemming from or related to the validity, interpretation, or execution of this agreement will be amicably settled between the Parties. If the Parties cannot come to agreement then one or other will submit the dispute to an agreed independent third party for a final decision. Both Parties agree to share the arbitration costs equally."*[1125]
Aker (Norway, 2012)	IndustriALL		X	Section 4 (d) of Infringements of the Agreement *"In case of deadlock, arbitration will be handled by the ILO or a neutral party agreed upon by (company) management and the trade union side."*

[1125] Unofficial translation provided in the database on transnational company agreements (n41).

EDF (France, 2018)	IndustriALL	X		Dispute Resolution *"Failing a resolution, the signatories will have the option to jointly appoint a mediator to facilitate the settlement of the case."*
G4S (Belgium, 2008)	UNI Global Union		X	Section 7 – Dispute Resolution *"In the event that the parties are unable to resolve a dispute concerning the application of this agreement after discussion at the Review Meeting, by mutual agreement the matter may be referred to a neutral arbiter to find a mediated solution."*
H&M (Sweden, 2015)	IndustriALL	X		Section 14 of Resolution of Industrial Relations Issues *"In case of a failure to agree at the level of the JIRDC, the Parties may by mutual agreement appoint an independent mediator, acceptable to both Parties, to help the Parties agree on the best way to facilitate a resolution of an Industrial Relations issue."*
Inditex (Spain, 2019)	IndustriALL	X		General *"Every effort will be made to find common agreement but where this is not possible, the Parties will, in appropriate circumstances, seek the expert advice of the ILO or an agreed third party for mediation and dispute settlement. The Parties shall agree to abide by the final recommendations of the ILO or other third party."*
ISS (Denmark, 2008)	UNI Global Union	X	X	Section 2 (4) – Implementation and Procedures *"In the event that the parties are unable to resolve a dispute arising out of this global agreement after discussion at the bi-annual meeting as set out in Section 6.3 above, the matter shall be referred to a mutually agreed independent mediator/arbitrator, who shall seek initially a mediated resolution. In the event of failure to reach a mediated resolution the independent party shall propose an arbitrated resolution which shall be binding on both parties. It shall be left for the independent mediator/arbitrator to decide which party shall pay the costs associated with such mediation or arbitration."*
Loomis (Sweden, 2013)	UNI Global Union	X		Section 6 – Implementation *"In the event that the parties are unable to resolve a dispute concerning the application of this Agreement after discussion at the Implementation Group meeting, the matter may be referred, by mutual agreement, to a neutral mediator. The mediator shall be jointly selected by the parties. A request for mediation will not be unreasonably denied by either party."*
Mizuno (2020)	IndustriALL		X	Article 7 – Arbitration

				"All disputes, controversies, or differences which may arise between the parties hereto, out of, in relation to or in connection with this Agreement, shall be finally settled by arbitration." *"The award rendered by an arbitrator or arbitrators in such arbitration shall be final and binding upon all the parties."*
Securitas (Sweden, 2012)	UNI Global Union	X		Section 7 c) – Dispute Resolution *"In the event that the parties are unable to resolve a dispute concerning the application of this Agreement after discussion at the Implementation Group meeting, the matter may be referred by mutual agreement, to a neutral mediator. The mediator shall be jointly selected by the parties. A request for mediation will not be unreasonably denied by either party."*
Skanska (Sweden, 2001)	(Then) International Federation of Building and Wood Workers (IFBWW)		X	*"If agreement regarding interpretations and applications of this agreement cannot be reached in the application group, the issue will be referred to an arbitration board comprising two members and an independent chairman. Skanska AB and the IFBWW will each appoint one member, and the chairman will be appointed through mutual agreement. Arbitration board rulings are binding for both parties."*
Sodexo (France, 2011)	International Union of food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	X		Section 6 (4) – Implementation *"In the event that the disagreement still persists after the efforts in Sections 6.2 and 6.3 are exhausted, the matter may be referred to a mutually agreed independent mediator to facilitate negotiated resolution."*
Stora Enso (Finland, 2018)	IndustriALL	X		V – Dispute Resolution *"In the event that the parties are unable to resolve a dispute concerning the application of this Agreement after having discussed it at meeting of the Committee, it may be submitted by mutual consent to a mediator for guidance. Parties shall choose the mediator jointly. Neither party may refuse a request for mediation without just cause."*
Tchibo (Germany, 2016)	IndustriALL	X		Section 20 of Implementation *"In case the Parties are unable to reach a mutual solution that is appropriate to remedy the breach and satisfactorily to the Parties, the Parties shall agree to seek the assistance of the ILO for mediation and dispute settlement. The Parties shall*

				agree to abide the final recommendations of the ILO."

Table 73. Examples of provisions referring to mediation or arbitration in global collective agreements.

Access to mediation or arbitration, allowing for the involvement of a neutral party, can be a key factor for dispute settlement in cases where the parties reach an **impasse**. As emphasised by Zimmer in regard to the Bangladesh Accord, *"a neutral and competent chair is a central factor for finding a solution in case the social partners get stuck with a problem"*.[1126] Hence, interpretative standstills can be resolved by resorting to expert opinions, through mediation or arbitration, when the parties' set procedure or periodic dialogue fails to attain a common ground solution.[1127] Although focused on transnational company agreements within the boundaries of the European Union, a proposal for mediation and arbitration procedures has been developed, highlighting *"a broad consensus among the signatory parties of TCAs on the fact that it is up to them to solve conflicts that might arise from their implementation"* and suggesting mediation as a dispute resolution alternative for when these internal mechanisms fail.[1128] Despite the added value mediation can bring, by addressing any matter affecting the implementation of an agreement, it does not, as some have argued, necessarily tackle a problem before it escalates,[1129] since mediation is referred as a final or almost final way to address a violation of the agreement. Furthermore, as chapter 6 unveils, these resolution methods have yet to be used.

[1126] Zimmer, 'International Framework Agreements – New Developments through Better Implementation on the Basis of an Analysis of the Bangladesh Accord and the Indonesian Freedom of Association Protocol' (n232), p. 202.

[1127] Renée-Claude Drouin, 'The Role of the ILO in Promoting the Development of International Framework Agreements' in Konstantinos Papadakis (ed.), *Cross-Border Social Dialogue and Agreements: An Emerging Global Industrial Relations Framework?* (International Labour Organisation 2008), pp. 237-259; César F. Rosado Marzán, 'Organising with International Framework Agreements: An Exploratory Study' (n21).

[1128] Silvana Sciarra, Maximilian Fuchs, and André Sobczak, *Towards a Legal Framework for Transnational Company Agreements* (Confederation Syndicat European Trade Union 2012), p. 30. Available At: http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20%20from%20Committee%20and%20Groups%20of%20Experts/20140424-015608_Report-TCA-EN_lowpdf.pdf [Accessed 7 July 2020].

[1129] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 190.

v. Resort to Court

Some agreements permit the **resort to court**, normally within the jurisdiction of the multinational enterprise's headquarters.

Company + Company Origin + Year	Global Union Federation	Provision
EDF (France, 2018)	IndustriALL	Dispute Resolution *"As a last resort, they will have the possibility to bring the case to the competent tribunal in the location of the EDF Group headquarters."*
Esprit (Germany, 2018)	IndustriALL	Section 7 (3) - Final Provisions *"In case of any disagreement related to the implementation or interpretation of this agreement, the signatories will have the possibility to bring the case to the competent judiciary body in Germany, notwithstanding the place of execution of the agreement and/or the intercession of a third party."*
PSA (France, 2017)	IndustriALL	Chapter 2 – Interpretation and Settlement of Disputes *"Failing a resolution, the parties will have the possibility to bring the case to the competent tribunal in the location of PSA headquarters, notwithstanding the place of execution of the agreement or/and the intercession of a third party."*
Safran (France, 2017)	IndustriALL	Section 17 – Settlement of Disputes *"In the absence of an agreement between the parties, legal jurisdiction may intervene."*
Siemens Gamesa (Spain-Germany, 2019)	IndustriALL	Section 9 ö Settlement of Disputes *"As a last resort, they will have the possibility to bring the case to the competent tribunal in the location of the Siemens Gamesa Group headquarters."*
Umicore (Belgium, 2019)	IndustriALL	Section 10 – Validity of the Agreement *"This agreement is governed by Belgian law. Consequently, any disputes will fall within the exclusive competence of the Belgian courts."*

Table 74. Examples of provisions allowing the resort to court in global collective agreements.

vi. ILO Intervention

Some agreements refer to a **possible intervention of the ILO**, normally as a mediator.

Company + Company Origin + Year	Global Union Federation	Provision
Aker (Norway, 2012)	IndustriALL	Section 4 (d) of Infringements of the Agreement *"In case of deadlock, arbitration will be handled by the ILO or a neutral party agreed upon by (company) management and the union side."*
ASOS (United Kingdom, 2017)	IndustriALL	Section 4 (8) – Implementation/Structure and Organisation *"In situations where it is not clear whether a particular practice constitutes a violation of the Agreement, relevant international labour standards of the ILO shall be used as reference points."* Section 6 (2) – Registration and Term of the Agreement *"Every effort will be made to find common agreement but where this is not possible the Parties to this Agreement shall in appropriate instances seek the expert advice of the ILO. The Parties shall mutually agree to abide by the final recommendations of the ILO."*
Eni (Italy, 2019)	IndustriALL	Section 8 (6) – Dispute Settlement *"In case of need for interpretation of this agreement, the Parties may agree to seek the expert advice of the ILO or any other agreed third party."*
Esprit (Germany, 2018)	IndustriALL	Section 6 (2) – Registration and Term of the Agreement *"Every effort will be made to find common agreement but where this is not possible the Parties to this Agreement shall in appropriate instances seek the expert advice of the ILO or other mutually agreed upon neutral party. The Parties shall mutually agree to abide by the final recommendations of the ILO or mutually agreed upon party."*
Fonterra (New Zealand, 2002)	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	Witnessed by Juan Somavia, Director General of the International Labour Organisation
H&M (Sweden, 2015)	IndustriALL	Section 26 of Registration and Term of this Agreement *"This Agreement shall be registered with the International Labour Organisation."*
Inditex (Spain, 2019)	IndustriALL	Interpretation *"Every effort will be made to find common agreement but where this is not possible, the Parties will, in appropriate circumstances, seek the expert advice of the ILO or an agreed third party for mediation and dispute settlement. The Parties shall agree to abide by the final recommendations of the ILO or other third party."*
Siemens Gamesa (Spain-Germany, 2019)	IndustriALL	Section 9 – Settlement of Disputes *"Failing a resolution, the signatories will have the option to jointly appoint a mediator, e.g. the ILO and/or any other jointly agreed third party, to facilitate the settlement of the case."*

Tchibo (Germany, 2016)	IndustriALL	Section 20 of Implementation *"In case the Parties are unable to reach a mutual solution that is appropriate to remedy the breach and satisfactorily to the Parties, the Parties shall agree to seek the assistance of the ILO for mediation and dispute settlement. The Parties shall agree to abide by the final recommendations of the ILO."*

Table 75. Examples of provisions referring to ILO involvement in global collective agreements.

vii. Third-Party Claims

Access to the dispute settlement procedures comprised in global collective agreements is limited to the global union federation and the multinational enterprise, with some agreements explicitly refusing the possibility of third-party claims. Local settlement can be accessed directly by employees, who can also be assisted by trade unions. Referrals of an issue to the next steps in a dispute settlement procedure are conducted by the parties or their representatives, as well as trade union affiliates of the global union federation.

Company + Company Origin + Year	Global Union Federation	Provision
ABN AMRO (Netherlands, 2015)	UNI Global Union	Section 5 of Implementation *"Parties recognise that the present agreement does not grant any contractual rights to third parties or to any employee of ABN AMRO, and that the agreement may not affect the practices of agreements negotiated with other trade unions that are active within ABN AMRO."*
G4S (Belgium, 2008)	UNI Global Union	Section 9 – Status *"G4S and UNI (...) accept that no part of the agreement is legally enforceable, either by the parties or by any third party, or in any way changes or amends any individual G4S employee's terms and conditions."*
Loomis (Sweden, 2013)	UNI Global Union	Section 6 – Implementation *"UNI and STWU further recognise this Agreement does not confer any contractual rights upon third parties (including UNI affiliates) or upon any employee of the Loomis Group, nor shall this Agreement undermine labour relations practices or agreements with other unions (non-UNI affiliates) operating within Loomis."*
Sodexo (France, 2011)	International Union of Food, Agricultural, Hotel, Restaurant, Catering,	Section 7 (2) of Term and Interpretation *"The procedures for resolution of differences set forth above shall be the exclusive remedy available to the parties, and nothing in this agreement shall provide the basis for any cause of action of any kind*

	Tobacco and Allied Workers' Association (IUF)	*in any court or administrative body by "IUF", "Sodexo", or any other entity or individual."*
Stora Enso (Finland, 2018)	IndustriALL	VI – Closing Provisions *"No individual or third party claims may be based on this Global Framework Agreement."*
ThyssenKrupp (Germany, 2015)	IndustriALL	Section 13 – Closing Provisions *"No individual or third party claims may be based on this Framework Agreement. This applies also to the undersigned parties of the Framework Agreement, i.e. the Framework Agreement has no legal effects between the undersigned parties thereof."*

Table 76. Examples of provisions that exclude the possibility of third-party claims in global collective agreements.

viii. Applicable Law

In some cases, the agreement explicitly states the **applicable law**.

Company + Company Origin + Year	Global Union Federation	Provision
Eni (Italy, 2019)	IndustriALL	Section 10 – Final Provisions *"This agreement is governed by Italian legislation."*
Loomis (Sweden, 2013)	UNI Global Union	Section 7 – Miscellaneous *"This Agreement is governed by the substantive laws of Sweden."*
PSA (France, 2017)	IndustriALL	Chapter 3 – Final Provisions *"This agreement is governed by French law."*
Renault (France, 2013)	IndustriALL	Chapter 7 – Final Provisions *"This agreement is subject to French law."*
Safran (France, 2017)	IndustriALL	Section 18 – Final Provisions *"This agreement is subject to French law."*
Securitas (Sweden, 2012)	UNI Global Union	Section 8 – Term *"This Agreement shall be governed and construed in accordance with the laws of Sweden."*
Siemens Gamesa (Spain-Germany, 2019)	IndustriALL	Section 10 – Final Provisions *"This agreement is subject to Spanish legislation."*
Umicore (Belgium, 2019)	IndustriALL	Section 10 – Validity of the Agreement *"This agreement is governed by Belgian law."*

Table 77. Examples of provisions referring to the applicable law to the global collective agreement.

C) What Type of Enforcement for Global Collective Agreements?

In order to be considered **binding**, global collective agreements must be enforceable. Enforceability is an expression of an agreement's binding character. This is an essential feature of the concept of collective agreement, as identified throughout different legal systems and ILO Recommendation No. 91. However, the binding character is not obligatorily linked to legal enforcement. In fact, enforcement can be agreed between the parties, outside of the judicial spectrum, since the most significant factor to consider refers to the most effective way of ensuring the agreement fulfils its functions. Hence, legal enforcement is not the underlining reasoning for dispute resolution in global collective agreements. In line with their social dialogue basis, cooperation, and anticipated continued relationship, most agreements have set up their own compliance structures. As identified by Hadwiger, although in connection to the broader category of global framework agreements, but also applicable to global collective agreements, there is a clear principle according to which disputes regarding the interpretation or implementation of an agreement are to be resolved by the signatories, following a more **inquisitorial model**, instead of an adversarial one. As the author asserts, *"Alternative dispute resolution and particularly mediation can be more appropriate for GFAs than court litigation because it preserves the relationship between the social partners and benefits the collaborative context of the agreements"*.[1130] In fact, if the resolution mechanisms set up in an agreement function adequately, legal enforcement is not necessary to prevent the use of global collective agreements as public relations tools, improve accountability, or fulfill their goals of uniform implementation of standards.

This section also allows for a distinction between **formal adjudication, through the court**, and **informal dispute resolution mechanisms**, which are specified in the agreement. Within this distinction, a further division can be set out, separating global collective agreements in different levels of enforcement. Marzo identified adjudication based on a jurisdiction clause,

[1130] ibid, p. 190.

arbitration, internalisation of conflicts, and an independent panel of experts. As the author recognised, an additional option, referent to the possibility of civil society participation or the involvement of an international organisation, which would transform these agreement's dialogue from bilateral to trilateral, has never been set up.[1131]

While not entirely aligned, but based on this construction, it is possible to structure dispute settlement procedures in **three groups**. Hence, a first group is composed of more sophisticated dispute settlement procedures. Some agreements refer to the possibility of settling disputes **judicially**, typically including a jurisdiction clause, which specifies which court can deal with disputes concerning the agreement. A second group of agreements allow for the possibility of resorting to **arbitration and/or mediation**. The parties choose an independent arbitrator or mediator, jointly agreed, and whose recommendations the parties must abide. In some cases, the parties can resort to the ILO for aid in regard to interpretation or as a mediator. It is not uncommon that agreements allowing for judicial enforcement also refer to the possibility of mediation or arbitration before resorting to court. Differently, other agreements do not include the possibility of resorting to court, terminating the enforcement procedure with the resort to a neutral arbitrator or mediator. A third type of dispute settlement refers to agreements that comprise a **set procedure**, without the possibility of resorting to arbitration or mediation.

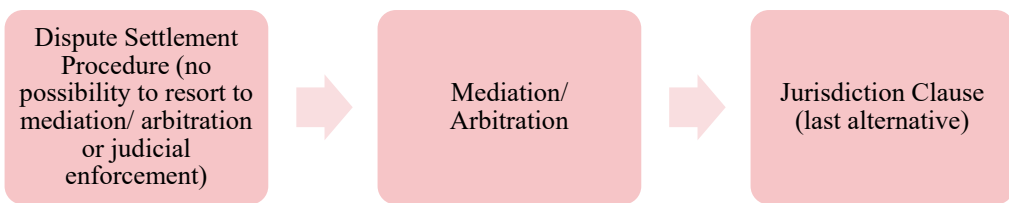

Figure 5. Levels of enforcement in global collective agreements.

[1131] Marzo, 'From Codes of Conduct to International Framework Agreements: Contractualising the Protection of Human Rights' (n895), pp. 479-480.

Hence, as a **benchmark**, for an agreement to be considered as binding, it must comprise a specified dispute settlement procedure. There are, however, some **exceptions**. Some agreements refer to a complaints system framed within a specified procedure, whereas others comprise an independent complaint system. However, general and vague references to dispute settlement procedures can raise questions in regard to their binding effect or voluntary character.[1132] It is **not enough** that an agreement merely refers to cooperation in dispute settlement or the common finding of solutions if a procedure is not defined. In fact, it is not unusual that agreements contain an open-ended reference to the parties' cooperation and efforts in finding a common ground resolution, with no other details in terms of procedure, measures, or any sanctions. Most global collective agreements normally comprise a hierarchical dispute settlement procedure. This usually starts by bringing a complaint for resolution at the local level, national level, and central management. In some cases, when a solution cannot be found, mediation and/or arbitration is permitted. As mentioned above, such mechanisms are more suited to the nature and goals of global collective agreements. Moreover, they allow for more flexibility, erase or reduce litigation costs and length, and enable confidentiality.[1133] As stated in several agreements, before publicising a complaint, the parties should attempt to solve it through the mechanisms comprised in the document.

Not all global collective agreements include a a reference to **mediation or arbitration**. Furthermore, it is worth noting that, even when existing, references to mediation or arbitration are rather vague and general. Such references are mostly found in agreements signed by European multinationals and particularly from countries with a collaborative industrial relations tradition. In particular, Swedish companies demonstrate a greater tendency to include such references. For global union federations, resort to mediation or arbitration should not be viewed as a type of control over national trade unions, since dispute resolution begins at the local level and

[1132] ibid, p. 482.
[1133] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 191.

this should be preferred. Furthermore, as previously addressed, the functioning of global collective agreements is based on a subsidiarity principle. When **comparing arbitration and mediation**, arbitration can be viewed as more similar to judicial enforcement. In fact, differently from happens with mediation, arbitration awards are enforceable in court and the parties have no control over the result.[1134] Some agreements explicitly refer to **mediation or arbitration by the ILO**, demonstrating a possibility for further involvement by the organisation in the resolution of disputes concerning a global collective agreement,[1135] which provides additional creditability and legitimacy to the agreement.[1136] Actual resort to the ILO and a further specification of mediation and arbitration procedures, would provide clarity and certainty in the resolution of disputes. As Hadwiger lists, the procedure could include, for instance, a reference to the start of the mediation process, a definition of the disputes suitable for mediation or arbitration, the costs, refraining from publicising a matter or engaging in harmful campaigns or industrial action, and final consequences in case a consensus has not been reached.[1137] A Confederación Sindical de Commissiones Obreras's (CCOO) report regarding the implementation of Inditex's agreement until 2017, acknowledged that while, the agreement merely refers to the possibility of seeking the expert advice of the ILO, in subsequent agreements a more developed formula is pointed out, establishing the possibility of arbitration by the ILO.[1138] The renewed version of Inditex's agreement still uses a vague reference to dispute settlement, mentioning the possibility for the parties to *"seek the expert advice of the ILO or an agreed third party for mediation and dispute settlement"*. In a positive development, Mizuno's agreement, renewed in October 2020, contains a more detailed reference to arbitration, instead of simply mentioning the possibility of

[1134] ibid, pp. 192-195.
[1135] Manuel Antonio Garcia-Muñoz Alhambra and Beryl ter Haar, 'Harnessing Public Institutions for Labour Enforcement: Embedding a Transnational Labour Inspectorate within the ILO' (2020) Vol. 17 International Organisations Law Review, pp. 233-260.
[1136] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 198.
[1137] ibid, pp. 194-197.
[1138] (Translation by the author) Isidor Boix and Víctor Garrido, 'Balance Sindical de los 10 Años del Acuerdo Marco Global con Inditex - Una Experiencia de Acción Sindical Por Una Globalización Sostenible – 4 Octubre de 2017 – 10o Aniversario De La Firma Del Acuerdo Marco' (2017) CCOO Industria, p. 41.

resorting to it.[1139] Dispute resolution procedures developed by the parties in global collective agreements constitute an alternative to judicial enforcement. The increasing references to an agreement's legal enforceability, either allowing for the possibility of bringing a complaint to court, or denying any legally binding value, **increase the relevance of dispute settlement procedures jointly agreed** by the signatories. Still, issues will only be settled if a specified structure is established for both the agreed (often hierarchical) dispute settlement procedure and mediation/arbitration procedures.[1140] Hence, a detailed description of mediation and arbitration procedures would facilitate their use and provide more certainty to the parties. As the interviews unveil, mediation and arbitration have, so far, not been used in the Cambodian context.[1141]

Almost all agreements that refer to dispute settlement, in a more or less detailed manner, include a provision addressing the parties' attempt to find a **common solution**. Hence, even agreements that set up a dispute settlement procedure normally refer to an overall endeavour of the parties to find a common interest solution. Often, when the agreement sets up a settlement procedure, a matter can ultimately be referred to a body created by the agreement, composed by representatives of the signatories. The involvement of both the enterprise's and workers' representatives entails an ownership that is absent from other regulative attempts. Furthermore, it enables the parties to reach a negotiated, compromised solution. The identified risk of a

[1139] According to Article 7 of Mizuno's agreement with IndustriALL, *"All disputes, controversies, or differences which may arise between the parties hereto, out of, in relation to or in connection with this Agreement, shall be finally settled by arbitration. Arbitration shall be conducted by the Swiss Chambers' Arbitration Institution in Switzerland in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the notice of Arbitration is submitted in accordance with these rules if IndustriALL Global Union is the respondent, and arbitration shall be conducted by the Japan Commercial Arbitration Association in Tokyo, Japan in accordance with the Commercial Arbitration Rules of the Association if UA Zensen, Mizuno Workers' Union or Mizuno Corporation is the respondent in such arbitration. The award rendered by an arbitrator or arbitrators in such arbitration shall be final and binding upon all the parties."*

[1140] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 198.

[1141] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019, January-February 2020); (Translation by the author) Boix and Garrido, 'Balance Sindical de los 10 Años del Acuerdo Marco Global con Inditex - Una Experiencia de Acción Sindical Por Una Globalización Sostenible – 4 Octubre de 2017 – 10o Aniversario De La Firma Del Acuerdo Marco' (n1138), p. 41.

'parallel justice'[1142] is not inherently problematic, since **non-judicial enforcement is more tailored** to the social dialogue nature and global scope of global collective agreements. Both judicial and non-judicial enforcement serve the goal of enforcing a global collective agreement, with informal adjudication being more suitable to their social dialogue basis, international character, and the parties' interests. Thus, for a global framework agreement to be considered as a global collective agreement, enforcement is required, but judicial enforcement, although welcomed in terms of a more straightforward fit into the concept of collective agreement, is not indispensable.

If global framework agreements are to be considered as collective agreements at the international level, they **must address deviations** from the provisions comprised. Global collective agreements have become more and more technical and complex, including a range of different labour standards and procedural provisions, including more detailed dispute resolution mechanisms. Besides **denoting the binding character** of the agreement, the inclusion of some type of enforcement mechanism illustrates several other dynamics. In fact, the importance of such mechanisms is further increased in regard to **standards beyond the fundamental labour principles and rights**, since the first can be more easily enforced through reputational sanctions.[1143] Moreover, a proper functioning of dispute settlement provisions serves to counteract the possible use of global collective agreements as a façade for public image improvement and prove a multinational enterprise's commitment to comply and implement the comprised standards throughout the agreement's scope. Hence, dispute resolution mechanisms are an **indicator of the parties' commitment** to implement an agreement, they increase its credibility, and, at least theoretically, improve compliance.

[1142] Marzo, 'From Codes of Conduct to International Framework Agreements: Contractualising the Protection of Human Rights' (n895), p. 481.
[1143] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 189.

In terms of **sanctions**, some agreements explicitly refer that serious and continuous deviations, which are not resolved within the cooperative framework established by the agreement, will (or can) ultimately lead to its termination. These deviations are addressed with the procedures comprised in the agreement. However, when deviations are not ceased, the agreement must be considered as void. Brewster's terminology, which **differentiates breaches from violations**, and its application to global framework agreements, as introduced by Hadwiger, is useful to highlight these differences. Breaches of the agreement illustrate its functioning, putting the enforcement mechanisms at work and therefore strengthening it. Differently, violations weaken the agreement, since the resolution procedures agreed between the parties demonstrate their inability to address deviations.[1144] When provided for in the agreement, mediation and arbitration, used as final alternatives to settle a dispute, can be used to address cases in which *"the relationship between the partners is irrevocably damaged"*.[1145] If, however, not even these can resolve the matter, the deviation demonstrates a weakness and an ineffectiveness that can finally lead to the termination of the agreement. Generally, and supplementing the pyramid presented by Hadwiger,[1146] the enforcement of global collective agreements can be structured as the figure illustrates.

[1144] ibid, pp. 173-182.
[1145] ibid, p. 190.
[1146] ibid, p. 59.

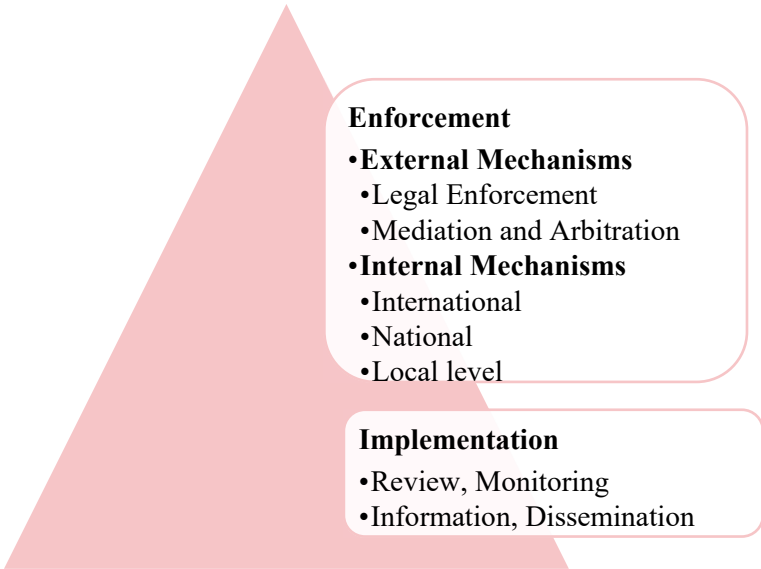

Figure 6. Enforcement of global collective agreements.

While virtually all global framework agreements contain references to dissemination and exchange of information, not all regulate the review and monitoring procedures on the agreement's implementation. Likewise, not all agreements deal with enforcement, referring to dispute settlement procedure, sanctions, or both. For a global framework agreement to be considered as a collective agreement, it must be enforceable and contain some type of dispute settlement reference. Implementation provisions relating to dissemination, review, and monitoring are not sufficient. When an agreement establishes a review body, this is sometimes used as the last resort in the dispute settling procedure. Regardless, when global collective agreements set a dispute settlement procedure, a particular hierarchy is normally adopted, despite some variances. Hence, internal mechanisms are first used, with an initial attempt to solve the issue at local/workplace level. If the matter remains unsolved, it is referred to the national level. Finally, it the issue remains unsettled, the matter is referred to the international level, which normally means the body created by the agreement. Some agreements provide for external mechanisms, allowing for the possibility to appoint a mediator or an arbitrator to ultimately solve the matter. Finally, a last resort alternative within external mechanisms refers to judicial enforcement, which is

permitted in some agreements. Sanctions might be provided, even when a specific body is not created. Some agreements contain very general references to dispute settlement, merely stating that the parties will work together to find a solution in both their interests. Still, even when the references to dispute settlement are general, it is possible that the agreements refer to a sanction, either explicitly or implicitly.

Agreements enabling legal enforcement or the resort to mediation/arbitration and containing clear dispute settlement procedures are the **closest to the concept of collective agreement**. The same can be said in regard to agreements that, although containing broad references to dispute settlement, include sanctions in their text. However, and although the consideration of global framework agreements within the concept of collective agreement is conditional on the type of enforcement mechanism comprised in the document, the realisation of their potential impact is very much dependent on its actual use, as well as the extension of the agreement's scope of application, meaning the references to the supply chain.

Global collective agreements aim to develop good industrial relations. While possessing enforcement mechanisms, expressed in the form of dispute settling procedures, they are intended to focus on the development of social dialogue and the involvement of local unions in the implementation, monitoring, and enforcement of the agreements. In this sense, they embody a regulatory approach to fundamental labour standards that attempts to *"induce compliance without the application of sanctions"*.[1147] In fact, global collective agreements introduce implementation mechanisms based on training and information exchange. These are often monitored through bodies created under the agreements. If these two implementation steps do not stimulate compliance, the jointly agreed enforcement mechanisms can be used. These envisage a possible application of sanctions, often in the form of contract termination.

[1147] Fenwick and Novitz, 'Conclusion: Regulating to Protect Workers' Human Rights' (n1097), p. 606.

As defined in Recommendation No. 91, collective agreements are binding. For global collective agreements, bindingness can be deduced from an array of elements. These can include concrete obligations, for instance to create specific bodies, to carry out certain implementation and monitoring activities, as well as the parties' perception and actual usage of the document. Hence, while enforcement is especially relevant in the bindingness assessment, further indications can also be considered. Chapter 6 looks into the implementation and perception of relevant stakeholders in regard to the binding character of two agreements. While sometimes vague and limited to the empirical study carried out, the accounts verify an increasing recognition of bindingness, key to the classification of these instruments as collective agreements. Enforcement provisions provide a key insight into an agreement's binding character. Since global collective agreements often lack an explicit recognition of legal enforceability, the enforcement mechanisms jointly agreed by the parties are especially relevant. While not entirely unproblematic, some features of the concept of collective agreement are less controversial for the analysis of whether global collective agreements fit into the notion. Differently, bindingness and its associated enforcement constitute more challenging assessments. Besides the actual usage of the agreement, also examined in chapter 6 in relation to two agreements, the agreed enforcement mechanisms comprised in global collective agreements can be categorised and examined based on whether they can truly make an agreement enforceable and consequently binding. That is what the present section attempts to construct. In global collective agreements, enforcement is expressed in provisions addressing violations and complaints through dispute resolution procedures and sometimes litigation. Concrete dispute resolution mechanisms entail firmer parameters on how to tackle violations. Several agreements contain hierarchical procedures, beginning with an attempt to solve an issue at the local level which, if unresolved, can be tackled at the national level and subsequently at the global level. Some agreements further allow for the possibility to resort to mediation/arbitration and/or a court. Best examples of enforcement procedures comprised in an agreement can be found, for instance, in EDF's agreement, H&M's, Inditex's, PSA's, and Siemens Gamesa's agreements. All of the before-mentioned agreements

establish a hierarchical procedure to deal with violations, with some allowing the resort to mediation (e.g., H&M's and Inditex's agreements) and others a further resort to court (e.g., EDF's, PSA's, and Siemens Gamesa's agreements). Differently, vague references to joint efforts aimed at the resolution of disputes do not entail any obligations or rights for the parties and those covered by the agreement. For instance, AEON's agreement refers to joint efforts for early resolution of a problem, GEA's agreement to information regarding problems and discussions on an annual meeting, and Salini Impregilo's to a joint discussion aiming at the settlement of a dispute. These references do not entail an obligation to actually settle a dispute, focusing instead on potential efforts aimed at such. While global collective agreements do not address some important issues, such as purchasing practices, some explicitly refer to compliance as a criterion for establishing or maintaining business relations. Agreements like Mann+Hummel's, Renault's, and Rheinmetall's phrase that requirement in terms of a consideration basis or selection criterion for enduring business partnerships. Some agreements explicitly refer to the termination of business relations as a sanction for continuous, unresolved, violations. Such references award the agreement with tangible sanctions that a business partner can reasonably expect from violations with the standards comprised in an agreement. Addressing matters related to predatory purchasing practices and noting these agreements' social dialogue basis, the termination is often phrased as a possibility, instead of a direct consequence of violations. Hence, EDF's agreement refers to repeated breaches that 'may result' in the termination of business relations. Similarly, Loomis' agreement states that the company 'shall consider' not doing business with any partner that fails to comply with the standards comprised in the agreement. Finally, some agreements explicitly refer to the termination of the agreement itself if a complaint cannot be solved through any of the alternatives provided for.

5.1.6. Scope

Both the material and subjective scope of global framework agreements are addressed in chapter 4, in relation to the content and scope of application.

These delimitations are also applicable to global collective agreements. The minimum content of global collective agreements is expressed in **reference to the core labour rights**. Hence, a benchmark relates to the four core labour principles and rights, identified by the ILO 1998 Declaration on Fundamental Principles and Rights at Work. Nevertheless, the vast majority of current agreements go beyond this minimum content, listing a number of other human rights instruments and ILO conventions in particular. Still, ILO conventions are ratified by states and not multinational enterprises. Any ILO member state is obliged to promote, respect, and realise the four core labour rights, regardless of ratification of the eight fundamental conventions.[1148] Considering that any ILO member state has these responsibilities, one could question the value of referring to such conventions. Also, for other ILO conventions, what is the significance of these indications? Although multinational enterprises do not ratify ILO conventions, such remarks are meaningful in terms of implementation. This is particularly relevant for countries that have ratified conventions but have a record of poor implementation. Furthermore, if a country has not ratified a specific convention, these references are valuable since the multinational enterprise commits to apply the standards comprised in the agreement in all countries where it operates and regardless of ratification by those countries. These would be enforced according to the mechanisms agreed by the parties. For conventions ratified by a particular country, this creates an additional remedy. For non-ratified conventions, these mechanisms enable the enforcement of standards that would otherwise not be enforceable in that domestic context. Global collective agreements must have a global scope. However, as referred in chapter 4, in the section regarding the reference(s) to the supply chain, these can vary considerable among different agreements. These might be more or less comprehensive, including the entirety of the supply chain, or merely apply within the company and its subsidiaries. Regardless, in regard to its geographical scope, a global collective agreement

[1148] In terms of the eight fundamental conventions, according to ILO Declaration on Fundamental Principles and Rights at Work, *"all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are subject of those Conventions"*.

can potentially operate anywhere in the world. An agreement that can potentially apply to any country in the world but that in reality merely applies to a cluster of supplier countries is still considered a global collective agreement. If the multinational enterprise contracts a supplier or buys a subsidiary in a new country, that supplier or subsidiary will be covered by the agreement.[1149]

In regard to a global collective agreement's **temporal scope**, most agreements include a provision regarding their duration, entry into effect, renewal, and termination.[1150] The majority of global collective agreements state they come into effect on the date of signing. Moreover, when referring to duration, most agreements also mention termination by providing a notice period, which normally has to be put into writing.

Company + Company Origin + Year	Global Union Federation	Provision
Acciona (Spain, 2014)	Building and Woodworkers' Federation (BWI)	Duration *"This agreement is effective from today's date, and may be terminated by any party with three month's advance notice."*
Aker (Norway, 2012)	IndustriALL	Section 8 – Duration and Recognition *"This agreement is applicable for an indeterminate duration if not cancelled or asked renegotiated by one of the parties. Cancellation or renegotiation must take place with a notice of at least 6 months, and shall be followed by mandatory negotiations initiated by the company."*
EDF (France, 2018)	IndustriALL	Entry into Force and Term of the Agreement *"The provisions of this agreement will come into force on the day following its filing, which will take place in line with the law. It has been entered into for a term of 4 years from its entry into force."*

[1149] For instance, Inditex's agreement has a global scope. According to its text, *"Inditex undertakes to apply and insist on the enforcement of the above-mentioned international labour standards to all workers throughout its entire supply chain, regardless of whether they are directly employed by Inditex or by its manufacturers and suppliers"*. The company refers to twelve clusters, which include Spain, Portugal, Morocco, Turkey, India, Pakistan, Bangladesh, Vietnam, Cambodia, China, Brazil and Argentina, stating that these correspond to 96% of the company's production chain. However, if the company contracts outside of the twelve clusters, given the global scope of the agreement, the new supplier will be covered by the standards comprised in the document. See, Inditex, 'Our Suppliers'. Available At: https://www.inditex.com/our-commitment-to-people/our-suppliers [Accessed 18 June 2020].

[1150] Differently, some agreements do not refer to duration, termination, or amendments. For instance, Bosch's, Daimler's, Man's, Renault's, and Schwan Stabilo's agreements do not refer to neither duration nor termination at all. Section 2 (5) of Man+Hummel's agreement merely refers that the agreement enters into force on the day of it signing and does not set a particular duration or notice period. Section 9 of Nampak's agreement refers to attestation but it does not specifically determine its duration.

		Revision of the Agreement *"At the request of the Management, or one or more representative union organisations, the holding of negotiations to revise this agreement may be agreed, under the conditions and in the forms provided by the French Labour Code."* Renewal of the Agreement *"During the year preceding the date of the agreement's term, and no later than 6 months before this date, the Management and the representative union organisations agree to meet to examine whether or not it is advisable to renew this agreement's stipulations. If a renewal agreement is not recached, this agreement will cease to be effective at the end of its 4-year term."*
Elanders (Sweden, 2009)	UNI Global Union	Section 9 (1) (2) – Period of Validity *"This agreement is valid until further notice. Each part has the right to terminate this agreement with six month notice."*
Eni (Italy, 2019)	IndustriALL	Section 10 (2) – Duration of the Agreement *"This agreement shall be valid for four years as of the date of its signing. Six months before its expiry, the Parties shall meet to review the conditions for renewal."*
Esprit (Germany, 2018)	IndustriALL	Section 6 (1) of Registration and Term of the Agreement *"This Agreement comes into force from the date of this Agreement and will be reviewed within 2 years of the date of this Agreement."* *"Should either Party feel the need to terminate the agreement prior to the 2-year review, it must do so in writing with three months' notice."*
Essity (Sweden, 2018)	IndustriALL	Review *"Essity, Unionen IndustriALL Global Union and Essity Group EXE EWC Team will meet every second year to review practice in the area of the agreed principles and follow up this Agreement."* Duration, Renegotiation and Termination *"Hereafter the agreement is applicable for an indeterminate duration if not cancelled or asked renegotiated by one of the parties. Cancellation or renegotiation must take place with a notice of least 6 months, and shall be followed by mandatory negotiations initiated by the company."*
H&M (Sweden, 2015)	IndustriALL	Section 27 of Registration and Term of this Agreement *"This Agreement shall become effective from the date of signature and will remain in force for one year. After that the Agreement shall be deemed automatically extended for further periods of one year unless either Party gives notice to the other Party, at least three months in advance of the date of expiry or extension, that it does not wish renewal."*[1151]
Siemens Gamesa (Spain-Germany, 2019)	IndustriALL	Section 10 – Final Provisions *"During the year preceding the date of the agreement's term, and no later than 6 months before this date, Management, IndustriALL Global Union and the representative union organisations agree to meet to examine whether or not it is advisable to renew this agreement."*
Umicore (Belgium, 2019)	IndustriALL	Section 10 – Validity of the Agreement *"This agreement enters into force as from 17 October 2019 for a limited duration of 4 years. It can be terminated at the end of the 4-year term by any of the signatory parties by registered letter, subject to an advance*

[1151] H&M, 'H&M makes its Global Framework Agreement with IndustriALL and IF Metall permanent' (n97).

		notice of at least six months. Unless terminated as indicated above, the agreement is automatically extended for another 4 years."

Table 78. Examples of provisions referring to the temporal scope in global collective agreements.

While some documents explicitly state that the agreement has an indefinite duration, most do not specifically address the matter. Hence, when agreements do not specifically address the document's duration, this can be considerate as **indefinite**.

