



TRANSNATIONAL
COMPANY
AGREEMENTS (TCAs):
BUILDING
MANAGEMENT
KNOWLEDGE
& CAPACITY

Transnational Company Agreements: Issues, Approaches and Practices

A guide for employers' organisations
and companies

In partnership with:



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Transnational Company Agreements: Issues, Approaches and Practices

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and companies

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Transnational Company Agreements: Issues, Approaches and Practices
A guide for employers' organisations and companies

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Foreword

Globalisation, technology and decentralization of production patterns and provision of services are contributing to reshape the world of work.

These changes impact how businesses operate. Companies have to navigate an increasingly complex and dynamic environment, where they face heightened competition in a global market, uncertain economic growth, and challenges in attracting and retaining the right talent to remain successful and competitive.

Despite this, businesses' choices are no longer purely based on economic factors alone. Companies understand that responsible business conduct is key to achieve sustainability and profitability. As a result, aspects that traditionally pertained to the corporate social responsibility realm are now integral part of the daily decision-making process of businesses.

On the other hand, these trends also affect the structure of the workplace and the dialogue between management and workers. Labour relations are becoming more pluralistic and new actors, such as non-governmental organisations, consumers, and other stakeholders are joining the conversation.

In this context, and along with the current international debate on business and human rights, companies have a series of tools that they can rely on to promote sustainable growth and decent work.

Transnational company agreements are one of these options that particularly focus on social dialogue between multinational companies and global unions.

This guide offers the latest data, trends and examples about transnational company agreements; it shows why some companies have chosen to sign one, or why some others have decided not to. In sharing the latest figures and the best practices on transnational company agreements the guide seeks to help business make more informed decisions.

The guide is produced as part of a project co-funded by the European Union, and it builds on a series of thematic workshops organised in 2017 and 2018 with the partner employers' organisations, notably: BDA, CEOE, Confindustria, DI, MEDEF, as well as BusinessEurope and the International Organisation of Employers.

February 2018

Jorge Illingworth
Manager of the Employers'
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List of Acronyms

- CSR:** Corporate Social Responsibility
- EU:** European Union
- GUF:** Global Union Federation
- ILO:** International Labour Organization. When referring to the Secretariat of the Organization, the text will refer to the ILO Office
- IR:** Industrial Relations
- ITCILO:** International Training Center of the ILO
- NCP:** National Contact Points for the OECD Guidelines for Multinational Enterprises
- OECD:** Organization for Economic Co-operation and Development
- TCA:** Transnational Company Agreement
- UN:** United Nations
- UNI:** UNI Global Union
- UNGPs:** United Nations Guiding Principles on Businesses and Human rights



Introduction

Why develop a dedicated employers' TCA brochure?

Transnational Company Agreements (TCAs) are not recent phenomena; the first agreements date back some thirty years. They offer companies interested in furthering social dialogue an option to establish a framework of social norms at a group level, implemented on a voluntary basis and in partnership with selected union bodies and employee representatives. Their development has been enhanced by the combination of greater transnational social dialogue within European Works Councils and trade-union organization consolidation at global and European levels.

Despite their thirty years of existence, TCAs are not widespread. Currently there are about 320 transnational agreements concluded with around 180 companies, which is a small number compared with the 80,000 major multinational companies operating around the world.

About half of the 320 agreements are global in scope, while the others are largely European. This brochure focuses on global agreements.

There is a difference between global and European agreements. Global TCAs tend in general terms to support the ILO fundamental principles and rights at work¹; the European agreements tend to be more closely defined in scope and are often based on specific themes, for example health and safety, diversity, skills management, and so forth; and they help develop HR policies across Europe. Moreover they operate in a comparatively homogeneous regulatory and social environment *vis-à-vis* other regions, as well as possessing more developed local-level social dialogue structures.

Multinational companies are under increasing pressure to sign TCAs, both from trade union campaigns and in response to heightened scrutiny by civil society in respect of upholding fundamental labour rights throughout their operations, especially within their supply chains. This general trend, in conjunction with the development of national regulations and societal expectations, means that this pressure on companies is expected to increase.

This brochure seeks to equip companies with up-to-date information and data on global TCAs to help them better understand the phenomenon and offer them the knowledge to help them determine whether or not a TCA

1 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference, 18 June 1998 (Annex revised 15 June 2010).

could be relevant to their specific situations, challenges and social dialogue policies.

The guide draws on the work carried out for over eight years by the International Training Centre of the International Labour Organization (ITCILO) Employers' Programme, including the various workshops that have enabled companies, both those with TCAs and those that have decided not to sign any, to share their experiences and their reasons for choosing, or not choosing, the TCA route.

Additional interviews have also been conducted with thirteen companies (nine with a TCA and four without a TCA) to obtain the latest update of their practices and thoughts on TCAs. These interviews have been a precious input in building this guide and all the effort made is most gratefully acknowledged.

Global framework agreements – current environment.

- ▶ About 150 global agreements (signed by about 130 companies) exist.
- ▶ Most are CSR type agreements. The vast majority refer to international standards on CSR and labour rights (essentially ILO standards). In other words, the companies commit to respecting a list of international conventions in all their operations worldwide, as well as ensuring monitoring of these commitments and the putting in place or facilitation of local-level dispute resolution mechanisms to counter any potential non-respect of the principles.
- ▶ European companies are the most involved with these types of agreement. They are mainly French and German but also exist in Spain, Italy, Sweden, Belgium, Portugal and Greece. Outside Europe the range of countries is broad, the practice spreading to countries such as South Africa, Malaysia, and Indonesia, although there are far fewer of them.
- ▶ A minority of global TCAs² address specific themes such as union rights, diversity, occupational health and safety, and others; and despite their thematic foci they still set down key general principles.