Company + Company Origin + Year	Global Union Federation	Provision
ABN AMRO (Netherlands, 2015)	UNI Global Union	Section 6 of Implementation *"This agreement comes into effect on signing and will be evaluated in the monitoring group on a regular base. It may be terminated by either of the parties providing it is done in writing and notice of six months has been given."*
Besix (Belgium, 2017)	Building and Woodworkers' Federation (BWI)	Duration *"The Agreement upon signing by all parties will be indefinite unless either party notifies the other that it wishes to terminate or modify the Agreement upon sixty (60) days advanced written notice."*
Faber Castell (Germany, 2008)	(Then) International Federation of Building and Wood Workers (IFBWW)	Section 4 (4) – Term and Validity *"This agreement shall remain valid until notice is given by one of the contracting parties by informing the other parties in writing with a time limit of three calendar months at the end of the month."*
G4S (Belgium, 2008)	UNI Global Union	Section 9 – Status *"This agreement shall become effective as from the date on which all the parties sign it, and shall remain effective for as long as UNI, the GMB and G4S deem it appropriate, subject to three months' notice of termination or renegotiation."*
ISS (Denmark, 2008)	UNI Global Union	Section 7 (1) of Term *"This global agreement is for an indefinite period, but it may be terminated or renegotiated by either party upon giving the other party at least three months' notice of termination."*
Lafarge (France, 2013)	Building and Woodworkers' International (BWI) and IndustriALL	Duration *"This agreement will remain in force unless otherwise indicated by any party giving three calendar months' notice, in writing, to the other."*
Loomis (Sweden, 2013)	UNI Global Union	Section 5 – Term *"This Agreement shall become effective from the date of signing and is valid for a period of two (2) years, after which will continue in effect until terminated by either Party by six (6) months written notice."*
Norske Skog (Norway, 2013)	IndustriALL	Section 8 – Duration and Renegotiation *"Hereafter the Agreement is applicable for an indeterminate duration if not cancelled or asked renegotiated by one of the*

		parties. Cancellation or renegotiation must take place with a notice of at least 6 months, and shall be followed by mandatory negotiations initiated by the company."
PSA (France, 2017)	IndustriALL	Chapter 3 – Final Provisions *"Its signing has rendered it directly applicable for an indeterminate period."*
Safran (France, 2017)	IndustriALL	Section 18 – Final Provisions *"This Agreement shall take effect on the day of its signature. It shall remain in force for a period of 5 years."* *"Any request for termination of the Agreement, by either of the signing parties, is subject to a minimum notice period of six (6) months. In this case, the signing parties agree to meet during the notice period in order to attempt to replace this agreement with a modified version."*
Securitas (Sweden, 2012)	UNI Global Union	Section 8 – Term *"This Agreement shall become effective from the date of signing for two years. The agreement shall apply thereafter, unless a party gives written notice of termination to the other party three (3) months prior to the requested expiration date of the Agreement."*
Sodexo (France, 2011)	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	Section 7 (1) of Term and Interpretation *"This global agreement shall become effective as from the date on which both parties sign it and shall remain effective for as long as Sodexo and IUF deem it appropriate, but it may be terminated or renegotiated by either party upon giving the other party at least three months' written notice."*
Stora Enso (Finland, 2018)	IndustriALL	VI – Closing Provisions *"This Global Framework Agreement is applicable for an indefinite duration until it is terminated by one of the Parties by notifying the other party thereof in writing subject to a six calendar month period of notice prior to the end of a month."*
Tchibo (Germany, 2016)	IndustriALL	Section 35 – Term and Termination *"This Agreement shall come into force as the date of signing and shall remain in effect for an indefinite period of time if not terminated by either Party by giving six months written notice."*
ThyssenKrupp (Germany, 2015)	IndustriALL	Section 13 – Closing Provisions *"This Framework Agreement shall retain its validity until it is terminated by one of the Parties to the Framework Agreement by notifying the other party thereof in writing subject to a three calendar month period of notice prior to the end of a month."*

Table 79. Examples of global collective agreements with an indefinite duration.

Contrarily to other core features that define the concept of collective agreement, the material, subjective, and temporal scope of global collective agreements does not raise fundamental issues. Chapter 4 provides a detailed depiction of the material and subjective scope of global framework

agreements, referring to the ILO-based content and the references to the supply chain, respectively. The insights provided are also applicable to global collective agreements. In regard to the material scope, global collective agreements function as basis agreements, laying out minimum standards that can be improved according to national circumstances. Global collective agreements work as primary regulative systems that can be supplemented locally, similarly to what is often entitled as centralised decentralisation, which give greater emphasis to negotiations at the local level.[1152] Besides the fundamental principles and rights at work, ILO conventions and recommendations concerning wages, working hours, and health and safety, as well as other international instruments in the field of corporate social responsibility further initiatives are often referred in global collective agreements. The overview provided in chapter 4 regarding the material scope of global framework agreements is further applicable to global collective agreements. The latest, besides being more recent, symbolise a more advanced instrument and therefore comprise a content that always goes beyond the minimum ILO-based content comprised in the first global framework agreements. In terms of the subjective scope, global collective agreements cover both the signatories and workers within the supply chain, according to what is delineated in the agreement. As unveiled in chapter 4, coverage can be limited to those working for the company and its subsidiaries or extended to subcontractors and suppliers. Variations are mostly dependent on the sector, with agreements in the garment industry often comprising broad scopes of application. Finally, in regard to the temporal scope, there are no great disparities. While some agreements explicitly define a duration, most do not do so, being in force until one of the parties, normally by respecting a notice period, decides the terminate the agreement.

5.1.7. Form

All global framework agreements and, consequently, all global collective agreements are put in written form. All agreements respect the requirement

[1152] (Translation by the author) Evju, 'Kollektiv Autonomi, "Den Nordiske Modell" og dens Fremtid' (n424), p. 11.

contained in the ILO Collective Agreements Recommendation (No. 91), according to which the term collective agreement refers to agreements in **writing**. Moreover, some agreements explicitly require that amendments and supplements must be put in written form. Likewise, several agreements require the notice of termination to be made in writing.

Company + Company Origin + Year	Global Union Federation	Provision
Esprit (Germany, 2018)	IndustriALL	Section 7 (1) of Final Provisions *"Amendments and supplements to this agreement may only be made upon the parties' mutual consent and in writing."*
Faber Castell (Germany, 2008)	(Then) International Federation of Building and Wood Workers (IFBWW)	Section 4 (4) – Term and Validity *"This agreement shall remain valid until notice is given by one of the contracting parties by informing the other parties in writing with a time limit of three calendar months at the end of the month."*
Loomis (Sweden, 2013)	UNI Global Union	Section 5 – Term *"This Agreement shall become effective from the date of signing and is valid for a period of two (2) years, after which will continue in effect until terminated by either Party by six (6) months written notice."*
Securitas (Sweden, 2012)	UNI Global Union	Section 8 – Term *"This Agreement shall apply hereafter, unless a party gives written notice of termination to the other party three (3) months prior to the requested expiration date of the Agreement."*
Sodexo (France, 2011)	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	Section 7 (1) of Term and Interpretation *"but it may be terminated or renegotiated by either party upon giving the other party at least three month's written notice."*
Tchibo (Germany, 2016)	IndustriALL	Section 35 of Term and Termination *"This Agreement shall come into force as of the date of signing and shall remain in effect for an indefinite period of time if not terminated by either Party by giving six months written notice."*

Table 80. Examples of provisions in global collective agreements requiring amendments or termination to be put into writing.

While some agreements also refer to **registration**, there are no registration or publication requirements. Hence, it is sometimes challenging to find an agreement's text.[1153]

Company + Company Origin + Year	Global Union Federation	Provision
H&M (Sweden, 2015)	IndustriALL	Section 26 of Registration and Term of this Agreement *"This Agreement shall be registered with the International Labour Organisation."*
PSA (France, 2017)	IndustriALL	Chapter 1 – Implementation and Monitoring *"Two copies of this global framework agreement will be sent to the Versailles Regional Directorate for Enterprises, Competition Policy, Consumer Affairs, Labour and Employment, as well as to the registry of the French industrial tribunal."*
Safran (France, 2017)	IndustriALL	Section 18 – Final Provisions *"This global Framework Agreement shall undergo official notification to the governmental and administrative bodies of each country."*

Table 81. Examples of provisions referring to registration of a global collective agreement.

Several agreements refer to the document's **publication and distribution** on the company's and the global union federation's websites. In regard to dissemination, terms as 'appropriate form' or references to the possibility to disseminate the agreement orally or in writing are frequent.[1154] However, publication is not always required and it does not affect the agreement's entry into force. In fact, publication requirements are often included within an agreement's implementation provision, specifically those related to dissemination of the document.

Company + Company Origin + Year	Global Union Federation	Provision
Aker (Norway, 2012)	IndustriALL	Section 3 (a) of Implementation *"The agreement will also be made public on Akers website and relevant intranets."*

[1153] When an agreement is not accessible in the database developed by the European Commission and the ILO, the relevant global union federation's website, or the company's website, a content analysis and correct identification of a document as a global collective agreement is not possible.

[1154] For instance, Anglogold, BMW, and Daimler.

EDF (France, 2018)	IndustriALL	Notification, Filing and Publicising of the Agreement *"This agreement will undergo notification, filing and publicising formalities in accordance with the French Labour Code on the Management's initiative."*
Elanders (Sweden, 2009)	UNI Global Union	Section 6 – Distribution of the Global Agreement *"The Company will distribute copies of this Global Agreement within its organisation. UNI will distribute copies to all its affiliates with members in the Company."*
Essity (Sweden, 2018)	IndustriALL	Implementation *"Essity will ensure that appropriate translations of the Agreement to all affiliates that organise employees in Essity worldwide, and broadly publicise the existence of the Agreement and explain its implications to their affiliates within Essity."*
Faber Castell (Germany, 2008)	(Then) International Federation of Building and Wood Workers (IFBWW)	Section 4 (1) – Communication *"The implementation results shall be published internally and externally by means of appropriate means of communication (e.g. Faber-Castell Newsletter, Homepage)."* [1155]
G4S (Belgium, 2008)	UNI Global Union	Section 8 – Implementation *"UNI, the GMB and G4S jointly commit to publicise the agreement through the union membership and corporate structure respectively."*
ISS (Denmark, 2008)	UNI Global Union	Section 6 (1) of Implementation and Procedures *"The Union and ISS commit to publicise this global agreement throughout its membership and corporate structures respectively."*
Norske Skog (Norway, 2013)	IndustriALL	Section 3 (a) of Implementation *"Norske Skog will ensure that appropriate translations of the Agreement are available at all workplaces. The Agreement will also be made public on Norske Skog's website and Intranet."*
PSA (France, 2017)	IndustriALL	Chapter 1 – Implementation and Monitoring *"Information about the agreement shall be given to all the line managers and employees. Its dissemination will be facilitated by publication on Live'in, the Group's intranet portal, and by local spin-offs."*

Table 82. Examples of provisions referring to publication or dissemination of the global collective agreement.

As for the previous section, the form of global collective agreements does not raise significant issues. However, while not mentioned in Recommendation No. 91, other formal requirements, referent to the registration or deposit might hamper the consideration of a global collective agreement as a collective agreement in specific national contexts. Chapter 3

[1155] However, such information has not been found. Still, cases referent to positive results can be found in the Building and Wood Workers' International website. See, Building and Wood Workers' International, 'Faber Castell Peru: Workers Organise in Unions' (5 April 2016). Available At: https://www.bwint.org/cms/faber-castell-peru-workers-organize-in-unions-134 [Accessed 18 June 2020].

describes examples of countries in which registration is not condition of validity, as well as countries in which it is a prerequisite. When considered as a condition of validity, this is to award an agreement with the associated legal effects. Hence, for global collective agreements, national mandatory registration might be useful but not fundamental for their consideration as collective agreements.

5.1.8. Relation to Statutory Law and Other Collective Agreements

Differently from 'traditional' collective agreements, global collective agreements tend to refer to existing international instruments. They often do not create a separate set of labour standards, focusing instead on improving the implementation of already recognised international standards through the mechanisms comprised in the agreements.[1156] Not all global collective agreements refer to the agreement's relation to other sources of labour law. However, when mentioned, it is common that the agreement refers to its relation with the legislation of countries where the company operates, domestic collective agreements and, more rarely, employment contracts.

When global collective agreements refer to the agreement's placement within the **domestic legal framework** of countries where the company operates, the applicable hierarchy illustrates a subordinate application. Accordingly, these agreements are not intended to substitute any national laws or collective agreements. Instead, they work within these frameworks and intend to complement them when there are gaps, provided there is no conflict. Hence, global collective agreements can improve labour standards or improve their implementation within the agreement's scope of application. This is explicitly stated in some global collective agreements, which determine that the agremeent and core labour standards take precedence over national laws if the latest are less favourable. The fact these agreements do not contradict national legislation, meaning they can only improve standards within the agreement's scope, supports the idea of a **collective bargaining space** for these actors. Global collective agreements function as base collective

[1156] Krause, 'The Promotion of Labour Standards Through International Framework Agreements' (n147), p. 323.

agreements, that provide for general labour standards and are binding within the agreement's scope of application. As in **domestic collective agreements**, they must comply with national legislation. They can however, increase minimum standards within a company's operations, given they do not contradict national laws.

According to IndustriALL's guidelines, *"The Core Labour Standards and relevant jurisprudence of the ILO must take precedence over national laws in case the latter are less favourable than the respective ILO Conventions"*.[1157] A similar phrasing is present in various agreements.

Global collective agreements bind the relevant multinational enterprises to, at least, the ILO fundamental principles and rights at work. Hence, "*The distinct advance of IFAs is further highlighted when examining the specific status of these core conventions"*.[1158] According to the ILO Declaration on Fundamental Principles and Rights at Work, regardless of ratification of the fundamental conventions, member states have an obligation to respect, promote, and realise the principles concerning the identified fundamental rights. While international labour standards impose obligations on states and not on enterprises, the fact corporations commit, through global collective agreements, to respect and apply international labour standards throughout the agreement's scope entails an implementation assurance. In regard to the **core labour standards**, this means the enterprise commits to apply them in countries with a poor implementation record.

Similarly, in regard **to other international labour standards**, the enterprise commits to apply them in countries that have not ratified those conventions or poorly implement them. In countries where national legislation is flawed or poorly implemented, through these agreements, *"the ILO's Core Labour Standards (and others) can be guaranteed in all facilities of a transnational company, which is especially helpful in transition and developing countries,*

[1157] IndustriALL, 'IndustriALL Global Union's Guidelines for Global Framework Agreements (GFAs)' (n884).
[1158] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 518.

where legislation is sometimes insufficient, poorly enforced or anti-worker".[1159]

Company + Company Origin + Year	Global Union Federation	Reference	Provision
ASOS (United Kingdom, 2017)	IndustriALL	Application of the standards mentioned in the agreement and ILO jurisprudence vis-á-vis national laws if these are less favourable	Section 2 (2) of Conventions and Standards *"The Parties mutually agree, (...) that the conventions and standards mentioned (...) as well as relevant jurisprudence of the ILO shall solely apply vis-à-vis national laws in case these laws are less favourable to employees."*
PSA (France, 2017)	IndustriALL	The agreement is not intended to substitute local laws, regulations, and conventions; when it is a matter of fundamental standards, labour and jurisprudence of the ILO supplant national legislation when they are more favourable	Chapter 1 – Implementation and Monitoring *"The provisions of this agreement are not intended to substitute for local laws, regulations and conventions. Nevertheless, when it is a matter of fundamental standards of labour and jurisprudence of the ILO, they must supplant national legislation when the latter is less favourable than the respective conventions of the ILO."*
Rheinmetall (Germany, 2018)	IndustriALL	Application of the stricter provisions, unless the action associated is unlawful	Preamble *"When national regulations, industry standards or this Agreement address the same subject matter, the stricter provisions shall always apply unless the action associated therewith would be unlawful."*
Safran (France, 2017)	IndustriALL	The agreement does not substitute national legislation and/or collective and/or business agreements if they are more favourable	Section 18 – Final Provisions *"This Agreement shall be applied in each relevant country in consultation with local representatives, in order to take economic social, cultural and regulatory differences into account. It shall not substitute national legislation and/or collective and/or business agreements if they are more favourable."*
Solvay (Belgium, 2017)	IndustriALL	The agreement, the core labour standards and the jurisprudence of the ILO take precedence over local and national laws when these latter are less favourable	Section I – Scope of the Agreement *"The provisions of this agreement and the Core Labour Standards and relevant jurisprudence of the ILO shall take precedence over local and national laws in case the latter are less favourable."*
Tchibo (2016)	IndustriALL	The conventions, standards, and relevant	Section 7 – References to Conventions and Standards

[1159] International Metalworkers' Federation, 'The Power of Framework Agreements' (n958).

		jurisprudence of the ILO apply in case national laws are less favourable to employees	*"The Parties mutually agree (...) that the conventions and standards as mentioned in Section 6 as well as relevant jurisprudence of the ILO shall solely apply vis-à-vis national laws in case these laws are less favourable to employees."*

Table 83. Examples of provisions referring to the relation between ILO standards comprised in global collective agreements and the domestic legal framework.

Global collective agreements create a set of rules that is parallel to national legislation, collective agreements, and employment contracts. Concerns regarding references to 'national legal and industry standards'[1160] are less problematic than one might initially expect. Given the expanding references to international labour standards, these agreements work as a basis, which can only be improved by existing national standards. Furthermore, they provide added remedies, jointly agreed by the parties.

Global collective agreements can complement **national legislation** and regulations that are either inexistent or poorly implemented. It is also possible that the regulatory content comprised in global collective agreements overlaps with national rules. If this happens, as it is explicitly stated in some agreements, the agreement should prevail if it is more beneficial to workers, limited to its subjective scope. However, if national rules provide for higher standards, these will be applicable instead. The aim is for the agreement to establish a minimum set of rights that are equally applicable within the entirety of its global scope. Hence, global collective agreements generate new rules in industrial relations and counteract the limitation of enforcing labour standards, particularly for countries with weak legislation or enforcement and for those outside a direct and formal relationship with the multinational.[1161] The fact legal liability is often problematic is not an issue, as long as the agreement includes dispute settlement procedures that are adequately used and implemented. Also, as argued above, legal enforcement

[1160] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), pp. 234-235.

[1161] Schömann, Sobczak, Voss, and Wilke, *Codes of Conduct and International Framework Agreements: New Forms of Governance at Company Level* (n129), p. 21.

is not the most apt way of enforcing agreements of this nature. However, as a guarantee of uniformity, it is essential that the implementation, monitoring, and dispute settlement mechanisms comprised in an agreement are adequately applied.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Danske Bank (Denmark, 2008)	UNI Global Union	Work within local rules and regulations	Section 2 (f) – Local Rules and Regulations *"Danske Bank Group will respect and work within local rules and regulations in any jurisdiction in which the Group does business."*
FCC Construcción (Spain, 2012)	Building and Woodworkers' Federation (BWI)	Application in accordance with the provisions of the benchmark national legislation, without deviation or contradiction with these	*"In this spirit, FCC Construcción, S.A. and the BWI shall work together to verify the effective application by all FCC Construcción, S.A. activities and undertakings of the following requirements, which must be applied at all times in accordance with the provisions in each case of the benchmark national legislation and without any deviation from, or contradiction with, same."*
G4S (Belgium, 2008)	UNI Global Union	Rolled out application of terms of the agreement that go beyond local legislative requirements or existing agreements, application within the framework of laws and regulations of each country	Section 8 – Implementation *"Those terms of the agreement which go beyond local legislative requirements or existing agreements will be rolled out on a phased basis so that the parties can work together to ensure the success of the agreement."* Section 9 – Status *"G4S and UNI recognise that this agreement must be applied within the framework of laws and regulations that apply in each country."*
Loomis (Sweden, 2013)	UNI Global Union	Compliance with all national employment laws, collective agreements, health and safety regulations and applicable laws and internationally recognised human rights	Section 3 – Loomis Commitment *"Loomis, along with UNI and STWU, undertakes to comply with all national employment laws, collective agreements, health and safety regulations as well as applicable laws and internationally recognised human rights, in every market in which Loomis operates."*
Securitas (Sweden, 2012)	UNI Global Union	Application within the framework of laws and regulations applicable in each country, no provision of the	Section 8 – Term *"Securitas and UNI recognise that this Agreement must be applied within the framework of laws and regulations that apply in each country and accept that no specific provision of the Agreement is legally enforceable if it violates such laws.*

		agreement is legally enforceable if it violations these	*However, in the event a provision of this Agreement is invalid in any country, the remainder of the Agreement that is legally enforceable will remain in full force and effect."*

Table 84. Examples of provisions referring to the relation between global collective agreements and domestic legislation.

In regard to **collective agreements at the national level**, global collective agreements are also placed within a non-contradictory relation. Thus, when addressing their relation to national collective bargaining and collective agreements, global collective agreements state they are not intended to replace or prevail over them.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Eni (Italy, 2019)	IndustriALL	The agreement is not intended to substitute or interfere with bargaining processes at local, national or European level	Section 8 (4) – Actions Plans and Monitoring *"This agreement is not intended as a substitute for, or to interfere with, any dialogue or bargaining processes followed at local, national or European level."*
Elanders (Sweden, 2009)	UNI Global Union	The agreement does not affect collective agreements that provide for additional rights	Section 5 – Implementation and Monitoring *"The implementation of this agreement outlines minimum workers' rights in the Company and does not affect any collective agreement that may accord additional rights on workers."*
G4S (Belgium, 2008)	UNI Global Union	The agreement does not undermine existing labour relations practices or agreements relating to union rights or facilities	Section 9 – Status *"Nothing in this agreement shall in any way undermine existing labour relations practices or agreements relating to union rights or facilities already freely established by any trade union operating within the G4S group."*
Safran (France, 2017)	IndustriALL	The agreement does not substitute collective agreements if they are more favourable	Section 18 – Final Provisions *"This Agreement shall be applied in each relevant country in consultation with local representatives, in order to take economic social, cultural and regulatory differences into account. It shall not substitute national legislation and/or collective and/or business agreements if they are more favourable."*

Sodexo (France, 2011)	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	The agreement does not substitute or supersede existing collective bargaining agreements	Section 4 (5) of Responsibility of Parties *"The 'Sodexo-IUF annual meeting' will not be a forum for national, multinational, or international collective bargaining, and nothing in the 'Sodexo-IUF annual meeting', the ongoing communications, or this agreement shall substitute for or supersede existing collective bargaining agreements between 'Sodexo' and the representatives of its employees."*

Table 85. Examples of provisions referring to the relation between global collective agreement's relation and collective agreements at the national level.

In regard to a global collective agreement's relation to **employment contracts**, it is not uncommon that a **favourability principle** is also applied. While this specific relation is often not explicitly addressed, when an agreement refers to it, it is stated that, if the agreement contains more favourable standards, these are applicable, unless they are considered to be unlawful.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
G4S (Belgium, 2008)	UNI Global Union	The agreement does not affect any individual employee's terms and conditions	Section 9 – Status *"G4S and UNI recognise that this agreement must be applied within the framework of laws and regulations that apply in each country and accept that no part of the agreement is legally enforceable, either by the parties or by any third party, or in any way changes or amends any individual G4S employee's terms and conditions."*

Table 86. Example of a provision referring to the relation between the global collective agreement and employment contracts at the national level.

Global collective agreements are not as detailed as domestic collective agreements. Hence, these documents do not tackle particular issues, such as specific time schedules or salaries. Furthermore, they do not intend to compete or conflict with them. Instead, they *"rather focus on the general framework within which management and unions can develop harmonious*

industrial relations."[1162] While working within the domestic framework, they are intended to **contribute for social dialogue**, giving both workers and employers a bargaining space. [1163] As the extinct International Confederation of Free Trade Unions (ICFTU) stated in 2004, these agreements set out principles, they are not detailed collective agreements, and are not intended to compete or conflict with collective agreements at the national level. Instead, they aim to create a space for social dialogue.[1164] Hence, global framework agreements in general and global collective agreements in particular, are often considered as **facilitators** to the development of collective bargaining at the national level. Global collective agreements, together with private and public governance initiatives can function together, **not as layers of regulation**, but strengthening each other, improving compliance, and creating a level playing field for competition.[1165]

Both signatories but multinationals in particular, whose history of corporate responsibility has been of wrongdoing denial but continuous non-compliance, requires them to take an **active role** in ensuring the adequate functioning of the implementation and enforcement mechanisms comprised in a global collective agreement. For companies this is especially relevant to prevent continued public criticism.[1166] Likewise, **local implementation** allows for a more flexible and adaptable implementation of global collective agreements, based on local circumstances. This is especially relevant in countries where the union movement is characterised by weak or fragmented worker representation or hostility to trade union activity.[1167] Along with clear

[1162] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 72.
[1163] ibid, p. 72.
[1164] International Confederation of Free Trade Unions (ICFTU), *A Trade Union Guide to Globalisation*, as cited in Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 72.
[1165] Frederick W. Mayer, 'Leveraging Private Governance for Public Purpose: Business, Civil Society and the State in Labour Regulation' in Anthony Payne and Nicola Phillips (eds), *Handbook of the International Political Economy of Governance* (Edward Elgar 2014), pp. 344-360; International Labour Organisation, *Workplace Compliance in Global Supply Chains* (n226), pp. 24, 31.
[1166] Kenny, 'Code or Contract: Whether Wal-Mart's Code of Conduct Creates a Contractual Obligation Between Wal-Mart and the Employees of its Foreign Suppliers' (n1017), p. 473.
[1167] Ford and Gillan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (n145), p. 468.

procedures for dispute resolution, a clear definition of the scope would invest the agreement with a greater degree of certainty.

Company + Company Origin + Year	Global Union Federation	Reference	Provision
Esprit (Germany, 2018)	IndustriALL	The agreement serves as a basis to develop a mature system of industrial relations	Section 3 (4) of Scope *"This framework Agreement is intended to facilitate the negotiation of detailed collective agreements between local trade unions and all Suppliers to Esprit at national or other levels. It should serve as an important basis for developing a mature system of industrial relations with each company and throughout each company's supply chain."*
H&M (Sweden, 2015)	IndustriALL	The parties will promote the signing of collective agreements	Section 18 of Implementation of the Agreement *"The Parties will jointly promote signing of collective agreements both at factory, company and industrial level between relevant social partners in countries where H&M has direct suppliers and subcontractors producing merchandise/ready made goods sold throughout the group's retail operations."*

Table 87. Examples of provisions referring to global collective agreements as facilitators of the development of collective bargaining at the national level.

As previously mentioned, global collective agreements function as basis agreements, setting minimum standards that can go beyond the domestic legal framework of the countries placed within a multinational's supply chain. When they do not go beyond a country's domestic legislation, they offer cross-border uniformity, applying a set of minimum standards through an agreement's scope. Moreover, they provide an added remedy, expressed in the enforcement mechanisms comprised in an agreement. Given their global scope and goal of uniform standard setting, global collective agreements must function in a flexible manner, always operating within existing rules. When an agreement addresses the relationship with national law, it is often stated the agreement will comply with the national legal framework. Hence, for instance, FCC Construcción's agreement refers to application in accordance with benchmark national legislation, Loomis' agreement mentions compliance with national law, and Securita's agreement

refers to application within the legal framework applicable in the country. A noteworthy example is G4S' agreement, which describes a rolled-out application in regard to terms of the agreement that go beyond local legislation and existing agreements. Similarly, the regulative framework created by global collective agreements functions within the one created by collective agreements at the local and national level. While global collective agreements are intended to work as a foundation to promote the negotiation and signing of collective agreements and develop mature systems of industrial relations, they are not intended to supass agreements at the local or national level. Esprit's and H&M's agreements explicitly state the goal of developing mature industrial relations systems and promoting the negotiation and signature of 'detailed collective agreements'. In terms of the relationship with the regulatory framework created by local and national collective agreements, Eni's agreement states that the document is not intended to substitute or interfere with local, national, or European bargaining processes. Likewise, Sodexo's agreement states the document does not substitute or supersede existing collective bargaining agreements and, according to Elanders' agreement, the document does not affect collective agreements that provide for additional rights. Similarly, Safran's agreement determines that the document does not substitute collective agreements, if they are more favourable. Global collective agreements provide for a regulative framework that functions in parallel with the rules comprised in national industrial relations systems. Since they are intended to implement an equal set of minimum standards, they work within existing rules on the basis of a favourability principle. In somes cases, global collective agreements improve the applicable standards and provide for additional remedies, comprised in the agreement to tackle violations. In other cases, the content of the agreement is already expressed in legislation and national collective agreements, meaning that the agreement merely adds a remedy and implementation measures. Hence, besides functioning as a minimum benchmark and existing in parallel to different domestic industrial relations systems, global collective agreements also intersect with them. Based on a favourability principle they are intended to improve the applicable standards

within an agreement's scope and promote social dialogue, never violating the other regulative frameworks in which they operate.

5.2. Final Remarks

Collective agreements emerged as *"the only permissive means of establishing uniform working conditions"*.[1168] The same can be said about global collective agreements. In the absence of international binding rules and a progressive exclusion of unions from the negotiating table, global collective agreements provide an alternative to deal with a pressing concern. They represent a stepping stone towards a framework of collective bargaining at the international level and allow workers to be involved in the implementation, monitoring, and enforcement of international labour standards. Through global collective agreements, both management and labour support the development of social dialogue and formalise the participation of trade unions in a multinational enterprise's worldwide activities.[1169] Global collective agreements aim to create a social dialogue framework, allowing for the development of a harmonious skeleton of industrial relations focusing on the respect for core labour standards. As chapter 6 demonstrates, global collective agreements focus on the prevention of conflicts and the construction of good industrial relations but they also need to tackle violations when these happen. Differently from corporate social responsibility initiatives, they promote ILO labour standards through collective bargaining, aiming *"to create and foster bilateral social dialogue, rather than one-sided implementation (and evaluation of implementation of basic workers' rights"*.[1170] Despite differences in enforcement outcomes, the following chapter demonstrates how global collective agreements constitute

[1168] Fahlbeck, *Collective Agreements: A Crossroad Between Public Law and Private Law* (n340), p. 30.
[1169] Isabelle Schömann, André Sobczack, Eckhard Voss, and Peter Wilke, 'The Impact of Transnational Company Agreements on Social Dialogue and Industrial Relations' in Konstantinos Papadakis (ed.) *Shaping Global Industrial Relations: The Impact of International Framework Agreements* (Palgrave Macmillan 2011), pp. 22-37.
[1170] Fenwick and Novitz, 'Conclusion: Regulating to Protect Workers' Human Rights' (n1097), p. 610.

a social dialogue instrument, capable of creating a collective bargaining enabling environment. These agreements constitute *"agreements of principle intended primarily to help create the space in which workers can organise themselves and bargain"*.[1171] Given the inability of governments to set out minimum global labour standards, global collective agreements embody a possible framework for international industrial relations, while recognising global union federations as legitimate bargaining partners.

Chapter 4 demonstrates that global framework agreements clearly comprise some of the core features of a collective agreement, as stated in the ILO Recommendation No. 91. Also, they clearly comprise procedural rules, defining the scope of application, as well as the rights and obligations of the signatory parties. These correspond to the obligatory content of a collective agreement.[1172] However, as the present chapter demonstrates, certain features can be discussed. By analysing the core features of a collective agreement in relation to global framework agreements, this chapter attempts to construct an identification framework for the global framework agreements that can be considered as collective agreements. While some core elements are clearly fulfilled, key aspects in this identification required further discussion, particularly in relation to enforcement, the binding effect, and their position within a hierarchy of labour law sources. The systematisation provided in the previous sections supports the argument in favour of global collective agreements' enforceability and binding character, though further research would provide more definitive conclusions. While sharing features with traditional corporate social responsibility initiatives, global collective agreements go beyond them and one could view them as a development of corporate social responsibility towards global industrial relations. The actual implementation and use of dispute resolution mechanisms in global collective agreements would provide important material for this evaluation.[1173] The following chapter intends to associate the empirical

[1171] Hammer, 'International Framework Agreements: Global Industrial Relations Between Rights and Bargaining' (n21), p. 518.

[1172] Guarriello, 'Transnational Collective Agreements' (n107), p. 4.

[1173] Accordingly, *"the actual record of implementation of IFAs on the ground would constitute important information in making a more exact assessment of the relationship of IFAs to collective agreements. Empirical research is necessary to provide concrete evidence of the parties' will (or lack thereto) to be bound*

research carried out in Cambodia with the analysis carried out throughout this chapter in order to understand if the implementation and enforcement of global collective agreements is actually conducted. Additionally, the subsequent chapter attempts to test the identification framework of global collective agreements.

by the provisions of IFAs and to implement them in good faith. In addition, unresolved issues remain with regard to the representation mandate of the parties to IFA negotiations, while the monitoring and dissemination practices appear, so far to be rather rudimentary". See, Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 81-83.

6. Empirical Findings: The Functioning and Impact of Global Collective Agreement

The present chapter is dedicated to the empirical findings. Section 6.1. starts by providing the background and aims of the empirical work. H&M's and Inditex's agreements, which constitute the interview focus, are identified as global collective agreements. Subsequently, the empirical findings are specified, presenting the interviewees' general views on global collective agreements, their binding character, particularities of the Cambodian context, and the interviewees' opinions about the relevance of the multinational enterprises' country of origin. Information gathered regarding the implementation, enforcement, and dispute settlement of the two selected agreements is further provided. Based on these findings, section 6.2. looks into the impact of global framework agreements in connection to issues highlighted in both literature and the interviews. The third and last section presents some final remarks.

6.1. Empirical Findings

The present section summarises the findings of the empirical study carried out in Cambodia and Sweden during the course of two field trips in 2019 and 2020. The methodology, background, and aims of the empirical study are detailed in the methodology section of chapter 1 and are therefore not reiterated here. Hence, the justification behind the country, company, and interviewee choices are comprised in chapter 1. A list of the guidelines with the interview questions is provided in the annex section.

6.1.1. H&M's and Inditex's Agreements as Global Collective Agreements

Both H&M's and Inditex's agreements are considered to fit within the concept of **global collective agreement**. H&M's agreement was signed by Karl-Johan Persson, the company's CEO, Jyrki Raina, then secretary general of IndustriALL, and Anders Ferbe, then president of Swedish IF Metall. Inditex's agreement was signed by Pablo Isla, Inditex's CEO and Valter Sanches, secretary general of IndustriALL. On the workers' side, global union federations are explicitly recognised as **legitimate counterparts** in both agreements. The Preamble of H&M's agreement explicitly states that *"By this GFA, H&M recognises IndustriALL as its legitimate partner for discussions regarding human and trade union rights in the workplace"*. According to Inditex's agreement, *"Inditex recognises IndustriALL, its Spanish affiliated unions CCOO-I and UGT-FICA, and in general its affiliated trade unions in their supply chain countries as their global trade union counterparts for workers engaged in the production of textile, garments and footwear"*. Given the global scope of application, global union federations are the only suitable actors to sign such agreements. As the interviews unveil, the existing tensions within the Cambodian trade union movement show that a demand for all IndustriALL's affiliates to sign the global agreements would be unfeasible.

The principle of subsidiarity that governs the functioning of global union federations, along with global collective agreements' global scope and social dialogue aims to give a great emphasis to **local implementation and enforcement**. The significance of local involvement can be seen as a way to counteract arguments of lack of representativity. H&M's agreement sets up national monitoring committees, introduced in production countries agreed by the parties. National monitoring committees play a central role in the implementation of the global agreement. They create, monitor, and evaluate national implementation strategies. Additionally, they collaborate with trade unions, H&M direct suppliers, and their subcontractors to provide guidance and advice on the achievement of well-functioning industrial relations, particularly in regard to dispute prevention, dispute resolution, and collective

bargaining agreements. National monitoring committees can assist in the resolution of industrial relations issues and disputes, as well as discuss, explore, and implement other activities agreed by the parties. The agreement explicitly states that industrial disputes are best resolved throughout workplace negotiation, with the support of national trade unions or dispute resolution procedures provided for in industry agreements and/or local law. If these methods cannot satisfactorily settle an issue, the national monitoring committee can intervene. Inditex's agreement also underlines the significance of local trade union involvement by asserting that local trade union representatives participate in the implementation of the agreement in their respective countries. Also, the agreement refers to the involvement of a trade union expert or a general coordinator if a breach of the agreement cannot be solved at factory level.

Both agreements **cover the entirety of the supply chain**. For H&M, this refers to production. According to the Preamble of H&M's agreement, *"The terms and conditions of the GFA shall cover all production units where H&M's direct suppliers and their subcontractors produce merchandise/ready made goods sold throughout H&M group's retail operations, and trade unions/worker representatives present at these production units"*. Additionally, non-affiliate trade unions can participate in the implementation of the agreement through an agreement with IndustriALL. Moreover, according to the agreement, *"The Parties agree to work together to actively implement well-functioning industrial relations at H&M's direct suppliers own operations and their subcontractors (...) throughout H&M's groups retail operations"*. Inditex's agreement defines its scope of application by stating that *"The terms and conditions of the Agreement shall apply throughout the Inditex supply chain including workplaces not represented by IndustriALL affiliated unions"*. Moreover, the agreement determines that the company *"undertakes to apply and insist on the enforcement of the above-mentioned international labour standards to all workers throughout its entire supply chain, regardless of whether they are directly employed by Inditex or by its manufacturers and suppliers"*.

Both agreements refer to the **company's leverage**. H&M's agreement asserts that the company *"will actively use all its possible leverage to ensure that its direct suppliers and their subcontractors producing merchandise/ready made goods sold throughout H&M group's retail operations respect human and trade union rights in the workplace"*. According to Inditex's agreement, the company *"commits to actively use all of its leverage to ensure that suppliers and manufacturers of Inditex respect Human Rights and therefore, labour and union rights in the workplaces under the Inditex supply chain"*. Compared to most agreements, these references illustrate a stronger commitment, even if they do not explicitly address pricing practices and do not make the termination of business relations a consequence for violations of the agreement.[1174] Still, as argued in this dissertation, contract termination opposes the idea on which these agreements are based, namely the establishment of long-term commercial dealings and the improvement of industrial relations in the countries where the company operates. Contract termination would eliminate a possible use of leverage and should only be used as the most final consequence, based on constant violations and disinterest to improve working conditions.

For both global brands, reputational concerns, consumer pressure, competition, and economic interests can represent partial reasons behind the negotiation and signing of the global collective agreement. However, these do not affect the agreements' **free and voluntary character**. Despite a possible in-depth analysis of the parties' hidden motives to negotiate and sign a global collective agreement, the content of an agreement represents a compromise between both signatories, entailing a 'give and take' from both sides. Good faith references further support these agreements' free and voluntary character. In the case of H&M, besides the cooperative industrial context of the company's country of origin, the agreement was made a permanent cooperation in 2016. However, the first global brand signing an

[1174] Markus Kaltenborn, Carina Neset, and Johannes Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (2020) Vol. 36 No. 2 International Journal of Comparative Labour Law and Industrial Relations, pp. 178-179.

agreement of this sort, covering the company's supply chain, was Inditex.[1175] The agreement's first version, signed in 2007, was agreed outside a contentious context, which illustrates the agreement's free character. Specific behavioural characteristics of individual representatives leading up to the signature of a global collective agreement are, although thought-provoking and indeed significant, beyond the scope of this dissertation. It is however worth mentioning that the parties' positions and stances on each other, specifically the CEOs and the leaders of global union federations play a determinant role in whether an agreement is negotiated and finally signed, but also on its content. Hence, *"feelings of trust towards the others, beliefs about the others' legitimacy, feelings of friendliness towards the other and motivational orientation. All these result in tendencies to adopt cooperative (instead of competitive or individualistic) actions towards the other. Negotiating IFAs resembles a process in which the parties learn from each other."*[1176] The fact the agreement has been continuously renewed is also a sign of its voluntary character. The same can be said in regard to its automatic renewal, which takes place unless one of party states it does not wish to renew it, usually within a three-month notice. Also, the fact that the costs for the coordination's annual meeting and activities are assumed by Inditex is an indicator of the company's free and voluntary will to negotiate, sign, and implement the agreement.

A key feature of the concept of collective agreement is its **binding** character. Also, in this respect, both Inditex's and H&M's agreements are considered to be binding. Both agreements set up a resolution procedure, with H&M's agreement creating a more detailed hierarchical procedure, with the creation of two specific bodies for its implementation and enforcement. Furthermore, both agreements refer to the possibility of mediation as final dispute settlement alternative. H&M's agreement sets up a specific implementation and dispute resolution structure. The agreement is implemented at the factory level, by both management and trade union representatives. At the national

[1175] IndustriALL, 'Inditex' (11 July 2014). Available At: http://www.industriall-union.org/inditex [Accessed 21 July 2020].

[1176] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), p. 81.

level, national monitoring committees (NMCs) are established in agreed countries. These bodies are awarded an array of different implementation and monitoring duties. Furthermore, as determined in Section 3 (iii), they can provide assistance in the resolution of industrial relations issues and disputes. At the global level, a joint industrial relations development committee (JIRDC) is established by the agreement. According to Section 12, if a national monitoring committee considers it to be necessary, it can request support and guidance from the joint industrial relations development committee for the resolution of an industrial relations issue. Similarly, Section 13 states that, in case of disagreement among the national monitoring committee in regard to the resolution of an industrial relations issue, the matter can be referred to the joint industrial relations development committee. Finally, according to Section 14, if the JIRDC fails to settle an industrial relations issue, the parties can agree to appoint a mediator. Hence, a hierarchical dispute settlement procedure is set up by the agreement, which includes bodies established through the agreement and, as final solution, the resort to a mediator. According to Inditex's agreement, a potential breach is, as soon as discovered, dealt with a remediation action plan. Still, the agreement sets up a procedure, beginning with resolution at the factory level, a notification to the relevant trade union expert and the respective member of the global union committee or the general coordinator, who will inform the representative of Inditex and IndustriALL, and will take actions for the resolution of the breach. In regard to the agreement's interpretation, questions are to be resolved through consultation between the parties, with every effort being made to find a common agreement. When that is not possible, the parties can seek the expert advice of the ILO or an agreed third party for mediation and dispute settlement, whose final recommendations the parties must abide. As developed in chapter 4 of the dissertation, mediation is particularly fitted to the global scope and the **collaborative aims** of global collective agreements. The preamble of H&M's agreement determines that *"Collaboration between the Parties pursuant to the GFA aims to ensure more effective application of the International Labour Standards mentioned above"*. Similarly, in its preamble, Inditex's agreement asserts that *"The guiding principle of this Agreement is the shared belief that cooperation and*

collaboration are key to strengthen Human Rights within Inditex's supply chain".

In terms of **content**, H&M's agreement explicitly refers to twenty ILO conventions, including the eight fundamental conventions, ten recommendations, and one protocol. Inditex's agreement refers to the company's Code of Conduct, which mentions thirteen ILO conventions, including the eight fundamental ILO conventions, and one ILO recommendation. In regard to the **temporal scope**, H&M's agreement was made permanent in 2016.[1177] Inditex's agreement is automatically extended for one-year periods, unless one of the parties states it does not wish to renew it, with a three-month notice. As for **formal requirements**, both agreements have been put into writing, with some type of involvement by the ILO. This provides added legitimacy to the agreements. H&M's global collective agreement was registered with the ILO. In regard to Inditex's renewed agreement, the signing ceremony was attended by the ILO's deputy director general for field operations and partnerships.[1178]

In terms of these agreements' **relation with other sources of labour law**, the idea of minimum standards is recurrent. Hence, references to national, industry, or collective bargaining agreements' rules are comprised throughout both agreements. However, if the minimum standards provided for by the global collective agreement are not comprised in national rules, the agreement applies. For instance, in regard to freedom of association and collective bargaining, H&M's agreement states that, *"Where the right to freedom of association and collective bargaining is restricted under national law, the employer encourages and does not hinder the development of mechanisms for independent and free association and bargaining"*. In regard to wages, H&M's agreement refers that these should meet, at a minimum, either the national legal level, industry level, or the collective bargaining agreement level, whichever is higher. Differently, Inditex's agreement does

[1177] H&M, 'H&M Makes Its Global Framework Agreement with IndustriALL and IF Metall Permanent' (n97).
[1178] Inditex, 'Inditex and IndustriALL Global Union Agree to Create a Global Union Committee (n38); IndustriALL, 'IndustriALL and Inditex Create a Global Union Committee' (n38).

not directly address this matter, merely referring to the *"sustainable social development to improve fundamental Human Rights, including labour and social rights, and the living conditions of the communities related with its manufacturing activities"*.

6.1.2. Empirical Findings

A) General Views on Global Collective Agreements

Despite being previously informed about the main topics of the interviews, interviewees' knowledge about the agreements' application and content was diverse, particularly among different trade union representatives. Likewise, the need to conduct a narrative of the issues relevant to a particular stakeholder, sometimes seemingly hedging questions, was a concern in some interviews. The interviews show a common understanding of global collective agreements as contributors to the improvement of social dialogue and interpretative differences. As stated by Kaltenbron, Neset, and Norpoth, these agreements *"provide a formal basis for ongoing exchanges between the partners of the agreement, but also involve further actors relevant to transnational labour relations beyond the signatories"*, being considered as an example of transnational labour relations.[1179] However, as the interviews demonstrated, the involvement of actors beyond the signatories is still limited. Nevertheless, in regard to the establishment of continuous relations between the partners of the agreement, improvements have been noticed. In contrast, an example provided referred to Myanmar, where small interpretative divergences had previously exploded in riots and the destruction of equipment.[1180] Generally, global collective agreements were viewed by the interviewees as a **positive development** when compared to previously adopted corporate social responsibility instruments and codes of conduct in particular. These agreements' potential was repeatedly recognised, with an interviewee referring that these agreements *"are the most*

[1179] Papadakis, 'Introduction and Overview' (n1066), pp. 1-18; Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 170.

[1180] Interview with an IF Metall Representative (Skype Interview, February 2020).

potential instrument for every stakeholder to be involved and implement international labour standards".[1181] Nevertheless, it was continuously conveyed, particularly by civil society and trade union representatives, that an effect beyond paper and pure public relations stunts would greatly depend on the brands' commitment,[1182] making these agreements *"a tool in a tool box"*.[1183] This goes in agreement with Kaltenborn, Neset, and Norpoth's work, according to which global collective agreements are considered a transnational arena of labour relations[1184] and a part of the available toolboxes within global industrial relations and cross-border social dialogue.[1185]

Besides global retailers, IndustriALL expressed a wish for **multinational manufacturers** to also sign global collective agreements. The fact that these have not signed global collective agreements was highlighted as problematic, since sometimes brands do not possess the necessary leverage or even the same leverage at all times. Some factories supply for various different brands, meaning that leverage can sometimes be very limited. Moreover, and although the company's origin was sometimes dismissed as irrelevant in regard to the content and implementation of an agreement, the specific national context of the country where the agreement is implemented was underlined as more significant, particularly in regard to the ownership of factories. For instance, in Bangladesh and Turkey factories are mostly locally owned, whereas in Indonesia and Cambodia factories are mostly foreign owned.[1186] Moreover, as some interviewees referred and Kaltenborn, Neset,

[1181] Interview with a Trade Union Representative (Phnom Penh, Cambodia, April 2019).

[1182] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020), an IF Metall Representative (February 2020), an IndustriALL representative (February 2020), H&M Representatives (Phnom Penh, Cambodia, January 2020 and Lund, Sweden, April 2019), a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020), and a Researcher Specialised in the Trade Union Movement in Cambodia (Phnom Penh, Cambodia, January 2020).

[1183] Interview with a Non-Governmental Oganisation Representative (Phnom Penh, Cambodia, January 2020).

[1184] Helfen and Ficther, 'Building Transnational Union Networks Across Global Production Networks: Conceptualising a New Arena of Labour Management Relations' (n905), pp. 553-576.

[1185] International Labour Office, *International Framework Agreements in the Food Retail, Garment and Chemicals Sectors* (n12); Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 170.

[1186] Interview with an IndustriALL Representative (Skype Interview, February 2020).

and Norpoth have emphasised, the involvement of workers in the implementation of the agreement increases the potential of effective implementation, especially when compared to purely private company initiatives, such as codes of conduct.[1187] As the following paragraphs demonstrate, actual results vary based on the company, country, and union involved. In Cambodia, these agreements have had a relatively slow and short implementation period, which also impacts the achievement of results. Nevertheless, the interviews show the agreements are in fact used and have indeed helped in the settlement of disputes.

The interviewees have also repeatedly expressed a **lack of involvement by the ILO** and **non-governmental organisations**. Besides an ILO basis and despite clear links to the ILO in both agreements, with H&M's agreement being registered with the ILO and Inditex's agreement specifically referring to the possibility of mediation with the organisation, a further involvement is absent. In Cambodia, this involvement could be further facilitated through the operation of Better Factories Cambodia, created in 2001. Differently, in terms of civil society involvement, more marked tensions could be observed. A Confederación Sindical de Comisiones Obreas (CCOO) report about the implementation of Inditex's agreement until 2017 referred to a common understanding, both in regard to some initiatives and global objectives. However, according to the same report and while referring to specific disagreements, this is not always the case for particular aspects of a strategy, the organisations' complaints, or their interferences in union work. Still, the usefulness of coordination with non-governmental organisations was recognised, even if is not exempted from tensions. This **tension** was further expressed in interviews with civil society representatives, who seemed suspicious of global collective agreements' effects. Similarly, companies seemed to perceive civil society's criticisms as unreasonable demands for

[1187] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020); Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 170.

multinational enterprises to solve all problems alone.[1188] As developed in the following sections, this supports the information gathered in the interviews.

Likewise, the **Ministry of Labour** is not involved in the implementation of these agreements, which was overwhelmingly considered as a positive thing. Similarly, the **Garment Manufacturers Association in Cambodia** (GMAC) is not engaged in the application of the agreements. Including GMAC, according to one trade union leader, *"would bring the quality of the agreements down"*.[1189] Hence, neither H&M nor the unions wished to engage GMAC. It was generally understood that, while a global collective agreement can set higher standards, based on international labour law, the employers' association would try to set lower standards.[1190] In fact, when interviewed, the representative of GMAC did not seem to be entirely aware of these agreements' existence, mixing them with the negotiations regarding a sectoral collective bargaining agreement within the garment industry. Still, GMAC highlighted that the different members have various financial situations and capabilities, meaning that some might not be able to afford certain demands. Hence, not all GMAC members would be able to respect an agreement's standards, especially if these go beyond the law. However, the employers' association representative also highlighted that, if the standards comprised in the agreement are equal or below what is legally required, this should, in any case, be enforced by the state. However, state enforcement is often lacking in Cambodia. According to GMAC, it is preferable to use the mechanisms already available at the national level, in particular the courts or the Arbitration Council. Nevertheless, the GMAC interviewee stated that resorting to court, even when the employers' association wins (and even when not bribing), might be useless since the

[1188] *"At the same time, it should be noted that there have been, and still are, approaches, from both union and civil society organisations, which seem to be waiting for the multinationals to resolve on their own the world's problems. (...) The pretense of appealing to the paternalism of multinationals could be a reminder of the verse 'Neither in Gods, kings or tribunes is the supreme savior. We ourselves make the redemptive effort".* See, (Translation by the author) Boix and Garrido, 'Balance Sindical de los 10 Años del Acuerdo Marco Global con Inditex - Una Experiencia de Acción Sindical Por Una Globalización Sostenible – 4 Octubre de 2017 – 10o Aniversario De La Firma Del Acuerdo Marco' (n1138), pp. 45-46.

[1189] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).

[1190] Interview with Trade Union Representatives (Phnom Penh, Cambodia, January-February 2020).

buyer ultimately imposes a certain conduct on the supplier.[1191] Accordingly, if necessary, as last resort, trade unions can go to the brand. Finally, the interviewee was positive in relation to the proposed amendments to the Trade Union Law, which have been a matter of concern for thirty-six international and Cambodian civil society organisations.[1192]

B) General Views on the Binding Character

Global collective agreements' quantitative and qualitative developments make it relevant to analyse the topic from a normativity standpoint, meaning the degree to which the parties see the rules as binding.[1193] The binding character of these agreements was recognised by several interviewees, **although not in a legal sense**. According to a representative of IndustriALL, global collective agreements are indeed binding, giving the global union federation responsibilities and rights that have to be respected. For instance, global union federations are given obligations, such as the provision of information to their affiliates which, in turn, need to inform their members. These agreements also contain sanctions and dispute settlement mechanisms. However, the parties cannot bring an agreement to court or to the Permanent Court of Arbitration. Hence, according to the representative of IndustriALL, these agreements are not binding in a legally binding sense.[1194] Similarly, a representative for IF Metall referred to H&M's agreement as 'somewhat binding', bringing more accountability than other instruments.[1195] However, more accountability requires awareness and sanctions. As a trade union leader referred, if a factory violates an agreement and then remedies the violation through a compensation of the loss of salary and reinstatement of the worker(s), there is no sanction applied. In fact, the action taken merely represents a return to a situation of compliance. One trade union interviewee

[1191] Interview with a GMAC Representative (Phnom Penh, Cambodia, February 2020).
[1192] Amnesty International, 'Cambodia's Law on Trade Unions and Cases Against Trade Union Leaders' (December 18 2019). Available At: https://www.amnesty.org/download/Documents/ASA2316042019ENGLISH.pdf [Accessed 11 August 2020].
[1193] Jan Bebbington, Elizabeth A. Kirk and Carlos Larrinaga, 'The Production of Normativity: A Comparison of Reporting Regimes in Spain and the UK' (2012) Accounting, Organisations and Society No. 37, pp. 78-94.
[1194] Interview with an IndustriALL Representative (Skype Interview, February 2020).
[1195] Interview with an IF Metall Representative (Skype Interview, February 2020).

had suggested that global collective agreements could impose fines as specific sanctions.[1196] A former H&M representative referred that the agreement is placed under the company's sustainability frame and that those working with it are not from the legal field. Hence, according to the interviewee, while H&M's agreement is indeed binding, it is still an agreement meaning that, if there is a sharp conflict and no consensus can be reached, it can be terminated.[1197] For the leader of the trade union that has brought the vast majority of cases before the national monitoring committee, created under H&M's agreement, these agreements could officially be considered as binding and this would add clarity and leave less room for misinterpretations. However, strong national unions and strong global union federations are required. In the interviewee's view, global union federations have not clarified that the agreement should be perceived as binding because they lack the capacity to 'impose' such assertion.[1198] When questioned about these agreements' binding character, the president of a trade union that represents workers in factories supplying for both H&M and Inditex affirmed that trade unions would agree on officially declaring these agreements as binding but *"everything would depend on the other party's will"*. The same interviewee recognised that bindingness is not necessarily related to the courts but arbitration or mediation instead.[1199] Also, although viewing these agreements as soft law, one of the interviewed researchers recognised these could be binding in a similar way to collective agreements in the United Kingdom.[1200]

Interviewees representing **civil society** expressed the view that these agreements would only work if brands are the enforcers.[1201] However, the enforcement of global collective agreements is constructed on a social dialogue basis and mechanisms jointly agreed by the signatories. The representative of another non-governmental organisation expressed disbelief

[1196] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1197] Interview with a Former H&M Representative (Lund, Sweden, February 2020).
[1198] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1199] Interview with a Trade Union Representative (Phnom Penh, Cambodia, April, 2019 and January-February 2020).
[1200] Interview with a Researcher (Skype Interview, February 2020).
[1201] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).

in the agreements and stated that, even cases resolved under global collective agreements, required support from non-governmental organisations.[1202] This was not corroborated by other interviewees. According to other interviews, non-governmental organisations could have been aware of the cases' developments, but were not involved in their settlement under the relevant global collective agreements. As derived from the agreements' texts and literature, national trade union representatives and H&M representatives stated that non-governmental organisations do not play a role in the implementation of global collective agreements and H&M's agreement in particular.[1203] The statements of civil society representatives demonstrate a closed narrative that centres responsibility for enforcement solely on one of the signatory parties. The representative for one of the non-governmental organisations interviewed underlined the importance of brands' understanding of the domestic context in which they work, noting how corruption is a massive problem in Cambodia. Furthermore, the vast number of union federations, around eighty, makes the application of these agreements challenging, particularly in comparison to other countries, such as Vietnam. The same representative emphasised that agreements should explicitly address the continuous renewal of short-term contracts, which is one of the main concerns in Cambodia.[1204] Nevertheless, H&M's agreement explicitly states that *"The employers should strive for permanent employment and take steps beyond those required by law to limit the use of fixed-term contracts of employment"*. Similarly, Inditex's renewed agreement, in reference to brand's code of conduct, determines that *"Manufacturers and suppliers undertake that all the employment formulas they use are part of the applicable local laws"*. Hence, both agreements address the topic. Accordingly, as a minimum, contracts signed for a specific duration cannot be longer than two years. A contract can be renewed one or more times, as long as it does not surpass the maximum duration of two years, as mandated in Article 67 of the Cambodian Labour Law. Civil society in

[1202] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).

[1203] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020), an IF Metall representative (February 2020), an IndustriALL Representative (February 2020), H&M Representatives (Phnom Penh, Cambodia, January 2020 and Lund, Sweden, April 2019), and a Researcher (Skype Interview, February 2020).

[1204] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).

Cambodia appeared more doubtful of these agreements' positive effect, stating that global collective agreements' merely address the symptoms and not the problem.[1205] Still, the need for brands to use their leverage on suppliers was recurrently highlighted. And, although recognising that *"Nordic countries are easier to work with"*, the representative of one of the non-governmental organisations interviewed stated that shaming has been the most helpful strategy in dealing with H&M.[1206]

The **contradictions** between the narratives of trade union and non-governmental organisation's representatives can be evocative of a conflict of ideas on how to govern workers' rights transnationally. Accordingly, non-governmental organisations support trust built from outcomes based on codified minimum requirements and are therefore more prone to promote companies' adoption of codes of conduct. Differently, unions consider trust as based on the process of collective bargaining and therefore back the negotiation and signing of global collective agreements.[1207]

The fact these agreements have increasingly broaden their scope of application, particularly in the garment industry, covering both suppliers and subcontractors and making the agreements applicable beyond companies owned or controlled by the multinational enterprise, is an indicator of a binding character when compared to previous agreements. Moreover, such development places these agreements within the context of global governance of labour relations. The fact that more comprehensive supply chain references can normally be found in the garment sector illustrates that buyer driven industries, though initially challenging for the negotiation of such agreements, tend to address sector related problems, namely the fragmentation and complexity of the supply chain.[1208] However, interviewees also referred that, despite allowing for a higher involvement in the agreement's implementation, the broader scope of application can be

[1205] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1206] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1207] Niklas Egels-Zandén, 'Transnational Governance of Workers' Rights: Outlining a Research Agenda' (2009) Vol. 87, Journal of Business Ethics, pp. 178-179.
[1208] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 170.

problematic when a factory supplies several brands, meaning that several brands' commitment and their combined leverage should be used. Company representatives interviewed also mentioned that lack of leverage is sometimes problematic when dealing with issues that arise at suppliers or subcontractors that are not entirely or predominantly dependent on that brand.[1209]

C) The Cambodian Context

As developed in chapter 1, Cambodia was selected as the place to conduct the empirical work for both contact facilitation and the fact that Cambodia is a major supplier for both H&M and Inditex. Also, the domestic legal framework, the problems in its enforcement, the background of the trade union movement, and the importance of the garment sector in the country, make Cambodia a challenging implementation setting but also a place where global collective agreements can have the greatest positive impact.[1210] The garment and footwear industry constitute one of Cambodia's economic pillars, which include the agriculture, tourism, and the construction sectors.[1211] According to the ILO, the textile and footwear sector employ around one million workers, from which almost eighty percent are women.[1212] It represents sixteen percent of the country's gross domestic product and eighty percent of its export earnings.[1213] Garment factories are mostly foreign owned, with Taiwan, Hong Kong, South Korea, China, and Japan heading the list of owners.[1214] Unionisation is high but politicised, with several unions being affiliated with the government, the major opposition

[1209] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).
[1210] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 170.
[1211] Kun Makara, 'Positive Outlook for Cambodia's Economy' *The Phnom Penh Post* (11 October 2012). Available At: https://www.phnompenhpost.com/business/positive-outlook-cambodias-economy [Accessed 26 October 2020].
[1212] International Labour Organisation, 'Cambodia Garment and Footwear Sector Bulletin – Issue 8' (December 2018), p. 1. Available At: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_663043.pdf [Accessed 26 October 2020].
[1213] Rastogi, 'Cambodia's Garment Manufacturing Industry' (n102).
[1214] International Labour Organisation, 'Cambodia Garment and Footwear Sector Bulletin – Issue 9' (July 2019), p. 5. Available At: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_714915.pdf [Accessed 26 October 2020].

party, or employers, with only a smaller number being considered as truly independent.[1215]

The impact of global collective agreements can be particularly striking due to a **'blockage' of the Arbitration Council** and the interpretation given to the country's new trade union law.[1216] On the 17th of May 2016, the Trade Union Law was promulgated. The new law restricts the right to strike[1217] and imposes mandatory registration requirements that limit the capability of conducting trade union activity. As specified in Articles 12-16 of the Trade Union Law, registration is made mandatory if a union is to enjoy the rights comprised in the law, namely the possibility to bring a complaint to the Labour Court, acquire property, and enter into contracts. If registration has been denied, cancelled, or delayed, union activity is deemed to be illegal. Registration is authorised by the Ministry of Labour, based on a complex list of requirements comprised in the law. According to Article 15, the procedures and form of the registration application are determined by a *Prakas* of the Ministry in charge of Labour, allowing for the possibility to alter requirements. According to Article 54, a union must possess thirty percent or more of the workforce to obtain the 'most representative status', which gives such a union exclusive bargaining rights and the right to file a collective labour dispute. This means that the right to file a collective labour dispute is limited to unions with the 'most representative status'. Hence, access to the Arbitration Council is limited to these unions, which are often pro-government. While the Arbitration Council had previously been considered a credible institution to resolve collective labour disputes,[1218] Article 54 has resulted in an enormous decrease of cases filed with the

[1215] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 181.
[1216] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1217] Office of the United Nations High Commissioner for Human Rights in Cambodia, 'A Human Rights Analysis of the Draft Law on Trade Unions' (30 March 2016). Available At: https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/TUL_Analysis-Eng.pdf [Accessed 7 August 2020].
[1218] Hugo Van Noord, Hans S. Hwang, and Kate Bugeja, 'Cambodia's Arbitration Council: Institution-Building in a Developing Country – Working Paper No. 24' (International Labour Office 2011).

council. Hence, the 2016 law has hindered trade union activities.[1219] In an open letter, in December 2019, thirty-six international and Cambodian civil society organisations expressed deep concerns about unchanged provisions and proposed amendments to the Law on Trade Unions. In particular, it was argued that the law continues to impose a burdensome registration procedure, including recognition and approval by government authorities. Furthermore, unions without the most representative status cannot defend the interests of their members and represent them before the Arbitration Council.[1220]

As recognised by trade union representatives, differently from what happens at the level of the Arbitration Council, the enforcement mechanisms comprised in both H&M's and Inditex's agreements are not limited to collective complaints. With the agreement of IndustriALL, even non-affiliated trade unions can participate in the implementation of these agreements. Differently, only trade unions with a specific status can submit complaints to the Arbitration Council. Brand representatives and researchers highlighted the difficult relationship of trade unions and brands with the government and the Ministry of Labour.[1221] The contentious judicial context in Cambodia, where a lack of trust in the judicial system and law enforcement[1222] is largely shared among trade unions, workers, and non-governmental organisations, make enforcement mechanisms comprised in global collective agreements a **significant additional remedy** to tackle violations of labour standards.[1223] In comparison, other countries, for instance Turkey, were mentioned by interviewees as examples of more trustworthy judicial systems. Resort to court is promoted and can work in

[1219] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), pp. 181-182.
[1220] Amnesty International, 'Cambodia's Law on Trade Unions and Cases Against Trade Union Leaders' (n1174).
[1221] Interviews with Researchers (Phnom Penh, Cambodia, January 2020 and February 2020) and H&M's Representatives (January 2020).
[1222] In 2019, Cambodia's corruption perceptions index (CPI) was placed in the 162nd place, in a list of 180 countries. The CPI scores and ranks countries according to how a country's public sector is perceived by experts and business executives. See, Transparency International, 'Cambodia – Country Data' (n1075).
[1223] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).

parallel to these agreements' dispute settlement procedures, or as an alternative remedy to tackle violations.[1224]

Finally, a problem recurrently mentioned, in both literature and the interviews, was the widespread **affiliation** of trade unions with either the government or the employer. Another interesting issue linked to the cases mentioned by the interviewees is related to **factory ownership**. An interviewee mentioned that the majority of factories are foreign owned and sometimes very old, having been established in the end of the nineties or the beginning of the 2000s. Hence, the problem of suppliers that can easily abandon a factory site, since they often only own the machines, is mostly related to new factories. For this interviewee, abrupt factory closures are a more viable course of action for newer factories. Differently, for previously established ones, there is more openness for cooperation and improvement.[1225] Accordingly, the impact of an agreement will not only be reliant on the brands' relationship with their suppliers, but also the suppliers' investment.[1226]

D) Company Origin

The interviews have showed that both H&M's and Inditex's global collective agreements are used in Cambodia. The variations in the agreements' impact are meaningful and a set of different explanations can be speculated. For some interviewees the origin of the company's headquarters does not play a role in either the content, implementation, or dispute settlement procedures.[1227] However, for other interviewees the **company origin** is considered as significant.[1228] This relevance was referred in terms of social dialogue with the company, with several trade unions representatives

[1224] Interview with Trade Union Representatives (Phnom Penh, Cambodia, January-February 2020) and a H&M Representative (Phnom Penh, Cambodia January 2020).
[1225] Interview with a Researcher (Skype Interview, February 2020).
[1226] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1227] Interview with a Researcher (Skype Interview, February 2020) and an IndustriALL Representative (Skype Interview, February 2020).
[1228] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020), an IF Metall Representative (Skype Interview, February 2020), and a Former H&M Representative (Lund, Sweden, February 2020).

referring to cooperation with H&M as being significantly smoother. The company origin was also mentioned in relation to cooperation between IndustriALL and the relevant national trade union.

The **involvement of the national trade union** of the country where the company has its headquarters was, in the case of H&M, viewed as strength. While H&M's production does not take place in Sweden, IF Metall would be the union representing workers in the country's textile industry. Besides this, the involvement of IF Metall was perceived as positive with a representative referring to the union's closeness to company management and a long-standing relationship with the multinational. This is particularly visible in the Nordic countries, where co-determination is very relevant. Moreover, sometimes the multinational has no relation with the global union federation it is negotiating with or has merely had contact when there was some type of conflict. Hence, the involvement of a national trade union from the country where the company has its headquarters bridges the relation with the global union federation. However, the same interviewee recognised this idea does not work in all countries where the company has its headquarters, referring to the USA as a primary example. In regard to Inditex, the preamble of the agreement states that, *"Inditex recognises IndustriALL, its Spanish affiliated unions CCOO-I and UGT-FICA,*[1229] *and in general its affiliated trade unions in their supply chain countries as their global trade union counterparts for workers"*. Spanish national trade unions are also involved in the implementation of the agreement, also through the new agreement's global union committee.[1230]

Issues surrounding the **lack of an explicitly given mandate to global union federations** in regard to the negotiation and signature of global collective agreements were generally dismissed,[1231] since no other organisation would be satisfactorily representative to sign such agreements.

[1229] Federación de Industria, Construcción y Agro de la Unión General de Trabajadores.
[1230] Interview with an IF Metall Representative (Skype Interview, February 2020) and a Former H&M Representative (Lund, Sweden, February 2020).
[1231] Interview with an IndustriALL Representative (Skype Interview, February 2020).

The company origin seems to have a possible impact in various aspects of an agreement's content and implementation. This includes the social dialogue carried out with the multinational enterprise in the countries where it operates, the involvement of the relevant national trade unions of the company's headquarters, and the **type of instrument** adopted. Likewise, the influence of national systems in the transnational industrial relations system, the developmental level of collective bargaining, as well as the detail and scope of legislation, may impact the type of instrument adopted. Multinational enterprises coming from countries with highly developed industrial relations systems may seem more prone to negotiate global collective agreements. Differently corporations whose headquarters are located in countries with comprehensive and detailed legislation and little space for collective bargaining may be more likely to adopt codes of conduct. This may justify why global collective agreements are considered to be mostly a European phenomenon.[1232] Still, it is worth noting that, as in private governance instruments, global collective agreements have varied throughout time and according to the sector considered. As the ILO Sectoral Policies Department has identified in regard to corporate social responsibility initiatives, consumer awareness, brand identity, civil society pressure, and internal collaboration among supply chains also affect the type of private initiative adopted.[1233] Thus, corporate social responsibility policies adopted by European companies *"can work both as a complement of institutionalised stakeholder power in their country of origin and as substitute for its absence in their countries of operation"*.[1234] This means that initiatives adopted by a company are not only based on economic grounds, but also on the labour institutions in the company's country of origin. Thus, along with other

[1232] Egels-Zandén, 'Transnational Governance of Workers' Rights: Outlining a Research Agenda' (n1207), pp. 179-180.

[1233] Delautre, 'Decent Work in Global Supply Chains: An Internal Research Review – Research Department Working Paper No. 47' (n150), p. 39.

[1234] Gregory Jackson and Nikolas Rathert, 'Private Governance as Regulatory Substitute or Complement? A Comparative Institutional Approach to CSR Adoption by Multinational Corporations' (2016) Vol. 49 Research in the Sociology of Organisations, pp. 445-478; Guillaume Delautre and Bruno Dante Abriata, 'Corporate Social Responsibility: Exploring Determinants and Complementarities – Research Department Working Paper No. 83' (International Labour Office 2018); Delautre, 'Decent Work in Global Supply Chains: An Internal Research Review – Research Department Working Paper No. 47' (n150), p. 40.

factors, the domestic context in the country of origin of the enterprise plays a role in the type of instrument it decides to adopt.

E) Current Implementation of H&M's and Inditex's Global Collective Agreements in Cambodia

The interviews conducted corroborated the idea according to which both H&M's and Inditex's agreements are in fact **implemented and used in Cambodia**. Nevertheless, these agreements' implementation and results can vary, both between companies and supplier countries.[1235] Differently, other brands' agreements mentioned by interviewees were highlighted as not being used. For instance, at the time the interviews were conducted, Mizuno's agreement was not actually used by the parties in Cambodia.[1236] Mizuno's agreement was renewed in October 2020 and the inclusion of a dispute settlement procedure with the possibility of arbitration could possibly change this.

H&M's agreement was signed in 2015 and renewed with an indefinite term in 2016. The agreement is placed within the company's **sustainability** department.[1237] As stated in its preamble, the parties believe *"that well-structured industrial relations are an essential component of stable and sustainable social relations in production"*. Accordingly, the main goal of the agreement is the achievement of good industrial relations and assistance in the settlement of disputes. As stated by a H&M representative, *"the aim of the agreement is the prevention of conflicts, also the solving, but that is not the focus"*.[1238] **Implementation** is carried out through raising awareness and strengthening the capacity of stakeholders to negotiate and resolve disputes, with H&M's role described in Sections 19 through 21 and IndustriALL's and IF Metall's role in Sections 22 through 25.[1239] In practice,

[1235] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020), an IF Metall Representative (February 2020), and an IndustriALL Representative (February 2020).
[1236] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1237] Interview with a H&M Representative (Phnom Penh, Cambodia, January 2020).
[1238] Interview with a H&M Representative (Phnom Penh, Cambodia, January 2020).
[1239] International Labour Office, *International Framework Agreements in the Food Retail, Garment and Chemicals Sectors* (n12), pp. 38-39; Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global

implementation is carried out through **training** regarding the content of the agreement. According to information provided by H&M and referent to 2018, suppliers and trade union leaders linked to twenty-two factories and representing ninety per cent of the brand's business, had been provided training.[1240] Training is provided to suppliers and trade union leaders, meaning that workers do not have direct access to training regarding the content of the agreement. Moreover, according to the trade union representatives interviewed, **dissemination** to workers through, for instance, the posting of information on factory walls, was not carried out.[1241] Section 20 of the agreement specifically states that *"H&M shall request that their direct suppliers inform their employees and request subcontractors producing merchandise/ready made goods to inform their employees of the existence and the implementation of this Agreement"*. However, according to information gathered trough the interviews, it seems dissemination is not adequately carried out and workers are often not entirely aware of the agreement's existence and general content. Responsibility for spreading information regarding the agreement at the local level is placed on local trade unions. This applies to both union members and non-union members. One of the interviewees referred to implementation carried out through exerting pressure on factories in order to **sign collective agreements**.[1242] This goes in line with Section 18 of the agreement, according to which, *"The Parties will jointly promote signing of collective agreements at both factory, company and industrial level"*. In regard to the agreement's implementation and **dispute resolution**, the parties have agreed on a specific structure. H&M's agreement determines a concrete implementation structure, based on the coordination between management and workers representatives at the factory level and two other bodies specifically created by the agreement, the national monitoring committee (NMC) and the joint industrial relations development committee (JIRDC).

Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 180.

[1240] Interview with H&M's Representative (Phnom Penh, Cambodia, January 2020).

[1241] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).

[1242] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, January 2020).

The joint industrial relations development committee is comprised of equal numbers of representatives, appointed by the parties to the agreement. These also appoint a co-chairperson to preside over the proceedings of the committee on an alternating basis. Section 8 lists the JIRDC's responsibilities, which include planning and overseeing the practical implementation of the agreement at the global level, exploring opportunities for cooperation aimed at attaining and maintaining good industrial relations in H&M's direct suppliers and their subcontractors, providing support and guidance to the NMCs, discussing, exploring and implementing other activities agreed by the parties, and providing advice of matters referred to it by the NMC. According to Section 7, the JIRDC shall meet when agreed but at least once a year.

National monitoring committees are comprised by two representatives designated by each party. They can also designate more, if the parties so agree. Section 3 lists the responsibilities of the committees. These are in charge of creating, monitoring, and evaluating national strategies for implementing the agreement in countries where H&M's direct suppliers and their subcontractors are located, collaborating with trade unions/worker representatives and H&M direct suppliers and subcontractors to provide guidance and advice on achieving good industrial relations (in particular in regard to dispute prevention, resolution, and collective bargaining agreements), assisting with the resolution of industrial relations issues and disputes, and discussing and implementing other activities agreed by the parties. According to Section 4, the NMCs shall meet regularly at times agreed by the parties, with the possibility of organising special ad hoc meetings, depending on the matter. Finally, according to Section 9, a key principle of the agreement is *"that well-functioning industrial relations are best achieved if industrial relations and related issues ('Industrial Relations Issues') are resolved through workplace negotiation, and when needed with support of appropriate national trade union or dispute resolution procedures provided for in industry agreements and/or local law"*. If that is not possible, Section 10 provides that a request is made to the NMC to support local procedures and intervene to facilitate a solution. Moreover, according to

Section 12, if necessary, the NMC can request support and guidance from the JIRDC. If the NMC disagrees on the best way to facilitate an industrial relations issue, the issue can be submitted to the JIRDC for a final decision. If the issue cannot be solved at the level of the JIRDC, the parties can agree to appoint an independent mediator. The following paragraphs describe how these provisions are implemented in Cambodia, while highlighting some particularities and challenges found.

In some of H&M's production countries, including Cambodia, **national monitoring committees** are established (Section 15). A representative for H&M referred that the NMC in Cambodia is not very mature, based on the industrial relations system.[1243] An IndustriALL representative referred that all NMCs are recent. Hence, while some interviewees distinguished these committees as more or less mature, the IndustriALL interviewee preferred the term 'higher functioning' committees.[1244] The establishment of NMCs enables the creation of local ownership in regard to the global collective agreement.[1245] Based on the information gathered through the interviews, the NMC in Cambodia was established in 2016. However, in 2016 the committee was still not entirely functional. Hence, the agreement has been implemented in the country for a limited number of years, making it challenging to assess its current impact and prospects for the future. In Cambodia, the NMC is composed of three representatives from each party, namely three H&M representatives and three representatives of Cambodian trade union federations. Employers' associations and the Garment Manufacturers Association in Cambodia in particular are not members of the NMC.

All interviewees were in agreement in regard to the organisation of **periodic meetings** between the members of the NMC, as required by Section 3 of the agreement. These normally happen once a month, but the committee can

[1243] Interview with a H&M Representative (Lund, Sweden, April 2019).
[1244] Interview with an IndustriALL Representative (Skype Interview, February 2020).
[1245] As stressed by Kaltenborn, Neset, and Norpoth, by *"foreseeing the establishment of NMCs, the GFA includes a mechanism capable of creating local ownership, thereby addressing perceived weaknesses in the local implementation of previous GFAs"*. See, Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 180.

meet at any time if a complaint is made. It was also confirmed that the JIRDC does in fact meet once a year. It is worth noting that the functioning of the NMC suffers from problems connected with the background of the union movement in the country. Government hostility to independent trade unions and an extensive rate of union affiliation with the government creates competition and mistrust within the union movement. This **distrust** was pointed out by several of the trade union leaders interviewed.[1246] The fact that solely two unions had brought up cases to the national monitoring committee made other trade unions question the benefits of the agreement for those that are not part of the committee. Furthermore, the majority of complaints had been raised by only one union federation. A researcher interviewed added how this mistrust was general and based on a lack of cooperation due to competition for membership. In fact, in some factories, workers are represented by a multitude of trade unions.[1247] For instance, in one of the cases brought up before the national monitoring committee there were twenty one unions at the factory.[1248] This distrust and competition were also identified in Kaltenborn, Neset, and Norpoth's publication, as *"the more immediate reason for the lack of engagement on the part of several unions"*, with unions seating at the NMC being *"perceived to be in a favourable position to present themselves to workers as capable of resolving disputes"*, which affected *"the willingness of the other unions to use the dispute resolution mechanisms provided by the NMC"*.[1249] As revealed in the interviews conducted[1250] and supported by the mentioned authors, other unions seemed to not trust the NMC, viewing the federations represented at the committee, as acting in their own interest, instead of the collective interest.[1251] The mentioned authors also identified a case in which the NMC

[1246] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).

[1247] Interview with a Researcher (Skype Interview, February 2020).

[1248] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020), an IF Metall Representative (February 2020), an IndustriALL Representative (February 2020), H&M Representatives (Phnom Penh, Cambodia, January 2020 and Lund, Sweden, April 2019).

[1249] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 184.

[1250] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).

[1251] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 184.

was unable to settle an industrial relations issue, based on the involvement of two federations sitting at the committee. Since the NMC did not deal with the case, this was not mentioned in any of the interviews carried out within the empirical study.[1252]

It was confirmed that the NMC had **facilitated the resolution of some cases**, listed by the interviewees. Taking a case to the NMC involves an analysis of the labour law, the awards taken by the Arbitration Council, the global collective agreement, and an assessment of whether the decision taken by the supplier was correct or not. If a violation is found, the NMC will develop a strategy.[1253] The representative of the trade union that had brought the highest number of cases before the NMC, respectively four, stated that, in terms of dispute **settlement at the factory level**, H&M's agreement *"does not work satisfactorily"*. However, the same interviewee referred that the next step in the hierarchy, the national monitoring committee, *"functions much better"*.

A H&M representative listed a **total of five cases** in which the NMC was involved. However, details concerning these cases were **not always consistent** with the information provided by the interviewed trade union representatives.[1254] The information provided by H&M and trade union representatives complemented each other and the selection of cases is based on overlapping references. Hence, the description of cases that were addressed under the mechanisms comprised in the agreement is based on consistent information gathered in the various interviews. It is worth noting that the parties did not always share similar views in regard to the cases. For instance, some interviewees considered certain cases to be 'settled' or 'resolved', whereas others perceived them as 'still pending' and awaiting resolution. Sometimes it was challenging to separate an interviewee's discourse, following a specific narrative, connected to a union's agenda and to problems they wished to highlight, but sometimes not related to the

[1252] ibid, p. 184.
[1253] Interview with an IF Metall Representative (Skype Interview, February 2020).
[1254] However, the leader of the trade union which has brought three cases before the national monitoring committee, also listed five cases. Interview with a Trade Union Leader (Phnom Penh, Cambodia, January-February 2020).

company discussed and the corresponding agreement. Hence, examples of situations concerning employer hostility or employer affiliated trade unions were frequently mentioned. Issues involving other brands, which had not signed a global collective agreement were also regularly referred. When relevant, particularly in terms of comparison, these references are discussed.

Four complaints were brought up by the same trade union and another complaint was raised by a different federation. Both these federations are members of the NMC. **Federations that do not hold a seat** at the NMC had not seek the body created under the agreement to resolve industrial relations issues. This was the case, despite efforts carried out by the signatory parties to implement an inclusive approach, allowing all Cambodian affiliates of IndustriALL to comment on the agreement's draft before the conclusion of negotiations and providing training to suppliers, NMC members, and other IndustriALL affiliates. The interviews showed that a lack of knowledge and understanding of the agreement was still present, even for federations that held a seat at the NMC.[1255]

It was widely agreed that the vast **majority of violations** of the agreement concerned unfair dismissals, work accidents, illegal renewal of short-term contracts, and discrimination issues, particularly against pregnant workers and trade union members or representatives.[1256] The following paragraphs provide a description of **non-compliance cases that were addressed by the dispute settlement procedures** established by H&M's agreement and mentioned in interviews. However, as the next paragraphs also unveil, the agreement has been further used to deal with violations of labour standards on a cooperative basis, outside of any internal or external dispute settlement procedures.

In **one case**, referent to an unfair dismissal, the NMC did not directly solve the issue but two meetings were conducted within the committee, which

[1255] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, January-February 2020).
[1256] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).

contributed to the resolution of the case. A **second case** dealt with the unfair dismissal of three workers who tried to found a trade union. This case ended up being solved through the leverage of the joint industrial relations development committee development committee in 2018. The JIRDC facilitated the reinstatement and compensation of the workers. The case took around eleven to twelve months to be solved. A **third case**, concerning the continuous, illegal, renewal of short-term contracts, in violation of Article 67 of the Labour Law, was brought forward in 2016. A complaint was brought up again in 2019. Although not elaborating on details, according to information provided by H&M, the federation was informed that the case was outside the scope of the NMC. According to H&M, the factory did not produce for the brand. However, for the trade union who brought the case forward, the case was still pending at the committee.[1257] A **fourth case** was also brought forward in 2016, before the committee was properly functioning. This case was mentioned in several interviews as referring to the closure of a factory producing for H&M and other brands. According to information provided by the leader of the union that brought the case forward, the matter was further brought before the JIRDC but the case had not been solved yet.[1258] The information provided was unclear and the interviewee seemed to have a narrative related to the union's agenda. Furthermore, the interviewee demonstrated limited knowledge about the agreement, unwarily mentioning brands that had not signed any global collective agreements. The interviewee was unable to clarify if the matter had indeed been brought before the JIRDC or to the headquarters' level instead. The same interviewee criticised and questioned the utility of the agreement stating that, *"if even a trade union that is a member of the NMC could not push cases to be resolved, how could other unions use it?"*. The latest information gathered in a follow-up interview identified the case as still pending. This case seems to be mentioned by Kaltenborn, Neset, and Norpoth. According to the authors the case was brought before the NMC and bilaterally to H&M, but not to the JIRDC. H&M refused to be the only brand to pay compensation after the factory closure, and argued it only accounted

[1257] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1258] However, this information was not corroborated by other interviews.

for a small portion of the factory's production, which the workers refuted. Hence, if other buyers were convinced to pay severance, H&M would agree to contribute. After being brought to the NMC, the case was taken to the company's headquarters in Stockholm, and not to the JIRDC. The case was considered as still pending at H&M's headquarters, being in discussions with IF Metall acting on behalf of the Cambodian federation.[1259]

The leader of a trade union revealed that, as in Cambodia, the NMCs in Turkey and Bangladesh had facilitated the resolution of cases.[1260] Likewise, the leader of the trade union who brought almost all cases to the NMC in Cambodia referred to Indonesia's, Turkey's, and Bangladesh's NMCs as 'more mature'.[1261] However, up until February 2020, besides the Cambodian case, no other complaints had been brought before the joint industrial relations development committee.[1262]

A case described by Kaltenborn, Neset, and Norpoth did not seem to be referred in any of the interviews conducted. In this **particular case**, H&M possessed a limited leverage, since the factory supplied an array of other brands, mainly a Japanese clothing brand. The matter concerned union demands regarding an increase in payments per piece. Workers went on strike and management dismissed 105 of the striking workers. After an award from the Arbitration Council in favour of the union federation and a decision by the Labour Court in favour of factory management,[1263] the federation resorted to a different strategy, outside the legal mechanisms available. This strategy was based on the involvement of transnational partners, namely the Clean Clothes Campaign, IndustriALL, the International Trade Union Confederation, and buyers, including H&M. H&M used its leverage to try to

[1259] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 188.
[1260] Interviews with H&M Representatives (Phnom Penh, Cambodia, January 2020 and Lund, Sweden, April 2019) and Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).
[1261] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1262] Interview with an IndustriALL Representative (Skype Interview, February 2020).
[1263] The relevant union federation was able to attain an arbitral award from the Arbitration Council, ordering management to reinstate the workers. However, the factory management filed a complaint with the Labour Court, claiming the strike was illegal, based on a lack of notice by the union. The Labour Court decided in favour of management, although it was later found the judge had been bribed by management.

make management respect the arbitral award. However, given its marginal influence, management refused the demands. Based on the federation's preference, H&M decided not to cut ties with the supplier and attempted to continue to use some of its influence instead. This ultimately ended in the advisory group, the JIRDC, looking for support to increase leverage over management, which resulted in a campaign led by the Clean Clothes Campaign against the main buyer, the mentioned Japanese brand. This, with the help of IndustriALL, led to the reinstatement of 54 of the 105 dismissed workers. Hence, the global collective agreement enabled an increased cooperation and the escalation of conflicts, by involving other transnational actors.[1264] The idea of preserving the business relation with a supplier, with the possibility of exerting longstanding influence and improving working conditions and industrial relations was uncovered in previous work, related to the implementation of Inditex's agreement in Portugal.

Kaltenborn, Neset, and Norpoth further identified **three cases** in which attempts to found unions at H&M suppliers were met with opposition from management. The relevant trade union federation informed H&M, which contacted the supplier and required management to respect the right to freedom of association. Based on H&M's use of its leverage, the documentation presented by worker representatives was recognised and the unions were founded. The respect for freedom of association in these three cases was credited as a positive outcome of the brand's global collective agreement.[1265] However, in these cases the dispute settlement procedures created under the agreement were not used. These cases illustrate that emphasis is given to dispute resolution at the local level, with the possibility of involvement by the NMC. However, the interviews revealed that **local dispute settlement was malfunctioning**. Furthermore, since suppliers and subcontractors are not parties to the agreement, the NMC cannot impose binding demands on the resolution of an industrial relations issue. This weakness is balanced through the possibility of bringing the issue to the

[1264] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), pp. 186-187.
[1265] ibid, p. 186.