2 The food company Danone for example has signed about 10 Global agreements each addressing a specific topic (sustainable employment, diversity, training, etc...). In 2017, Sodexo signed a TCA over preventing sexual harassment at work that is presented as an "Annex" to its TCA on fundamental rights.



Part I

TCAs and new labour rights challenges

1 Developments in the normative arena

1.1 Soft law initiatives

A series of soft law initiatives have emerged to guide and support businesses to uphold labour rights throughout their operations. These initiatives are briefly described in this section as useful background and context to TCAs.

- ▶ *A useful tool is the Learning Module on CSR & Business and Human Rights instruments³, developed by the Employers' Activities Programme of the ITCILO, which enables readers to navigate the myriad of standards.*

In June 2011 the UN Human Rights Council (UNHRC) endorsed the United Nations Guiding Principles on Business and Human Rights, which are widely referred to as the UNGPs⁴.

Following years of political stalemate on how to assign business responsibility for their impact on human rights and following the creation of initiatives such as the UN Global Compact, the UNGPs clarified the respective duty of States to protect human rights and the responsibility of all business enterprises to respect such rights, as well as the need for victims of business-related harm to have access to a remedy. The UNGPs are widely recognized as *the* global authoritative standard on business and human rights, the Economist newspaper having called them a “watershed event” in putting human rights on the business agenda.

3 The online module is available on e-campus, the online learning platform of the ITCILO here: <https://ecampus.itcilo.org/enrol/index.php?id=414> (available to registered users).

4 More information on the guiding principles and on the UN HRC are available here: <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>

Their uptake has been broad, deep and swift. The UNGPs provide a blueprint for action and they have mobilised Governments, companies, employers, lawyers, policy-makers, regulators, civil society, trade unions, financial institutions, international and regional organisations, and sports bodies around the world.


At international level, corporate responsibility for respecting human rights is a standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument relating to corporate responsibility. The UNGPs' endorsement by the UNHRC confirmed that this responsibility was affirmed by UN Member States.

While the UNGPs did not create new legal obligations, they are not voluntary. All States are expected to protect human rights against business-related abuse, and in most cases are under a legal obligation through their ratification of existing legally-binding international human rights treaties. The responsibility for respecting human rights is a minimum expectation of all companies and is reflected – fully or partly – in domestic law or regulations relating to companies.

On the back of the UNGPs' efforts companies' legal obligations have continued to harden. In 2014 the UNHRC established an open-ended intergovernmental working group with a mandate to elaborate an international legally-binding instrument "to regulate, in international human rights law, the activities of transnational corporations and other business enterprises". Following three general discussions, work on this treaty process is still ongoing and as yet its content, scope and level of State support is unclear. Moreover there is no clear horizon for its adoption. Nonetheless this initiative reflects a trend towards the hardening of the legal human rights obligations on business enterprises.

The UNGPs quickly influenced other CSR instruments. During their most recent revision in 2011, the OECD guidelines for multinational enterprises introduced a reference to human rights. In line with greater attention to multinational companies' responsibilities, the OECD has over recent years increased the number of its guidebooks for socially-responsible companies⁵, with the objective of providing businesses with appropriate tools. The goal is to assist multinational companies by way of practical and technical support so that they can succeed in their own 'due diligence' efforts. The OECD guides cater for the extractive industries (mining, oil, gas, minerals) and for the agriculture and clothing industries' supply chains.

⁵ The available guides can be consulted at <http://www.oecd.org/corporate/mne/>.



Governments adhering to the OECD Guidelines are required to set up a National Contact Point (NCP), the main role of which is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that may arise from any alleged non-observance of the guidelines in specific instances.

NCPs assist enterprises and their stakeholders in taking appropriate measures to further observance of the Guidelines. They provide a mediation and conciliation platform for resolving practical issues that may arise with implementation of the Guidelines.

The 2017 revised Tripartite Declaration relating to Multinational Enterprises (MNEs) and Social Policy of the ILO⁶ has been updated to reflect the UNGPs' approach. It addresses the challenges of supply chains and, in consistency with the UNGPs, it also provides guidance on due diligence processes. With this revision the ILO is seeking to promote the MNEs Declaration as a relevant tool for businesses to use as part of their sustainable development policies.

The UNGPs' notion of due diligence is similarly distributed in national regulatory instruments.

1.2 Regulatory initiatives

However, there is a more recent trend to move away from the “soft law” approach and to go towards “hard law”, when it comes to reporting and to international standards along global value chains.

Although many states continue to follow the route of “soft law”, this trend will have a large impact on how companies handle supply chain issues, moving from a business-driven approach where they may see a business case for action, to a regulatory approach obliging them to take action.

An example is the California Transparency in Supply Chains Act, which was promulgated in October 2010 and entered into force in 2012. The Act applies to large manufacturers and retailers that do business in the State of California and have gross worldwide sales of over \$100 million. These companies are obliged to report on their supply chains and use their own websites as a platform for sharing ‘their efforts to eradicate slavery and human trafficking in their direct supply chains.’