JIRDC and ultimately appointing a mediator. Accordingly, the NMC functions as both an implementation and monitoring body at the national level, as well as one of the provided instances for dispute resolution.[1266] Finally, some of the cases mentioned show that the **agreement is often used outside** any legally available remedies and the internally instituted procedures comprised in the agreement. This usage of the agreement has had seemingly positive results. This goes in accordance with the social dialogue basis of the agreements and the commitment to solve disputes through joint, cooperative efforts, resorting to resolution procedures as a last resort.

The interviews revealed that there is **no standardised registration system** for disputes brought under the agreement. Hence, trade unions and brands had distinctive views as to whether an issue had been settled. A H&M representative recognised that there was no formal mechanism for registration. Instead, H&M kept a log of cases, which was updated according to the information provided by worker representatives or factory management. Hence, for H&M, three cases had been closed and two were still pending.[1267] Two of the cases pending at the NMC were referred by both the leader of the relevant trade union and H&M.[1268] However, another case, perceived by H&M as 'closed' or 'settled', was considered as pending by the trade union who brought the complaint forward. According to the information gathered through the interviews, these divergences mostly happened in regard to cases that H&M considered to be outside the scope of the NMC. For instance, H&M considered that, in one of these cases, a factory that closed was not a supplier for the brand and, accordingly, the case did not fall under the scope of the NMC. H&M recognised that the factory could be unauthorised but the verification of labels revealed a connection to other countries and not Cambodia. Accordingly, for H&M, the case fell outside the scope of the NMC in the country. H&M emphasised the fact that, even though all complaints had originated from only two trade union federations,

[1266] ibid, p. 180.

[1267] This was also corroborated by the leader of one of the trade unions comprising the national monitoring committee. Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).

[1268] Interview with a H&M Representative (Phnom Penh, Cambodia, January 2020) and a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).

the brand also resolved cases with other local trade unions and federations, when these approached H&M.[1269] While the agreement could be used to deal with these cases, the interviews confirmed that is never the case for trade unions not represented at the NMC.[1270] A researcher interviewed also underlined the fact that, even without the agreement, when facing violations of labour standards, trade unions often went directly to the brand. This course of action was conducted outside a mutually agreed framework on both the procedure and the relevant standards and could indicate a lack of knowledge regarding the existence of the agreement and the mechanisms it comprises. The same researcher also referred that the resort to a brand should be used a last resource, after all the institutional mechanisms made available in the country and those comprised in the agreement are exhausted. Still, for the interviewee, global collective agreements could also work as the 'entry point' to talk to a brand. It was also recognised that some agreements are given a legal basis, meaning that the internal tools comprised in the agreement can overlap with external mechanisms.[1271]

The agreement explicitly refers to the possibility of **mediation**. However, as stated by both trade union leaders and H&M representatives, mediation has never used in regard to the agreement in Cambodia. A trade union representative emphasised the potential significance of mediation, despite the fact that its actual use would depend on the government, the local law, and the supplier.[1272]

Through the interviews it was possible to learn about **H&M's new guidelines**,[1273] referent to deadlines to bring forward problems concerning the implementation of the global agreement. According to the guidelines, a case should be brought within three weeks and cases should not be older than

[1269] Interview with a H&M Representative (Phnom Penh, Cambodia, January 2020).
[1270] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, January-February 2020).
[1271] Interview with a Researcher (Skype Interview, February 2020).
[1272] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020) and H&M Representatives (Phnom Penh, Cambodia, January 2020 and Lund, Sweden, April 2019).
[1273] However, the text of the guidelines was not attainable. See, IndustriALL, 'IndustriALL Unions Negotiate Global Dispute Resolution Mechanisms with H&M' (n35).

one year.[1274] However, a former employee for H&M highlighted the fact that the new guidelines could be problematic if they have a retroactive effect.[1275] For a trade union representative, the one-year deadline would be acceptable if there are regular inspections.[1276]

The interviewees' views on the **agreement's impact** were generally consistent. Most referred to a positive impact, although slow, with a cycle of trust being built and broken between the parties. Both H&M and trade union representatives recognised a positive, although limited impact of the agreement. In particular, several trade union representatives underlined the fact that, while some factories displayed a will to respect the standards comprised in the agreement, others seemed to willingly ignore them. One of the interviewees was of the opinion that nothing had really changed, despite recognising the agreement had only recently started being implemented. One of the interviewees referred that the agreement had brought more openness for social dialogue, while stressing the need for political will.[1277]

As acknowledged by an IndustriALL representative, the **number of collective agreements** has not increased significantly since the signature of H&M's global collective agreement. However, the agreement not only created better and additional remedies, but it had also improved social dialogue, leading to a more enabling environment for the negotiation and signature of collective agreements. In fact, the text of H&M's agreement reveals a clear commitment and willingness to use its leverage. Furthermore, the agreement provided an additional grievance mechanism.[1278] Given the remedies available, it is a choice for IndustriALL's affiliates to resort to one or several remedies simultaneously. According to an IndustriALL

[1274] Interview with a H&M Representative (Phnom Penh, Cambodia, January 2020).
[1275] Interview with a Former H&M Representative (Lund, Sweden, February 2020).
[1276] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1277] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020), an IF Metall Representative (February 2020), an IndustriALL Representative (February 2020), H&M Representatives (Phnom Penh, Cambodia, January 2020 and Lund, Sweden, April 2019), a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020), and a Researcher Specialised in the Trade Union Movement in Cambodia (Phnom Penh, Cambodia, January 2020).
[1278] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 186.

representative, these could use the agreement directly, go to court, or, in some cases, resort to the Arbitration Council.[1279]

Inditex's agreement was renewed in November 2019. The new agreement establishes a global union committee, created to share and promote best industry practices. The committee intends to enable a more direct participation of local union representatives in how the agreement is applied, while attaining advice from union experts. Joint training schemes involving workers at both Inditex factories and its suppliers, are further established.[1280] Besides the agreement itself, the 2012 Protocol, which recognised the role of local trade unions in the implementation of the agreement based on their proximity to factories, allowed for local trade unions to notify Inditex and IndustriALL if they identified a breach of the agreement. Contingent on confirmation, these could introduce a corrective action plan. The Protocol further implemented training programmes, aimed at managers, supervisors, workers, and trade union representatives. These were intended to promote a better understanding of the agreement. Hence, training for workers was already envisioned in 2012. However, the interviews emphasised that, while trade union representatives and management participated in training programmes, workers were often excluded. As in the case of H&M, in Cambodia, trade unions are given the task to transmit information regarding the agreement's existence and content to workers.

The interviews revealed that, while Inditex's agreement had been used, **complaints had not been solved**.[1281] The stakeholders interviewed linked the lack of an impactful effect to various **reasons**. For instance, it was referred that Cambodia provided for a *"low production level"*.[1282] However, the company itself identifies Cambodia as one of its main production clusters, with two suppliers and 127 factories.[1283] Trade union representatives referred

[1279] Interview with an IndustriALL Representative (Skype Interview, February 2020).
[1280] Inditex, 'Inditex Annual Report 2019' (n116); Inditex, 'Inditex and IndustriALL Global Union Agree to Create a Global Union Committee' (n38).
[1281] Interview with a Trade Union Representative (Phnom Penh, Cambodia, April 2019).
[1282] Interview with a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1283] Together with Spain, Portugal, Morocco, Turkey, Bangladesh, Vietnam, China, Brazil, and Argentina constitute 96% of Inditex's production. See, Inditex, 'Our Suppliers' (n1149).

to a more complicated relationship with Inditex, when compared to H&M. One trade union representative recognised that, while Inditex's agreement had been used, the complaints remained unsolved.[1284] After initial interviews in 2019, another interview was conducted in January 2020, with the leader of the trade union that had brought the majority of cases before H&M's NMC. The union leader revealed the union had seven cases pending under Inditex's global collective agreement and shared that, in the end of February 2020, the union would receive an answer in regard to their resolution. A follow-up was carried out in March but the cases remained unresolved.[1285] The same trade union leader referred that the union had had a bad experience with Inditex and that the previous version of Inditex's agreement was weak.

The representative of a national **non-governmental organisation** referred to the organisation's bad relationship with the brand, highlighting a lack of transparency and stating that, *"as far as Inditex goes, the agreement has not brought any significant changes*". In particular, interviewees mentioned the lack of factory disclosure and the use of private audit mechanisms. The same interviewee referred to two cases in which complaints were brought to Inditex by the non-governmental organisation. Both cases referred to unfair dismissal and the non-contractual renewal of trade union founders. However, having been raised by the non-governmental organisation, these issues were not (and could not be) brought under the global collective agreement. During the course of the interview, the importance of non-governmental organisations in Cambodia was repeatedly highlighted, based on the low capacity of trade unions.[1286] However, other interviewees and trade union representatives in particular, referred that non-governmental organisations did not have any role in the implementation and enforcement of global collective agreements, since this was solely done in cooperation between the parties to the agreement and their affiliates.

[1284] Interviews with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).
[1285] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-March 2020).
[1286] Interview with a Non-Gvernmental Organsation Representative (Phnom Penh, Camdbodia, January-February 2020).

The fact that Inditex had **less people** working 'on the ground' was used as an explanation for the differences in enforcement.[1287] Comparably, PUMA, which only had one staff member in Cambodia, was mentioned as a 'good example'. An interviewee referred to a case of unfair dismissal of a trade union leader whose contract was terminated on a Friday and on a Monday the worker had been reinstated.[1288] Hence, despite not having signed a global collective agreement and having a small number of people working on sustainability in Cambodia, PUMA was generally perceived as a 'good brand'.[1289] Another interviewee referred that, besides the number of people on the ground, H&M had **more knowledge of their suppliers**.[1290] Both a former H&M employee and the leader of the trade union with seven cases pending under Inditex's global collective agreement emphasised that, more than the number of people working on the matters, the amount of **workload** and the existence of a honest commitment were more important.[1291]

The information gathered in the interviews **contradicts** previous findings in regard to the implementation of Inditex's agreement. For instance, a 2014 special report mentioned that, since the agreement was signed, it had enabled IndustriALL to resolve freedom of association issues, monitor working conditions in supplier factories, and effectively reintegrate workers expelled for being trade unionists, namely in Cambodia.[1292] While these issues might have been resolved by resorting to the agreement but outside the dispute settlement procedures it comprises, the interviews revealed that several cases were still awaiting resolution under the agreement.

[1287] Interview with a H&M Representative (Phnom Penh, Cambodia, January 2020) and a Non-Govermental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1288] Interview with a H&M Representative (Phnom Penh, Cambodia, January 2020) and a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1289] Interview with a Former H&M Representative (Lund, Sweden, February 2020) and a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1290] Interview with a Former H&M Representative (Lund, Sweden, February 2020).
[1291] Interview with a Former H&M Representative (Lund, Sweden, February 2020) and a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1292] Guguen, 'Inditex and IndustriALL Global Union: Getting Results from a Global Framework Agreement – Special Report' (n14), p. 21.

In 2017, Isidor Boix and Víctor Garrido identified that since 2007, when the first version of the agreement was signed, joint delegations, meeting twice a year to monitor the implementation of the agreement had resulted in more than one hundred factory visits. These were carried out in Portugal, Bulgaria, Morocco, Tunisia, Turkey, India, Bangladesh, Cambodia, Vietnam, China, Brazil, and Argentina. These visits, according to the authors, had allowed the entry of local trade unions at the factory level. Until then, these trade unions had not been allowed entry. Furthermore, they had enabled a follow-up of Inditex's supply chain by the trade unions located in the company's headquarters, as well as a contextual assessment of particular problems regarding labour conditions and the relationship with the supplier. The reports permitted a record of the initiatives taken by trade unions and Inditex based on audits, information provided by local unions and non-governmental organisations, and the implementation strategy designed in the agreement. Furthermore, in regard to conflicts, the authors referred that practically all the conflicts detected had been resolved with the intervention of the local Inditex team together with local unions and, in some cases, with the leadership of the corporate sustainability department and IndustriALL's regional office or coordinator for the agreement. It was emphasised that suppliers almost never produce exclusively for Inditex, meaning that (normally), the higher Inditex's production percentage is, the easier it is to find a solution.[1293] Also, and although interpretation problems allowing the parties to seek the expert advice of the ILO or another third party had not arisen, the 2017 report stated there had not been any alerts of possible violations of basic labour rights that had not been properly addressed by Inditex, particularly when the company had a decisive influence.[1294]

These findings are not in line with the information provided by the interviewees. While it is pertinent to keep in mind the interviews were solely focused on the Cambodian context and with a limited number of

[1293] (Translation by the author) Boix and Garrido, 'Balance Sindical de los 10 Años del Acuerdo Marco Global con Inditex - Una Experiencia de Acción Sindical Por Una Globalización Sostenible – 4 Octubre de 2017 – 10o Aniversario De La Firma Del Acuerdo Marco' (n1138), p. 40.
[1294] ibid, p. 46.

interviewees,[1295] it seems that not all alerts of possible violations have been properly addressed. In fact, transparency, highlighted in Inditex's annual 2019 report,[1296] was criticised by trade union representatives.[1297]

A study published by Gregoratti and Miller in 2011 emphasised the positive impact of Inditex's agreement at the factory level, contributing for both the reinstatement of workers, union recognition, and dialogue. A researcher interviewed also referred to the same case. However, the successful use of the agreement was conditional to a continuous sourcing relationship between the supplier and the brand, which illustrates the importance of company leverage.[1298] The same issue has been referred in relation to child labour cases identified in Portugal. A threat to terminate business relations not only illustrates the leverage held by the company, but it also poses a risk in terms of a decrease in factory orders, productivity, and subsequent unemployment or decrease of working conditions.[1299] Thus, and although leverage is a key part of the effective implementation of a global collective agreement, the fast pace and unpredictability of buyer-driven industries like the garment sector, pose a hazard to the continuation of positive results.[1300]

Finally, in regard to **other brands** that have signed similar agreements, Mizuno and Tchibo were occasionally mentioned. A trade union representative mentioned the 2011 version of Mizuno's agreement. According to the interviewee, the brand supplies from factories in Cambodia but, in the interviewee's knowledge, the agreement was not used.[1301] Tchibo's agreement was referred in regard to one case dealt with by using the brand's global collective agreement. However, and even if the company seemingly considered the case to be settled, an IndustriALL representative stated that the global union reached out to the brand but never received a

[1295] ibid.
[1296] Inditex, 'Annual Report 2019' (n118).
[1297] Interview with Trade Union Representatives (Phnom Penh, Cambodia, April 2019 and January-February 2020).
[1298] Interview with a Researcher (Skype Interview, February 2020).
[1299] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 177.
[1300] ibid, p. 174.
[1301] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).

response.[1302] According to one of the trade union representatives interviewed, critical of the implementation of H&M's agreement (since a case brought before the NMC by the union was still pending), Tchibo's agreement had not been adequately implemented in Cambodia.[1303] This information creates serious doubts in terms of the agreement's impact in the improvement of worker conditions and the relationship between the signatories.

F) Final Remarks

The interviews show a general understanding in regard to a positive impact derived from these agreements. Still, this development was widely recognised as slow. In particular, in regard to H&M's agreement, there was an overall understanding in terms of an, although slow and somewhat limited, positive impact. Given the recent character of the agreement and the functioning of its NMC in particular, the implementation and enforcement were still considered to be a 'learning process'.[1304] Furthermore, although most interviewees were of the view there was a need for an added pressure on companies, some highlighted how sometimes a brand does not possess enough leverage and how sometimes trade unions and workers have naïve expectations on how issues should be solved.[1305]

Based on their social dialogue basis and promotion of collective bargaining goal, key pointers, such as the increase in the number of collective agreements, could be used as indicative of these agreements' positive impact.[1306] A trade union representative explicitly referred to collective agreements as *"the evidence, the real practice of using the global agreement"*.[1307] However, if these indicators are used, in Cambodia the impact of these agreements is not noticeable, as the number of collective

[1302] Interview with an IndustriALL Representative (Skype Interview, February 2020).
[1303] Interview with a Trade Union Representative (Phnom Penh, Cambodia, April 2019).
[1304] Interview with an IF Metall Representative (February 2020).
[1305] Interview with an IF Metall Representative (Skype Interview, February 2020).
[1306] Interview with a H&M Representative (Lund, Sweden, April 2019).
[1307] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).

agreements has not increased noticeably after the agreements' signature.[1308] Hence, in regard to global collective agreements as catalysts for the negotiation and signing of collective agreements at the factory level, that potential has not been accomplished in Cambodia. Nevertheless, some trade union representatives acknowledged the agreements had contributed to the improvement of social dialogue. The cooperative basis has been used as a strategy for a continuous use of company leverage and seemingly had positive results in sorting out industrial relations issues. Furthermore, discussions regarding the negotiation of a sectoral collective agreement in the garment industry have hampered the negotiation of collective agreements at a lower level. Trade union representatives also pointed out a need for improvement in regard to dissemination since, despite the training conducted for both suppliers and trade union leaders, workers are often unaware of the agreements' existence and lack the knowledge on how and when to use them. Dissemination at the factory level is flawed and responsibility is placed on trade unions which, themselves, may need to *"digest these concepts at the local level"*.[1309]

The need for buyers' support and commitment for this development was repeatedly addressed. Hence, global collective agreements were viewed as positive, since they represent a commitment at the top level. The possibility of brands including references to global collective agreements in the contracts with suppliers or subcontractors, which has been claimed as beneficial in terms of both bindingness and clarity, was contended as many subcontracting factories are unregistered. Their unregistered status means that disclosure by suppliers would lead to legal and economic consequences, such as the suspension of export licences. Hence, the inclusion of references to global collective agreements in contracts with suppliers would not cover these unregistered subcontractors.

[1308] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020) and a Non-Governmental Organisation Representative (Phnom Penh, Cambodia, January 2020).
[1309] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).

The implementation of these agreements shows how **industrial democracy**, as referred by Kaltenborn, Neset, and Norpoth, and defined by Sidney and Beatrice Webb, can vary according to different multinational enterprises, even when facing the same national context.[1310] In particular, for H&M, the actual use of the NMCs demonstrates an involvement and a sense of ownership by local trade unions, even if this is sometimes limited.[1311] This, based on the interviews carried out, did not seem to have developed to the same extent with Inditex. Using the mechanisms created by the agreement and the leverage it enjoys as a leading brand, the implementation of H&M's global collective agreement in Cambodia seems to have produced more positive results. Still, as mentioned by several interviewees, a brand's leverage by itself might not be enough to resolve issues and bring improvements in industrial relations and labour conditions. In buyer-driven chains, buyers hold a high leverage, based on an easiness to relocate production.[1312] However, and despite its importance, leverage is only one of the key factors involved in the successful implementation of a global collective agreement. Other factors, such as the domestic legal framework and union context constitute further elements that impact the positive effect of global collective agreements.

Finally, particularly in the case of H&M, the agreements have provided a continuous communication channel with the companies, enabling union involvement in the decisions taken by the brand. This was viewed in the case identified by Kaltenborn, Neset, and Norpoth, in which H&M, based on the federation's preference, decided not to cut business relations with the uncomplying factory.[1313] Nevertheless, this direct communication seems to be limited to federations possessing a seat at the NMC. A similar situation happened in regard to Inditex and the identification of two child labour cases in Portugal. In the Cambodian context, given the restrictions enabled by the 2016 New Trade Union Law, this gives independent trade unions some

[1310] Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), p. 175.
[1311] ibid, p. 175.
[1312] ibid, p. 176.
[1313] ibid, p. 189.

influence over the buyer's decisions, provides an added grievance procedure, and contributes to the development of good industrial relations within the country's domestic context. As the mentioned authors stated when referring to an IF Metall representative, *"even if the GFA was not instrumental in settling all the cases successfully, having the structure in place was already a significant achievement for the trade union movement since it fosters dialogue"*.[1314]

6.2. Impact of Global Framework Agreements and Dilemmas

The present section poses questions in regard to the analytical material available, focusing on the implementation and enforcement of global collective agreements, problems relating to the dissemination and understanding of the agreements by the parties involved in their implementation at the local level, and the need to clarify the functioning of the dispute settlement procedures. Suggestions on how to overcome these gaps are further presented.

6.2.1. Available Material

As demonstrated in chapter 1, the use of global collective agreements has already been reported in a number of cases where a global union federation and its national affiliates resorted to an agreement as a path to transnational unionisation and the protection of core labour standards throughout a global supply chain.[1315] This demonstrates the nuclear importance of local trade

[1314] ibid, p. 189.

[1315] E.g., Miller, 'Preparing for the Long Haul: Negotiating International Framework Agreements in the Global Textile, Garment and Footwear Industry' (n33); Papadakis, 'Globalising Industrial Relations: What Role for International Framework Agreements?' (n125), pp. 277-306; Lone Riisgaard and Nikolaus Hammer, 'Prospects for Labour in Global Value Chains: Labour Standards in the Cut Flower and Banana Industries' (2011) Vol. 49 British Journal of Industrial Relations, pp. 168-190; Pamela K. Robinson, 'Chapter 8: International Framework Agreements: Do Workers Benefit in a Global Banana Supply Chain?' in Konstantinos Papadakis (ed.) *Shaping Global Industrial Relations: The Impact of International Framework*

unions and how a global collective agreement's implementation is highly based on the local level and social dialogue. The aim was never to provide a comprehensive literature review of all documented cases. The choice of cases described is based on recurrent references found in literature[1316] and particular aspects of these agreements intended to be highlighted or considered as especially effective in regard to their implementation. The cited examples compose the ground used to present the major findings of the empirical work carried out in Cambodia. The listed cases display these agreements' impact in the improvement of industrial relations, particularly in terms of trade union establishment and engagement throughout supply chains. Moreover, they illustrate how issues are sometimes resolved through the use of a solidarity network and an organisation enabling environment, which are provided by the presence and implementation of a global collective agreement. These show a positive impact of global collective agreements, although the settlement of disputes was conducted outside the agreed mechanisms comprised in the agreements. The mentioned examples refer to anti-union behaviour on the part of suppliers. Outside the spectrum of freedom of association and the right to collective bargaining, examples of enforcement separated from the mechanisms arranged in the agreements are scarcer. Thus, while social dialogue and solidarity-based initiatives have seemingly worked in the background of matters relating to freedom of association and the right to collective bargaining, other industrial relations issues apparently call for more institutionalised mechanisms.

Still, the available material on the implementation and dispute resolution of global collective agreements typically focuses on the analysis of positive cases. Accordingly, more positive than negative examples can be found in

Agreements (Palgrave Macmillan 2011), pp. 614-718; Cotton and Royle, 'Transnational Organising: A Case Study of Contract Workers in the Colombian Minimum Industry' (n229); Williams, Davies, and Chinguno, 'Subcontracting and Labour Standards: Reassessing the Potential of International Framework Agreements' (n30), pp. 181-203.

[1316] E.g., Konstantinos Papadakis (ed.), *Shaping Global Industrial Relations: The Impact of International Framework Agreements* (n11); Hayter, *The Role of Collective Bargaining in the Global Economy* (n19); MacCallum, *Global Unions, Local Power: Spirit of Transnational Labour Organising* (n20); Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12).

literature[1317], as well as union, and news sources.[1318] Thus, despite the fact several articles show some scepticism in regard to 'potential' innovative impact of global collective agreements, when cases are described, these are normally cited as 'good examples'.

There is a tendency of the available material to focus on cases that were somehow resolved under a global collective agreement. In most instances, that resolution was done through references to the agreement's existence and content as a basis for social dialogue, outside the dispute settlement procedures comprised in the document. Examples of shortcomings in implementation and enforcement of global collective agreements are vastly inexistent. The interviews have revealed both the positive and negative sides of the implementation and enforcement of the two selected agreements in Cambodia. Finally, information regarding the concrete results of an agreement's implementation and enforcement are often scarce. In particular, for Inditex's agreement, it was possible to discover a set of initiatives relating to training schemes, factory visits, and information on the supply chain.[1319] Evidence regarding the resolution of disputes under the agreement was discovered in some reports, but without any specific details.[1320] Enforcement focused information available is scarce and vague. The same can be said in regard to public information available on the enforcement and implementation of H&M's agreement.[1321] This supports the idea regarding the use of global collective agreements as tools used to address the relationship with particular types of stakeholders, namely trade unions.

[1317] See, Fichter, Helfen and Sydow, 'Regulating Labour Relations in Global Production Networks: Insights on International Framework Agreements' (n163), pp. 69-86; Konstantinos Papadakis (ed.), *Shaping Global Industrial Relations: The Impact of International Framework Agreements* (n11).

[1318] E.g., Fashion Network, 'H&M renews Global Framework Agreement' (5 October 2016). Available At: https://uk.fashionnetwork.com/news/H-M-renews-Global-Framework-Agreement,739630.html#.XGxNYC0VRmA [Accessed 19 February 2019].

[1319] Inditex, 'Inditex Annual Report 2019' (n116), pp. 106, 108.

[1320] Guguen, 'Inditex and IndustriALL Global Union: Getting Results from a Global Framework Agreement – Special Report' (n14); Boix and Garrido, 'Balance Sindical de los 10 Años del Acuerdo Marco Global con Inditex - Una Experiencia de Acción Sindical Por Una Globalización Sostenible – 4 Octubre de 2017 – 10o Aniversario De La Firma Del Acuerdo Marco' (n1138).

[1321] IndustriALL, 'Agreement with H&M Proves Instrumental in Resolving Conflicts' (n14); IndustriALL, 'Using Global Framework Agreements to Organise' (n14).

6.2.2. Dissemination and Comprehension Problems

In line with Hadwiger's findings, the interviews carried out show how the impact of global collective agreements is reliant on the wording of an agreement and the implementation mechanisms it comprises, but also on its local implementation and dissemination. Without this, proper understanding of the agreement and local involvement in its implementation and enforcement will be highly tainted.[1322] Accordingly, the cooperation and involvement of global union federations, local trade unions, as well as central and local management is indispensable.[1323] Local trade unions' lack of involvement in the negotiation of a global collective agreement, together with an inadequate communication, dissemination, and training in regard to the agreement will result in a lack of ownership.[1324]

In relation to previous research,[1325] the interviews demonstrate that dissemination and comprehension problems are prevalent also in relation to suppliers and subcontractors. In the case of local trade unions, some interviewees demonstrated a clear knowledge of the agreement's content, whereas others seemed to lack that knowledge. In fact, knowledge and understanding of global collective agreements varied among the different trade union representatives interviewed. Some demonstrated an insight and analysis capabilities regarding both the content and the implementation of the agreement. Differently, other trade union representatives seemed to blend the narrative they wished to convey with the actual implementation of the global collective agreements. Accordingly, references to issues linked to anti-union behaviour, wages, and an array of other brands that contract suppliers in Cambodia were frequently mentioned. In some cases, this seemed to be based on an actual lack of knowledge, whereas in others, it appeared to be connected to an intent to share a narrative. As mentioned by the trade union representatives interviewed, workers were not included in

[1322] Croucher and Cotton, *Global Unions Global Business: Global Union Federations and International Business* (n1058), p. 63.
[1323] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 170.
[1324] ibid, p. 171.
[1325] ibid, p. 171.

training initiatives. Thus, while training is provided to management and trade union representatives, it is not directly provided to workers. Dissemination of the agreement to workers seemed to be carried out by trade unions, which might lack the knowledge and necessary resources. Accordingly, if dissemination is not carried out or is poorly conducted at the local level, workers have no knowledge of the agreement or how to use it. Thus, for workers, apart from an unawareness of the agreements' existence, there were also indications of a lack of understanding regarding their content and how to use them.

The interviews demonstrate that, in the Cambodian garment industry, though monitoring is carried out as prescribed by the relevant agreements, implementation is not always carried out in a suitable manner. Besides adequate dissemination and translation of the agreement, it is fundamental that unions and local management are provided training in regard to the content and functioning of the agreement. As already identified in previous studies, global collective agreements are often unknown or poorly understood at the local level. While the interviews confirm that training initiatives are indeed carried out, some trade union representatives were still unaware of key elements of the agreements. For instance, in regard to H&M's agreement, one of the trade union representatives holding a seat in the NMC seemed to have mere general knowledge of the agreement.[1326] Inditex implemented an initiative to provide funding for independent trade union officers to monitor and report on compliance with the global agreement within the company's subsidiaries and suppliers, covering India, Bangladesh, Cambodia, Turkey, Latin America, and China.[1327] However, in Cambodia, although training has been conducted under the agreement, the issues remain the same.

[1326] Interview with a Trade Union Representative (Phnom Penh, Cambodia, January-February 2020).
[1327] Ford and Gillan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (n145), p. 467-468.

6.2.3. Vagueness of Dispute Settlement Procedures

Global collective agreements should prevent violations of workers' rights, but also work as a remedy when these happen.[1328] As previously mentioned, general references to dispute settlement, merely providing for a joint discussion, aimed at a mutual and early resolution, particularly without any reference to specific measures, do not suffice for an agreement to be considered as a global collective agreement. Examples of such references can be found in AEON's (2014), Danske Banks' (2008), Ford's (2012), Italcementi (2008), Nampak's (2006), and Salini Impregilo's (2014) agreements. The references to enforcement and dispute settlement comprised in the agreements are too vague to institute dispute settlement procedures.

Still, even for agreements that comprise a clear hierarchical procedure for the settlement of disputes, allow for mediation and/or arbitration, and the resort to a court, **lack of clarity is still issue**. For instance, Section 14 of H&M's agreement, allows for mediation, merely states that *"In case of a failure to agree at the level of JIRDC, the Parties may by mutual agreement appoint an independent mediator, acceptable to both Parties, to help the Parties agree on the best way to facilitate a resolution of an Industrial Relations issue"*. Inditex's agreement allows for the parties to seek the expert advice of the ILO and any agreed third party for mediation. These are still rather vague.

As developed in chapter 4, non-judicial mechanisms, namely arbitration and mediation constitute better alternatives to litigation in national courts. Based on their social dialogue basis and, as stated in H&M's agreement, the goal of establishing 'well-functioning industrial relations', mediation might constitute a better alternative. Nevertheless, arbitration also has its own advantages. Both mediation and arbitration allow for neutrality. However, 164 states have ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Furthermore, arbitration provides a final and binding resolution by a third neutral party. Also, it surpasses an array of

[1328] IndustriALL, 'Global Framework Agreements Are Strategic Tools' (n28).

practical issues, from the need to hire local legal counselling and translating documents, as several languages can be used in arbitration. Hence, it allows for a cross border system that allows for a better functioning between legal cultures. Based on the recognition of a set of concerns relating to arbitration, namely the costs and arbitrability, an attempt to create a mechanism that is both adaptable, flexible, and simple enough for brands and unions to modify the rules according to their needs and implement them in their own agreement covering a supply chain[1329] has been developed by the Clean Clothes Campaign, Global Labour Justice, International Labour Rights Forum, and Worker Rights Consortium. The proposed '**Model Arbitration Clauses** for the Resolution of Disputes Under Enforceable Brand Agreements' provides an arbitration-based template through which global collective agreements can be enforced. They institute a detailed procedure, allowing for more clarity, transparency, and covering a series of gaps left in global collective agreements' references to arbitration.[1330] These clauses can further fit into the cross-border nature and social dialogue goals of global collective agreements since, as stated in Article 15:

> At any time during the course of the arbitral proceedings, parties may agree in writing to resort to mediation or other facilitation methods to resolve their dispute.

Hence, mediation is always possible. Still, and despite the usefulness of the model clauses, and the recognition that some arbitration matters should have been detailed in the global collective agreements signed, namely the choice of law and the seat of arbitration, these have been somewhat criticised. As highlighted by Christy Hoffman, UNI Global Union's Secretary General, the timeframes are challenging, and global union federations are not willing to

[1329] Katerina Yiannibas, 'Webinar: How Do We Resolve Labour Disputes Under Global Supply Chain Agreements?' (Cornell IRL School, July 17 2020). Available At: https://www.ilr.cornell.edu/new-conversations-project-sustainable-labor-practices-global-supply-chains/news-and-events/webinar-how-do-we-resolve-labor-disputes-under-global-supply-chain-agreements [Accessed 12 August 2020].

[1330] Clean Clothes Campaign, Global Labour Justice, International Labour Rights Forum, and Worker Rights Consortium, 'Model Arbitration Clauses for the Resolution of Disputes Under Enforceable Brand Agreements' (24 June 2020). Available At: https://laborrights.org/releases/four-major-civil-society-groups-release-dispute-resolution-system-and-model-arbitration [Accessed 12 August 2020].

negotiate arbitration every time they negotiate a global collective agreement, focusing their leverage on arbitration language. Instead of renegotiating the model clauses every time a global collective agreement is signed, global unions are attempting to negotiate a process with the Permanent Court of Arbitration, in an expedite package adapted to labour cases, constituting an institution embedded process.[1331]

Other alternatives have included a more active role taken by the ILO, namely through the creation of a **Transnational Labour Inspectorate**.[1332] Currently, according to information gathered through the interviews and corroborated in literature, the ILO does not have an actual role in the implementation and enforcement of these agreements. This is the case, despite references to the ILO in various agreements and the suggestions made to IndustriALL's global collective agreement working group in a 2018 meeting at the ILO. These advocated for better use of ILO tools and mechanisms.[1333]

6.3. Final Remarks

In 2007, Inditex signed the first global collective agreement in the garment industry. Since then, the agreement has been renewed twice, the latest in 2019. Other key brands, such as Mizuno, H&M, Tchibo, and ASOS have signed and renewed further agreements and others are in negotiations to do so. Likewise, a variety of other sectors have seen a development in both the number and content of these agreements. Going beyond global framework agreements, global collective agreements represent a whole new stage in both transnational industrial relations but also in corporate social responsibility.

[1331] Christy Hoffman, Webinar: How Do We Resolve Labour Disputes Under Global Supply Chain Agreements?' (Cornell IRL School, July 17 2020). Available At: https://www.ilr.cornell.edu/new-conversations-project-sustainable-labor-practices-global-supply-chains/news-and-events/webinar-how-do-we-resolve-labor-disputes-under-global-supply-chain-agreements [Accessed 12 August 2020].

[1332] Garcia-Muñoz Alhambra and ter Haar, 'Harnessing Public Institutions for Labour Law Enforcement: Embedding a Transnational Labour Inspectorate within the ILO' (n1118), pp. 233-260.

[1333] IndustriALL, 'Global Framework Agreements Are Strategic Tools' (n28).

They impose a minimum framework that applies to all of those within the agreement's scope. This minimum framework is implemented on a social dialogue basis, contributing to the development of industrial relations in the countries where the multinational enterprise operates and, when necessary, enforced trough the mechanisms comprised in the agreement. These are not intended to function based on paternalistic approach, giving primacy to local implementation and local dispute settlement. This allows for an implementation and enforcement that is primarily carried out at the local level, while also allowing for monitoring and dispute resolution at the top level. In regard to corporate social responsibility, these agreements illustrate a multinational enterprise's understanding regarding the impact of their activities (even if they are not directly responsible) and the need of involvement and participation of those impacted.

As previously mentioned, global collective agreements are based on a cooperative, social dialogue approach and intend to implement minimum labour standards throughout an agreement's scope. Despite the inclusion of enforcement mechanisms, these agreements are built around the aim of developing a long-term, cooperative relationship. Thus, while enforcement mechanisms provide a last resort alternative to address violations, these agreements can also be used in a more informal setting. Workers are indeed provided with opportunities to identify local issues and have indeed been able to participate in employers' decision making, working as a *"means by which to achieve more meaningful social dialogue from the ground upwards"*.[1334] The fact H&M's agreement has also been used outside its formal content and dispute resolution mechanisms illustrates how these agreements can contribute to strengthening the power of local unions and the development of good industrial relations. Furthermore, they highlight the institutional and coalitional power of trade unions. In particular, trade unions can find opportunities to exert pressure in companies that are especially sensitive to

[1334] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), pp. 225-226, 229.

reputational damages.[1335] As stated by an interviewee, these agreements constitute a tool in a tool box, being one of several power resources that promote social dialogue and create an enabling space for dispute resolution.[1336] Furthermore, global collective agreements contribute to a democratisation of the labour standard setting procedure. As stated by Novitz, *"even a flawed IFA can bring about substantial change and improvements in terms of worker participation"*.[1337] Both agreements are recognised to have a positive influence in the development of social dialogue and communication with the relevant brand, even when the agreements' formally instituted enforcement mechanisms failed.

Despite their current and impending impact in the improvement of social dialogue and the establishment of (at least) minimum working conditions, some key issues must be addressed. Unlike previous attempts to regulate the worldwide conduct of multinational enterprises, global collective agreements tackle enforcement and do not place the handling of violations solely in the company's goodwill. In fact, as revealed in chapter 5, proper enforcement mechanisms constitute one of the fundamental features for the identification of global framework agreements that fit into a narrower category of global collective agreements.[1338] As stated in IndustriALL's guidelines, an agreement *"must contain an effective mechanism for implementation, enforcement and a procedure for binding dispute resolution"*. [1339] While general references to cooperation in regard to dispute settlement are not sufficient for a global framework agreement to be considered as a global collective agreement, the current enforcement provisions comprised in global collective agreements ought to be more detailed. A collaboration with the ILO, using model arbitration clauses, or working together with an institution

[1335] Mustchin and Martínez Lucio, 'Transnational Collective Agreements and the Development of New Spaces for Union Action: The Formal and Informal Uses of International and European Framework Agreements in the UK' (n46), pp. 582, 590, 294.
[1336] ibid, pp. 591, 597.
[1337] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 239.
[1338] Owen E. Herrnstadt, 'Are International Framework Agreements a Path to Corporate Social Responsibility?' (2007) Vol. 10 No. 1 U. Pa. Journal of Business and Employment Law, pp. 187-224.
[1339] IndustriALL, 'IndustriALL Global Union's Guidelines for Global Framework Agreements (GFAs)' (n884).

such as the Permanent Court of Arbitration are all possibilities that global collective agreements could use to surpass these deficits.

Extensive and adequate dissemination are key conditions for an agreement's effective implementation and subsequent impact. Dissemination provisions have become more detailed, comprising an array of activities intended to be carried out. However, significant issues could be still identified. As the interviews show, while training activities are indeed carried out, adequate communication is often overlooked. Also, as the interviews reveal, national trade unions might have a weak understanding of the agreements, especially when they are not affiliated with the relevant global union federation. The same can be said for non-affiliated workers. A lack of knowledge or poor understanding of an agreement and its existence, together with management hostility or indifference to its promotion are important limitations to an agreement's effective implementation.[1340]

A clear definition of an agreement's scope of implementation and the obligations comprised are also recommended. Such definition would contribute to avoid interpretative problems. These recommendations do not entail a compulsory development into a scope that covers the totality of the supply chain. It is relevant that the scope is achievable and therefore references to direct control, influence, and even agreements merely applicable to subsidiaries are not meaningless if that wording entails the agreement's real impact. Nevertheless, the target should be a development into the widest scope of application, covering the whole supply chain. The prospect of an enterprise's refusal to tackle complaints that occur in a supplier or subcontractor based on the fact these are not within the agreement's scope of application illustrates that a wide reference to the supply chain is preferable. However, if it represents a mere declaration devoided of any real commitment, it is pointless.[1341] Accordingly, if global

[1340] Novitz, 'Big Unions and Big Business: Can International Framework Agreements Promote Sustainable Development at a Local Level' (n325), p. 238; Mustchin and Martínez Lucio, 'Transnational Collective Agreements and the Development of New Spaces for Union Action: The Formal and Informal Uses of International and European Framework Agreements in the UK' (n46), p. 580.

[1341] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 171.

collective agreements are to be effective in improving working conditions and contributing to good industrial relations, they must cover not only the enterprise and subsidiaries, but also suppliers and other business partners. As stated in IndustriALL's guidelines for global collective agreements, the agreements *"must cover all company operations throughout the world without exception"*.[1342]

Despite room for improvement, global collective agreements can be used in the improvement of working conditions and the development of the industrial relations system in the countries where the multinational enterprise operates. They contribute to the implementation and enforcement of labour standards in countries that have either not ratified ILO conventions or have a record of poor implementation. An IndustriALL interviewee emphasised how merely piling global collective agreements would not constitute a sustainable strategy and would not solve systemic problems, but urgent ones instead. In fact, without adequate implementation and enforcement, the mere signing of global collective agreements is meaningless. Still, their value as a tool was recognised, particularly if placed within a global brand long standing strategy.[1343]

[1342] IndustriALL, 'IndustriALL Global Union's Guidelines for Global Framework Agreements (GFAs)' (n884).
[1343] Interview with an IndustriALL Representative (Skype Interview, February 2020).

7. Conclusions

The present chapter attempts to tie the information examined in the preceding chapters, while summarising the fundamental issues addressed and answering the four research questions presented in chapter 1. Global framework agreements that comprise certain features are identified as collective agreements. This identification carries with it certain effects, for the relationship between the signatories and for the workers covered by the agreements. The functioning of these agreements is further examined, through a content analysis of their text. This analysis is complemented with interview data, which looks into the actual implementation and enforcement of two global collective agreements. The impact of these agreements in Cambodia is also analysed, providing insights into issues that are also relevant for the implementation and enforcement of other global collective agreements in other domestic settings. Further research into the actual usage of these agreements in more countries, focusing on the problems identified would be valuable. In particular, focus on the improvement of dispute settlement provisions and their actual usage would provide added insights into their general acceptance as collective agreements. Moreover, further research into the use of these agreements in a more informal manner, as 'proof' of the commitment taken by the multinationals, would be beneficial.

Based on chapter 2 and 4, the legal status of global framework agreements is analysed, showing that their identification as mere corporate social responsibility instruments or collective agreements is very much dependent on the stakeholder considered. The view according to which global framework agreements should be considered as private law contracts is challenged and arguments against this understanding are presented. While similarities with collective agreements are easily identified, chapter 5 distinguishes a narrower concept, that of global collective agreements, based on the analysis of a set of agreements that fulfil key features. These features are identified and described in chapter 3, departing from the ILO definition

of collective agreement and aspects comprised throughout various domestic contexts. Chapter 4 further addresses the functioning of global framework agreements, answering questions about their content, implementation, and monitoring, while chapter 5 addresses enforcement. Focusing on the narrower concept of global collective agreements and using Cambodia as an example, the impact of global collective agreements is examined in chapter 6. Hence, the question regarding the impact of global collective agreements in Cambodia is answered, based on the empirical work carried out. For a global collective agreement to be able to achieve its goals in terms of equal implementation of labour standards and development of industrial relations throughout a company's operations, the interaction with other regulatory mechanisms and actors must be carried out in an effective manner.[1344] This means that the relevant stakeholders, particularly at the trade union level, must be addressed, which requires an agreement's actual dissemination and trade union involvement in its implementation. Besides dissemination issues and poor local enforcement, the vagueness of disputes settlement procedures constitutes a further problematic. This matter is addressed in connection with the functioning of these agreements, particularly in regard to dissemination, monitoring, and enforcement. As chapter 6 and the empirical work demonstrate, these matters represent an obstacle in practice. The final research question, regarding the interaction of global collective agreements and other regulatory mechanisms, national and international, is lastly addressed in chapter 4 and chapter 5. In terms of international instruments, global collective agreements go beyond existing instruments attempting to regulate the worldwide conduct of multinational enterprises. As collective agreements, they involve workers' representatives and contain actual rights and obligations for both parties, and award an added protection for those covered by the agreement. The minimum standard uniformity intended to be established functions within different national industrial relations systems which, while allowing for better working conditions than those afforded by national legislation and collective agreements, does not intend to surpass existing regulative frameworks.

[1344] Hardy and Ariyawansa, 'Literature Review on the Governance of Work' (n217), p. 73.

7.1. Legal Status of Global Framework Agreements

7.1.1. Global Framework Agreements, Corporate Social Responsibility, and Industrial Relations

Global or international framework agreements touch upon a **variety of different concepts** related to globalisation, labour law, industrial relations theories, and corporate social responsibility. Global framework agreements do not perfectly fit into any of these concepts, being a combination of different elements instead. Hence, it is hard to position them into any existing legal category or notion. Nevertheless, this dissertation argues that, among the numerous global framework agreements, some fit into the concept of collective agreement, based on the identification and analysis of a set of core features.

The following paragraphs discuss the placement of global framework agreements within corporate social responsibility and examine the changing roles taken by different stakeholders. Stakeholder theory and the legitimatory discourse increasingly adopted by multinational enterprises are considered. The possible ways of legally framing global framework agreements are discussed, before connecting this to the analysis carried out in chapter 5, which demonstrate that some global framework agreements truly fit within the concept of collective agreement.

A) Placement within Corporate Social Responsibility

Global framework agreements *"might be considered more a feature of global industrial relations than a part of corporate social responsibility"*.[1345] However, based on Carrol's definition of social responsibility of business,[1346] one could wonder whether global framework agreements should rather be

[1345] Telljohann, da Costa, Müller, Rehfeldt, and Zimmer, *European and International Framework Agreements: Practical Experiences and Strategic Approaches* (n48), p. 63.
[1346] Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance' (n260), pp. 705-724.

viewed as a development of corporate social responsibility or a bridge between corporate social responsibility and global industrial relations. Carroll's definition introduces key elements of the concept of corporate social responsibility. Global framework agreements develop the notion, introducing industrial relations aspects and connecting these two dimensions.

The placement of global framework agreements **within corporate social responsibility** will depend on the actor considered, meaning there is no clear-cut answer. For **trade unions**, these agreements might represent an alternative to corporate social responsibility whereas, **for some companies**, they can be considered as an evolution and an opportunity of avoiding legal responsibility. **For the ILO**, global framework agreements are not corporate social responsibility instruments, despite being discussed in relation to the concept. As stated by the team leader of the ILO's multinational enterprises programme in 2007, global framework agreements are not corporate social responsibility initiatives, even if they represent a way through which companies can express their commitment and adherence to certain principles, meaning they are often placed within that field.[1347]

The **signatories' views in regard to the goals** of global framework agreements can somewhat differ. In general, these agreements are regarded by both global union federations and the signatory multinational enterprise as equal standard implementing instruments that also intend to create a continuous relation, based on joint implementation and sometimes enforcement. From a **global union federation's perspective**, global framework agreements provide a recognition of legitimacy and bargaining

[1347] *"An international (or global) framework agreement (IFA) is an instrument negotiated between a multinational enterprise and a Global Union Federation (GUF) in order to establish an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates. (…) Although framework agreeements are not corporate social responsibility (CSR) initiatives, they are often referred to in the CSR debate because they are one of the ways in which companies can express their commitment towards the respect of certain principles. However, the specific aspect that distinguishes frameworks agreements from CSR initiatives is that they result from negotiation with international workers' representatives."* See, International Labour Organisation, 'International Framework Agreements: A Global Tool for Supporting Rights at Work' (31 January 2007). Available At: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_080723/lang--en/index.htm [Accessed 30 June 2020].

rights.[1348] Furthermore, through them, global union federations aim to establish minimum standards in all of a multinational enterprise's worldwide operations.[1349] Additionally, these agreements are intended to create a long-term relationship, based on continuous social dialogue and the involvement of workers' representatives in the regulation of a multinational enterprise's conduct. Furthermore, global framework agreements aim to support the development of international cooperation between a global union's affiliates. **For companies**, global framework agreements can also be viewed as a possibility to develop a permanent relationship so that conflicts can be reduced and production is not affected. Interviews with a current and a former H&M representative have highlighted these aspects, referring to the negative consequences of production stoppages in profits and the construction of a positive, continuous, relationship with supplier factories. The threat of industrial conflict should not be underestimated, particularly for companies originating in countries where the peace obligation, mentioned in chapter 3, is highly valued. These agreements can also contribute to the improvement of a multinational's public image and reputation, since the negotiation of agreements involving workers' representatives increases the credibility of commitments to conduct business in a socially responsible manner. Relating this expectation to both **stakeholder and legitimacy theory**, developed in chapter 2, multinationals view global framework agreements as a way of improving their image and relation to various stakeholders. Hence, companies expect to boost a positive image with consumers, attract investment, and improve the morale and relationship with employees.

In regard to companies, global framework agreements are seemingly best **placed within sustainability/corporate social responsibility policies**, aimed at the protection and improvement of legitimacy. However, it is interesting to note that, despite some available materials, their **use as**

[1348] Helfen and Fichter, 'Building Transnational Union Networks Across Global Production Networks: Conceptualising a New Arena of Labour-Management Relations' (n905), pp. 553-576.

[1349] Helfen and Fichter, 'Building Transnational Union Networks Across Global Production Networks: Conceptualising a New Arena of Labour-Management Relations' (n905), pp. 553-576; Ford and Gillan, 'The Global Union Federations in International Industrial Relations: A Critical Review' (n145), pp. 456-475.

possible public relations tools is more dubious in comparison to other corporate social responsibility initiatives. In fact, it is often challenging to find the agreements in the company's websites and related information is not widely publicised.[1350] Based on the interviews conducted with a former and a current H&M representative, the brand's agreement is placed within the company's sustainability department, previously titled as corporate social responsibility.[1351] Hence, it is not directly linked to H&M's legal department. However, according to a former H&M representative, the reasons behind the signature of the global framework agreement were not linked to any evasion from legal responsibility. Other motives were listed, namely the improvement of relations between workers and the brand, the mitigation of risks for human rights, and the improvement of productivity. In particular, the 2014 strike in Cambodia, which put production down to five per cent was referred.[1352]

Global framework agreements are not subjected to state intervention or oversight,[1353] even when resort to a court is explicitly provided for. Companies seem to view judicial enforcement as unlikely and inconvenient. For instance, in regard to the implementation of Inditex's agreement, a report stated that resorting to court raises problems, due to the inexistence of an international labour court and the fact that the company is the one that directly commits to the agreement. Hence, even if suppliers have signed a commitment to the brand, they are not an active part in the global agreement. Nevertheless, the report emphasised that there is always the possibility of resorting to court based on the country's domestic labour legislation and its express mention of international labour standards, without ignoring the agreement.[1354]

[1350] Krause, 'The Promotion of Labour Standards Through International Framework Agreements' (n147), p. 326.
[1351] Interview with a H&M Representative and a former H&M Representative (Phnom Penh, Cambodia, January-February 2020 and Lund, Sweden, February 2020).
[1352] Interview with a former H&M Representative (Lund, Sweden, February 2020).
[1353] Marzo, 'From Codes of Conduct to International Framework Agreements: Contractualising the Protection of Human Rights' (n895), p. 471.
[1354] (Translation by the author) Boix and Garrido, 'Balance Sindical de los 10 Años del Acuerdo Marco Global con Inditex - Una Experiencia de Acción Sindical Por Una Globalización Sostenible – 4 Octubre de 2017 – 10o Aniversario De La Firma Del Acuerdo Marco' (n1138), p. 41.

Accordingly, the placement of global framework agreements within the field of corporate social responsibility is very much dependent on the actor considered and its concrete interests. Following a developmental trend, private labour governance of supply chain has progressively evolved from unilateral company based initiatives to multistakeholder instruments which include union involvement in particular.[1355] This allows for a distinction between pure corporate social instruments and those that carry with them a higher or lesser degree of industrial democracy.[1356] Among these, there is a set of agreements that go a step further and can indeed be considered as collective agreements. Regardless of whether the parties place these agreements within the field of corporate social responsibility, judicial enforcement, while not required, is also not excluded. Some agreements explicitly enable the possibility of bringing a dispute to court, meaning that the parties and companies in particular, do not necessarily intend to prevent legal liability. Still, when provided, this alternative is always placed as a last resort alternative. A dispute should initially be solved within the agreement's social dialogue basis and joint problem solving. In other words, through the agreement's internal mechanisms. As developed in chapter 3 and 5, collective agreements are binding. Enforcement is an expression of an agreement's binding effect, ensuring that violations are addressed.

B) Stakeholder Theory and Industrial Relations

The different industrial relations theories presented in chapter 3 underlined key elements that are relevant for the analysis of global framework agreements, both in regard to corporate social responsibility and within the concept of collective agreement. These theories emphasised the relevant actors to take into consideration in the creation of rules within an industrial

[1355] Ashwin, Oka, Schuessler, Alexander, and Lohmeyer, 'Spillover Effects Across Transnational Industrial Relations Agreements: The Potential and Limits of Collective Action in Global Supply Chains' (n905), pp. 1001-1005.

[1356] Jimmy Donaghey and Juliane Reinecke, 'When Industrial Democracy Meets Corporate Social Responsibility – A Comparison of the Bangladesh Accord and Alliance as Responses to the Rana Plaza Disaster' (2018) Vol. 56 No. 1 British Journal of Industrial Relations, pp. 14-42; Ashwin, Oka, Schuessler, Alexander, and Lohmeyer, 'Spillover Effects Across Transnational Industrial Relations Agreements: The Potential and Limits of Collective Action in Global Supply Chains' (n905), p. 1001.

relations system, as well as factors to consider in regard to the relation between the social partners. According to these theories, industrial relations are created by employers, unions, governments, and their interactions. These were developed having the national context as a background. However, industrial relations are increasingly extending to the international level and new actors are increasingly playing a more significant role. Despite the primary relevance of the three actors identified, **other actors** also play a role in industrial relations. In fact, the interactions analysed in industrial relations theories touch upon a variety of different actors, including unions, workers, management, society in general, company leadership, and third-party negotiators.[1357] As described in chapter 2 in regard to globalisation and stakeholder theory, governments play a decreased part in transnational industrial relations, whereas multinational corporations have progressively played a more central role. Similarly, consumers have gained more importance. Through globalisation, transnational outsourcing, and the development of attempted regulative initiatives, a parallel, **transnational industrial relations system** has emerged. This transnational system is based on an increasing awareness of the importance of international trade union solidarity and the vast influence of multinational enterprises, functioning in parallel to national systems.

Differently from what happens at the national level, transnational industrial relations do not function based on legal enforcement but on **voluntary governance** instead. While industrial relations at the national level have also developed voluntarily, they have gradually been regulated and placed into the countries' legal framework. The same has not happened at the international level. Despite involving the same key actors identified in national industrial relations systems, the **role played** by each one is different. Hence, while management, employees' organisations, and the government constitute key actors in industrial relations, also recognised in the ILO's tripartite context, the weight each actor carries is distinct in a transnational setting. First, there has been shift from a state orientated to a corporate centred industrial relations system. Second, there has been a weakening of

[1357] Jayeoba, Ayantunji, and Sholesi, 'A Critique of the Systems Theory of J. T. Dunlop' (n347), pp. 97-106.

national trade unions and a need for engagement at the international level.[1358] The less active role of governments in outsourcing countries, based on weak legislation or poor enforcement, has shifted the governance role to multinational corporations. This was facilitated by a decreasing trade union membership and non-governmental organisations' attention shift from state to corporate entities. Hence, there has been a move towards voluntary initiatives, in the form of joint multi-stakeholder instruments, codes of conduct, and global framework agreements. These have ultimately led to the development of collective agreements at the international level.

These instruments and the increasing relevance of a transnational dimension further entail an involvement of **new actors or stakeholders**, which had not been previously considered by industrial relations theories. These include consumers, non-governmental organisations, and financial institutions. The relevance of each actor can vary based on the instrument considered. For instance, codes of conduct give a more relevant role to consumers and financial institutions, whereas global framework agreements emphasise the part played by the supply of labour and the threat of industrial action.[1359] This dimension is viewed in corporate discourse in relation to global framework agreements.

C) Corporate Discourse

Companies tend to see social responsibility as damaging to profitability.[1360] However, as argued in chapter 2, they have progressively engaged in a legitimatory discourse as a self-defence or pre-emptive strategy. Such development is based on an array of factors, namely a growing awareness regarding the impact of multinational enterprises' conduct. Also, as presented in chapter 2, differently from previous regulative attempts, global

[1358] Egels-Zandén, 'Transnational Governance of Workers' Rights: Outlining a Research Agenda' (1207), pp. 169-173.
[1359] ibid, pp. 169-179.
[1360] Kimberly Gregalis Granatino, 'Corporate Responsibility Now: Profit at the Expense of Human Rights with Exemption from Liability' (1999) Vol. 23 No. 1 Suffolk Transnational Law Review, pp. 191-226; 'Organisational Irrationality and Corporate Human Rights Violations' (2009) Vol. 7 Harvard Law Review, pp. 1931-1952.

framework agreements are directed at a different set of stakeholders, focusing on the development of a lasting and cooperative relationship with trade unions and workers in particular. This discursive difference is visible in the differences between codes of conduct and global framework agreements. Non-governmental organisations support trust built from outcomes based on codified minimum requirements and are therefore more prone to promote companies' adoption of codes of conduct. Differently, unions consider trust as based on the process of collective bargaining and therefore back the negotiation and signing of global framework agreements. Nevertheless, some types of global framework agreements, representative of symbolic management, are characterised by a promotional approach. This is especially true for older global framework agreements. Nowadays, global framework agreements possess more than a minimum content, contain more precise references to the company's supply chain, implementation procedures and, in a growing number of agreements, enforcement mechanisms.[1361] The prominence given to freedom of association and the effective recognition of the right to collective bargaining also provides an indication of global framework agreements as instruments directed at the social partners, instead of consumers and shareholders. As mentioned in regard to the ILO based content of global framework agreements, consumers tend to give more attention to issues surrounding other fundamental labour rights, namely child labour and forced labour. The developmental trend represented by global collective agreements, which contain rights and obligations for both signatories that can indeed be enforced, is the embodiment of a strategy aimed at the relationship between multinationals and workers' representatives at the international level. Based on these considerations, global framework agreements are assessed as instruments that bridge industrial relations and corporate social responsibility. Global collective agreements are viewed as a further development, equivalent to the emergence of collective agreements at the national level. These, despite possessing links to existing corporate social responsibility initiatives, regulate the relationship between the signatories and the working conditions

[1361] Delautre, 'Decent Work in Global Supply Chains: An Internal Research Review – Research Department Working Paper No. 47' (n150), p. 40.

of those covered by the agreement. Industrial relations at the international level increasingly involve additional actors, besides the traditional tripartite setting, but the role played by each is dependent on the type of instrument. Global collective agreements focus on the social partners, represented at the international level.

7.1.2. Legal Status

The view according to which global framework agreements can be considered as **contracts** has the merit of allowing for judicial enforcement. However, as shown in chapter 4, it is not the most appropriate way of framing these agreements. As described in chapter 4, the possibility of viewing global framework agreements as contracts, judicially enforced through private international law is inadequate to these agreements' social dialogue basis, their aims, and global scope. First, mechanisms jointly agreed by the parties and the possibility to use mediation or arbitration in case a solution is not found within that joint framework, are more fitting to both the international character of global framework agreements and their cooperative nature. Judicial enforcement is not necessarily the most effective way to realise the social dialogue and minimum equal protection intended to be secured. In fact, judicial enforcement is problematic for global framework agreements, whose scope includes, at least, all of the subsidiaries where the company possesses a controlling interest. Some agreements, notably in the garment industry, further cover subcontractors and suppliers throughout the company's supply chain. Hence, it has been questioned whether courts are the best venue to hold a retailer responsible for the conduct of its suppliers.[1362] Joint dispute settlement procedures and, from a state involvement perspective, a public procurement preference for companies that demonstrate their suppliers respect human rights[1363] can be considered as alternative options. Second, even if judicial enforcement is dispensable, some agreements, and

[1362] *"Although lawsuits have been successful, some comentators question whether the courts are the best venue to hold a retailer responsible for the behavior of its suppliers"*. See, Kenny, 'Code or Contract: Whether Wal-Mart's Code of Conduct Creates a Contractual Obligation Between Wal-Mart and the Employees of its Foreign Suppliers' (n1017), p. 470.

[1363] ibid, p. 470.

particularly more recent ones, explicitly allow for the possibility of bringing a complaint to court or specify what legislation is applicable to the agreement. Hence, agreements can unequivocally enable the resort to court and/or include a jurisdiction clause. Besides further disadvantages, related to both cost and time issues, judicial enforcement of global framework agreements is, when a jurisdiction clause is not defined, difficult and elusive. The end result will be dependent on the jurisdiction and the law applied to the case. Moreover, the impact of the decision will hinge on the state enforcing it, meaning that effectiveness can greatly vary. While not all global framework agreements have reached the developmental status of collective agreements and lack clarity in terms of obligations and/or enforcement capability, these are not mere contracts. They are evocative of collective agreements, being applied to, at least, the signatories and those employed by the multinational and its subsidiaries.

It is worth noting that the **mere filling of a complaint** might lead the company to make alterations to its policy or lead to changes in its implementation, so as to avoid criticism and further reputational damage. Moreover, the continued threat of litigation and corporate denial of wrongdoing can be sufficient to settle a case and even create lasting improvements.[1364] Hence, the threat of litigation and public image costs can, as they have been in the past (to some extent), be enablers of corporate behavioural change. Still, any corporate conduct modification would be solely decided by the company and rely on its good will and tolerance. The same can be said in regard to its maintenance. Likewise, if (or when) judicial decisions are reached, they could represent key developments and create lasting change. This also applies to the consideration of global framework agreements as legally enforceable contracts. However, in settlement cases, the root causes of the problems would persist.[1365] Consequently, **dispute settlement procedures agreed and executed** by the parties are more tailored to the enforcement of global framework agreements. Dispute resolution, as stated in most agreements, should primarily be handled at the

[1364] ibid, p. 473.
[1365] ibid, pp. 469-470.

local level and through cooperation between the parties. On the companies' side, legal liability entails a risk of legal, financial, and reputational damages. On the global union federations' side, the use of cooperative dispute resolution mechanisms increases the significance of their role and allows for a developing relationship that enables the improvement of working conditions across a multinational enterprise's worldwide operations, also in regard to workers' employment and income safety. In fact, a constructive relationship between the parties allows for the development of industrial relations in the different countries where the company operates and contracts. Such development is beneficial for the union movement at the national level, for the multinational enterprise in regard to both production interruptions and legal certainty, and for the global union federation in terms of legitimacy, international solidarity, and usage of positive experiences.

Global framework agreements do not fit into any existent legal category. Compared to previous instruments, global framework agreements are in fact **more akin to collective agreements** and some can indeed be considered as such. When an agreement comprises dispute settlement provisions and can therefore be enforced, there is a validation that the agreement carries with it a binding effect. Jointly agreed dispute settlement mechanisms are more fitted to the nature of global framework agreements and provide an added indication of a possible fit in the concept of collective agreement. While global framework agreements represent a bilateral initiative that entails a higher degree of worker involvement, not all can be identified as global collective agreements. For a global framework agreement to be considered a collective agreement, it must fulfill specific features. Hence, a descriptive approach, adopted in chapters 3 and 4, opens the path for a more prescriptive approach stance. Based on ILO Recommendation No. 91 and exemplified in different national contexts, chapter 3 identifies and describes key features that define the concept of collective agreement. Classifying a set of global framework agreements as collective agreements carries connotations associated with the relation between the social partners and coverage of working conditions. Furthermore, it represents the recognition of a development that is equivalent to that of industrial relations at the national

level. As bilateral agreements, representative of a need to internationalise industrial relations systems, global collective agreements have emerged in the absence of a regulatory framework for collective bargaining at the international level. This is comparable to the development of collective agreements in national industrial relations systems. This dissertation merely provides a reasoning to designate an already existing (and developing) phenomenon. As developed in chapter 5, some features of the concept of collective agreement are especially contentious and difficult to identify in global framework agreements. While the representativeness of the parties, the free and voluntary character of negotiations, the existence of good faith, and the scope are less problematic, the binding effect and corresponding enforcement are controversial. These need to be more than mere references to the parties' cooperation in finding a common ground solution. Agreements that tackle enforcement usually comprise a (often hierarchical) complaint or dispute settlement procedure, sometimes specifying sanctions, and often allowing the resort to mediation/arbitration or even to court.

As the interviews illustrated, stakeholders' perceptions of these agreements' binding character vary and are often vague. While not recognising their status as a collective agreement, due to the lack of a clear statement from the signatory parties, the binding character was often acknowledged. Representatives from H&M, IndustriALL, and Cambodian trade unions viewed these agreements as binding. Still, even if the binding character was acknowledged, it was not viewed in a legal sense. An IndustriALL representative acknowledged the agreements give rights and obligations that can be enforced through the jointly agreed dispute settlement provisions. Nevertheless, the same interviewee stressed that, at least for the majority of agreements, the parties cannot bring a dispute to court or the Permanent Court of Arbitration.

Generally, those interviewed considered these agreements as promoters of social dialogue, giving the signatories and their affiliated organisations a collective bargaining space. Also, seeing them as a positive development compared to previous corporate social responsibility instruments, global

collective agreements were considered to bring more accountability for multinational enterprises. Still, as mentioned by an IF Metall representative, more accountability requires awareness and sanctions. As the interviews unveiled and literature has highlighted, this awareness is sometimes deficient. Furthermore, when a sanction is specifically mentioned in an agreement, in most cases it refers to the termination of contractual relations. Accordingly, violations can either be addressed through a cooperative framework, merely representing the return to a situation of compliance, or a complete slaying of business relations or sometimes the agreement. Accordingly, a trade union representative suggested that agreements could include sanctions in the form of fines.

As mentioned in chapter 5, a distinction between breaches and violations can be applied. A breach would then be addressed through the enforcement procedures comprised in the agreement. These can be internally or externally instituted, allowing for the resort to mediation, arbitration, or even a court. When these cannot resolve an issue, the breach would then transform into a violation, ultimately leading to the end of contractual relations with the supplier or subcontractor or even the termination of the agreement itself. This goes in line with the statements of an interviewee representing H&M who stated that, although the agreement can be considered as binding, it is still an agreement meaning that, if there is a sharp conflict that cannot be dealt with in consensus, it can be terminated. As highlighted by some interviewees, a clarification of the binding character would be a positive development, leaving less room for misinterpretations. Most interviewees mentioned their potential as enablers of stakeholder involvement but also emphasised these would highly depend on the relevant brand's honest commitment. Global collective agreements would then function as a tool placed in a context composed by an array of other instruments and remedies.

7.2. The Functioning of Global Framework Agreements

Based on a content analysis of various global framework agreements and a literature overview, chapter 4 provides an answer to the second research question, offering an examination of the parties, content, implementation mechanisms, and scope of global framework agreements. Chapter 6 further provides an added dimension regarding the concrete functioning of two selected agreements. While national trade unions and other types of workers' representatives can be involved in the negotiation and signing of a global framework agreement, these must necessarily be signed by a **global union federation** and a multinational enterprise. The bilateral character is one of the main features that distinguishes global framework agreements from comparable initiatives aiming to regulate the worldwide conduct of multinational enterprises. As explained in chapter 4 and the representativeness section of chapter 5, global union federations are the only organisations suitable to represent workers in an international instrument with a social dialogue aim and a global scope. Global framework agreements represent a formal recognition of the relevant global union federation as a legitimate counterpart, with some agreements containing explicit references to such recognition. National trade unions of the company's country of origin can, as referred in chapter 6, act as intermediaries, bridging the relationship between the multinational and the global union federation. Moreover, their involvement can add legitimacy to the agreement, since the national trade union can pressure the multinational enterprise within the company's national context, where accountability might be more marked. On the company side, most signatory multinationals have a European origin. However, some global framework agreements have been signed by companies whose headquarters are located in the United States, South Africa, and New Zealand. All global framework agreements are company-based, meaning there is no involvement of a global employers' federation. A future development could include the elaboration of a global framework agreement signed by global federations from both sides. The possible involvement of a global employers' federation in the negotiation and signing of a sectoral

global collective agreement would be a relevant topic for future research. This possibility involves competition issues that would be interesting to address.

Content wise, global framework agreements must, as a minimum benchmark, include a reference to the ILO core labour standards. Nowadays, all agreements comprise an assortment of further ILO standards and international instruments. In line with their social dialogue basis and subsequent development into actual collective agreements, global framework agreements give prominence to freedom of association and the right to collective bargaining. In fact, even agreements that do not explicitly refer to the eight fundamental ILO conventions, tend to mention Convention No. 87 and No. 89. The relevance given to these fundamental standards, in contrast to consumer-focused concerns, goes in accordance with the consideration of these agreements as more targeted to the relation between the social partners. This, in turn, also backs their development into collective agreements. Besides regulating the relationship between the signatory parties, global framework agreements cover an array of working conditions for those covered by the agreement. Chapter 4 provides a systematisation of standards regarding working conditions in global framework agreements. These include matters relating to wages, working hours, occupational safety and health, training, and sustainable development in the relationship with subcontractors, suppliers, workers, and the general community.

In terms of **implementation**, the vast majority of global framework agreements refer to dissemination, translation, and affixation of the agreement, as well as training programmes. Chapter 6 identifies problems in regard to training and dissemination of H&M's and Inditex's agreements, which are also repeated throughout literature. Some agreements contain more detailed provisions, referring to strategies aimed at the promotion of freedom of association and collective bargaining, as well as factory disclosure. Agreements often refer to implementation based on a cooperative approach, constructed around social dialogue with the participation of both signatories. Implementation at the local level is given primacy, leaving issues that cannot

be effectively performed at this level to the multinational's management and the global union federation or a joint body created under the agreement. Monitoring wise, most agreements establish a body comprised of representatives from both the global union federation and the multinational enterprise. These periodically review and monitor the implementation of the agreement, as well as issues that have arisen. Sometimes these bodies are also used for dispute settlement. A smaller number of agreements also tackles monitoring, carried out through meetings between the parties, reporting violations, and auditing mechanisms.

Finally, a global framework agreement must contain a **reference to the supply chain**. These references can vary considerably among different agreements. Thus, as a minimum, a global framework agreement applies within the relevant multinational enterprise and its subsidiaries. Some agreements refer to an application within the company's 'sphere of influence' and others, particularly in the garment industry, explicitly cover subcontractors and suppliers. Chapter 4 differentiates the references to the supply chain based on degree of comprehensiveness (i.e., broad or limited to a degree of control or influence) and detail (i.e., precise or vague).

Initially referring to the fundamental principles and rights at work and including rudimentary implementation mechanisms, agreements recently signed or renewed now include various other international labour standards and references to an array of corporate social responsibility instruments, as well as mechanisms for addressing violations. As developed in chapter 4 and 5, the developmental trend found in global framework agreements is particularly visible in the garment industry. While this development is further visible in other sectors, the garment sector seems to be a term of reference for such development. Future research could analyse links to consumer pressure and corporate social responsibility, examining what could be considered as a unique progress in agreements within this sector. A content analysis in the light of the key features of a collective agreement identified in chapter 3 show that, currently, all agreements signed by multinational enterprises placed in the garment sector can be considered as collective

agreements. Hence, the second research question is further clarified in chapter 6, which provides added insights into practical issues regarding the functioning of these agreements. While restricted to the two selected agreements as the focus of the empirical study, this complements the understanding of implementation and enforcement matters. The findings cannot be generalised but they unveil information into how these agreements are implemented, how enforcement mechanisms are used, and whether they truly enable the resolution of disputes. Furthermore, they introduce themes that are relevant to the implementation and enforcement of global collective agreements in other settings. These include distrust issues, dissemination problems, and the ambiguity of dispute settlement provisions.

The selected agreements possess a somewhat similar content. Both H&M's and Inditex's agreements explicitly recognise IndustriALL as a legitimate counterpart, highlight local implementation and enforcement, and underline the importance of company leverage. Likewise, both agreements contain comprehensive supply references, covering direct suppliers and their subcontractors, as well as those working for them, regardless of whether they are directly employed by the brands. Finally, the agreements include a broad material scope, referring to an array of ILO instruments and corporate social responsibility initiatives. Cambodia is a major supplier cluster for both companies, and holds a relevant place in both agreements' implementation. In the case of H&M, this refers to the national monitoring committee. For Inditex, it refers to the more recently created global union committee. An analysis of these agreements' implementation and enforcement provides an understanding regarding their use, functioning, and outcome discrepancies.

The interviews identified dissemination and training issues, with responsibilities being placed on the national affiliates of IndustriALL which, despite receiving training regarding the content of the agreements, need time to apprehend it themselves. In regard to H&M's agreement, further problems were found, linked to the local settlement of industrial relations issues and the registration of settled disputes. Local dispute resolution was considered to be 'malfunctioning', with enforcement at the national level being preferred

instead. Moreover, the lack of a common registration system meant that disputes were sometimes viewed as settled by H&M and still pending for the relevant trade union. The enforcement of Inditex's agreement presented more striking problems. The agreement was considered to be implemented but lacked in enforcement. While training programmes and factories inspections were indeed conducted, several complaints were not settled in Cambodia. The interviews also unveiled a usage of the agreements as 'entry points' to talk to a brand, even allowing for the resolution of issues in a more informal manner, outside of the dispute settlement procedures institutionalised by the agreements. This more informal usage enables flexibility, suits these agreements' social dialogue basis, and allows for the construction of a long-term relationship with business partners through a continuous use of company leverage.

7.3. Impact of Global Collective Agreements in Cambodia

The interviews revealed that, in Cambodia, the majority of violations concern unfair dismissals, work accidents, illegal renewal of short-term contracts, and discrimination issues. Trade union leaders expressed a common understanding of the agreements as contributors to the improvement of social dialogue and interpretative differences. Differently, interviews with civil society representatives revealed more scepticism in regard to the impact of these agreements. Civil society interviewees tended to place all responsibilities on the brands. While the importance of company leverage and the existence of a honest business commitment were also emphasised by trade union representatives, civil society interviewees centred enforcement responsibilities solely on the company side. However, non-governmental organisations have not been involved in the implementation and enforcement of these agreements. In fact, global collective agreements are intended to work through a cooperative basis and a social dialogue approach, while giving special importance to the local level. The representative of a non-

governmental organisation interviewed stated that cases settled under global collective agreements had some type of involvement by civil society organisations. This was opposed by other interviewees. While recognising that a possible involvement by civil society would be beneficial, particularly in terms of resource allocation and attainment of information, other interviewees stated that non-governmental organisations were not involved in the settlement of disputes. The interviews further revealed a distrust from civil society organisations torwards both trade unions and multinational enterprises. Such wariness is understandable, given previous corporate behaviours and the problematic trade union context in Cambodia. It is essential that a possible collaboration and assistance from non-governmental organisations is conducted outside a blame orientated approach. The contradictions between the data attained from trade unions and non-governmental organisations can unveil an ideological conflict in how to transnationally govern workers' rights, with unions considering global collective agreements as a better tactic to address corporate behaviour.

The **discrepancies in stakeholder perceptions** regarding the impact of global collective agreements can be traced back these agreements' placement within corporate discourse and legitimation strategies. As collective agreements, these are instruments focused on the relationship between the social partners. The lack of involvement by civil society organisations reflects the domestic context, which is characterised by distrust within and outside the union movement. Similarly, the lack of involvement by the Garment Manufacturers Association is a result of the domestic context. Both trade union and company representatives perceived a possible involvement by the manufacturers association as detrimental to a successful implementation. These fears were somewhat supported by the narrative adopted by the GMAC representative interviewed. The GMAC representative raised the problem of competition, stressing the fact that not all suppliers have the same capacity to fulfill the standards comprised in a global collective agreement. However, when most of a supplier's production is meant for a particular brand, company leverage requires compliance with the agreement, under the penalty of irremediable affecting the brand's

relationship with the supplier. This can also create a spillover effect meaning that, when a supplier is required to respect the standards comprised in an agreement in order to maintain a key business relation, these will also apply to production destined to other brands. Also, as more companies sign similar agreements, the more a level playing field is established. Furthermore, these agreements merely impose minimum standards, most of which are already mirrored in the country's legislation, meaning that supplier factories should already be in compliance with the majority of demands comprised in an agreement.

The same cannot be said in regard to the lack of involvement by the ILO, whose intervention is commonly perceived as a positive, promoted by the Better Factories programme. A further involvement by the ILO, particularly in regard to dispute settlement would be beneficial. These narrative contradictions further illustrate different views into how workers' rights should be governed transnationally. While labour market interventions by the ILO would be seen as disturbances in several domestic contexts, the history of involvement within the Better Factories programme creates a path of positive engagement that could be used in the implementation of enforcement of global collective agreements. A possible contribution of the ILO, in terms of training and monitoring would provide an answer to dissemination issues and complement the exchange of information. Furthermore, being a recognised trustworthy actor, the ILO could act as a mediator or arbitrator, providing a list of neutral parties to settle disputes.

It could be hypothesised whether companies whose headquarters originate in countries with more developed systems of industrial relations would be more predisposed to sign global collective agreements. Differently, companies from countries lacking such development and possessing more comprehensive and detailed legislation would be more inclined to adopt codes of conduct. This, along with other factors, namely brand identify, civil society pressure, and consumer awareness would justify why the vast majority of global collective agreements are signed by multinational enterprises from European countries. Still, despite sharing several

commonalities, the two agreements selected to study the impact of global collective agreements in Cambodia have had **different outcomes**. While both agreements have been implemented, interviews revealed that H&M's agreement works considerably better in the settlement of disputes. Interviewees considered different explanations for enforcement variations, including company origin.

Enforcement discrepancies brought about the question of **company origin** as a possible differentiator for an agreement's impact. Interviewees shared distinct views on the relevance of company origin, with a trade union representative and a former H&M representative recognising a possible role of the company's headquarters. Company origin seemed relevant in regard to the involvement of a national trade union from the country where the company has its headquarters. The national trade unions involved are usually key actors in the national context. In the case of H&M, this refers to IF Metall, which would represent workers in the textile industry at the national level. For Inditex, the preamble of the agreement explicitly refers to a recognition of two key trade unions in Spain. As mentioned in chapter 6, H&M's agreement was also signed by IF Metall, whereas Inditex's agreement simply refers to an explicit recognition of the two Spanish trade unions. The signature by a national trade union(s) is especially common in agreements signed by Nordic companies and significant when the multinational enterprise had no previous relationship with the global union federation. In the latest cases, the involvement of the national trade union acts as an intermediary in the relation with the global union federation. Still, while the involvement of national trade unions from the company's headquarters is common for most global collective agreements signed by Nordic companies, this is not uncommon for other multinational enterprises, particularly from a European context. Despite not being signed by the national trade unions mentioned in the preamble, Spanish Inditex refers to their participation particularly in the agreement's global union committee. Pressure from the brand's domestic union environment could justify enforcement discrepancies. Some interviewees considered company origin to be significant, referring to social dialogue and cooperation with H&M as

being ‘smoother’. This factor seems to affect the type of instrument adopted, with European companies representing the majority of business entities signing global collective agreements. Moreover, company origin seemingly influences the implementation and enforcement of the corresponding agreement, even when they possess a similar content.

The interviews revealed that both agreements are indeed **implemented**, mostly through training to trade union and management representatives. While training and periodic meetings to review the agreements’ implementation were carried out, dissemination appeared defective, particularly for workers. More detailed information was attained in regard to H&M’s agreement but trade union representatives mentioned a similar deficiency for Inditex’s agreement. Likewise, while workers need trade union involvement to address a dispute under the agreement, they often lack knowledge on its existence and how to use it. Hence, as mentioned by an interviewee, although global collective agreements entail more accountability that also requires more awareness. Worker focused training, covered by the brand and possibly in cooperation with the ILO, could address this dissemination gap.

The interviews revealed that the **dispute settlement mechanisms** comprised in H&M’s agreement have been (though not always) effectively used in Cambodia. Local enforcement was considered to be malfunctioning. This is problematic since global collective agreements place the primary implementation and enforcement responsibilities locally. Local enforcement issues could possibly be improved through broader training. The establishment of a national monitoring committee allowed the creation of local ownership in connection to the agreement. However, local ownership seemed to be limited to unions holding a seat at the national monitoring committee. The widespread mistrust that characterises the union movement in Cambodia, based on incompatible affiliations and competition for membership creates barriers in the functioning of the committee. Unions represented at the national monitoring committee were considered to act in their own interest, instead of the collective one. Furthermore, only unions

represented at the committee had brought complaints forward to this body. The interviews unveiled that the national monitoring committee had indeed facilitated the resolution of some industrial relations issues. While it could be confirmed that five cases had been brought up before the committee, the information provided by interviewees was not always coherent. This revealed the absence of a registration system for settled disputes. The interviews also disclosed a more informal use of the agreement. While the bodies and procedures institutionalised by the agreement had in fact been employed, the agreement had also been used to tackle disputes outside them. Based on a social dialogue approach, references to the agreement in discussions were carried out. Hence, most interviewees considered that the agreement had had a positive impact, particularly in regard to the creation of an environment prone to the development of social dialogue.

In the case of Inditex, the dispute settlement procedures comprised in the agreement have not been successfully used in Cambodia. The agreement was considered to have no impact on dispute settlement. Different justifications were suggested by interviewees, from low production levels, the number of people working on corporate social responsibility issues in Cambodia, and company origin. As mentioned above and developed in chapter 6, company origin is conceivably the most suitable justification. Interviewees referred to a more complicated relationship with Inditex when compared to H&M. This observation supports company origin focused deductions. Empirical findings also revealed discrepancies from information previously published in reports regarding the impact and implementation of Inditex's agreement. For instance, while the authors' definition of 'any alerts of possible violations of basic labour rights' could justify their conclusions regarding a proper address by the company, the interviews revealed that seven complaints brought under the agreement were still pending. It is important to recognise the restricted character of the information attained in the interviews. However, the representatives of trade unions affiliated with IndustriALL shared a common understanding of regarding the relationship with Inditex as being more problematic. Finally, while mediation is explicitly allowed in both agreements, according to those interviewed, it has never been used in

Cambodia. The European Union's withdrawal from the 'Everything but Arms' preferential treatment and issues surrounding the negotiation of a sectoral collective agreement in the garment industry could have influenced the negligible increase of collective agreements in Cambodia.

The two agreements were considered to have a positive impact in terms of social dialogue, possibly working as 'entry' points to conduct conversations with a brand. Interviewees suggested that a concrete proof of positive impact could be viewed in the number of collective agreements. However, based on this indicator, the impact of global collective agreements in Cambodia is not visible. While both agreements have indeed been implemented, dissemination issues were identified, with responsibilities being placed on trade unions. These, despite receiving training regarding the content of the agreements, may need to apprehend it themselves. Furthermore, the implementation was considered to be a 'learning' process. Improvements in dissemination could further improve local enforcement deficits, particularly in regard to H&M's agreement. Still, enforcement mechanisms comprised in H&M's agreement have been successfully used at the national level. The actual usage of H&M's national monitoring committee demonstrates an involvement and sense of ownership by local trade unions, although limited to those holding a seat at the committee. Still, the agreement has contributed to the construction of a direct communication channel with the brand, enabling union involvement in the decisions taken by the brand. Differently, for Inditex's agreement, enforcement was inexistent. While the agreement was considered to have contributed to an improved social dialogue with the brand, the enforcement mechanisms instituted by the agreement were not effectively used. The text of both agreements illustrates an intent to prevent violations, while comprising enforcement procedures for when these happen. Working in parallel to other remedies available in the countries where the company contracts production, the agreements provide an added remedy to tackle violations. The interviews have revealed a further usage of the agreements, outside the jointly agreed mechanisms. These are mentioned in discussions and used for the settlement of disputes, as evidence the brand's commitment. Hence, enforcement mechanisms provide a last resort

alternative to tackle violations, but are also used in an informal setting. Finally, and despite the fact that both agreements include the possibility of mediation, those provisions have never been used. As mentioned in chapter 6, while it is reasonable that a global union federation does not wish to exhaust its leverage on dispute settlement provisions, these should be more than mere references to the possibility of mediation or arbitration. Chapter 5 describes the various ways of enforcing a global collective agreement. In most cases a hierarchical dispute settlement procedure is established, giving primacy to local resolution, which can move on to the national, and international levels. Sometimes an unresolved matter can be further addressed by external mechanisms, particularly in the form of mediation/arbitration or even the resort to court. However, when external mechanisms are permitted, these are normally vaguely referred. More detailed references would not only promote their use but also provide more clarity in regard to an agreement's binding character. A greater involvement by the ILO could provide an agreed meddling.

7.4. Intersection of Frameworks

Similarly to collective agreements in national industrial relations systems, global collective agreements have developed in the absence of a regulatory framework, being based on collective autonomy and being *"the result of dialogue and exchange between the main players in the field, especially companies and trade unions"*.[1366] Composing a narrower category compared to both transnational company agreements and global framework agreements, global collective agreements represent a new development and can indeed be considered as collective agreements at the international level. They democratise the setting of labour standards throughout a company's supply chain, involving workers' representatives in the implementation, monitoring, and settlement of disputes. Furthermore, they address the power

[1366] Guarriello, 'Transnational Collective Agreements' (n107), pp. 16, 18.

asymmetry between a multinational enterprise and workers' representatives. The involvement of workers' representatives in the negotiation and signature of an agreement, together with the key involvement of local trade unions in its implementation, monitoring, and enforcement, makes global collective agreements more than a mere top-down approach, bridging the local and global dimensions. They have created a platform for national and local trade unions to improve upon, based on a set of minimum standards which can be further improved.[1367]

As illustrative of global governance, global collective agreements represent a form of rule-making beyond the state.[1368] They build a stable framework of standards that is intended to be implemented throughout a company's operations. Accordingly, the rules agreed by the parties intersect with other frameworks, both at the international and the national level. As for the first, global collective agreements intersect with **international labour law**, by explicitly referring to an array of applicable standards, in the form of soft and hard law. Hence, for international labour law, global collective agreements function as non-delegated rules intermediaries, directly applying ILO norms to companies.[1369] These references, particularly in regard to hard law and ILO conventions, will not always create additional rules to be implemented in a country. For a state that has not ratified all the standards mentioned in a global collective agreement, these became applicable in that country, within the agreement's scope and through its implementation mechanisms. These standards become further applicable through the dispute settlement procedures comprised in the agreement. Differently, for countries that have ratified all the standards referred in a global collective agreement, the agreement creates an added implementation layer, both in measures and monitoring, as well as an extra judicial, non-state-based remedy. In some cases, the agreement further permits the judicial resolution of an issue.