6 The Tripartite declaration of principles concerning multinational enterprises and social policy, is available here: http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm

In another example, the EU Directive on non-financial reporting, adopted in 2014, put a common framework in place across all EU countries. The Directive requires public interest entities, that is generally stock-market-listed companies, banks, insurance companies and so forth with more than 500 staff to publish an annual statement containing information on the impact the company has had in four areas: environment, employee and social issues, human rights, and anti-corruption. The Directive also requires these companies to outline how they are leading policies in these four areas, including due diligence processes implemented, the results of policy implementation, and incidents that arose during the period. These companies are also required to give information on the primary risks pertaining to these four areas with respect to their own activities and on the way in which they are managing those risks.

The UK's Modern Slavery Act of 2015⁷ requires commercial organizations that do business in the UK with business revenues in excess of £36 million to include a statement on slavery and human trafficking in their annual report and accounts. The Act targets the biggest companies because they are assumed to have the means of conducting a required preliminary audit and are also regarded as having significant negotiation power and influence. Companies have to indicate the various steps they are taking to ensure that their sub-contractors and suppliers are not conducting any practices linked with slavery and human trafficking. The statements are to be published on the companies' websites with a link to the relevant page provided on the front 'welcome' page.

The French law adopted on February 2017 requires French companies with more than 5,000 employees in France⁸, or 10,000 worldwide, to formulate a vigilance plan, highlighting 'reasonable duty of care measures' that aim to 'identify the risks and prevent serious infringements of human rights and fundamental freedoms, people's health and safety, as well as the environment,' that results directly or indirectly from its activities or from those of its subsidiaries, suppliers, and sub-contractors with which it has an established commercial relationship. The plan 'is meant to be formulated in association with stakeholders and, failing that, within the framework of subsidiaries' multi-party initiatives as well as at regional level.' In addition, alert mechanisms must be included in companies' care and due diligence

7 The bill can be consulted here: <https://www.gov.uk/government/collections/modern-slavery-bill>.

8 The law can be consulted here <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>.

plans, and should be ‘developed in concert with society’s representative union organizations.’

Other projects are also currently underway in Switzerland, the Netherlands⁹, and elsewhere.

1.3 Intercompany initiatives

On the business side, inter-company initiatives are multiplying as companies work together to seek to improve situations in specific countries and sectors. Multi-stakeholder initiatives are another way in which companies can choose to solve problems on the ground based on a holistic approach. The Bangladesh Accord is one example of this multi-stakeholder approach, but there are others that may or may not have the support of the ILO Office or the international trade unions.

These latest developments stem from the growing momentum of the adoption of the UNGPs but they were partly accelerated by the consequences of the 2013 Rana Plaza drama that spread beyond the textile sector.

Businesses find themselves at a key moment when relevant frameworks of standards are evolving and there is a trend towards stricter accountability. Within a context of rising societal expectations, business enterprises have to rethink their approach, instruments, and policies as they aim to manage increasingly complex supply chains (sub-contracting fragmentation operating at several levels), while finding themselves, despite their best intentions, with little actual influence in sometimes difficult local contexts, especially when they are acting alone.

2 Adapting trade union strategies

Major differences exist between the initial joint declarations signed with the Global Union Federations (GUFs) during the 1990-2000 decade and the latest generation of agreements. While the earlier documents were often short and general in nature, opting to list the ILO standards that a company was committed to uphold *via* its foreign subsidiaries, the latest batch includes clearer commitments as well as indicating implementation and monitoring measures. This difference is the result of a change in global

⁹ The Child Labour Due Diligence Bill is still under Parliamentary scrutiny. It is expected to enter into force in 2020.


union federation strategy, as these bodies have raised their requirements and set out pre-requisites for global agreement negotiations.

Indeed, even before the UNGPs and the Rana Plaza accident, unions had already defined two main thrusts for their negotiation strategy. First was the campaign against 'casual work' (ranging from atypical employment contracts to sub-contracting, including recourse to intermediaries), which in their view lead to worse labour conditions and weaker union influence; and it is from this axis that the inclusion of value chains in the agreements came about.

Second was a stronger affirmation of the freedom of association and of the right to collective bargaining, by way of including more precise commitments to union presence and collective guarantees, which for the unions offer the best way of safeguarding these standards. In addition there are more specific demands for procedures for monitoring commitments, and as a result the second-generation agreements are less and less affirmations of rights and instead are putting international social dialogue instruments in place to ensure that commitments are actually kept.

After Rana Plaza, GUFs expect these agreements to lead to better supplier and sub-contractors' social practices and for this reason they are consistently using these agreements to get companies to have their business partners also uphold ILO standards. A large number of TCAs refer to value chains to differing degrees (see *G – Extending the scope of the agreement to subcontractors and suppliers*) and GUFs expect multinational companies that sign them to ensure that also their business partners and subcontractors respect the standards set out in the TCA.

To this end GUFs are pushing for multinational companies to give union experts access to supplier and sub-contractor facilities. Trade unions believe that another way of improving working conditions is to encourage and facilitate employee unionization among suppliers and sub-contractors. This is the route that some textile sector companies have taken (H&M, Inditex, Tchibo, Asos, etc), and the unions clearly hope that such commitments will become more widespread.



Part II

TCAs or unilateral instruments? What drives a company to choose one over the other?

Given this development of soft law and hard law at international, regional and national levels, companies are faced with a complicated decision regarding the value added inherent in signing a TCA. Why should companies enter into these Agreements? Does it make sense to do so?