[1367] Smit, 'International Framework Agreements Taking Sting Out of Transnational Collective Bargaining' (n1078), p. 264.
[1368] Axel Marx and Jan Wouters, 'Explaining New Models of Global Voluntary Regulation: What Can Organisational Studies Contribute?' (2018) Vol. 9 No. 1 Global Policy Volume, p. 121.
[1369] Hardy and Ariyawansa, 'Literature Review on the Governance of Work' (n217), pp. 72-73.

As for a global collective agreement's relation with the **laws of the country** where it is implemented, in most cases, the agreement is greatly based on national legislation. Still, while complying with national legislation, they can improve legal standards, based on a favourability principle. Finally, in regard to **collective agreements at the national level**, global collective agreements promote collective bargaining, stimulating the negotiation of collective agreements at the national level, with more detailed and increased standards. Comparably to higher ranked collective agreements, global collective agreements provide a floor for lower-level bargaining. Hence, despite not substituting collective agreements in the country where they are implemented, global collective agreements create a structure for collective bargaining. Moreover, they create a set of basic labour rights that must be respected within the global agreement's scope of application. Interviewees generally recognised the social dialogue and collective bargaining space created by global collective agreements. However, the general number of collective agreements in Cambodia has not increased considerably since the agreements' signature and implementation. While the national context, namely the European Union's withdrawal of the 'Everything but Arms' (EBA) preferential treatment and issues surrounding the negotiation of a sectoral collective agreement within the garment industry could have impacted this possible increase, the reality is that such outcome has not been achieved.

Global framework agreements' character as collective agreements is frequently denied. Hopefully, this dissertation has demonstrated that, besides the clear similarities between global framework agreements and collective agreements, there is indeed a group of documents that can be placed within the concept of collective agreement. Westregård argued, *"These are designed as framework agreements and are not collective agreements in the traditional sense. Because they do not contain concrete rules about salaries and employment conditions, like the Swedish collective agreements, do they hold no greater significance for those working in Sweden"*.[1370] Collective agreements, can work as frameworks, establishing general rules intended to

[1370] Westregård, 'Sweden' (n628), p. 573.

be later developed at the local level. Global collective agreements can be viewed as distinct from traditional collective agreements but that does not withdraw their character as such. The present analysis of global collective agreements does not intend to support the idea that these agreements would have any great significance in Sweden, where, for instance, there is no textile production. These agreements are intended to provide minimum standards and their logic is aimed at third countries where the multinational enterprise operates, particularly when these have lower labour standards or these are poorly enforced.

Additionally, being based on a close and continuous **cooperation**, global collective agreements differ from previous regulatory attempts, which focused on an arms-length relation. Hence, there has been a development towards a more, embedded, cooperative effort in regard to the monitoring and enforcement of labour conditions and global collective agreements are illustrative of such development. Moreover, while allowing for repeated interactions between the actors, an embedded regulatory approach allows for the information sharing and knowledge creation. In respect to the relationship with third parties, global collective agreements institute a balance between an exit and voice responses. An exit response entails a withdrawal from the relationship to secure compliance, while a voice response is based on an effective communication system and cooperation.[1371] While several global collective agreements provide for the possibility of terminating a contractual relationship, explicitly referring to termination or making the respect for the agreement as a criterion for the continuation of business relations, they are based on a dialogue approach. This is also true for any global framework agreement in general. In fact, even for agreements that do not comprise any dispute settlement provisions and cannot be considered as global collective agreements, there is a reference for a cooperative take in finding a mutual resolution of issues that have arisen from the agreement's implementation. Contract termination cancels any possibility to exert influence over the supplier and improve working conditions. Thus, as viewed in a case study

[1371] Marx and Wouters, 'Explaining New Models of Global Voluntary Regulation: What Can Organisational Studies Contribute?' (n1368), pp- 125-126.

relation to Inditex's agreement in Portugal, before contract termination, a dialogue approach is used in order to solve the matter and before the application of sanctions. The same was found in a situation regarding H&M's agreement. The agreement was used, within and outside the dispute settlement procedures comprised.[1372]

Based on the existence of a plurality of orders and, similarly to Giugni's identification of the growing differences between the reality of industrial relations and the relevant norms, **global collective agreements add a further dimension** in the international context. They represent a recognition of the failure of international labour law to regulate the reality of industrial relations and fundamental labour rights at the international level. Moreover, analogously to collective agreements, global collective agreements are an expression of **collective autonomy** and represent an autonomously created legal order. Mutually recognised by these agreements, multinational enterprises and global union federations in particular, can be regarded as, in the words of Sinzheimer, autonomous organisations.[1373] Likewise, the internal dispute resolution mechanisms comprised in global collective agreements constitute an expression of collective autonomy, based on their private and non-judicial character.[1374] However, operating in parallel to the state law of the countries where the company operates, the rules established and enforced by global collective agreements are restricted by a state-based framework. These do not substitute the state's legal order, being in a hierarchical relation with it. Hence, particularly in regard to wages and working hours, global collective agreements often refer to standards comprised in national law or collective agreements, whichever is more favourable.

Collective autonomy should not be viewed as an absolute power, free of any state interference, through which the social partners set rules that always

[1372] Avelar Pereira, 'Global Policy Instruments for Unions in the Global Economy' (n18); Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), pp. 1169-184.

[1373] Dukes, 'Constitutionalising Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law' (n380), p. 351.

[1374] Hadwiger, *Contracting International Employee Participation – Global Framework Agreements* (n12), p. 59.

overcome the state's. The state does not delegate or create this power, but it can recognise it or declare its existence. This denotes an attitude of limited and appropriate intervention to guarantee the exercise of collective autonomy. This is indicated in ILO Convention No. 87 which, in Article 3 (2), states that:

> The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

These agreements emerged from a social need to counter multinationals' growing influence and record of poor labour standards, allowed by the fragmentation of production in the background of globalisation. They permit the dialogue and interaction between workers' representatives at the international level and multinational enterprises, while allowing these parties to construct their own legal framework. As affirmed by Papadakis, *"The legal framework created by this interaction could coexist along other legal sources, including that created by the social partners through collective bargaining at national, sectoral and enterprise levels, or by each state through regulation, or further still, by states and international organisations at international or regional levels"*. [1375]

In some countries, global collective agreements truly represent an **improvement in relation to national labour standards**, whereas in others they merely state the company's obligation to obey the law. Nevertheless, the strategic value of global collective agreements is based on the implementation and enforcement of a set of standards that work as minimum benchmarks for what must be respected and is implemented throughout a multinational enterprise's operations.

Companies' leverage is counterbalanced by the power held by trade unions. In some countries, mostly in the northern European context, this power is comparable. Differently, in other contexts, trade unions bear heavy

[1375] Papadakis, Casale, and Tsotroudi, 'International Framework Agreements as Elements of a Cross-Border Industrial Relations Framework' (n17), pp. 81-83.

challenges in terms of recognition, membership, and bargaining capability. In the latest cases, global collective agreements can **balance the existing power relation** in favour of unions.[1376] The possibility of cooperation between trade unions and civil society has not been facilitated in the Cambodian context. In particular, the interviews have revealed that, in regard to H&M's agreement, trade unions that do not have a seat in the national monitoring committee do not use the agreement. Particularities in the Cambodian union movement, based on the existence of an array of different unions with various affiliations, hamper trade union cooperation. Still, additional actions aimed at the inclusion of more trade unions in the training, dissemination, and implementation activities of the agreement should be executed, facilitating cooperation and easing out the existent distrust in the Cambodian union movement. These would enable an increased awareness of the utility of the agreement and promote its use by additional trade unions. A similar problem, at least in regard to dissemination, was highlighted in regard to Inditex's agreement. While the agreement explicitly refers to capacity building programmes and the importance of local trade unions in its implementation, these aspects were somewhat restricted to a limited number of trade unions which also faced problems in the settlement of disputes.

As a top-down approach to the regulation of labour standards, global collective agreements might represent an interference to collective *laissez faire*. A further involvement by the ILO entails an added interference. As previously mentioned, the ILO could participate in training, covering implementation gaps unveiled through the empirical study. Furthermore, the ILO could contribute in the enforcement of these agreements. As an accepted neutral party, the organisation could provide a list of mediators or arbitrators and therefore cover existing deficits in the dispute settlement procedures comprised in global collective agreements. Yet, these agreements are also intended to work towards the development of industrial relations in the countries where the company operates. Chapter 6 demonstrates how these

[1376] This goes in line with the findigs of Kaltenborn, Neset, and Norpoth. See, Kaltenborn, Neset, and Norpoth, 'Implementation of the H&M Global Framework Agreement in Cambodia: Producing Outcomes for Industrial Democracy Despite a Challenging Context?' (n1174), pp. 177-178.

agreements have created a space for collective bargaining and the improvement of social dialogue. Functioning as promoters of collective bargaining, they constitute a permissible interference, allowing 'premature' industrial relations systems to develop. Hence, global collective agreements tackle urgent issues, enabling the implementation and enforcement of a minimum set of labour standards throughout the worldwide scope of the agreement, while promoting the maturation of underdeveloped industrial relations systems. As for the generality of collective agreements at the national level, global collective agreements apply as minimum terms. Provisions in detriment of the employee are considered as invalid. Likewise, *in melius* provisions contained in employment contracts in contradiction from the global collective agreement are permissible.

Global collective agreement can indeed function at a higher level, setting the minimum standards intended to implemented according to the different national systems. The fact all these agreements are agreed at company-level does not contradict the trend decentralisation, since local and national level collective agreements are given the task to decide important and detailed issues at the local level, leaving basic material conditions to global collective agreements.[1377]

7.5. Final Remarks

The preceding chapters have touched upon a variety of different issues. Depending on the company, the implementation country, and its corresponding context, multinational enterprises and trade unions might have a different perception of what the signature of a global collective agreement entails. Hopefully this contribution has enabled an understanding of the concept of global framework agreement, the reasons behind these agreements' emergence, their constitutive elements, and the difficulties of placing them into any known legal category. Likewise, the dissertation has

[1377] Bruun, 'The Autonomy of Collective Agreement' (481), p. 12.

possibly facilitated an insight in regard to the division between the concept of global framework agreement and global collective agreement. As a narrower concept, global collective agreements constitute a set of global framework agreements that are indeed collective agreements at the international level. This conclusion is based on the analysis of essential, 'core features', of a collective agreement. In a more or less explicit manner, all global collective agreements fulfill these features. The aim is not to impose a more demanding or restrictive fulfilment of these core features than what is required for collective agreements at the national level. As the chapter 3 shows, these core features are expressed in a great variety of ways throughout different national contexts. The present dissertation moves from a more descriptive (particularly in chapter 3 and 4) to a more a prescriptive approach (especially visible in chapter 5 and 6). The description of the background, industrial relations theories, and the core features of collective agreements were necessary, so that a more supported analysis could be carried out. Likewise, a description of the core features of global framework agreements was also fundamental for a proper analysis of the documents that actually fit within the concept of global collective agreement. Notwithstanding the differences in how the collective agreement is regulated in different countries, it is still possible to define a common core. Hence, a prescription of what a collective agreement should be requires flexibility. The core features used to identify what a collective agreement is are used as metaphoric boxes that allow for the understanding of a very complex phenomenon. This identification was valuable as a guideline, while keeping in consideration that global collective agreements do not have to strictly meet each core feature. Hence, the reference to the identified core features is used, not in a prescriptive sense, but as a description of the phenomenon. Similarly, different scholars have varied from a more descriptive approach to collective agreements to a more prescriptive line. The phenomenon can be described as viewed by these scholars or suggestions can be made into how it should be addressed. Giugni and Kahn-Freund seem adopt a more descriptive approach to industrial relations and collective agreements, whereas Dunlop seems to adopt a more prescriptive view. This dissertation identifies a framework for which global framework agreements actually fit into the concept of collective

agreement. Furthermore, it provides added insights into these agreements' impact and enforcement. The identification of these documents as collective agreement is not merely rethorical, awarding a set of effects to the parties involved. These effects include the creation of a binding commitment between the parties, the obligatory component covering the rights and responsibilities of the signatories, and the coverage of working conditions for those placed within a brand's supply chain.

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8. Annexes

8.1. Annex 1 – Information to Research Participants

Name of the Project: Global Collective Agreements

I would like to invite you to take part in the present research study, through your participation in this interview. Before deciding to participate in the interview please take the time to read this short explanation regarding the project's topic and purposes. Also, please know you are welcomed to ask any questions and are free to withdraw from participating at any time. Participation is entirely voluntary.

My name is Fabiana Avelar Pereira and I am a doctoral candidate at Lund University in Sweden. My doctoral dissertation research focuses on the study of global collective agreements, also known as international framework agreements, which constitute agreements signed between global union federations and multinational enterprises. My hypothesis is that they constitute collective agreements at the international level and I will study their possible impact in the respect and promotion of workers' rights throughout supply chains.

Taking part in the interview entails participating in a conversation regarding your knowledge on such agreements' existence and implementation or a specific agreement's content and implementation. If you are aware of the agreement's existence, questions will follow, referent to its binding value and the effectiveness of its enforcement mechanisms, as well as practical examples. You have been chosen as part of a small sample of interviewees whose opinion is considered significant in comprehending the legal status of these agreements and their factual application. The project takes into consideration possible risks regarding your involvement in the study. Hence, your participation and your responses are confidential. Your name will not be included in the final dissertation and all the information regarding the interview data and answers will be safely kept in a computer without internet nor radio access.

The project has been subjected to ethical vetting in Sweden. These interviews constitute the empirical part of the doctoral project which will result in a dissertation on the topic of global collective agreements.

My contact is the following: fabiana.pereira@har.lu.se.

8.2. Annex 2 – Questionnaire

The project took into consideration the implications that choosing structured, semi-structured or unstructured interview questions have in the data collection, its analysis and interpretation. For the present project, semi-structured interviews were chosen, meaning that, despite having a list of questions, interviewees will be encouraged to elaborate on specific issues. As a hybrid method, semi-structured interviews combine the strengths of structured and unstructured interviews and mitigate some of their weaknesses. Following advices developed in literature, the interviews will begin with more open-ended questions, make use of questions that require elaboration, give interviewees the time to reflect and therefore engage in what could otherwise be considered as awkward pauses.[1] Furthermore, the interpretative methodology chosen for the project acknowledges genuine concerns regarding the interviewees' perception on how the interview data will be used, the interview situation and the interviewer. In the context of Alvesson's reflexive methodology, explained in Annex 2, it is important not to simplify and idealise the interview situation, viewing the interviewee as a competent truth teller. Hence, one should acknowledge the interview situation as a socially and linguistically complex meeting, in which the interviewer's questions and style shape the context, frame and content of the study. Furthermore, rather than simply assisting in science, the interviewee might be a politically motivated actor. Issues regarding what the interviewee knows or his/her ability to communicate it (i.e., knowing but incapable of telling versus capability to tell something convincing but not actually knowing). This has various implications for research practice, such as (1) revising and improving research work, (2) refining the ability to critically interpret interview material, (3) revising the research question and purpose, and (4) being more modest about empirical claims.

The majority of global collective agreements' studies using interviews the interviewees are asked to describe situations in which their rights have not been respected. However, the interviewees are not asked to elaborate on whether they know what to do when her rights are violated, whether union representatives are aware of these problems and whether that violation was solved in anyway or led to any consequences. Keeping this in mind, the constructed questionnaire comprises the following themes and questions, in the following order:

Topics and Guide Questions	Reason
Introductory remarks, delivering information regarding the project, use of the interview data, consent and the voluntariness of participation, done orally and in written form (consent forms).	Information and Consent.

Introductory questions: - How long have you been working for/been involved with (i.e., the company, the factory, the trade union)? - Could you talk about the positive or negative impact this has had in your life? - What is your position or status with the company? Do you have any managerial responsibilities? - Do you represent the employer or employees?	
General knowledge about collective agreements as such: - Are you familiar with collective agreements and such agreements' application at your workplace? - Do the application and enforcement of such agreements affect your workplace?	Knowledge about collective agreements.
Knowledge regarding the existence and content of the agreement: - Are you aware of the agreement signed between (i.e., the corresponding global union federation and the company?) - Do you know what the agreement contains (e.g., what rights are contained, what sanctions are provided?) - Specific question for company representatives: is the agreement's existence made available to workers?	Relevant in terms of the agreement's effectiveness and impact.
Knowledge regarding the implementation of the agreement: - Can you talk about any situation in which the agreement was referred to/implemented? - Do the parties normally refer to the agreement? - Are you aware of "regular steering committee meetings, separate or embedded in other industrial relations meetings, under the global collective agreement?	Relevant in terms of the agreement's binding character.
Specific questions for workers and trade union members and leaders: description of situations of violation: - Can you give an example of situations in which your rights were not respected? - Do you know what to do when that happens? - Did those violations led to any consequences?	Relevant in terms of the agreement's binding character and the agreement's effectiveness and impact.

Table 1. Interview Guide.

During the interviews several probes were be used. These included elaboration probes (e.g., asking the interviewees to describe the terms used), detailed-orientated probes (e.g., asking for chronological and locational clarifications) and even silence probes, which provided a significant contribution in answering the questions regarding the agreement's binding character.

8.3. Annex 3 – List of Global Framework Agreements

The following tables list the existing global framework agreements according to the corresponding global union federation(s).

Company	Title	Country	Date
Aker	Agreement between Fellesforbundet/Tekna/Nito/ IndustriALL Global Union and Aker ASA	Norway	2012
ASOS[1]	Global Framework Agreement[2]	United Kingdom	2017
BMW	Joint Declaration on Human Rights and on Working Conditions in the BMW Group	Germany	2005
Bosch	Basic Principles of Social Responsibility at Bosch	Germany	2004
Brunel[3]	Global Framework Agreement on Social Responsibility – 'A Commitment to Social Responsibility without Borders'	Germany	2007
Daimler[4]	Principles of Social Responsibility at Daimler	Germany	2012
EADS	International Framework Agreement	Netherlands	2005
EDF[5]	Global Framework Agreement on the EDF Group's Corporate Social Responsibility	France	2018
Electrolux	International Framework Agreement between AB	Sweden	2010

[1] The agreement was signed on the 2nd of October of 2017 and, according to its text, it will be reviewed within two years. No information was found on a reviewed agreement. However, an interview carried out with IndustriALL's director for the textile and garment industry referred the agreement is still in force.

[2] Concluded for a duration of two years but the interviewee from IndustriALL stated the agreement was still in force.

[3] IndustriALL, 'IMF signs IFA with Brunel' (3 July 2007). Available At: http://www.industriall-union.org/archive/imf/imf-signs-ifa-with-brunel [Accessed 26 May 2020].

[4] IndustriALL, 'Daimler' (25 May 2012). Available At: http://www.industriall-union.org/daimler [Accessed 26 May 2020].

[5] IndustriALL, 'EDF' (2 July 2018). Available At: http://www.industriall-union.org/edf [Accessed 26 May 2020].

	Electrolux and Employee Representatives of IF Metall, Unionen, IMF and the KFD of the AB Electrolux Board of Directors		
Engie (GDF Suez)	Global Agreement on Fundamental Rights, Social Dialogue and Sustainable Development	France	2010
Eni[6]	Global Framework Agreement on International Industrial Relations and Corporate Social Responsibility	Italy	2019
Esprit[7]	Global Framework Agreement	Germany and Hong Kong	2018
Essity	Agreement between Essity and IndustriALL Global Union/Unionen/Essity Group EWC	Sweden	2018
Ford	International Framework Agreement Ford Motor Company and Global IMF/Ford Global Information Sharing Network Agreed upon Social Rights and Social Responsibility Principles	United States of America	2012
GEA	Codes of Conduct of GEA AG	Germany	2003
H&M	Global Framework Agreement on Compliance and Implementation of International Labour Standards at the Suppliers of H&M	Sweden	2015
Inditex[8]	Global Framework Agreement	Spain	2019

[6] IndustriALL, 'IndustriALL renews global agreement with energy company ENI' (24 June 2019). Available At: http://www.industriall-union.org/industriall-renews-global-agreement-with-energy-company-eni [Accessed 23 May 2020].

[7] IndustriALL,'IndustriALL and Esprit commit to working together to improve workers' rights' (6 January 2018). Available At: http://www.industriall-union.org/industriall-and-esprit-commit-to-working-together-to-improve-workers-rights?utm_source=Newsletters+in+english&utm_campaign=0637cc484c-EMAIL_CAMPAIGN_2018_08_09_02_20&utm_medium=email&utm_term=0_65751b77d5-0637cc484c-19155253 [Accessed 14 May 2020].

[8] Inditex, 'Inditex and IndustriALL Global Union Agree to Create a Global Union Committee' (13 November 2019). Available At: https://www.inditex.com/article?articleId=640512&title=Inditex+and+IndustriALL+Global+Union+agree+to+create+a+Global+Union+Committee [Accessed 14 July 2020]; IndustriALL, 'IndustriALL and Inditex

Leoni	Declaration on Social Rights and Industrial Relationships at Leoni	Germany	2002
Lukoil[9]	Global Framework Agreement	Russia	2018
Man	Global Framework Agreement on Human Rights and Working Conditions	Germany	2012
Mann + Hummel	Joint Declaration on Fundamentals of Social Responsibility of the Mann + Hummel Group	Germany	2011
Merloni	Statement of Agreement	Italy	2001
Mizuno	Global Framework Agreement	Japan	2020
Norske Skog	Agreement between Fellesforbundet/IndustriALL Global Union and Norske Skogindustrier ASA on the Development of Good Working Relations in Norske Skogindustrier's Worldwide Operations	Norway	2013
Prym	Declaration on the Social Rights and Industrial Relations within the Prym Group	Germany	2004
PSA Group[10]	Global Framework Agreement on the PSA Group's Social Responsibility	France	2017
Renault[11]	Global Framework Agreement on Social, Societal and Environmental Responsibility between the Renault Group, the	France	2013

Create a Global Union Committee' (13 November 2019). Available At: http://www.industriall-union.org/industriall-and-inditex-create-a-global-union-committee [Accessed 14 July 2020].

[9] IndustriALL, 'IndustriALL and Lukoil renew global agreement' (5 June 2018). Available At: http://www.industriall-union.org/industriall-and-lukoil-renew-global-agreement [Accessed 30 May 2020].

[10] IndustriALL, 'IndustriALL signs new global agreement with the PSA Group' (8 March 2017). Available At: http://www.industriall-union.org/industriall-signs-new-global-agreement-with-the-psa-group-0 [Accessed 26 May 2020].

[11] Complement to the global agreement, entitled 'Building the World of Work Together at Group Renault – Global Framework Agreement on Developing Life at Work', signed in 2019. See, IndustriALL, 'IndustriALL signs quality of working life agreement with Renault' (9 July 2019). Available At: http://www.industriall-union.org/industriall-signs-quality-of-working-life-agreement-with-renault [Accessed 26 May 2020].

	Renault Group Works' Council and IndustriALL Global Union		
Rheinmentall[12]	Global Framework Agreement on Principles of Social Responsibility for the Rheinmetall Group	Germany	2018
Röchling	Principles of Social Responsibility - Codes of Conduct Gebr. Röchling KG	Germany	2004
Saab	International Framework Agreement between Saab AB and Employee Representatives Organisations in Saab AB and IF Metall and IndustriALL Global Union	Sweden	2012
Safran	Global Framework Agreement on Working Conditoons, Corporate Social Responsibility and Sustainable Development	France	2017
SCA[13]	Agreement between SCA and IndustriALL Global Union/ Pappers/ SCA EWC	Sweden	2013
Siemens	International Framework Agreement	Germany	2012
Siemens Gamesa[14]	Global Framework Agreement on Social Responsibility	Spain	2019
SKF	SKF Conde of Conduct	Sweden	2003
Solvay[15]	Global Framework Agreement on Social Responsibility and Sustainable Development between Solvay Group and IndustriALL Global Union	Belgium	2017

[12] IndustriALL, 'IndustriALL renews global agreement with German multinational Rheinmetall' (12 October 2018). Available At: http://www.industriall-union.org/industriall-renews-global-agreement-with-german-multinational-rheinmetall [Accessed 26 May 2020].

[13] IndustriALL, 'IndustriALL Global Union signs two new Global Framework Agreements' (13 December 2013). Available At: http://www.industriall-union.org/industriall-global-union-signs-two-new-global-framework-agreements [Accessed 26 May 2020].

[14] IndustriALL, 'IndustriALL renews global agreement with Siemens Gamesa' (November 2019). Available At: http://www.industriall-union.org/industriall-renews-global-agreement-with-siemens-gamesa [Accessed 14 May 2020].

[15] IndustriALL, 'IndusriALL and Solvay renew their global framework agreement for five years' (3 February 2017). Available At: http://www.industriall-union.org/solvay-and-industriall-renew-their-global-framework-agreement-for-five-years [Accessed 26 May 2020].

Tchibo	Global Framework Agreement on the Implementation of International Labour Standards throughout the Tchibo Non-Food Supply Chain	Germany	2016
ThyssenKrupp	International Framework Agreement	Germany	2015
Umicore[16]	Global Framework Agreement on Sustainable Development	Belgium	2019
Vallourec	Principles of Responsibility applicable within the Vallourec Group	France	2008
ZF	Global Framework Agreement on Rights at Work	Germany	2011

Table 1. List of global framework agreements signed by IndustriALL. Based the database developed by the European Commission and the International Labour Organisation and IndustriALL's listing.[17]

Company	Title	Country	Date
Ability	Code of Conduct UNI – Ability Tecnologias e Servicos S/A	Brazil	2008
ABN Amro	International Framework Agreement	Netherlands	2015
Adecco	Memorandum of Understanding between Ciett Corporate Members and UNI Global Union on Temporary Agency Work	Switzerland	2008
AEON	Global Framework Agreement; AEON CO. LTD., UNI Global Union, UA Zensen, Federation of AEON Group Workers' Union	Japan	2014
Antara	Labour – Management Agreement on Code of Conduct	Indonesia	2000

[16] IndustriALL, 'Umicore and IndustriALL renew Global Framework Agreement' (17 October 2019). Available At: http://www.industriall-union.org/umicore-and-industriall-renew-global-framework-agreement [Accessed 26 May 2020].

[17] See, European Commission and the ILO – Employment, Social Affairs & Inclusion, 'Database on Transnational Company Agreements'. Available At: https://ec.europa.eu/social/main.jsp?catId=978&langId=en [Accessed 1 February 2019]; IndustriALL, 'Global Framework Agreements'. Available At: http://www.industriall-union.org/global-framework-agreements [Accessed 24 September 2019].

	between Antara, Antara Employees' Union and UNI Global Union		
Auchan Retail[18]	Global Agreement on Environmental and Social Responsibility	France	2017
BNP Paribas[19]	BNP Paribas Agreement on Fundamental Rights and Global Social Framework	France	2018
Danske Bank	Global Framework Agreement on Fundamental Labour Rights within Danske Bank Group	Denmark	2008
Elanders	Global Framework Agreement on the Respect and Promotion of International Labour Standards and Trade Union Recognition	Sweden	2009
Eurosport	Global Agreement on Fundamental Social Rights	France	2012
France Telecom S/A	Worldwide Agreement on Fundamental Labour Rights	France	2006
G4S	Global Agreement: Ethical Employment Partnership	Belgium	2008
H&M	Agreement between Hennes & Mauritz AB (H&M) and Union Network International (UNI) on Cooperation in Order to Secure and Promote Workers' Rights at H&M's Workplaces Worldwide	Sweden	2004
Inditex Group	Global Agreement for Implementation of Fundamental Rights and Decent Work	Spain	2009
Indosat	Memorandum of Understanding on Global Framework Protocol between Indosat and UNI Global Union	Indonesia	2013

[18] The agreement is only available in French. The French text was analysed and the translation of the database was used.

[19] UNI Global Union, 'Global Agreement between BNP Paribas and UNI Global Union advances labour rights, gender equality for the company's 200,000 workers worldwide' (September 2018). Available At: https://www.uniglobalunion.org/news/global-agreement-between-bnp-paribas-and-uni-global-union-advances-labour-rights-gender [Accessed 13 May 2020].

ISS	UNI-SS Global Agreement	Denmark	2008
Kelly Services	Memorandum of Understanding between Ciett Corporate Members and UNI Global Union on Temproary Agency Work	United States of America	2008
Loomis	Global Agreement between Loomis AB and UNI Global Union and Swedish Transport Workers' Union	Sweden	2013
Manpower	Memorandum of Understanding between Ciett Corporate Members and UNI Global Union on Temporary Work	United States of America	2008
Metro Group	Joint Statement of Metro Group & UNI Global Union	Germany	2013
Nampak	Global Agreement on the Respect and Promotion of International Labour Standards between Nampak LTD and Union Network International	South Africa	2006
Olympia Flexgroup	Memorandum of Understanding between Ciett Corporate Members and UNI Global Union on Temporary Agency Work	Switzerland	2008
Securitas	Global Agreement between Securitas AB, UNI Global Union and Swedish Transport Workers' Union	Sweden	2012
Shoprite Checkers	Global Framework Agreement	South Africa	2010
Takashimaya	Global Framework Agreement Labour-Management on Code of Conduct between Takashimaya Company Limited, Takashimaya Labour Union, JSD and UNI Global Union	Japan	2008
Tel Telecomunicacoes	UNI-Tel Tecomunicacoes LTDA Code of Conduct	Brazil	2009
Telefónica	Global Agreement	Spain	2014
Telkom Indonesia	Global Agreement Protocol between Telkom Indonesia and UNI Global Union	Indonesia	2010

USG	Memorandum of Understanding between Ciett Corporate Members and UNI Global Union on Temporary Agency Work	Netherlands	2008

Table 2. List of global framework agreements signed by UNI Global Union. Based on the database developed by the European Commission and the International Labour Organisation and and UNI Global Union's listing.[20]

Company	Title	Country	Date
Acciona	Framework Agreement among Acciona S/A, Building and Wood Workers' International (BWI), CCOO Construction and Services and MCA-UGT	Spain	2014
Besix	International Framework Agreement	Belgium	2017
Dragados	Framework Agreement among Dragados S/A, Building and Wood Workers' International (BWI), CCOO Construcion and Services and MCA-UGT	Spain	2014
Faber Castell	Agreement between A. W. Faber-Castell Unternehmensverwaltnung GmbH & Co, 90546 Stein and Industriegewerkschaft Metall/Bau-und Holzarbeiter Internationale, BHI	Germany	2008
FCC Construcción	Global Framework Agreement on Employees Rights	Spain	2012
Ferrovial	Framework Agreement between Ferrovial, the Building and Wood Workers' International, FECOMA and MCA	Spain	2012
Hochtief	Framework Agreement between Hochtief and IFBWW	Germany	2000

[20] See, UNI Global Union, 'UNI Global Union's Global Framework Agreements'. Available At: https://www.uniglobalunion.org/about-us/global-agreements [Accessed 13 May 2020].

Italcementi	Inetrnational Framework Agreement to Promote and Protect Workers' Rights	Italy	2008
OHL	Framework Agreement between Obrascon Huarte Lain S/A, Building and Wood Workers' International, FECOMA and MCA	Spain	2012
Pfleiderer	International Framework Agreement between Pfleiderer AG and IG Metall Germany, Building and Wood Workers' International (BWI) and the European Works Council of Pfleiderer AG	Germany	2010
Royal Bam	Framework Agreement signed between Royal Bam Group nv and Building and Wood Workers' International (BWI) to Promote and Protect Workers' Rights	Netherlands	2006
Sacyr	Framework Agreement among Sacyr, Building and Wood Workers' International (BWI), CCOO Construction and Services and MCA-UGT	Spain	2014
Salini Impregilo[21]	International Framework Agreement between Salini Impregilo S.p.A and Building and Wood Workers' International (BWI), FENEAL UIL, FILCA CISL and FILLEA CGIL	Italy	2014
Skanska	Agreement between Skanska and IFBWW	Sweden	2001
Stabilo	International Framework Agreement between Schwanhäußer Industrie Holding GmbH & Co KG, 90562	Germany	2005

[21] Salini Imprefilo S. pA, 'International Framework Agreement between Salini-IMpregilo S.p.A. and Building and Wood Workers' International (BWI), FENEA UIL, FILCA CISL and FILLEA CGIL'. Available At: https://ec.europa.eu/employment_social/empl_portal/transnational_agreements/IFA_SaliniImpregilo_EN.pdf [Accessed 25 May 2020].

	Heroldsberg, Germany and IG Metall, Germany/International Federation of Building and Wood Workers (IFBWW)		
Staedler	International Framework Agreement between Staedtler, IG Metall Germnay and Building and Wood Workers' International (BWI)	Germany	2006
Veidekke[22]	Global Framework Agreement between Fellesforbundet, Norsk Arbeidsmandsforbund/BWI and Veidekke ASA in Developing Decent Working Conditions in Veidekke ASAs Global Operations	Norway	2017
Volker Wessels	Volker Wessels: Signed between Royal Volker Wessels Stevin NV (Volker Wessels) and the Building and Wood Workers' International (BWI) to Promote and Protect Workers' Rights	Netherlands	2007
Wilkhan	International Framework Agreement on Social Responsibility and Promotion of Employees Rights	Germany	2009

Table 3. List of global framework agreements signed by the Building and Wood Workers' International (BWI). Based on the databased developed by the European Commission and the International Labour Organisation and the Building and Wood Workers' International's listing.[23]

Company	Title	Country	Date
WAZ	Framework Agreement between Westdeutsche Allgemeine	Germany	2007

[22] European Commission and the ILO – Employment, Social Affairs & Inclusion, 'Database on Transnational Company Agreements – Veidekke' (n17); Building and Wood Workers' International, 'Reassuring labour standards in Veidekke ASAs Global Operations' (10 January 2017). Available At: https://www.bwint.org/cms/priorities-10/rights-34/trade-union-rights-35/news-36/reassuring-labour-standards-in-veidekke-asas-global-operations-577 [Accessed 22 May 2020].

[23] See, Building and Wood Workers' International, 'International Framework Agreements'. Available At: http://bwiconnect.bwint.org/default.asp?Issue=search&Language=EN&subj=FRAM&sort=type&text=&type=documents [Accessed 10 May 2020].

	Zeitung Mediengruppe (WAZ) and International Federation of Journalists/European Federation of Journalists (IFJ/EFJ) on the Defence and the Promotion of Press Freedom, Quality Journalism and Sound Industry		

Table 4. List of global framework agreements signed by the International Federation of Journalists (IFJ). Based on the databased developed by the European Commission and the International Labour Organisation.

Company	Title	Country	Date
Accor	Agreement between the IUF and the Accor Group on Trade Union Recognition	France	2005
Coca-Cola	Joint Coca-Cola and IUF Statement	United States of America	2005
Danone	IUF/BSN Common Viewpoint	France	1988
Fonterra	Agreement between Fonterra, the IUF and the New Zealand Dairy Workers Union	New Zealand	2002
Melia	Global Agreement IUF-UITA/Melia Hotels International S/A	Spain	2013
Sodexo	International Framework Agreement	France	2011

Table 5. List of global framework agreements signed by International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). Based on the database developed by the European Commission and the International Labour Orgnaisation.

Company	Title	Country	Date
Lafarge	Global Agreement on Corporate Social Responsibility and International Industrial Relations	France	2013

Table 6. List of global framework agreements signed by the Building and Wood Workers' International (BWI) and IndustriALL. Based on the databased developed by the European Commission and the International Labour Organisation, the Building and Wood Workers' International's listing, and IndustriALL's listing.

Company	Title	Country	Date
EDF	Global Framework Agreement on the EDF Group's Corporate Social Responsibility	France	2018
Enel	Global Framework Agreement on Social Dialogue Guidelines	Italy	2013

Table 7. List of global framework agreements signed by IndustriALL and the Public Services International (PSI). Based on the databased developed by the European Commission and the International Labour Organisation, IndustriALL's and the Public Services International's listings.[24]

Company	Title	Country	Date
GDF Suez	Global Agreement on Fundamental Rights, Social Dialogue and Sustainable Development	France	2010

Table 8. List of global framework agreements signed by the International Federation of Chemical, Energy, Mine and General Workers' Unions (merged into IndustriALL in 2012), the Building and Wood Workers' International (BWI), and the Public Services International (PSI). Based on the databased developed by the European Commission and the International Labour Organisation.

Company	Title	Country	Date
Stora Enso	Global Framework Agreement on Fundamental Rights	Finland	2018

Table 9. List of global framework agreements signed by IndustriALL, UNI Global Union, and the Building and Wood Workers' International (BWI). Based on the database developed by the European Commission and the International Labour Organisation.

Through a content analysis and based on the four constitutive elements mentioned above, **this dissertation has identified all agreements included in the preceding tables as global framework agreements**. The European Commission and the ILO database was widely used.

[24] See, IndustriALL, 'Global Framework Agreements' (n17); Public Services International, 'Global Framework Agreements'. Available At: http://www.world-psi.org/en/search/node/global%20framework%20agreement [Accessed 14 May 2020].

Furthermore, IndustriALL,[25] the Building and Wood Workers' International,[26] and UNI Global Union[27] provide a list of the signed global framework agreements and, in most cases, their texts. Additionally, the multinational enterprises' websites were also a resource, eventhough global framework agreements were often challenging to find in company websites. However, in some cases they were easily available and fundamental in finding an updated version of the document.[28]

The text of **some agreements was not able to be analysed**. These include UNI Global Union's agreements with Abadi Indonesia, ABU, Codere,[29] EuroMED Postal,[30] ICOMON,[31] NAG, PALSCON, PARTOUCHE[32], Quad Graphics, and Skandia. These agreements were referred in the corresponding global union federation's website but the document was not found. Accordingly, these agreements could not be examined and, therefore, are not considered in the preceding tables.

Agreements **sometimes mentioned in literature** as examples of international framework agreements are not considered as such if they do not comprise all of the four constitutive elements listed above or concern a specific issue, such as temporary work. For instance, National Australia Group's global agreement does not include any type of implementation mechanism and it is therefore not considered to be an international framework agreement. Likewise, agreements **identified in a global union federation's listing** as global agreements are also not considered to be global framework agreements if they not comprise the four elements identified above. UNI Global Union's list includes Media Prima's 'Memorandum of Understanding between TV3 System Televisyen Malaysia Berhad and UNI Global Union – Malaysia Liaison Council' as a global framework agreement. Media Prima's agreement possesses some of the constitutive elements of a global framework agreement, but not all. In particular, its reference to the supply chain is scarce, merely referring that *"Global and others concerned with fair labour relations would be pleased to*

[25] IndustriALL, 'Global Framework Agreements' (n17).

[26] Building and Wood Workers' International, 'International Framework Agreements'. Available At: http://bwiconnect.bwint.org/default.asp?Issue=search&Language=EN&subj=FRAM&sort=type&text=&type=documents [Accessed 10 May 2020].

[27] UNI Global Union, 'Global Agreements'. Available At: https://www.uniglobalunion.org/about-us/global-agreements [Accessed 13 May 2020].

[28] For instance, Inditex, 'Inditex and IndustriALL Global Union Agree to Create a Global Union Committee' (n28).

[29] UNI Global Union, 'UNI Global Union and Codere sign a Global Agreement' (Mars 2013). Available At: https://www.uniglobalunion.org/fr/node/23048 [Accessed 13 May 2020].

[30] UNI Global Union, 'UNI signs landmark cooperation agreement with Euromed Postal' (February 2012). Available At: https://www.uniglobalunion.org/de/node/23883 [Accessed 13 May 2020].

[31] UNI Global Union, 'Two Global Agreements signed in Brazil' (October 2008). Available At: https://www.uniglobalunion.org/news/two-global-agreements-signed-brazil-1 [Accessed 13 May 2020].

[32] UNI Global Union, 'Global Agreement between Groupe Partouche and UNI Global Union raises workplace standards in the gaming industry' (September 2018). Available At: https://www.uniglobalunion.org/es/node/39531 [Accessed 13 May 2020].

see upheld as an example throughout Southeast Asia and elsehere". Likewise, the agreement's mention to a review simply states that *"TV3 will continue to meet periodically with the Union to review and discuss industrial relations issues in Media Prima Berhad's audiovisiual operations in Malysia"*.[33] Hence, the document does not contain any provisions concerning implementation, either in the form of dissemination, monitoring, review or dispute settlement and it is not considered to be a global framework agreement. However, when an agreement deals with a particular issue but it also fulfils the four identified requirements, it is considered to be a global framework agreement. That is the case of, for instance, USG's agreement with UNI. In fact, the company's 'People's Memorandum of Understanding between Ciett Corporate Members and UNI Global Union on Temporary Agency Work' comprises the four elements and even addresses, although briefly, the settlement of disputes.

Some agreements seem to have **expired** and, since information on these agreements' renewal was not found, these are also not considered in the list established, even when they are included in the used database or in the global unions' websites. These include, for example, UNI Global Union's agreements with Carrefour, Euradius, OTE, Portugal Telecom, Société Générale UPU, and Ballast Nedam. The same can be said about, for instance, Equinor's agreement with IndustriALL. According to the list provided by IndustriALL in its website, Equinor constitutes one of the multinational enterprises that has signed such a global framework agreement with the global union federation. The agreement, last renewed in 2016, states that its duration is of two years, lasting until the 30th of June 2018. According to the document, after that period the agreement will be evaluated and may be prolonged. However, information on a renewal was not found and, accordingly, the agreement is not considered in the table above. Another example is Petrobras' agreement, signed in 2011 for two years. Similarly, since information on the agreement's renewal was not discovered, the agreement is not included in the table comprising the global framework agreements signed by IndustriALL, notwithstanding being included in the global union's website. Similarly, Total's agreement, was signed in 2015 with IndustriALL, for a four-year period and, since information on the agreement's renewal was not found, the agreement is not included in the table of global framework agreements signed by IndustriALL. However, the agreement is mentioned on some relevant occasions. Some references are considered significant, also because the agreement only expired in 2019. The same can be said in regard to Engie (GDF Suez)'s agreement, which is comprised in IndustriALL's online list. According to Section 6 (1), the agreement is valid for a period of three years. Hence, having been signed in 2010 and since no information on the agreement's renewal was attained, the agreement is not considered in the relevant table. Differently, **Esprit's** agreement, signed in April 2018 and reviewed within two years is considered throughout the dissertation, given

[33] European Commission, 'Memoradum of Understanding between TV3 System Televisyen Malaysia Berhad and UNI Global Union – Malaysia Liaison Council'. Available At: https://ec.europa.eu/social/main.jsp?catId=978&langId=en&agreementId=114 [Accessed 13 May 2020].

the sector and since termination is not explicitly provided. **Volkswagen's** agreement, although included in IndustriALL's list,[34] was suspended by the global union federation in December 2018, based on the enterprise's consistent refusal to provide the same rights to its workers in Chattanooga, Tennessee.[35] In other cases, information about an **agreement's renewal was discovered but the document was unattainable**. In particular, and although information regarding its renewal in 2019, Banco do Brasil's agreement was not found.[36] Likewise, the text of Telenor's agreement with UNI Global Union, renewed in 2020, was not found.[37]

UNI Global Union's website, under the heading of 'Global Agreements', offers a list that includes **other types of agreements, namely those with a regional scope**. By not having a global scope, these agreements are not considered to be global framework agreements. For instance, Itaú's framework agreement merely applies to the Americas.[38] Likewise, Chiquita's agreement, signed by Chiquita, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Coordinadora Latinoamericana de Sindicatos Bananeros (COLSIBA), although clearly fulfilling the other constitutive elements of an international framework agreement, merely has a regional scope. The heading of the agreement, 'Agreement on Freedom of Association, Minimum Labour Standards and Employment in Latin American Banana Operations', explicitly denotes its regional scope. The exclusion of agreements with a regional scope is based on the differentiation between international and European framework agreements and the global intend behind the negotiation and signature of these documents. Still, if an agreement merely possesses a **potential global scope**, practically applying to a specific

[34] IndustriALL, 'Global Framework Agreements'. Available At: http://www.industriall-union.org/global-framework-agreements [Accessed 26 May 2020].