There is no one-size-fits-all approach, and the answer varies from company to company. For this reason, before any decision is taken for or against a TCA, it is necessary for each individual company to undertake an opportunity *versus* risk assessment on its specific situation. Such an assessment should be done with great care.

1 Reasons for engaging in TCAs

Some companies look with favour on TCAs and have embraced this tool as part of their company policies. Companies that have signed TCAs often report the following benefits.

1.1 Giving more credits to company policies

As the result of bilateral negotiations between company heads and union representatives, these agreements entail a certain level of follow-up by the agreement signatories. TCAs introduce different forms of implementation and monitoring procedures that are specific in both their nature and their scope because they are permanent, jointly formulated and applied through a counter-balancing influence within the company. It is exactly this level of requirement that is sought after by those who commit themselves to the process. All companies interviewed and holding TCAs share the point of view that the agreement makes companies commit themselves even further and encourages them to allocate resources in compliance with the commitments in order to achieve the objectives.

“ *An agreement places obligations on the various parties – that is how it is. Once you have signed the agreement, you are bound and have to try to comply. Otherwise if one of the parties does not respect the agreement then trouble ensues.*

Group Industrial Relations Head. ”

“ *When you co-sign with a trade union then the union becomes your effective auditor. Unions aren't bodies that you pay; you don't audit yourself complete with temptation or complacency and in any case with better understanding. It is the trade union that effectively carries out the audit and the trade union's goal is to defend workers and contradict the employer.*


Group Industrial Relations Head. ”

“ *Unions challenge us and highlight a certain number of things that we sometimes don't manage appropriately. However they do help us to put things on the table and examine them. In the end employee representatives enable us to make progress and that is the overall goal.*

Group Industrial Relations Head. ”

It is precisely this level of requirement or constraint (real or perceived), which makes the existence of a TCA a criterion that non-financial rating agencies and socially responsible investors take into account and which can help boost a company's social scores during public tenders. Companies believe that they also lend weight internally with their employees, who give more credence to negotiated outcomes than to unilateral policies.

Another important driver for concluding an TCA is a possible positive effect on the company's image. It is a way of showcasing the corporate CSR culture towards not only its customers, but also its employees and stakeholders.



1.2 Regulating subsidiaries becomes significant and social dialogue practices are homogenized

TCA's often include already existing managerial policies and instruments or formalize fragmented business policies within a single contractual document, thereby augmenting their visibility.

These agreements thus relate to policies addressing equality, diversity, occupational health and safety and so forth, and gives them more visibility and consistency *vis-à-vis* employees throughout the companies' subsidiaries as well as the union bodies operating in those subsidiaries. These agreements are then more than CSR agreements and are a type of 'group-wide social contract' that act as a global reference document for a business group's social policies. Because it is a single and more high-profile document, and given its contractual nature, it allows employees and unions to be fully involved.

“ *With this agreement we were able to consolidate, add more direction and provide a higher profile as well as re-visit some issues or provisions that were already in many of countries across the globe but not in all. Finally, this helps us to add coherence and deploy more widely certain measures that were already largely present.* ”

Group Industrial Relations Head. ”

In general, often underpinning the TCA there are two equally significant goals, namely promotion of fundamental rights or global social policies, and transmission of a common culture of social dialogue to subsidiaries across the globe.

TCA's often try to promote social dialogue across all the company's subsidiaries. Companies can feel more at ease in a global context by adopting a form of social norm for industrial relations, which ensures that they can rely on the subsidiaries to conduct homogeneous social dialogue while still remaining close to their local culture.

“ *We want social dialogue to progress across all our businesses because we believe (correctly or not) that dialogue between the social partners is something that can boost the overall performance of the company, as well as its economic, social, human, and societal performance.* ”

Group Industrial Relations Head. ”

“ *The idea is not to harmonize industrial relations systems, but instead to try and influence the social partners so they are more open to dialogue and adopt a constructive attitude.*

Group Industrial Relations Head. ”

1.3 Additional monitoring and reporting tool as well as a means of resolving disputes via social dialogue


This positive aspect of TCAs is the one most often underlined. Companies recognize that the implementation mechanisms offer the means of creating an opportunity for dialogue .

“ *We are in constant dialogue with UNI, and not just during formal meetings. We regularly interact and share what is going on in the group.*

CSR Director. ”

TCAs also allow joint solutions to be formulated when tackling problems of respect for workers' rights within the company. Local-level dispute resolution is always the first choice, with resort to corporate and union federation intervention only to encourage local actors to return to the negotiating table and seek a solution.

These agreements are also seen as an opportunity for learning by both the employer and trade union participants. Companies also use TCAs to avail themselves of other information channels in order to learn what is going on at group level and what is occurring along the supply chain in order to complete and compare information provided *via* the management channel. Managers fairly easily admit that companies know how to use global networks to their best advantage, precisely where the management channel can be less efficient. These other information channels allow management to focus on potentially deteriorating situations and ensure their resolution before they become exacerbated. They can also provide relevant information for top management or third parties such as investors, NGOs, social rating agencies, auditors, clients, and the press, whenever they are questioned about a local situation.



“ When investors raise questions on for instance a subject that was covered in the press, this information flow also allows us access to various sources of information which allows us to better explain the situation and how it can be managed.

CSR Director.

”

1.4 Tackling significant challenges to companies

TCA's are less and less merely marginally altered copies of model agreements that international trade unions have authored; instead they are tailored to respond to companies' real issues and concerns. Although this impetus has not always stemmed from the companies themselves, they nonetheless believe there to be an opportunity to engage in these types of processes.

For instance, potential drivers can include:

- ▶ The opportunity to provide staff support in companies that are anticipating significant transformations;
- ▶ Assisting in the internationalization of a group by spreading a common culture in its operations worldwide;
- ▶ Creating a new Group identity following a merger, also by spreading a common set of values;
- ▶ Helping to tackle burgeoning exposure to reputational risk associated with supply chains, such as in the textile sector on the day after the Rana Plaza disaster;
- ▶ Amplifying the impact of a global health and safety policy, etc.

“ We are a Group undergoing a complete transformation. We need alternative channels in addition to the traditional managerial line channels so as to report information, and mobilize employees, and we need to look at situations from a different angle, not allowing complacency and enabling a counter-balance that examines what we do.

Group Head Industrial Relations.

”

“ We were in the process of establishing a new post-merger group and so this agreement was one of several texts produced at the same time as the group's values ethics charter.

Group Head Industrial Relations

”

“ *It came at a period when sustainability rose as an item on the agenda and our company is a most highly visible one in our country. The request met our strategic mission to be a sustainable company. It helps to consolidate our communication toward our employees at an international level and to have it more transparent.*

Group Head Industrial Relations.



2 Reasons for not engaging in TCAs

2.1 Doubts over the actual extent of their commitment

Uncertainty over the implications of commitments taken as part of a TCA is a risk when assessing the pros and cons of embarking on such a process. Above all the uncertainty over the use that the trade union signatory parties, and still more their membership, can make of these agreements, including the company's employees, subcontractors, and even external third parties, is found to be most worrisome.

Companies can be uncomfortable with a formula perceived as potentially exposing them further if workers' human rights jurisdiction continues to develop. Further-more, legal departments are constantly on the watch against adding layers of legal constraints to those that a company already has to navigate, especially in the area of CSR and human rights that has recently undergone a change.



2.2 Doubts over reduced leeway in situations where the company already lacks complete control

As part of implementing their CSR policies, companies regularly have to handle tension between, on the one hand, commitments to comply with their own codes of conduct or CSR programmes that could incorporate international standards and, on the other hand, national legislation that is not always in line with and can even run counter to those international standards. Including such commitments in a TCA raises the concern that companies will have less room for manoeuvre and find themselves under even more pressure, whereas sometimes time itself can be an indispensable element in negotiating, convincing, and rounding the angles with local management.

“ *When conflict occurs between both sets of standards, our codes of conduct require us to prioritize ILO standards, if they are more favorable, over national law. However when national laws are too removed from ILO standards then extremely tense situations occur because we have to convince local management, which does not understand what is expected of it, as it is to all intents and purposes, correctly complying with their local legislation. Given that the TCA is positioned higher up the hierarchy, this places us in an even more delicate situation vis-à-vis our local counterparts.*

CSR Head. ”

2.3 Doubts over stakeholders' willingness to keep to the rules

Continuous progress is the approach that underlies all CSR policymaking. Aware that zero risk guarantees are impossible, especially along value chains, companies set out procedures aimed at limiting these risks and they fine-tune and improve them in response to any problems that arise and any new risks that emerge. Including references to fundamental rights at work in TCAs can entail recognition that in some cases management alone cannot solve certain situations and that social partners have to cooperate and work together to find a common solution.

But some companies are concerned that the unions use these agreements to put pressure on the company and blame it for any potential problem, disregarding the fact that the actual aim of these agreements is to be a drive for continuous improvement.

“ *This type of commitment implies that we agree to work in a mutually responsible manner and that trade unions are part of the solution and not part of the problem and so we avoid ending up meeting on the battlefield.* ”

CSR Head.

2.4 Doubts over the value added of a TCA to complement an active CSR policy


Many companies are not convinced of what value TCAs could add to their existing strategies. Within the context of bolstering CSR policies and following the milestone that are the UNGPs, some companies have already developed comprehensive strategies, as shown in the ITCILO guide on CSR and Human Rights¹⁰.

“ *We do what is expected according to the guiding principles. We have a policy and we have all the tools that help to implement it, we work closely with people so we don't really see the benefit.* ”

Sustainability Head.

Purchasing and compliance policies may have little to gain from the addition of a framework agreement. Many companies embed labour standards requirements in their procurement and purchasing policies to ensure that what suppliers must observe and apply before entering into a business transaction with the buyer is clear. Several of the companies interviewed indicated that they belong to a group of companies that together set out a *modus operandi* for managing their supplier network's 'social responsibility'. Examples of this include the Business Social Compliance Initiative (BSCI) in the commercial sector, Together for Sustainability in the chemicals sector, and the Joint Audit Cooperation (JAC) in the telecoms sector. By participating in such groups companies can rely on a procurement and purchasing code of conduct that is regularly updated in line with the changing risk-and-problem landscape. These codes of conduct include the requirement to comply with ILO Conventions (freedom of association, collective bargaining, fair remuneration, occupational H&S, special protection for young workers, prohibition of forced labour, etc.) and Declarations, the UNGPs, and the

¹⁰ ITCILO, “A Guide on CSR and Human Rights – what does it mean for companies in supply chains?”, 2015, available at http://www.itcilo.org/en/the-centre/programmes/employers-activities/project-tcas/A_Guide_on_CSR_and_Human_Rights_FINAL.pdf.