[35] IndustriALL, 'IndustriALL Suspends Global Agreement with Volkswagen'. Available At: http://www.industriall-union.org/industriall-suspends-global-agreement-with-volkswagen [Accessed 29 January 2019].

[36] UNI Global Union, 'UNI and Contraf signed a Global Framework Agreement with Banco do Brasil' (21 January 2019). Available At: https://www.uniglobalunion.org/news/uni-and-contraf-signed-a-global-framework-agreement-banco-do-brasil [Accessed 25 May 2020]; Contraf, 'Contraf-CUT assina Marco Global entre Banco do Brasil e a UNI Global Union' (24 January 2019). Available At: https://contrafcut.com.br/noticias/contraf-cut-assina-marco-global-entre-o-banco-do-brasil-e-a-uni-global-union-0400/ [Accessed 25 May 2020].

[37] Telenor, 'Telenor Group and UNI renew global agreement' (14 February 2020). Available At: https://www.telenor.com/media/announcement/telenor-group-and-uni-renews-global-agreement [Accessed 25 May 2020].

[38] European Commission, 'Framework Agreement between Banco Itaú-Unibanco S/A and Union Network for the Americas'. Available At: https://ec.europa.eu/social/main.jsp?catId=978&langId=en&agreementId=246 [Accessed 13 May 2020]; UNI Global Union, 'A New Milestone in Brazil: UNI signs Global Framework Agreement with Banco Itaú' (March 2014). Available At: https://www.uniglobalunion.org/news/a-new-milestone-brazil-uni-signs-global-framework-agreement-banco-itau [Accessed 13 May 2020]; UNI Global Union, 'UNI Global Union and Banco Itaú extend Global AgreementsSecuring labour rights' (October 2018). Available At: https://www.uniglobalunion.org/news/uni-global-union-and-banco-itau-extend-global-agreement-securing-labour-rights [Accessed 13 May 2020].

region, it is still considered to be a global framework agreement. This is based on the perception of the agreement's automatic application if the multinational enterprise expands its business operations to another region.

Contrarily, other agreements **not included in the list of the global union federation's website** are considered as still being in force, based on their presense in the database and the fact that their duration is indefinite. An example can be found in Brunel's agreement with the then existing International Metalworkers' Federation (IMF). Also, some agreements are not included in the list provided by the global union federation but are present in the database, and can be discovered in the global union's website through a **specific search**. Brunel's agreement is also an example, since it is not included in the list provided by IndustriALL. However, through a search of the company in the union's website it is possible to find the text of the agreement. Similarly, some agreements are **listed by both the global union's website and the database but the text is not available in the database**. For instance, Essity's agreement is listed in the database, but the document itself is not available. Somewhat similarly, the indication of an agreement is included in the list provided by the relevant global union federation and the database, but the **document itself is absent**. Another example is GeoPost's agreement. Accordingly, GeoPost's agreement could not be analysed even if, from the references provided in the database, it appears to be a global framework agreement.[39] The agreement appears to comprise implementation and dissemination provisions, references to review and monitoring, and a dispute settlement procedure. Moreover, the agreement seems to have expired in 2019 but, since it was not possible to access the document, that is not entirely clear.

It is also worth noting that the European Commission and the International Labour Organisation **database does not always contain the updated version** of the agreement. For instance, Inditex's agreement was last enewed in 2019. However, the database's latest version of the agreement is from 2014. Similarly, the database includes Lukoil's agreement from 2012, although the agreement was renewed in 2018.

Agreements **signed by several global union federations** are identified in a separate table. For example, Stora Enso's Global Framework Agreement on Fundamental Rights was signed by IndustriALL, UNI Global Union, and the Building and Wood Workers' International.[40]

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[39] European Comission and the ILO – Employment, Social Affairs & Inclusion, 'Database on Transnational Company Agreements' (n17); UNI Global Union, 'UNI Global Unions' Global Framework Agreements'. Available At: https://www.uniglobalunion.org/about-us/global-agreements [Accessed 30 May 2020]; UNI Global Union, 'UNI Global Union signs a global agreement with parcel delivery giant GeoPost' (14 March 2017). Available At: https://www.uniglobalunion.org/news/uni-global-union-signs-a-global-agreement-parcel-delivery-giant-geopost [Accessed 30 May].

[40] European Commission, 'Stora Enso - Global Framework Agreement on Fundamental Rights'. Available At: https://ec.europa.eu/social/main.jsp?catId=978&langId=en&agreementId=302 [Accessed 2 May 2020].

Additionally, unless it is found that an agreement is no longer in force with respect to the notice period, agreements signed for an **undetermined/undefined duration or indefinitive duration** are considered to still be applicable. Accordingly, agreements signed by **global union federations that have merged** into other federations are also considered to still be applicable, unless the duration of the agreement has expired. Agreements signed by global union federations that have merged into other organisations but are identified by the organisation within its list of global framework agreements as still being applicable are, after an analysis of their content, considered as global framework agreements that are still in force. An example is Faber Castell's agreement, signed by the then existing International Federation of Building and Wood Workers (IFBWW),[41] which merged into a new global union federation in 2005, the **Building and Wood Workers' International** (BWI).[42] The agreement is listed in the organisation's website[43] and, being signed in 2008 and having an indefinite duration, is considered as still applicable. The same can be said in regard to Hochtief's framework agreement. Having being signed in 2000 with an indefinite duration, by the International Federation of Building and Wood Workers, the agreement is listed in the website of the currently existing Building and Wood Workers' International. After an analysis of the agreement's content, the document is therefore analysed as a global framework agreement. Similarly, IKEA's 2001 framework agreement was signed by the multinational enterprise and the International Federation of Building and Wood Workers, and it is included in the Building and Wood Workers' International's website. The agreement has an indefinite duration and it is therefore also considered as a global framework agreement. Also, Skanska's 2001 agreement was signed by the company and the International Federation of Building and Wood Workers and it is currently listed in the Building and Wood Workers' International. Another example includes Schwan Stabilo's agreement, signed by the International Federation of Building and Wood Workers in 2005. BMW's agreement was signed in 2005, by the then existing International Metalworkers' Federation (IMF) and the BMW Group. The International Metalworkers' Federation merged into **IndustriALL** in 2012. Other examples of agreements signed by the International Metalworkers' Federation include EADS', Electrolux's, Ford's, GEA's, Leoni's, Man's, Mann + Hummel's, Merloni's, Prym's, and Röchling's, and Vallourec's agreements.

[41] European Commission, 'Agreement between A. W. Faber-Castell Unternehmensverwaltnung GmbH & Co, 90546 Stein and Industriegewerkschaft Metall/Bau-und Holzarbeiter Internationale, BHI'. Available At: https://ec.europa.eu/employment_social/empl_portal/transnational_agreements/FaberCastell_Agreement_EN.pdf [Accessed 8 May 2020].

[42] Building and Wood Workers' International, 'About BWI'. Available At: https://www.bwint.org/cms/about-2 [Accessed 14 May 2020].

[43] Building and Wood Workers' International, 'International Framework Agreements'. Available At: http://bwiconnect.bwint.org/default.asp?Issue=search&Language=EN&subj=FRAM&sort=type&text=&type=documents [Accessed 10 May 2020].

This selection is considered beneficial for an assessment of the current stage of development of global framework agreements and the construction of a proper identification framework of global collective agreements. However, when considered relevant, international framework agreements that have expired are mentioned, particularly when the agreement has recently expired and the text itself refers to an evalutation for the agreement's prolongation. This is the case of Equinor's (previous Statoil) agreement, which expired in June 2018. Section 5 of the agreement refers to an evalutation and prolongation, although, as mentioned above, information on a renewal was not discovered. Still, the agreement's environmental section and the company's placement within the energy sector are considered relevant as example of references to environmental protection in global framework agreements. Similarly, Umicore's agreement is relevant in regard to Section 3, referring to the environment. The agreement is also relevant in terms of its reference to the jurisdiction of Belgian courts. Moreover, the agreement illustrates how agreements signed by global union federations that have merged into other global unions can be considered as still being applicable. Hence, besides the motives listed above, namely the inclusion of the agreement in the global union federation's listing, Umicore's agreement supports this understanding, by stating that *"In case of merger of the signing employee organisations or merger of one of the signing employee organisations with another employee organisation, the new entity/entities shall automatically be deemed as party to this agreement and subject to its provision until such as the agreement is renegotiated"*.

Finally, some currently active global union federations have **not signed** global framework agreements. These include the Education International, the International Trade Union Confederation, the International Transport Workers' Federation and the World Federation of Trade Unions. Such agreements were not found in neither the database developed by the European Commission and the International Labour Organisation, nor their websites.

8.4. Annex 4 – Types of Dispute Settlement

Company	Monitoring Body	Dispute Settlement			
		Hierarchy	Mediation/ Arbitration	Judicial Enforcement	Explicit Measures
ABN AMRO (2015)	Monitoring group, meeting once a year	Local dispute settlement procedures, National/regional level, HR Director, Monitoring Group	Mediation	*"Parties recognise that the present agreement does not grant any contractual rights to third parties or to any employee (…)"*	
Acciona (2014)	Reference group, meeting at least once a year	Local management, National level, Reference group			Recom-mendations
AEON (2014)	Parties' meeting, once a year	*"In the event that a problem arises in regard to the implementation of the Agreement, all parties will jointly make efforts for early resolution"*			
Aker (2012)	Parties' meeting, at least every second year	Local site management, National union and the company's regional president, Aker's chief shop steward and Aker's chairman and CEO, Monitoring group, Arbitration	Arbitration by the ILO or a neutral agreed party		Potential termination of the contractual relationship Termination of the agreement *"After this process has been exhausted failure to reach a consensus will mean a termination*

					of the agreement"
Anglogold (2002)	Parties' meeting, at least once a year, Sub-committee to consider proposals	*"Anglogold and the ICEM agree to give practical effect to their common interest, and accordingly enter into this agreement to: establish a procedure for the resolution of disagreements that may arise from time to time"*			
Antara (2010)	Parties' meeting, once a year	*"When any difference arises from the implementation of this agreement which cannot be solved autonomously with the company. UNI Global Union will mediate with the parties in conflict and make the utmost effort to reach a peaceful situation"*			*"Third companies wishing to be awarded outsourcing contracts, jobs, works or any other type of service by Antara, will have to adhere to these principles"*
ASOS (2017)	Joint group, meeting twice a year	*"Questions concerning the interpretation of this Agreement shall be resolved through consultation between the signatories. Every effort will be made to find common agreement but where this is not possible the Parties to this Agreement shall in appropriate instances seek the expert advice of the ILO. The Parties shall mutually agree to abide by the final recommendations of the ILO"*			Recom-mendations
Auchan (2017)	Parties' meeting, once a year	Auchan and UNI Global Union agree to be available on an on-going basis to keep each other informed of any problems and to try to come the best resolution. All disputes concerning the validity, the interpretation or execution of the agreement will be amicably settled between the parties. However, if the signatory parties cannot come to an agreement, either of them can submit the dispute to an agreed third party for a final decision, while sharing the costs of arbitration equally			
Besix (2017)	Reference group, meeting once a year	Local management, National level, Besix Group	Third-party facilitator,		

		Chief HR Director and the Group CSR Officer, Reference group, Third-party facilitator	agreed by the parties		
BMW (2005)	Periodic consultations			*"No individual or third-party claims are admissible"*	*"The BMW Group expects its business partners and suppliers to use these principles as a basis in their mutual dealings and regards them as a suitable criterion for lasting business relationships"*
Bosch (2004)		Investigation of complaints, actions discussed by senior management and associate representatives			*"Bosch will not work with any suppliers who have demonstra-bly failed to comply with basic ILO standards"*
Brunel (2007)	Parties' meeting				
Daimler (2012)	Corporate audit and corporate management meetings	Central hotline established by Corporate audit for reports of non-compliance. Corporate Audit takes appropriate action			
Danske Bank (2008)	Parties' meeting, agreed frequency	*"Should UNI Global Union or one of the unions represented and recognised within Danske Bank Group consider that this agreement or one of its principles is not applied in one of the Group's entities, they undertake to contact Danske Bank Group management before any outside communication so that the*			

		necessary discussions and actions can take place – based on the principle that a local solution should be sought"			
Dragados (2014)	Reference group, meeting at least once a year	Local workplace management, BWI coordinator in cooperation with national affiliates and management, Reference group			Recom-mendations
EDF (2018)	Global committee (the Dialogue Committee on CSR), supported by a steering committee	Local resolution, Management and the relevant social partners at national level and the at the headquarter level, Global monitoring committee, Mediation, Competent tribunal	Mediation	*"As a last resort, they will have the possibility to bring the case to the competent tribunal in the location of the EDF Group head-quarters"*	Termination of the contractual relationship *"Any repeated breaches of the provisions of this agreement, the law, the rules relating to employee health and safety, the principles governing customer relations and the environment-ttal regulations in force, that are not rectified following notification, may result in the termination of relations with the*

					supplier or subcontractor, in accordance with the relevant contractual obligations"
Elanders (2009)	Monitoring Watch	*"The Company and UNI will work together to resolve any disagreement regarding the effective implementation of the principles"*			*"The Company will not knowingly use vendors or suppliers who willfully violate the principles of this Global Agreement"*
Eni (2019)	Global monitoring committee, meeting once a year	Local level, Management and relevant national unions, Global level (Eni's headquarters, IndustriALL and the coordinator of the agreement)	*"In case of need for interpreta-tion of this agree-ment, the Parties may agree to seek the expert advice of the ILO or any other agreed third party"*	*"This agreement is governed by Italian legislation"*	
Electrolux (2010)	Monitoring committee, meeting once a year	*"The parties are always entitled to initiate discussions and reports on incidents occurred. For this purpose both parties can involve external expertise should this so be required"*			
Enel (2013)	Global works council	*"Where any deviations from or violations of this agreement are found to exist, the Parties shall move quickly to inform one another. Having ascertained the facts, Enel shall intervene to resolve the problem and will inform the trade unions thereof"*			
Esprit (2018)	Joint group, meeting twice a year	Consultation between the	The parties can seek the expert	The agreement is governed in line with the	Recom-mendations

		signatories, expert advice	advice of the ILO or other mutually agreed upon neutral party, whose recom-menda-tions the parties must abide	relevant legislation in Germany Possibility to bring the case to the competent judiciary body in Germany, notwithstandin g the place of execution of the agreement and/or the intercession of a third party	
Essity (2018)	Parties' meeting, every sceond yeare	Local site management, relevant national trade union raises the issue with the HR department at the business group or regional level, referral to IndustriALL and Essity's corporate management			
Faber Castell (2008)	Self-assessment, Internal audits, External audits (monitoring committee, meeting at least every second year)	*"Any and all disputes which cannot be settled on the spot shall be transferred to the monitoring committee who will review the facts and propose corresponding measures"*			

FCC Construc-ción (2012)	Review board, meeting at least once a year	Local management of the workplace, BWI coordinator in collaboration with national affiliates and the responsible manager, Reference group			Recom-mendations
Ferrovial (2012)	Reference group, meeting at least once a year	Local management of the workplace, BWI coordinator in collaboration with national affiliates and the responsible manager, Reference group			Recom-mendations
Fonterra (2002)	Review committee, meeting once a year	Resolution at the local level, Recourse to the review committee for alleged serious or systematic violations			
Ford (2012)	Parties' meeting, once a year	*"The ongoing compliance of these Principles can be raised and discussed between the Company and Union in the Regions or at the Ford Global Information Sharing Forum. When issues are identified, the Parties will work together to find mutual solutions"*			
France Telecom (2006)	Parties' half yearly meetings	Contact by UNI to the France Telecom group which undertakes to implement any measures necessary to		*"Since the registered office of the France Telecom Group is in France, all provisions not foreseen by the*	

		ensure compliance		*parties will be governed by French law"*	
G4S (2008)	Parties' meeting, twice a year	Complaints by UNI affiliates - Local management, relevant trade union refers the issue to the country manager, UNI representatives will raise the issue with G4S' director of employee relations and the responsible manager who ensures corrective steps are taken, Review meeting Complaints by G4S companies – Local union, Company manager refers the issue to the relevant national trade union, Company's director of employee relations raises the matter with UNI which ensures corrective steps are taken, Review meeting Mediation	If unresolved after discussion at the Review meeting, the parties can refer a matter to a neutral arbiter to find a mediated solution	*"G4S and UNI (...) accept that no part of the agreement is legally enforceable, either by the parties or by any third party, or in any way changes or amends any individual G4S employee's terms and conditions"*	Corrective steps

GEA (2003)	Parties' meeting, at least once a year	*"All employees have the right to address subjects and problems in conjuction with the agreed principles"*			*"The codes of conduct of GEA AG are binding within the company throughout the world"* Advantegous basis for subsequent business relations in the future
H&M (2015)	Joint industrial relations development committee, meeting at least once a year	Workplace negotiation, National monitoring committee, Joint industrial relations development committee, Mediation	Mediation		
Hochtief (2000)	Officer appointed by Hochtief	Report to the executive board of Hochtief which takes the suitable measures to remedy the issue Questions of interpretation will be clarified jointly between the signatories			
IKEA (2001)	Joint group, meeting twie a year	Report to the group which will review the matter and propose appropriate measures			
Inditex (2019)	Global union committee, meeting once a year	Factory level, Trade union expert and the relevant global union committee member or the general coordinator who will inform the representative of Inditex and IndustriALL	Consulta-tion, where that is not possible the parties can seek the expert advice of the ILO or an agreed third party for mediation,		

		that will take actions for resolution	whose recom-menda-tions the parties agree to abide		
Indosat (2004)		Any act, conduct, plan or campaign from UNI Global Union that is inconsistent with Indosat's company value, Indosat has the right to sign out from UNI Global Union		*"The provisions of this Global Framework Protocol are intended as an expression of mutual understanding and are not intended to be legally binding and not create any legally binding contractual relationship amongst the Parties"*	
ISS (2008)	Parties' meeting, twice a year	Local/national level, Discussion at the parties' bi-annual meeting, Mediator/ arbitrator	Mediation/ Arbitration seeking a mediated resolution, If a mediated solution fails the independe nt party shall propose an arbitrated resolution binding on both parties		

Italcementi (2008)	Reference group, meeting once a year or when necessary	*"Signatories agree that any difference arising from the interpretation or implementation of this agreement will be examined jointly, for the purpose of clarification"*			
Lafarge (2013)	Reference group, meeting at least once a year or when necessary	Local management, National union and local company, Reference group and regional coordinators			Termination of the contractual relationship *"Any serious breach of the legislation concerning the health and safety of direct or indirect employees, the protection of the environment or basic human rights, which is not corrected after a warning, will result in the termination of relations with the concerned enterprise, subject to contractual obligations"* Termination of the agreement
Leoni (2002)	Internal auditing department			*"Third parties cannot derive or enforce any rights from*	Leoni views respect for the agreement as an advantegous

				this declaration"	basis for mutual relationships
Loomis (2013)	Implementa-tion group, meeting once a year	Local grievance procedures, Country or regional manager, Loomis group vice president for human resources, Implementation group, Mediation	Mediation	*"This Agreement is governed by the substantive laws of Sweden"* The agreement *"does not confer any contractual rights upon third parties (including UNI affiliates) or upon any employee of the Loomis group, nor shall this Agreement undermine labour relations practices or agreements with other unions (non-UNI affiliates) operating within Loomis"*	
Lukoil (2018)	Parties' meeting, once a year	*"Should any difficulty be observed in implementing this Agreement, the Parties hereto undertake to inform each other at the earliest*		*"The obligations set out in this Agreement represent the free will of Lukoil and are supplementary to the applicable law of the relevant*	

		opportunity in order to find a solution in the shortest possible time"		*countries in which Lukoil Group organisations operate"* *"The Parties agree that it is critical to raise awareness of all employees about the content and binding status of the Agreement"* *"This Agreement is executed in the English and Russian languages, the Russian and English versions being equally binding"*	
Man (2012)		Directors of the respective units appoint contacts, Man Group's tip-off system Extraordinary incidents are delat with directly and without delay between the parties		*"no claims against Man SE or its group companies or against their employees or executive bodies may be derived from this joint declaration of intent on any legal grounds, either from within the Company or*	

				by third parties"	
Mann+Hum-mel (2011)	Consultations, once a year	Supervisor/ respective local workers' representative/ external ombudsperson		*"No individual or third-party claims can be derived from this joint declaration"* *"Only the German version of this declaration is binding"*	The Mann+Hum-mel group regards the principles as a suitable criterion for lasting business relationships
Merloni (2001)	National joint commission				If direct suppliers violate the principles contained in Conventions No. 29 and 138, the Merloni group reserves the right to institute sanctions against those suppliers including, for cases of serious violations, cancellation of the contract
Mizuno (2020)	Joint industrial relations committee, at least once a year	Local management, National union and local company, IndustriALL will advise the local complainant or national trade union and Mizuno	Arbitration		

		will advise the local management, Arbitration			
Nampak (2006)	Parties' meeting, at least once a year	*"Nampak and a UNI delegation shall meet at the request of either party to resolve any dispute or disagreement regarding the implementation of this agreement"*			
Norske Skog (2013)	Parties' meeting, once a year	Local site management, National union and the company's regional president, IndustriALL and the company's corporate management			Corrective measures
OHL (2012)[1]	Reference group, meeting at least once a year	Local site management, BWI in collaboration with national affiliates and responsible manager, Reference group			Recom-mendations
Pfleiderer (2010)	Monitoring committee	Local employee representatives and local management, Trade union and the company, Monitoring committee			Cancellation of the agreement will be considered the final option
PSA (2017)	National level – annual monitoring by company management	Local management, Signatories in liaison with local management		*"Failing a resolution, the parties will have the possibility to bring the case*	

[1] Translation by the author.

	and trade unions Group level – global works council	and trade unions, Court		*to the competent tribunal in the location of PSA headquarters, notwithstand-ing the place of execution of the agreement or/and the intercession of a third party"*	
Quebecor World Inc. (2007)					
Renault (2013)	Parties' meeting, once a year, Every three years a global report	Local social dialogue, National/region -al/ company level		*"This agreement is subject to French law"* *"In the event of any discrepancy between the various translated versions, the French version is binding"*	Termination of the contractual relationship *"If necessary, corrective action plans may be set up with the Renault Group's support. Once identified, any failure not corrected may lead to various measures, including the Renault Group terminating its relationship with the company concerned"*

Rheinmetall (2018)		Complaints to management/ local employee representatives/ European works council/ IndustriALL/ Compliance officers		*"No individual claims or third-party claims may be derived from this Agreement. This also applies to the Parties to this Agreement, i.e., this Agreement shall not take on any legal effect with regard to the relationship between the Parties"*	*"Compliance with the principles contained in this Agreement should be taken into account in the selection and evaluation of suppliers, subcontractors and service providers"* *"Rheinmetall Group should consider taking steps against the respective company concerned"*
Royal BAM (2006)	Reference group, meeting once a year	*"If a serious breach of the agreement should be brought to the attention of either party Royal BAM Group nv will undertake an examination of the reported breach and shall report the BWI thereof"*			Recom-mendations *"Royal BAM Group nv (...) will therefore refrain from using the services of those trading partners, subcontractors and suppliers which do not respect the criteria"*
Röchling (2004)	Parties' meeting, once a year	*"All employees have the right to address topics and problems in connection with the agreed-upon principles. This shall not result in any disadvantages or sanctions as a result thereof"*			Röchling views the respect for the agreement as a positive

					basis for future business relationships
Saab (2012)	Parties' meeting, once a year	*"The parties are always entitled to initiate discussions and reports on incidents occurred"*			
Sacyr (2014)[2]	Reference group, meeting at least once a year	Local management of the workplace, BWI coordinator in cooperation with national affiliates and the responsible manager, Reference group	Divergences regarding the interpretation or implementation of the agreement is jointly examined for providing recommendations to the relevant parties		Recom-mendations
Safran (2017)	Global monitoring committee	Local, National trade union and general directorate of the group, Global monitoring, Jurisdiction		*"This agreement is subject to French law"* *"In the absence of agreement between the parties, jurisdiction may be exercised"*	
Salini Impregilo (2014)	Advisory/ monitoring group, meeting at least once a year or when the need arises	*"The Parties agree that any dispute arising from the interpretation or execution of the Agreement will be jointly discussed for the purpose of its settlement"*			
SCA (2013)	Parties' meeting,	Local site management, National trade			*"any proven violation of the principles*

[2] Translation by the author.

	every second year	union and the human resource department at the business group or regional group level, IndustriALL and SCA corporate management			*contained in the Agreement that is not remedied despite warnings will lead to termination of relationships with the company concerned"*
Schwan Stabilo (2005)	Monitoring committee, meeting once a year	*"If production and sales subsidiaries do not comply with the principles listed above, the Monitoring Committee will examine the matter and propose appropriate measures"*		*"The German version of this agreement is the authoritative version"*	Schwan Stabilo regards respect with the agreement as a basis for any enduring business partnership
Securitas (2012)	Implementa-tion group, meeting at least twice a year	Complaints by UNI affiliates – Local management, Country manager, UNI implementation group Complaints by Securitas – Local union, National union, UNI property services representatives Mediation	Mediation	*"This Agreement shall be governed and construed in accordance with the laws of Sweden"*	Termination of the contractual relationship *"Securitas shall endeavour to work with business partners who conduct their business in a way that is compatible with the terms of this agreements, and it shall consider not doing business with any partner that fails to*

					comply with these standards"
Shoprite Checkers (2010)					
Siemens Gamesa (2019)	Local level – regular social dialogue Global level – global monitoring committee, meeting once a year	Local resolution, Management and social partners at national level and the group headquarters, Global monitoring committee, Mediation, Competent court	Mediation *"Failing a resolution, the signatories will have the option to jointly appoint a mediator, e.g., the ILO and/or any other jointly agreed third party, to facilitate the settlement of the case"*	*"As a last resort, they will have the possibility to bring the case to the competent tribunal in the location of the Siemens Gamesa Group headquarters"* *"This agreement is subject to Spanish legislation"* *"In case of discrepancy between the various language versions, the Spanish version shall have legal value"*	
Skanska (2001)	Application group	The application group reports a violation to the responsible member of the group management staff who takes the relevant	Arbitration If an agreement cannot be reached in the application group the	*"The original Swedish version of this agreement will apply in all parts to all interpretations of the agreement"*	

		corrective measures	issue will be referred to an arbitration board, whose rulings are binding for both parties		
Sodexo (2011)	Parties' meeting, once a year	Sodexo-IUF annual meeting, Urgent or severe matters – ongoing communication between the IUF secretariat and Sodexo HR leadership	Mediation *"(...) the matter may be referred to a mutually agreed indepdent mediator to facilitate negotiated resolu-tion"*		
Solvay (2017)	Global panel, meeting once a year	Local level, National management and related trade unions in liaison with the signatories, Solvay headquarters		*"The English version of the agreement shall have legal force for the signatories"*	
Staedler (2006)	Monitoring team			*"Staedtler, IG Metall and BWI, as parties to this contract"* *"The German version of this Agreement is the authoritative version"*	

Stora Enso (2018)	Parties' meeting, every two years	Workplace level (union and management), National level (relevant union and management), Global level (committee), Mediation	Mediation	*"No individual or third party claims may be based on this Global Framework Agreement"*	
Takashimaya (2008)		Company level, UNI mediation with the parties in conflict			
Tchibo (2016)	GFA committee	Tchibo and IndustriALL contact persons which in consultation assess and investigate the potential breach and when needed directly address the Tchibo non-food suppliers and producers, if a breach is confirmed implementation of a remediation plan, Mediation	Mediation If the parties fail to find a mutual solution they agree to seek the assistance of the ILO for mediation and dispute settlement whose final recom-menda-tions the parties must abide		Remediation plan
Telkom Indonesia (2010)					
Thyssen-Krupp (2015)	International committee, meeting at least once a year	Responsible person on the site, Information about possible violations in		*"No individual or third-party claims may be based on this Framework Agreement.*	

		parallel via email through internal company communication channels to a central email address, Directors or management boards will take the necessary steps to remedy ThyssenKrupp in dialogue with the international committee		*This applies also to the undersigned parties of the Framework Agreement, i.e., the Framework Agreement has no legal effects between the undersigned parties"*	
Umicore (2019)	Joint monitoring committee, meeting once a year	Local level (union(s) and management), National level (union(s) and management), Joint monitoring committee, Termination of the agreement		*"This agreement is governed by Belgian law. Consequently, any disputes will fall within the exclusive competence of the Belgian courts"*	Termination of the agreement *"In case of a deadlock, Umicore or IndustriALL Global Union may as a last resort terminate the agreement"*
Veidekke (2017)	Parties' meeting, once a year	Local site management, National union and the company's regional president,			Corrective measures
Volker Wessels (2007)	Monitoring group, meeting at least once a year	*"Signatories agree that any difference arising from the interpretation or implementation of this agreement will be examined jointly, for the purpose of making recommendations to the signatory concerned"*			Recom-mendations
WAZ (2007)	Parties' meeting, at least	Local level, National level, Sub-committee			

	annually but as often as necessary	The sub-committee discusses plans and proposals placed by either party following any alleged breach of standards that could not be resolved at local or national levels			

Table 1. Enforcement mechanisms comprised in global framework agreements.

Global Framework Agreement (GFA)
between
H&M Hennes & Mauritz GBC AB
and
IndustriALL Global Union and Industrifacket Metall

ON COMPLIANCE AND IMPLEMENTATION OF INTERNATIONAL LABOUR STANDARDS AT THE SUPPLIERS OF H&M Hennes & Mauritz GBC AB

PREAMBLE

This Global Framework Agreement (GFA) is concluded between H&M (H&M Hennes & Mauritz GBC AB), IndustriALL (IndustriALL Global Union) and IF Metall (Industrifacket Metall) (the ´Parties`).

This GFA is founded upon a shared belief that well-structured industrial relations are an essential component of stable and sustainable social relations in production. This foundation enables business to flourish and to provide decent work[1] with respect and dignity.

For its part, H&M confirms under this GFA its commitment to and respect for human and trade union rights in the workplace, including the right to organize and to negotiate collective agreements. H&M will actively use all its possible leverage to ensure that its direct suppliers and their subcontractors producing merchandise/ready made goods sold throughout H&M group's retail operations respect human and trade union rights in the workplace.

By this GFA, H&M recognizes IndustriALL as its legitimate partner for discussions regarding human and trade union rights in the workplace. H&M may also interact with IndustriALL affiliated trade unions and use its good offices to facilitate an improvement in such rights and conditions among its suppliers.

For their part, under this GFA IndustriAll and IF Metall confirm their commitment to work with all unions represented at H&M's direct suppliers and their subcontractors producing merchandise/ready made goods sold throughout H&M group's retail operations, with the objective of increasing trade union capacity to ensure implementation of this GFA within a framework of well-functioning industrial relations.

The Parties agree to work together actively to implement well-functioning industrial relations at H&M's direct suppliers own operations and their subcontractors producing merchandise/ready made goods sold throughout H&M's groups retail operations. The parties agree that well-functioning industrial relations are best achieved by ensuring the application of International Labour Standards including the Universal Declaration of Human Rights, International Labour Organisation's (ILO) Conventions and Decent Work Agenda, the UN Convention on the Rights of the Child, OECD Guidelines for Multinational Enterprises, ILO Tripartite Declaration of Principles Concerning Multinational enterprises, the UN Global Compact Principles and UN Guiding Principles on Business and Human Rights.

Collaboration between the Parties pursuant to the GFA aims to ensure more effective application of the International Labour Standards mentioned above in line with H&M's Sustainability Commitment signed by all H&M's direct suppliers producing merchandise /ready made goods sold throughout H&M group's retail operations.

The terms and conditions of the GFA shall cover all production units where H&M's direct suppliers and their subcontractors produce merchandise/ready made goods sold throughout H&M group's retail operations, and trade unions/worker representatives present at these production units. Non-affiliated unions may participate in the implementation of this GFA by mutual agreement with IndustriALL.

[1] See ILO 'Decent Work – A Better World Starts Here' for a full definition

IMPLEMENTING INTERNATIONAL LABOUR STANDARDS TOWARDS WELL-FUNCTIONING INDUSTRIAL RELATIONS

The following section sets out the Parties' shared expectations of H&M's direct suppliers and their subcontractors producing merchandise/ready made goods for H&M group's retail operations. These expectations are based on the applicable international labour standards listed as specified. The term 'employer' is used to refer to supplier or their subcontractor covered under the terms of this agreement. The term 'employee' refers to any individual who performs work directly for a supplier or their subcontractor covered under the terms of this agreement.

Freedom of Association and Collective bargaining

C. 087 Freedom of Association and Protection of the right to Organize Convention
C. 098 Right to organize and Collective Bargaining Convention
C. 154 Collective Bargaining
C. 135 Workers Representatives Convention
R. 135 Minimum Wage Fixing Recommendation
R. 143 Workers' Representatives Recommendation

All workers, without exception or distinction, have the right to join or form a trade union of their own choosing and to bargain collectively. The employer shall respect trade union rights and remain strictly neutral regarding workers' right to organize. Workers' representatives are not discriminated against and have access to carry out their representative functions in the workplace. Where the right to freedom of association and collective bargaining is restricted under national law, the employer encourages and does not hinder the development of mechanisms for independent and free association and bargaining.

The parties acknowledge the central role of Freedom of Association and the Right to Bargain Collectively as set out in ILO Conventions, mentioned above, as the key to ensuring the sustainable and long-term compliance with International Labour Standards.

Discrimination, diversity and equality

C. 100 Equal Remuneration Convention
C. 111 Discrimination (Employment and Occupation) Convention
C. 159 Vocational Rehabilitation and Employment (Disabled Persons) Convention
R. 090 Equal Remuneration Recommendation
R. 111 Discrimination (Employment and Occupation) Recommendation
R. 168 Vocational Rehabilitation and Employment (Disabled Persons) Recommendation

Every employee is treated with respect and dignity at all times. No employee shall be subject to humiliating or corporal punishment or subject to physical, sexual, psychological or verbal harassment or abuse. There is no discrimination in hiring, compensation, access to training, promotion, termination of contract or retirement on the grounds of gender or sexual orientation, race, colour, age, pregnancy, religion, political opinion, nationality, ethnic origin, migratory status, disease or disability. There is a grievance mechanism in place enabling employees to put forward complaints without risk of retaliation.

With this Agreement the Parties emphasize their commitment to strive for equality between woman and men at work and gender equality when it comes to recruitment, career development, training and equal pay for equal work.

Child Labour and young workers

C. 138 Minimum Age Convention
R. 146 Minimum Age Recommendation
C. 182 Worst form of Child Labour
R. 190 Worst form of Child Labour Recommendation

Child labour is not accepted. No persons shall be employed at an age younger than 15 (or 14 where ILO Convention 138 makes an exception) or younger than the legal age for employment if this is higher than 15. All legal limitations regarding employment of persons below the age of 18 shall be followed. They should be protected from any hazardous work, night shift and any kind of work that might hamper their development or impose any physical harm.

Necessary measures shall be taken to prevent anyone under the legal age of employment from being recruited. The employer shall develop, or participate in, and contribute to policies and programs which provide transitional arrangements for any child found to be performing work in the workplace to enable her or him to attend and remain in quality education until no longer a child. The best interest of the child should be applied in consultation with the child's parents and/or guardian.

Forced, bonded, prison and illegal labour

C. 029 Forced Labour Convention
R. 035 Forced Labour (Indirect Compulsion) Recommendation
C. 105 Abolition of Forced Labour Convention

Forced, bonded, prison or illegal labour is not accepted. If contracted labour is used, the employer is responsible for employment eligibility fees of contract and/or foreign workers including recruitment fees. Employees shall not be required to lodge "deposits" or identity papers with their employer and shall be free to leave their employment after reasonable notice. The employees freedom of movement is not restricted. No part of wages is withheld.

Recognized employment

C. 122 Employment Policy Convention
C. 175 Part Time Work Convention

Every employee shall be entitled to written contract, in their own language, that stipulates conditions for the employment. Obligations to employees, under labour or social security laws and regulations arising from the regular employment relationship, shall not be avoided through the use of labour-only contracting or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment.

The employers should strive for permanent employment and take steps beyond those required by law to limit the use of fixed-term contracts of employment. In countries where the social security system falls short – the employer is encouraged to provide alternative insurance for employees, including medical and retirement insurances.

In the event of plant closure, the employer shall make payments of owed wages and mandated benefits, including severance pay and other allowances.

Fair Living Wage and benefits

C. 131 Minimum Wage Fixing Convention
R. 135 Minimum Wage Fixing Recommendation
C. 183 Maternity Protection Convention

The wages and benefits paid for a standard working week meet, at a minimum, national legal level, industry level, or collective bargaining agreement, whichever is higher. In any event, a fair living wage based on regular working hours and exclusive of overtime, bonuses and allowances, should always be enough to meet the basic needs of employees and their families, and provide some discretionary income. All wages shall be paid on a regular basis and in full, and the particulars of the wage for a pay period must be provided in written and understandable form. All fringe benefits required by law or contract are provided. Deduction from wages as a disciplinary measure shall not be permitted.

Working hours

C. 001 Hours of Work (Industry) Convention
C. 030 Hours of Work (Commerce and Offices) Convention
C. 014 Weekly Rest (Industry) Convention
C. 106 Weekly Rest (Commerce and Offices) Convention

Working hours in a week, as well as overtime hours, shall comply with national law or collective agreement, whichever affords the greater protection for workers, and be defined in contracts. In any event, employees shall not on a regular basis be required to work in excess of 48 hours per week and should be provided with at least one day off for every 7 day period. In exceptional cases voluntary overtime can be used but it cannot exceed 12 hours per week and the total hours in any 7 day period shall not exceed 60 hours. Overtime shall always be compensated at a premium rate, which is recommended to be not less than 125% of the regular rate of pay.

Health and Safety

C. 155 Occupational Safety and Health Convention
R. 164 Occupational Safety and Health Recommendation
P. 155 Protocol of 2002 to the Occupational Safety and Health Convention

The employer shall provide a safe, healthy and hygienic workplace to their employees. This is a priority at all times and at a bare minimum, this means:

- Compliance with applicable laws and regulations.
- No unsafe buildings.
- No exposure to hazardous machines, equipment and/or substances.
- Fire Safety shall be maintained through adequate equipment and facility conditions, regular firefighting training and evacuation drills and prevention of fire hazards.
- There is access to clean drinking water and toilet facilities. Adequate ventilation and temperature is provided.
- Accommodation/housing, when provided, must be separated from the workplace and is subject to all above fundamental requirements concerning health and safety.
- Prevention of accidents and injury to health arising out of, associated with, or occurring in the course of work.
- Employees receive regular and recorded health and safety training.

The Parties agree that health and safety issues shall be dealt with within the system of industrial relations if local procedure or national legislation does not prevent that.

The employer must ensure that the workers' rights to know about the hazards of their work and to receive education and training in how to do the work safely and their rights and obligations in relation to safety issues, are fulfilled. The employer shall respect the right of a worker to refuse work that he or she has reasonable justification to believe is unsafe, without suffering discrimination or loss of pay, including the right to refuse to enter or to remain inside a building that he or she has reasonable justification to believe is unsafe for occupation.

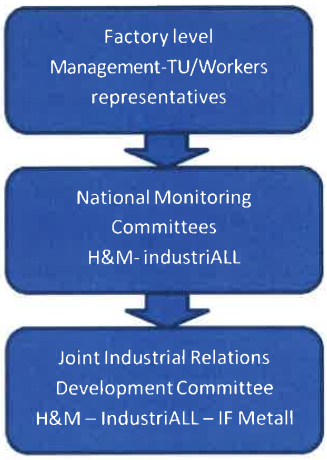
STRUCTURE AND IMPLEMENTATION OF WELL FUNCTIONING INDUSTRIAL RELATIONS

The guiding principle of the Agreement is the shared belief that cooperation and oversight of the Parties is the best way to fulfil the Agreement and to ensure good working conditions in the industry at H&M's direct suppliers and their subcontractors producing merchandise/ready made goods sold throughout H&M group's retail operations. Any disagreement on the interpretation and implementation of the Agreement shall be raised with the Parties and solved within the provisions and spirit of the Agreement by the Parties.

STRUCTURE AND RESPONSIBILITIES

For implementation of the agreement and dispute resolution the parties have agreed on a specific structure:

- Factory level
- National Monitoring Committees (NMC)
- Joint Industrial Relations Development Committee (JIDRC)



National Monitoring Committees

1. The Parties shall each designate two representatives to participate as members of each NMC, or more if the Parties so agree.

2. Each member designated by a Party must have (i) full insight and knowledge of the agreement and the intention of the agreement, the organizations they represent, and (ii) good knowledge and experience of industrial relations, and labour relations and legislation in the country where they are operating.

3. At national level, the NMCs shall:
    i. create, monitor and evaluate national strategies for implementation of this Agreement in countries where H&M direct suppliers and their subcontractors producing merchandise/ready made goods sold throughout H&M group's retail operations are located;
    ii. collaborate with trade unions/worker representatives and H&M direct suppliers and their subcontractors producing merchandise /ready made goods sold throughout H&M group's retail operations to provide general guidance and advice on achieving well functioning industrial relations, with particular reference to dispute prevention and resolution, and collective bargaining agreements;
    iii. if necessary, assist with the resolution of industrial relations issues and disputes as set out in paragraphs [10-11] of this Agreement and;
    iv. discuss/explore/implement other activities as agreed to by the Parties in writing.