OECD guidelines for multinational enterprises. Companies are externally audited and the auditors can make recommendations for corrective action.

A TCA in addition to well-developed conditions in the purchasing policy would have little impact.

“ *Everything that refers to labour standards along supply chains has already been well understood and reflected in our purchase and procurement policies and I don't see how a global agreement would bring me anything more.*

Sustainability Head. ”

Trade unions at local level may not look at human rights risks in a comprehensive manner. In terms of mitigation, unions essentially put forward a single solution, namely promoting unionization and collective bargaining. Some companies find this too narrow when compared with the much broader CSR agenda and do not perceive the interest in what they believe to be such a piecemeal instrument.

“ *In the countries where there is not a good union system that really works, we are working with local NGOs to help us in the Human Rights assessment.*

CSR Head. ”

In addition, companies may also be engaged in a dialogue with staff representatives on these policies without having a TCA.

“ *Our representatives at our European Works Council have a special task to make sure that everything is run correctly. We have them involved in the interpretation of our code. When we revised it a couple of years ago, they were able to go through the chapter of the code before it was published. They were also involved in the human rights policy and they also challenged us. Twice a year we meet with the European federation of our sector and this allows us to have a social dialogue. If they know something about some of the companies we could potentially consider dealing with, they let us know.*

CSR Head. ”

The foregoing does not mention that fora for dialogue are often established with the stakeholders, which include NGOs and national unions that together challenge their social practices, assist them in identifying risks, transmit information and help them develop projects within the country that can sometimes also involve other companies.

“ Our representatives at our European Works Council have a special task to make sure that everything is run correctly. We have them involved in the interpretation of our code. When we revised it a couple of years ago, they were able to go through the chapter of the code before it was published. They were also involved in the human rights policy and they also challenged us. Twice a year we meet with the European federation of our sector and this allows us to have a social dialogue. If they know something about some of the companies we could potentially consider dealing with, they let us know.

CSR Head. ”

“CSR policy is a central pillar with all stakeholders involved and on this particular point it is a question of applying a broad spectrum of stakeholders and not just one” – Sustainability Head.

It appears that several interviews with companies already with traditional TCAs promoting various standards have revealed that the value added is not that significant in this particular regard. In terms of commitments the agreements most often take up codes of conduct and other instruments that companies develop unilaterally. Company departments work more or less in concert and, although the agreement certainly plays a role, it is not a very decisive one.

2.5 Risk of local industrial relations being compromised

“ When we have been solicited to negotiate a TCA we have said no: our US management team was very against the idea because TCAs are seen as interference.

Group Head of Industrial Relations. ”



Since TCAs often seek to bring social dialogue practices closer together, companies can be reluctant to impose a regime that may call local practices into question and thus create tension. North America is often quoted as an example because locally social dialogue practices are not well developed, and therefore local management teams perceive framework agreements as a type of directive incompatible with their regulatory framework and their industrial relations practices.

However North America is not the only area where agreements are seen as interference. This fear of having a social dialogue or industrial relations model foisted on local management is also shared by certain national union bodies that also refuse TCAs, precisely because they are viewed as an instrument handed down from above that threatens their autonomy as local-level social partners. This quest for autonomy, which runs counter to any interference from outside, underlies why the social partners are sometimes against development of transnational collective bargaining.

In keeping with the idea of not infringing on the national level, some companies have stressed that they have developed negotiation dynamics at a local level and do not see the need to superimpose a higher-level agreement.

“ *We've already got hundreds of local agreements to manage. We are already putting a lot of effort into correctly implementing them. We can't increase the number of agreements further.*

CSR Head. **”**

2.6 Loss of flexibility

Medium-sized companies often have different management structures from global corporations. Their decision-making is often still at local level. This is why agreements covering many locations are seen as a loss of flexibility at the local decision-making level. This concern can particularly arise among shareholders, so the issue should, if appropriate, be covered in an external communication at the conclusion of the TCA.

Part III

Key issues to consider when engaging in a TCA

A thorough assessment of the pros and cons in concluding any TCA should in principle include an examination of the following aspects below.

1 Engage with employers' organisations to get information on TCAs

As a general recommendation, companies contemplating a TCA should engage with employers' organisations at the most appropriate level, whether it is international and/or, regional and/or national.


This is a preliminary step that will help companies:

- ▶ Obtain relevant information about TCAs, their implications, etc.,
- ▶ Gather intelligence about the national industrial relations contexts and the potential impact of a TCA;
- ▶ Gain access to a network of other member companies that may already have a TCA and learn from their best practices and experience.

2 A tool that includes an industrial relations (IR) strategy

TCAs are also IR tools. Once signed, they form part of a company's IR "architecture".

Therefore when engaging in such processes it is important for a company to regard the TCA not only as a tool for immediate purposes but also as part of its long-term IR strategy. For example global TCAs legitimize the



role of global union federations and will increase their influence within the company. This implies that, regardless of their content, the signatory companies recognize GUFs as legitimate counterparts in the field of transnational industrial relations.

“ *It makes sense since we are a global company that we work with a global union organization to support our commitments towards human rights and labour practices. It also gives us a point of contact globally.*

CSR Director.



Every agreement renewal and renegotiation follows this logic of strengthening the level of transnational industrial relations as much as it does of improving the level of commitments undertaken.

The TCA might also strengthen trade union activities in the company. Negotiations always involve building up structures, which can become permanent after the conclusion of the TCA.

Accordingly, the adoption of a TCA should fit within the company's wider IR goals. For instance, how would such a text fit within the company's own vision and long-term IR needs? Will it help or hinder the realization of that vision? Does it provide a vehicle that will add value to the strategy, or will it distract the company from its objectives?

3 As an instrument that can also evolve according to external factors

TCAs agreements are frequently signed for limited periods of time, ranging most often between three and five years. Renegotiation of these agreements presents an opportunity for GUFs to seek further commitments that are wider in their scope.

Pressure to align oneself with the best benchmark must be considered in a context of more complex challenges, especially along supply chains.

4 Legitimacy of the agreements' signatories and GUFs internal organization

4.1 Representativeness – a challenge

The legitimacy of the signatory parties is important for effective implementation of the agreement. On the employers' side, the most frequent choice of signatory is that of the company CEO, sometimes together with the HR manager at group level.


GUFs tend to be the main signatories on the employee side, sometimes combined with the European works council or national trade unions and the group works council, mainly those in the parent company. With companies that engage in several activities, several global federations may be involved.

Companies seek to prioritize signatories who will lend most weight to the agreement and involve the actors they need during its implementation. As mentioned above, global agreements are also union recognition documents and in this regard it could be said that the 'bedding down' of several different agreements has finally led to GUFs being considered legitimate actors.

Companies need to be aware of the limits of the GUFs as regards both their resources and their representativeness. In certain countries these bodies can end up drawing together members that do not actually represent majority unions and which have few or even no members in the group's subsidiaries. In countries where these bodies have little presence where their members are competing with non-member organizations, this poses a question over their ability to guarantee real effective global implementation and could even instead create problems for the company. Similarly it is not a given that national union members can effectively work in cross-border mode.

4.2 The challenge for the agreement to be legitimized within the union bodies

GUFs mandated procedures are gradually being put in place that enable them to promote the legitimacy of the agreement among their members. As a result the union federations can rely on their in-company members to adhere to the principle of cross-border negotiation and the fruits thereof. Practices currently vary between federations. They can sometimes end up



blocking situations and complicate processes that had previously been lauded for their simplicity. Nonetheless it is merely an issue of normal internal democracy which should culminate in the gaining of a stronghold in current practices because, logically, it should facilitate improved rights appropriation by local-level actors.

Furthermore, GUFs are reliant on their members and, as such, can themselves sometimes undergo internal difficulties in relation to powerful and influential members that seek to shape the agreement to different ends. GUFs may also have to defend their negotiation strategy *vis-à-vis* union cultures less well disposed to company negotiation or even hostile to cross-border negotiation and this in itself could impact on a company. Indeed GUFs draw together a set of diverse union cultures which sometimes do not interact well with the goals of the TCA.

In addition, some companies are closely engaged in partnerships with NGOs that help them identify risks and provide remedies. They feel very comfortable in a relationship with organizations that are perceived as less politicized than unions and can help them obtain a broader picture.

4.3 GUF unionisation strategy and special favour for federation union members

Recent developments show a tendency towards stronger provision of freedom of association and collective bargaining. Even before these developments occurred, some companies had signed agreements with the clear goal, subject to employees' wishes, of developing union representation across their subsidiaries, by both facilitating union access to employees and safeguarding management neutrality during union campaigns. What is new is that union federations are looking to introduce similar commitments, more ambitious than the relevant ILO Conventions, into global CSR agreements. TCAs would thus no longer be instruments in which companies commit themselves to respecting fundamental rights but would have to become actors in unionizing enterprises.

As with other professional organizations, GUFs seek to prioritize the strategy of greatest benefit to its membership. In terms of freedom of association, the framework agreement could be used in situations where a local GUF member is involved in a conflict with a non-GUF member and the company is asked to arbitrate, something which it frequently avoids, thus creating a dispute with the GUF.

“ We are ready to facilitate contact with the UNI members and employees when possible and when employees so wish. However it can be that at local level we may have non-UNI affiliated unions and we also have to work with them.

CSR Head. ”

Some companies seek precisely to favour the establishment of the GUF's members and commit themselves to giving facilitated access to them by their employees.


5 Local management involvement and avoiding the 'top-down' criticism

Company head office management increasingly enters into preparatory discussions with local management prior to the official negotiation or renegotiation of agreements.

Overall management team alignment is enhanced when early efforts are made to explain to local management teams the factors or constraints encouraging the company to commit itself in this way, the advantages that can be expected, and the resources that can be deployed to assist when taking the agreement's content on board. Local management can then use this forum to voice its reservations over certain commitments in the light of a local legal or social situation before actually taking on the commitment in full. This cannot be solely a formal consultation exercise but a real preparatory workspace which should facilitate subsidiaries' full involvement.

“ Extensive internal discussions and convincing argument were needed all along the operational line. We want to go beyond general broad-brush commitments so it was important to make sure the whole group was onboard so that we didn't just stop at outlining a set of principles.

Group Industrial Relations Head. ”



There is a value in considering involvement of local management in every agreement renegotiation.

“ *Every time we renegotiate, we distribute the draft agreement to our subsidiaries so they can give their opinions.* ”

Group Industrial Relations Head.