4. NMC shall meet regularly at times agreed on by the Parties. In between meetings, matters may be dealt with by correspondence or telephone. Special meetings can be held on an ad hoc basis depending on the matter.

5. Each NMC shall report its activities and issues related to the Agreement on a regular base to the JIRDC.

Joint Industrial Relations Development Committee

6. The Parties shall establish a Joint Industrial Relations Development Committee (**JIRDC**) comprising equal numbers of representatives appointed by each Party.

7. Each Party shall appoint a Co-Chairperson as one of its representatives who shall preside over the proceedings of the JIRDC on an alternating basis. The JIRDC shall meet as and when agreed, but in any case, at least once a year. In between meetings, matters may be dealt with by correspondence or telephone.

8. The JIRDC shall have responsibility for:
   i. planning and overseeing practical implementation of this Agreement at global level;
   ii. exploring opportunities for joint cooperation initiatives aimed at achieving and maintaining well-functioning industrial relations in H&M direct suppliers and their subcontractors producing merchandise /ready made goods sold throughout H&M groups retail operations;
   iii. if necessary, providing support and guidance to the National Monitoring Committees;
   iv. discussing, exploring and implementing other activities as agreed by the Parties in writing;
   v. giving advice on matters referred to it by NMC.

Resolution of Industrial Relations Issues

9. It is a key principle of this Agreement that well-functioning industrial relations are best achieved if industrial disputes and related issues (**'Industrial Relations Issues'**) are resolved through workplace negotiation, and when needed with support of appropriate national trade union or dispute resolution procedures provided for in industry agreements and/or local law.

10. If, however, an Industrial Relations Issue covered by this Agreement, arises in an H&M supplier and/or their subcontractor which cannot be settled satisfactorily through one of the methods in paragraph (9), *or* a request is made to the NMC to support the local procedures, the NMC may intervene to facilitate a resolution.

11. On learning of an Industrial Relations Issue, the NMC shall notify the JIRDC of the details and any related actions of the NMC.

12. If the NMC considers it necessary, the NMC can request support and guidance from the JIRDC.

13. If the NMC disagree on the best way to facilitate a resolution of an Industrial Relations Issue, either Party may submit it to the JIRDC for final decision.

14. In case of a failure to agree at the level of the JIRDC, the Parties may by mutual agreement appoint an independent mediator, acceptable to both Parties, to help the Parties agree on the best way to facilitate a resolution of an Industrial Relations issue.

IMPLEMENTATION OF THE AGREEMENT

15. The Parties shall agree upon which of H&M's production countries the NMCs shall be established in.

16. The Parties will work out a strategic plan for awareness-raising and education of NMCs to ensure the implementation of the Agreement.

17. With guidance from NMCs, the Parties will annually meet with them and review the need for awareness raising and capacity building for a long term sustainable implementation of the Agreement.

18. The Parties will jointly promote signing of collective agreements both at factory, company and industrial level between relevant social partners in countries where H&M has direct suppliers and subcontractors producing merchandise/ready made goods sold throughout the group's retail operations.

Role of H&M in communications and capacity building of suppliers and subcontractors

19. H&M shall inform all its direct suppliers of the existence and the implementation of this Agreement. H&M shall request that all direct suppliers inform their subcontractors that are producing merchandise/ready made goods sold throughout H&M group´s retail operations.

20. H&M shall request that their direct suppliers inform their employees and request subcontractors producing merchandise/ready made goods to inform their employees of the existence and the implementation of this Agreement. Upon request, H&M will provide IndustriALL and or IF Metall with the latest available updated list of H&M's direct suppliers and their subcontractors producing merchandise /ready made goods sold throughout H&M group's retail operations. H&M will secure the translation of the Agreement into all relevant languages agreed with IndustriALL and IF Metall.

21. H&M shall evaluate the capacity of management representatives at H&M's direct suppliers and subcontractors producing merchandise/goods sold throughout H&M groups' of retailers and when needed request them to undergo necessary capacity building, including but not limited to fields of employers' responsibility, workers' rights and obligations, industrial relations, collective bargaining agreements and peaceful conflict resolution.

Role of IndustriALL and IF Metall in communications and capacity building of trade unions

22. IndustriALL shall inform all of its affiliates in countries where H&M's direct suppliers and subcontractors are producing merchandise/ready made goods sold throughout H&M's group´s retail operations of the Agreement.

23. IndustriALL and IF Metall together with affiliated unions shall evaluate trade union capacity and provide necessary capacity building to all trade unions and worker representatives present at H&M's suppliers and their subcontractors producing merchandise sold throughout H&M group's retail operations, including but not limited to fields of worker awareness of rights and obligations, industrial relations, peaceful conflict resolution and collective bargaining agreements.

24. IndustriALL and IF Metall undertake to work with all trade unions and worker representatives present at H&M suppliers and their subcontractors producing merchandise sold throughout H&M group's retail operations, with an initial focus on increasing necessary capacity to ensure implementation of this GFA.

25. The capacity building activities will be included in the national strategies approved by the NMCs.

Registration and term of this Agreement

26. This Agreement shall be registered with the International Labour Organization.

27. This Agreement shall became effective from the date of signature and will remain in force for one year. After that the Agreement shall be deemed to be automatically extended for further periods of one year unless either Party gives notice to the other Party, at least three months in advance of the date of expiry or extension, that it does not wish renewal.

28. The original English version of this agreement will apply in all parts and to all interpretations of the Agreement.

Date:

On behalf of H&M:

Karl-Johan Persson, CEO

Date:

On behalf of IndustriALL:

Jyrki Raina, Secretary General

Date:

On behalf of IF Metall:

Anders Ferbe, President

GLOBAL FRAMEWORK AGREEMENT

November 13th, 2019

INTRODUCTION

On the one hand, Mr. Pablo Isla Álvarez de Tejera, Executive President of Industria de Diseño Textil, S.A. (INDITEX, S.A.) (hereinafter, "Inditex"), with C.I.F. A-15.075.062, and registered office at Avenida de la Diputación, Edificio Inditex, 15142 Arteixo (A Coruña), acting on its behalf and representation in accordance with the powers conferred by agreement of the Board of Directors on March 17, 2015, as a result of a public deed granted before the Notary of A Coruña, Mr. Francisco Manuel Ordónez Armán, dated 10th April, 2015 and under number 874 of his protocol.

And, on the other, Mr. Valter Sanches, General Secretary of IndustriALL Global Union (hereinafter "IndustriALL"), which headquarters are at 54bis, Route des Acacias 1227 Carouge, Geneva, Switzerland, acting on its behalf and representation, by virtue of the powers vested in him upon being elected at the IndustriALL Global Union's Congress on 5-6 October 2016 and by the statutes of said institution.

PREAMBLE:

After more than a decade of collaboration between Inditex and labour unions, and twelve years after the signing of the Global Framework Agreement between Inditex and IndustriALL (hereinafter the "Parties"), the Parties have decided to renew it through this document, which constitute a new Global Framework Agreement (hereinafter the "Agreement") for the purpose of reaffirming their respective commitments.

The main purpose of the Agreement remains ensuring respect of Human Rights within the labour and social environment, by promoting respect for international labour standards throughout Inditex's supply chain. This Agreement recognizes the crucial role that freedom of association and collective bargaining play in developing mature industrial relations. Accordingly, it is appropriate to establish a framework to reaffirm the engagement with trade union organisations, which represent the workers in the textile, footwear and garment supply chain.

The guiding principle of this Agreement is the shared belief that cooperation and collaboration are key to strengthen Human Rights within Inditex's supply chain.

The Parties have decided to renew the referred Global Framework Agreement to ratify its validity, reaffirm its undertakings and renew the respective responsibility of each party, through a proactive approach to face the challenges that may arise.

The Agreement is concluded between Inditex and IndustriALL.

For all these reasons, the Parties formulate the following considerations:

Inditex consists of a group of companies mainly devoted to the manufacture, distribution and sale of clothing and accessories. It further considers that its commitment with the sustainability includes to apply principles and criteria of sustainable social development to improve fundamental Human Rights, including labour and social rights, and the living conditions of the communities related with its manufacturing activities.

IndustriALL represents 50 million workers in 140 countries worldwide through more than 600 affiliated trade unions including those organizing workers in the textile, garment, footwear and leather industries. Moreover, it is committed to defend the rights and interest of workers at the global, regional and sub-regional levels by promoting international labour standards in the global supply chains. References to IndustriALL include its governing body and their affiliated trade unions.

Inditex recognizes IndustriALL, its Spanish affiliated unions CCOO-I and UGT-FICA, and in general its affiliated trade unions in their supply chain countries as their global trade union counterparts for workers engaged in the production of textile, garments and footwear and commits to actively use all its leverage to ensure that suppliers and manufacturers of Inditex respect Human Rights and therefore, labour and union rights in the workplaces under the Inditex supply chain.

Inditex undertakes to inform its suppliers about the contents and intent of the Agreement while IndustriALL will do likewise with its trade union affiliates and other relevant trade unions as appropriate.

INTERNATIONAL LABOUR STANDARDS & CONVENTIONS

Inditex and IndustriALL both acknowledge the central role of freedom of association and the right to bargain collectively as set out in International Labour Organization (hereinafter "ILO") Conventions No 87, 98, 135, and Recommendation 143 as essential to develop long-term sustainable compliance in factories that supply to Inditex because freedom of association and the right to bargain collectively provide workers with the mechanisms to monitor and enforce their rights at work, and as such serve as the base for promoting mature industrial relations.

The Parties agree to work together in order to ensure a more effective enforcement of International Labour Standards, including Conventions Nos. 29, 87, 98, 100, 105, 111, 135, 138, 155, 159, 182 and 190 of the ILO, as well as the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact Principles and the UN Guiding Principles on Business and Human Rights. Inditex undertakes to apply and insist on the enforcement of the above-mentioned international labour standards to all workers throughout its

entire supply chain, regardless of whether they are directly employed by Inditex or by its l manufacturers and suppliers.

The terms and conditions of the Agreement shall apply throughout the Inditex supply chain including workplaces not represented by IndustriALL affiliated unions. The Parties undertake to inform other trade unions in these locations about the terms and conditions agreed.

IndustriALL will work with Inditex to promote full compliance with the following standards set out in the international instruments mentioned above and in the Inditex Code of Conduct for Manufacturers and Suppliers attached hereto as Annex I:

1. No forced labour
2. No child labour
3. No discrimination
4. Respect for freedom of association and collective bargaining
5. No harsh or inhumane treatment
6. Safe and hygienic working conditions
7. Wages are paid
8. Working hours are not excessive
9. Regular employment
10. Traceability of production
11. Health and safety of products
12. Environmental awareness
13. Confidentiality of information
14. Code implementation
    a. Transparency and sustainability of procurement
    b. Reference to national legislation, conventions and agreements
    c. Verification of compliance
    d. Committee of Ethics and Whistleblowing Channel

IMPLEMENTATION

The Parties shall jointly work through the framework of the Agreement to strengthen the right to freedom of association, the right to bargain collectively, health & safety and in the work, to a living wage and other rights that ensure a decent work throughout the Inditex supply chain.

For implementation of the Agreement, the Parties have agreed on a specific structure. At global level, a Global Union Committee (hereinafter "The Committee") shall be established and it will be composed according to what is establishes in Annex II by: i) an agreed number of representatives of IndustriALL affiliates representing workers with presence in factories of Inditex´s clusters, and ii) representatives of the Spanish Trade Union mentioned in this Agreement on behalf of Inditex workers. This Committee shall meet once a year to review the implementation of the Agreement. IndustriALL will be invited to the meetings of the Committee. Inditex, from its side, could also designate a representation to attend

to the Committee, in case any request from their members and whenever it is understood necessary by the Coordination of the Agreement (hereinafter "Coordination").

The Committee will elect a Coordination with the aim to be the liaison with Inditex. The mentioned Coordination will be composed by four members (two on behalf of the Spanish Trade Unions above mentioned and two on behalf of the IndustriALL affiliates with presence in the Inditex production clusters) among which, one will act among them as a General Coordinator, subject to prior agreement with Inditex. Among the functions of said General Coordinator will be the resolution of those topics that cannot be solved locally. In these cases, the Coordination will investigate them along with the concerned local union and the respective Inditex representative. The Coordination will meet at least twice a year with representatives of Inditex.

Local trade unions have an important role to play in ensuring the implementation of the Agreement within the Inditex supply chain. Under the lines established by the Coordination, the local trade union representatives will participate in the implementation of the Agreement in their respective countries. Local trade unions may be supported by trade union experts, according to what is established in the Trade Union Expert Framework Contract signed between the Parties on 25th April 2016. With the aim of developing solid labour relations within the Inditex supply chain, local Trade Unions will keep a regular communication with local Inditex sustainability representatives with support of its respective trade union expert or through the General Coordinator of the Agreement, in absence of their respective trade union expert.

The costs of the annual meeting and the activities of the Coordination will be assumed by Inditex, according to its internal policies where applicable, and against the budget that is established in the Trade Union Expert Framework Agreement above referred.

ACCESS TO INDITEX SUPPLIERS

Inditex is committed to provide reasonable information about its supply chain to IndustriALL. In order to facilitate the enforcement of the Agreement and to strengthen freedom of association and the right to collective bargaining, Inditex shall provide IndustriALL with information about their suppliers through the General Coordination. This information must include all the data necessary which contributes to have a better understanding of the supplying factories

IndustriALL and its affiliates shall be given reasonable access to the factories that are part of Inditex supply chain. Access to premises shall be facilitated according to the mechanisms agreed between the Inditex management and the Coordination.

IndustriALL undertakes to keep confidential all information provided by Inditex and shall guarantee the proper use of that information by its affiliates.

RESOLUTION OF POTENTIAL BREACHES OF THE AGREEMENT

The Parties agree to inform each other of any breach of the Agreement, as soon as the breach is discovered, to enable the earliest possible implementation of a remediation action plan.

When a local trade union detects any potential breach regarding the enforcement of this Agreement in any of Inditex's suppliers that cannot be resolved at factory level, this shall be notified to the respective Trade Union Expert and to the respective Global Union Committee member of its cluster, or in its absence, to the General Coordinator, that will inform to the representative of Inditex and IndustriALL designated for such purposes, and that will take those actions for its resolution.

Likewise, the Committee could provide advice and support for the resolution of the breach.

CAPACITY BUILDING PROGRAMS

The Parties shall jointly develop policies and capacity building programs on industrial relations designed to advance in the implementation of the Agreement throughout the Inditex supply chain.

These capacity building programs will have the aim of involving all workers that are part of the Inditex manufacturers and suppliers, as well as the respective local trade unions.

The joint capacity building programs shall take into account those relevant issues for the development of the Agreement, including where applicable, the followings:

- Work organization
- Productivity, output capacity of manufacturers
- Purchasing practices and their impact on workers
- Social dialogue techniques at work
- Promotion of freedom of association, collective bargaining and the development of mature industrial relations.
- Promotion of equality between men and women
- Improving in reporting mechanisms and discipline at work
- Rights and duties of workers and management

As a supplement to the above mentioned initiatives mechanisms will be developed to promote mature industrial relations at the workplace.

GENERAL

The Parties jointly confirm that the Agreement shall become effective from its date of signature and will remain in force for one year after which it shall be deemed to be automatically extended for further periods of one year unless either party gives notice to the other with at least three months in advance of its expiry date or date of expiry of its extensions, that it does not wish renewal.

Inditex undertakes to work with its suppliers and IndustriALL with its trade union affiliates to make all possible efforts to ensure the successful implementation of the Agreement throughout Inditex's supply chain.

INTERPRETATION

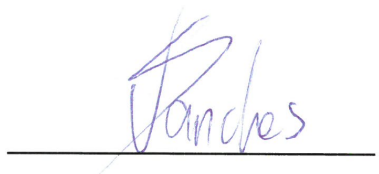
Questions concerning the interpretation of the Agreement shall be resolved through consultation between the Parties. Every effort will be made to find common agreement but where this is not possible, the Parties will, in appropriate circumstances, seek the expert advice of the ILO or an agreed third party for mediation and dispute settlement. The Parties shall agree to abide by the final recommendations of the ILO or other third party.

The current Agreement will be signed in Spanish and English. In case of any controversy between both versions, the Spanish version will prevail.

Inditex S.A.

Mr. Pablo Isla

IndustriALL Global Union



Mr. Valter Sanches

ANNEX I

Inditex Code of Conduct for Manufacturers and Suppliers

Introduction

The Inditex Code of Conduct for Manufacturers and Suppliers (hereinafter, the Code) defines minimum standards of ethical and responsible behaviour which must be met by the manufacturers and suppliers of the products commercialized by Inditex in the course of its business, in line with the corporate culture of Inditex Group (hereinafter Inditex), firmly based on the respect for Human and Labour Rights.

Inditex undertakes to allocate the appropriate resources so that manufacturers and suppliers are acquainted with and understand this Code and are able to ensure its compliance.

The Code shall be applied to all manufacturers and suppliers that take part in the purchasing, manufacturing and finishing processes and fosters and is based upon the following general principles that define Inditex's ethical behaviour:

- All Inditex's operations are developed under an ethical and responsible perspective.
- All persons, individuals or entities, who maintain, directly or indirectly, any kind of employment, economic, social and/or industrial relationship with Inditex, are treated fairly and with dignity.
- All Inditex's activities are carried out in a manner that most respects the environment.
- All manufacturers and suppliers (production centres that are not property of Inditex) fully adhere to these commitments and undertake to ensure that the standards which are set forth in the Code are met.

1. No forced labour

Inditex shall not allow any form of forced or involuntary labour in their manufacturers and suppliers. They may not require their employees to make any kind of "deposits", nor are they entitled to retain employees' identity documents.

Manufacturers shall acknowledge the right of their employees to leave their employer after reasonable notice[1].

[1] Aspects related to such limitations will be governed by Conventions 29 and 105 of International Labour Organization (ILO)

2. No child labour

Manufacturers and suppliers shall not employ minors. Inditex defines minors as those persons who have not yet reached their 16_{th} birthday. In cases where local legislation stipulates a higher minimum age, the higher limit shall apply.[2]

Persons with the ages between of 16 and 18 years will be considered young workers. Young workers shall not work during night hours or in hazardous conditions.[3]

3. No discrimination

Manufacturers and suppliers shall not apply any type of discriminatory practice with regards the recruitment, compensation, access to training, promotion, termination of the employment agreement or retirement, based on race, caste, creed, nationality, religion, age, physical or mental disability, gender, marital status, sexual orientation and/or union membership or political affiliation[4].

5. Respect for freedom of association and collective bargaining

Manufacturers and suppliers shall ensure that their employees, without distinction, have the right of association, union membership and collective bargaining. No retaliation may arise from the exercise of such right and no remuneration or payment whatsoever may be offered to the employees in order to hinder the exercise of such a right. Likewise, they shall adopt an open and collaborative attitude towards the activities of Trade Unions.

Workers' representatives shall be protected from any type of discrimination and shall be free to carry out their representative functions in their workplace.

Where the rights to Freedom of Association and Collective Bargaining are restricted under law, the appropriate channels to ensure a reasonable and independent exercise of such rights must be designed[5].

6. No harsh or inhumane treatment

Manufacturers and suppliers shall treat their employees with dignity and respect. Under no circumstances shall physical punishment, sexual or racial harassment, verbal or power abuse or any other form of harassment or intimidation be permitted.

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[2] Aspects related to prohibition of child labour will be developed according to Conventions 138 and 182 of the International Labour Organization (ILO)
[3] Aspects related to labour conditions for young workers will be governed by ILO Recommendation 190.
[4] Aspects related to labour practices will be developed according to ILO Convention 111.
[5] Aspects related to freedom of association and collective bargaining will be developed according to ILO Conventions 87, 98 and 135.

7. Safe and hygienic working conditions

Manufacturers and suppliers shall provide a safe and healthy workplace to their employees, ensuring minimum conditions of light, ventilation, hygiene, fire prevention, safety measures and access to a drinking water supply.

Workers shall have access to clean toilets facilities and drinking water. Where necessary, facilities for food storage shall be provided.

Accommodation, where provided, shall be clean and safe.

Manufacturers and suppliers shall take the required steps to prevent accidents and injuries to health of their workers, by minimizing as much as possible the risks inherent to work.

Manufacturers and suppliers shall provide their workers with regular training in the matter of health and safety at work. The company shall keep an appropriate record of the training courses done. Likewise, they shall appoint a person in charge of health and safety within the Management, duly authorized and with the appropriate decision taking power[6].

8. Wages are paid

Manufacturers and suppliers shall ensure that wages paid meet at least the minimum legal or collective bargain agreement, should this latter be higher. In any event, wages should always be enough to meet at least the basic needs of workers and their families and any other which might be considered as reasonable additional needs.

Manufacturers and suppliers shall not make any withholdings and/or deductions from wages for disciplinary purposes, nor for any reasons other than those provided in the applicable regulations, without the express authorization of workers. Likewise, they shall provide all workers with: written and understandable information about their wages conditions upon their recruitment, and detailed information about the particulars of their wages every time that these are paid.

Manufacturers and suppliers shall also ensure that wages and any other allowances or benefits are paid on time and are rendered in full compliance with all applicable laws and specifically, that payments are made in the manner that best suits the workers[7].

9. Working hours are not excessive

Manufacturers and suppliers shall adjust the length of the working day to the provisions of the applicable laws or of the collective bargain agreement applicable for the sector in question, if the latter affords greater protection for the workers.

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[6] Aspects related to labour conditions relation to work health and safety will be governed by ILO Convention 155.

[7] Aspects related to payment of wages will be governed by ILO Conventions 26 and 131.

Manufacturers and suppliers shall not require their employees to work, as a rule of thumb, in excess of 48 hours a week and workers shall be granted at least one day off for every 7 calendar day period on average.

Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate, pursuant to the provisions of the prevailing regulations in force[8].

10. Regular employment

Manufacturers and suppliers undertake that all the employment formulas they use are part of the applicable local laws. Thus, they shall not impair the rights of workers acknowledged under labour and social security laws and regulations by using schemes that have no real intention to promote regular employment in the framework of regular employment relationships.

11. Traceability of production

Manufacturers and suppliers shall not assign any work to third parties without the prior written authorization of Inditex. Those who outsource any work shall be responsible for the enforcement of the Code by these third parties and their employees.

Likewise, manufacturers and suppliers shall apply the principles of this Code to any homeworker involved in their supply chain, and shall give transparency to the locations and working conditions of said homeworkers.

12. Health and Safety of products

Manufacturers and suppliers are responsible for all products supplied to Inditex to comply with Inditex health and safety product standards so that the commercialized products do not entail any risk to customers.

13. Environmental awareness

Manufacturers and suppliers shall be duly committed at all times to protect the environment and shall comply with the standards and requirements of the applicable local and international Laws and Regulations.

Likewise, they commit to comply with environmental standards established by Inditex including, if applicable, the necessary measures to reduce and compensate such impact in order to apply said standards.

[8] Working day related issued will be governed by ILO Conventions 1 and 14.

14. Confidentiality of information

Manufacturers and suppliers shall preserve the integrity and confidentiality of the information they may receive as a consequence of their commercial relationship with Inditex.

The obligation of confidentiality will remain once the relation with Inditex is terminated and it will include the obligation to return any material related to the company held by the manufacturer or supplier.

15. Code implementation

Manufacturers and suppliers shall implement and maintain programmes to set in motion this Code. They shall appoint a senior member of Management who shall be responsible for the implementation and enforcement of this Code.

Manufacturers and suppliers shall communicate the Code to all employees and those in any way involved in the Inditex Supply Chain.

A copy of the Code, translated into the local language, shall be displayed in accessible locations to all workers.

15.1 Transparency

Manufacturers and suppliers shall carry out their activities in an honest, upright and transparent way, keeping for these purposes an appropriate accounting records system that facilitates the traceability of their decisions, as a preventive measure versus any type of corruption, bribe and extortion that might arise.

Manufacturers and suppliers shall not offer, grant, request or accept any gifts or donations to/from Inditex buyers which might infringe the provisions of the "Inditex Code of Conduct and Responsible Practices".

Manufacturers and suppliers shall not manipulate or influence their workers, nor shall they forge any files or records in order to alter the verification process regarding compliance with this Code.

Manufacturers and suppliers shall neither offer nor accept remuneration of any kind which seeks, or may be perceived to seek, to affect the impartial judgment or the objectivity of such parties appointed by Inditex to carry out inspections and compliance audits in connection with this Code.

15.2 Reference to national legislation, Conventions and Agreements.

The provisions of this Code constitute only minimum standards.

Should national regulations or any other applicable Law or any other commitments undertaken or applicable, including collective bargaining agreements, govern the same issue, the provision which offers greater protection for workers shall apply.

Inditex assumes, as part of its internal norms, the content of national and international Agreements and Conventions to which it has adhered, and that they are applied in its relationship with manufacturers and suppliers, committing to their promotion and compliance.

15.3 Verification of compliance

Manufacturers and suppliers shall authorize Inditex and/or any third parties the former might appoint, to monitor the appropriate enforcement of the Code. For these purposes, they shall provide the required means and the appropriate access to the facilities and documentation required to ensure this verification.

15.4 Committee of Ethics and Whistleblowing Channel

This Code is aligned with the principles and values that are included in the Inditex Code of Conduct and Responsible Practices, which regulates a Committee of Ethics and Whistleblowing Channel to ensure its enforcement.

In this sense, and in order to ensure the enforcement of the Code of Conduct for Manufacturers and Suppliers, the Committee of Ethics can act at its own initiative or following a formal complaint made in good faith by a manufacturer, supplier or other interested third party that might have any direct relationship or commercial or professional interest with Inditex.

To this end, any notices given pursuant to the provisions of this Code, either reports of any breach or enquiries regarding the Code's interpretation or application can be addressed directly to the Committee of Ethics via:

- Post: Avenida de la Diputación, Edificio Inditex, 15142 Arteixo, A Coruña (Spain), Att: Committee of Ethics
- Email: comitedeetica@inditex.com
- Fax: +34 981 186211.

ANNEX II

Global Union Committee composition

Global Union Committee composition is formed as per the main regions and sourcing countries at the signing date of the Agreement.

Global Union Committee will be composed by a total number of 9 members distributed as it is below indicated:

Africa (1)

-Morocco, Tunisia, Egipt

America (1)

-Argentina, Brasil, Mexico

Asia (4)

-Vietnam, Indonesia

-Cambodia, Myanmar

-Bangladesh, Pakistan

-India, Sri Lanka

Western Europe (2)

-Spain and rest of Western Europe countries

Eastern Europe (1)

-Turkey and rest of Eastern Europe countries

The composition of the Committee could be modified throughout the validity of the Agreement when agreed upon by the Parties and depending on the evolution that manufacturing in each of the regions and countries that are part of the Inditex supply chain where there are IndustriALL affiliates.

GLOBAL FRAMEWORK AGREEMENT

November 13th, 2019

INTRODUCTION

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13. Confidentiality of information
14. Code implementation
    a. Transparency and sustainability of procurement
    b. Reference to national legislation, conventions and agreements
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For implementation of the Agreement, the Parties have agreed on a specific structure. At global level, a Global Union Committee (hereinafter "The Committee") shall be established and it will be composed according to what is establishes in Annex II by: i) an agreed number of representatives of IndustriALL affiliates representing workers with presence in factories of Inditex´s clusters, and ii) representatives of the Spanish Trade Union mentioned in this Agreement on behalf of Inditex workers. This Committee shall meet once a year to review the implementation of the Agreement. IndustriALL will be invited to the meetings of the Committee. Inditex, from its side, could also designate a representation to attend

to the Committee, in case any request from their members and whenever it is understood necessary by the Coordination of the Agreement (hereinafter "Coordination").

The Committee will elect a Coordination with the aim to be the liaison with Inditex. The mentioned Coordination will be composed by four members (two on behalf of the Spanish Trade Unions above mentioned and two on behalf of the IndustriALL affiliates with presence in the Inditex production clusters) among which, one will act among them as a General Coordinator, subject to prior agreement with Inditex. Among the functions of said General Coordinator will be the resolution of those topics that cannot be solved locally. In these cases, the Coordination will investigate them along with the concerned local union and the respective Inditex representative. The Coordination will meet at least twice a year with representatives of Inditex.

Local trade unions have an important role to play in ensuring the implementation of the Agreement within the Inditex supply chain. Under the lines established by the Coordination, the local trade union representatives will participate in the implementation of the Agreement in their respective countries. Local trade unions may be supported by trade union experts, according to what is established in the Trade Union Expert Framework Contract signed between the Parties on 25th April 2016. With the aim of developing solid labour relations within the Inditex supply chain, local Trade Unions will keep a regular communication with local Inditex sustainability representatives with support of its respective trade union expert or through the General Coordinator of the Agreement, in absence of their respective trade union expert.

The costs of the annual meeting and the activities of the Coordination will be assumed by Inditex, according to its internal policies where applicable, and against the budget that is established in the Trade Union Expert Framework Agreement above referred.

ACCESS TO INDITEX SUPPLIERS

Inditex is committed to provide reasonable information about its supply chain to IndustriALL. In order to facilitate the enforcement of the Agreement and to strengthen freedom of association and the right to collective bargaining, Inditex shall provide IndustriALL with information about their suppliers through the General Coordination. This information must include all the data necessary which contributes to have a better understanding of the supplying factories

IndustriALL and its affiliates shall be given reasonable access to the factories that are part of Inditex supply chain. Access to premises shall be facilitated according to the mechanisms agreed between the Inditex management and the Coordination.

IndustriALL undertakes to keep confidential all information provided by Inditex and shall guarantee the proper use of that information by its affiliates.

RESOLUTION OF POTENTIAL BREACHES OF THE AGREEMENT

The Parties agree to inform each other of any breach of the Agreement, as soon as the breach is discovered, to enable the earliest possible implementation of a remediation action plan.

When a local trade union detects any potential breach regarding the enforcement of this Agreement in any of Inditex's suppliers that cannot be resolved at factory level, this shall be notified to the respective Trade Union Expert and to the respective Global Union Committee member of its cluster, or in its absence, to the General Coordinator, that will inform to the representative of Inditex and IndustriALL designated for such purposes, and that will take those actions for its resolution.

Likewise, the Committee could provide advice and support for the resolution of the breach.

CAPACITY BUILDING PROGRAMS

The Parties shall jointly develop policies and capacity building programs on industrial relations designed to advance in the implementation of the Agreement throughout the Inditex supply chain.

These capacity building programs will have the aim of involving all workers that are part of the Inditex manufacturers and suppliers, as well as the respective local trade unions.

The joint capacity building programs shall take into account those relevant issues for the development of the Agreement, including where applicable, the followings:

- Work organization
- Productivity, output capacity of manufacturers
- Purchasing practices and their impact on workers
- Social dialogue techniques at work
- Promotion of freedom of association, collective bargaining and the development of mature industrial relations.
- Promotion of equality between men and women
- Improving in reporting mechanisms and discipline at work
- Rights and duties of workers and management

As a supplement to the above mentioned initiatives mechanisms will be developed to promote mature industrial relations at the workplace.

GENERAL

The Parties jointly confirm that the Agreement shall become effective from its date of signature and will remain in force for one year after which it shall be deemed to be automatically extended for further periods of one year unless either party gives notice to the other with at least three months in advance of its expiry date or date of expiry of its extensions, that it does not wish renewal.

Inditex undertakes to work with its suppliers and IndustriALL with its trade union affiliates to make all possible efforts to ensure the successful implementation of the Agreement throughout Inditex's supply chain.

INTERPRETATION

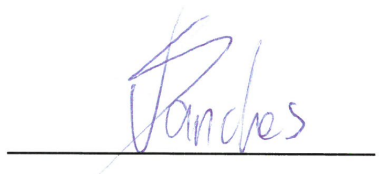
Questions concerning the interpretation of the Agreement shall be resolved through consultation between the Parties. Every effort will be made to find common agreement but where this is not possible, the Parties will, in appropriate circumstances, seek the expert advice of the ILO or an agreed third party for mediation and dispute settlement. The Parties shall agree to abide by the final recommendations of the ILO or other third party.

The current Agreement will be signed in Spanish and English. In case of any controversy between both versions, the Spanish version will prevail.

Inditex S.A.

Mr. Pablo Isla

IndustriALL Global Union



Mr. Valter Sanches

ANNEX I

Inditex Code of Conduct for Manufacturers and Suppliers

Introduction

The Inditex Code of Conduct for Manufacturers and Suppliers (hereinafter, the Code) defines minimum standards of ethical and responsible behaviour which must be met by the manufacturers and suppliers of the products commercialized by Inditex in the course of its business, in line with the corporate culture of Inditex Group (hereinafter Inditex), firmly based on the respect for Human and Labour Rights.

Inditex undertakes to allocate the appropriate resources so that manufacturers and suppliers are acquainted with and understand this Code and are able to ensure its compliance.

The Code shall be applied to all manufacturers and suppliers that take part in the purchasing, manufacturing and finishing processes and fosters and is based upon the following general principles that define Inditex's ethical behaviour:

- All Inditex's operations are developed under an ethical and responsible perspective.
- All persons, individuals or entities, who maintain, directly or indirectly, any kind of employment, economic, social and/or industrial relationship with Inditex, are treated fairly and with dignity.
- All Inditex's activities are carried out in a manner that most respects the environment.
- All manufacturers and suppliers (production centres that are not property of Inditex) fully adhere to these commitments and undertake to ensure that the standards which are set forth in the Code are met.

1. No forced labour

Inditex shall not allow any form of forced or involuntary labour in their manufacturers and suppliers. They may not require their employees to make any kind of "deposits", nor are they entitled to retain employees' identity documents.

Manufacturers shall acknowledge the right of their employees to leave their employer after reasonable notice[1].

[1] Aspects related to such limitations will be governed by Conventions 29 and 105 of International Labour Organization (ILO)

2. No child labour

Manufacturers and suppliers shall not employ minors. Inditex defines minors as those persons who have not yet reached their 16_{th} birthday. In cases where local legislation stipulates a higher minimum age, the higher limit shall apply.[2]

Persons with the ages between of 16 and 18 years will be considered young workers. Young workers shall not work during night hours or in hazardous conditions.[3]

3. No discrimination

Manufacturers and suppliers shall not apply any type of discriminatory practice with regards the recruitment, compensation, access to training, promotion, termination of the employment agreement or retirement, based on race, caste, creed, nationality, religion, age, physical or mental disability, gender, marital status, sexual orientation and/or union membership or political affiliation[4].

5. Respect for freedom of association and collective bargaining

Manufacturers and suppliers shall ensure that their employees, without distinction, have the right of association, union membership and collective bargaining. No retaliation may arise from the exercise of such right and no remuneration or payment whatsoever may be offered to the employees in order to hinder the exercise of such a right. Likewise, they shall adopt an open and collaborative attitude towards the activities of Trade Unions.

Workers' representatives shall be protected from any type of discrimination and shall be free to carry out their representative functions in their workplace.

Where the rights to Freedom of Association and Collective Bargaining are restricted under law, the appropriate channels to ensure a reasonable and independent exercise of such rights must be designed[5].

6. No harsh or inhumane treatment

Manufacturers and suppliers shall treat their employees with dignity and respect. Under no circumstances shall physical punishment, sexual or racial harassment, verbal or power abuse or any other form of harassment or intimidation be permitted.

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[2] Aspects related to prohibition of child labour will be developed according to Conventions 138 and 182 of the International Labour Organization (ILO)
[3] Aspects related to labour conditions for young workers will be governed by ILO Recommendation 190.
[4] Aspects related to labour practices will be developed according to ILO Convention 111.
[5] Aspects related to freedom of association and collective bargaining will be developed according to ILO Conventions 87, 98 and 135.

7. Safe and hygienic working conditions

Manufacturers and suppliers shall provide a safe and healthy workplace to their employees, ensuring minimum conditions of light, ventilation, hygiene, fire prevention, safety measures and access to a drinking water supply.

Workers shall have access to clean toilets facilities and drinking water. Where necessary, facilities for food storage shall be provided.

Accommodation, where provided, shall be clean and safe.

Manufacturers and suppliers shall take the required steps to prevent accidents and injuries to health of their workers, by minimizing as much as possible the risks inherent to work.

Manufacturers and suppliers shall provide their workers with regular training in the matter of health and safety at work. The company shall keep an appropriate record of the training courses done. Likewise, they shall appoint a person in charge of health and safety within the Management, duly authorized and with the appropriate decision taking power[6].

8. Wages are paid

Manufacturers and suppliers shall ensure that wages paid meet at least the minimum legal or collective bargain agreement, should this latter be higher. In any event, wages should always be enough to meet at least the basic needs of workers and their families and any other which might be considered as reasonable additional needs.

Manufacturers and suppliers shall not make any withholdings and/or deductions from wages for disciplinary purposes, nor for any reasons other than those provided in the applicable regulations, without the express authorization of workers. Likewise, they shall provide all workers with: written and understandable information about their wages conditions upon their recruitment, and detailed information about the particulars of their wages every time that these are paid.

Manufacturers and suppliers shall also ensure that wages and any other allowances or benefits are paid on time and are rendered in full compliance with all applicable laws and specifically, that payments are made in the manner that best suits the workers[7].

9. Working hours are not excessive

Manufacturers and suppliers shall adjust the length of the working day to the provisions of the applicable laws or of the collective bargain agreement applicable for the sector in question, if the latter affords greater protection for the workers.

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[6] Aspects related to labour conditions relation to work health and safety will be governed by ILO Convention 155.

[7] Aspects related to payment of wages will be governed by ILO Conventions 26 and 131.

Manufacturers and suppliers shall not require their employees to work, as a rule of thumb, in excess of 48 hours a week and workers shall be granted at least one day off for every 7 calendar day period on average.

Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate, pursuant to the provisions of the prevailing regulations in force[8].

10. Regular employment

Manufacturers and suppliers undertake that all the employment formulas they use are part of the applicable local laws. Thus, they shall not impair the rights of workers acknowledged under labour and social security laws and regulations by using schemes that have no real intention to promote regular employment in the framework of regular employment relationships.

11. Traceability of production

Manufacturers and suppliers shall not assign any work to third parties without the prior written authorization of Inditex. Those who outsource any work shall be responsible for the enforcement of the Code by these third parties and their employees.

Likewise, manufacturers and suppliers shall apply the principles of this Code to any homeworker involved in their supply chain, and shall give transparency to the locations and working conditions of said homeworkers.

12. Health and Safety of products

Manufacturers and suppliers are responsible for all products supplied to Inditex to comply with Inditex health and safety product standards so that the commercialized products do not entail any risk to customers.

13. Environmental awareness

Manufacturers and suppliers shall be duly committed at all times to protect the environment and shall comply with the standards and requirements of the applicable local and international Laws and Regulations.

Likewise, they commit to comply with environmental standards established by Inditex including, if applicable, the necessary measures to reduce and compensate such impact in order to apply said standards.

[8] Working day related issued will be governed by ILO Conventions 1 and 14.

14. Confidentiality of information

Manufacturers and suppliers shall preserve the integrity and confidentiality of the information they may receive as a consequence of their commercial relationship with Inditex.

The obligation of confidentiality will remain once the relation with Inditex is terminated and it will include the obligation to return any material related to the company held by the manufacturer or supplier.

15. Code implementation

Manufacturers and suppliers shall implement and maintain programmes to set in motion this Code. They shall appoint a senior member of Management who shall be responsible for the implementation and enforcement of this Code.

Manufacturers and suppliers shall communicate the Code to all employees and those in any way involved in the Inditex Supply Chain.

A copy of the Code, translated into the local language, shall be displayed in accessible locations to all workers.

15.1 Transparency

Manufacturers and suppliers shall carry out their activities in an honest, upright and transparent way, keeping for these purposes an appropriate accounting records system that facilitates the traceability of their decisions, as a preventive measure versus any type of corruption, bribe and extortion that might arise.

Manufacturers and suppliers shall not offer, grant, request or accept any gifts or donations to/from Inditex buyers which might infringe the provisions of the "Inditex Code of Conduct and Responsible Practices".

Manufacturers and suppliers shall not manipulate or influence their workers, nor shall they forge any files or records in order to alter the verification process regarding compliance with this Code.

Manufacturers and suppliers shall neither offer nor accept remuneration of any kind which seeks, or may be perceived to seek, to affect the impartial judgment or the objectivity of such parties appointed by Inditex to carry out inspections and compliance audits in connection with this Code.

15.2 Reference to national legislation, Conventions and Agreements.

The provisions of this Code constitute only minimum standards.

Should national regulations or any other applicable Law or any other commitments undertaken or applicable, including collective bargaining agreements, govern the same issue, the provision which offers greater protection for workers shall apply.

Inditex assumes, as part of its internal norms, the content of national and international Agreements and Conventions to which it has adhered, and that they are applied in its relationship with manufacturers and suppliers, committing to their promotion and compliance.

15.3 Verification of compliance

Manufacturers and suppliers shall authorize Inditex and/or any third parties the former might appoint, to monitor the appropriate enforcement of the Code. For these purposes, they shall provide the required means and the appropriate access to the facilities and documentation required to ensure this verification.

15.4 Committee of Ethics and Whistleblowing Channel

This Code is aligned with the principles and values that are included in the Inditex Code of Conduct and Responsible Practices, which regulates a Committee of Ethics and Whistleblowing Channel to ensure its enforcement.

In this sense, and in order to ensure the enforcement of the Code of Conduct for Manufacturers and Suppliers, the Committee of Ethics can act at its own initiative or following a formal complaint made in good faith by a manufacturer, supplier or other interested third party that might have any direct relationship or commercial or professional interest with Inditex.

To this end, any notices given pursuant to the provisions of this Code, either reports of any breach or enquiries regarding the Code's interpretation or application can be addressed directly to the Committee of Ethics via:

- Post: Avenida de la Diputación, Edificio Inditex, 15142 Arteixo, A Coruña (Spain), Att: Committee of Ethics
- Email: comitedeetica@inditex.com
- Fax: +34 981 186211.

ANNEX II

Global Union Committee composition

Global Union Committee composition is formed as per the main regions and sourcing countries at the signing date of the Agreement.

Global Union Committee will be composed by a total number of 9 members distributed as it is below indicated:

Africa (1)

-Morocco, Tunisia, Egipt

America (1)

-Argentina, Brasil, Mexico

Asia (4)

-Vietnam, Indonesia

-Cambodia, Myanmar

-Bangladesh, Pakistan

-India, Sri Lanka

Western Europe (2)

-Spain and rest of Western Europe countries

Eastern Europe (1)

-Turkey and rest of Eastern Europe countries

The composition of the Committee could be modified throughout the validity of the Agreement when agreed upon by the Parties and depending on the evolution that manufacturing in each of the regions and countries that are part of the Inditex supply chain where there are IndustriALL affiliates.