6 Language and the framework aspect of the agreement

6.1 Collisions with legal requirements or collective agreements

Before a TCA is signed, the company should ensure that the text does not conflict with existing legal requirements or valid collective agreements in the company. As a rule this means an exhaustive examination of whether the individual stipulations of the agreement contradict national legislation or existing collective or works agreements at any of the locations.

A particular problem arises when the fundamental labour rights guaranteed in TCAs – such as the prohibition of discrimination against women or the freedom of association – cannot be granted in certain countries because they run contrary to national legal systems. This is a serious problem. However, companies can seek guidance from the UN Guiding Principles on Business and Human Rights (No. 23) and the OECD MNE Guidelines when addressing such complex situations.

6.2 Language and wording

Agreements vary greatly, ranging from one-page joint declarations written out in very general terms to agreements running to more than twenty pages with extremely precise written content. It very much depends on the company culture.


Disputes after a TCA has been signed are sometimes caused by unclear formulations. Unlike standards in the traditional sense, here there are no effective, generally-accepted rules of interpretation. Neither can the dispute be resolved by prescribed legal procedures. To avoid misunderstandings the agreement should clearly express what the parties intend and the spirit in which the parties wish to proceed. The inclusion of definitions can often be useful. Another possibility is to refer to the corresponding interpretation in a comparable national or European regulation.

Recent developments have suggested that union organizations are looking to companies to deliver more demanding, “binding” or enforceable agreements. Certain companies perceive that unions want to give more legal scope to the agreements, with the risk that eventually they become more and more ‘legalised’ and less “gentlemen’s agreements”. The dispute settlement provision is critical when it comes to giving more enforceability to the TCA (see point G-d below).

6.3 Standards and References

As is the case with codes of conduct and other unilateral instruments, some global frameworks refer back to ILO principles, either just the core labour standards or also to additional Conventions such as those on occupational health and safety, wages, and so forth. They can either list the Conventions ‘*per se*’, or add specific changes to define more clearly what the parties expect to be upheld.

Other agreements refer to standards and initiatives other than the ILO’s, in particular the OECD Guidelines for Multinational Enterprises, the Universal Declaration of Human Rights, the Global Compact, and sometimes environmental standards. Unions may also ask that reference be made to the UNGPs, which are starting to be included in these agreements although certain companies remain resistant to the idea of introducing them and to taking the risk that the TCA’s original direction will be deflected.



“ We really stand behind the agreement because it formulates issues and elements that are very important to our company in terms of sustainability developments. We don't want to have an agreement that becomes an elephant and at the end you have to hire a hundred of people only to monitor each and every aspect. We committed to follow some ILO standards, and we want to fully commit we have to fully understand what they mean and what are their full implications.

Group Industrial Relations Head.

”

Brief summary of ILO standards

International labour standards are legal instruments drawn up by the ILO constituents (governments, employers and workers) that set out basic principles and rights at work. They are either Conventions, which are legally binding international treaties on ratification by Member States, or Recommendations which serve as non-binding guidelines for States. ILO Conventions are ratified by countries, not companies. Until such ratification is reflected in national law, the actual content of a Convention is not applicable in that Member State. Despite this, companies are making reference to those ILO instruments. Consequently, it is important that companies are aware of the content of the Conventions and understand what obligations could be incurred by including them in any text.

Certain companies choose to include in their agreement some of their group company policies that have been implemented on a unilateral basis. The idea behind this is to avail themselves of a single document that is easily communicated to employees and that gathers into one place the group's global policies that affect the employees, and in so doing hand trade unions the right to examine how they are implemented *vis-à-vis* the employees.

7 Extending the scope of the agreement to subcontractors and suppliers

There are different ways in which TCA agreements relate to suppliers and subcontractors or include them within their scope. In some cases the company commits itself to informing its suppliers and promoting the provisions of the TCA among them. Other agreements include the respect for TCA provisions as a criterion for establishing or continuing business relations. Lastly, some agreements make compliance with the TCA mandatory for suppliers, for instance through a commercial agreement. However, most of the time TCAs take up already longstanding charters or other elements that are being practised by way of their purchasing and procurement procedures which include a significant development in fundamental labour rights. In so doing companies provide the potential for trade unions to challenge them on this aspect.


Other companies do not wish to go down this road, at least not immediately, but they do accept, within the framework of their annual monitoring meeting, the need to provide information on these policies, on any audit results, and on improvements that have been effected, as well as to open a discussion on the issue.

Other companies refuse categorically, either because they see it as a major risk to the company or quite simply because this goes beyond their competence level.

“ *We don't have to take over-responsibility over the States.* **”**
Group Industrial Relations Head.

Companies may also believe that TCAs are not the right instrument, especially since the signatories (be they the union bodies or management) cannot legitimately impose such rules on autonomous structures, such as SMEs, along the value chain. Companies believe their grounds for refusing to include the supply chain in the scope of their TCA are justifiable on the grounds that the rate of unionization in SMEs along the value chain means that global unions are not best suited to ensuring the implementation of the TCA along a value chain in which they have little actual presence.

On top of this is the fact that extending the TCA along value chains can lead to working with organizations with which companies do not usually interact, as for instance in the commercial sector where the union federations that in



principle represent subcontractor and supplier employees do not regularly enter into dialogue with the company since that role is carried out by the service sector unions.

Given the changing international normative landscape, national developments (see Introduction) and social expectations, the issue of applying fundamental rights along value chains is certainly the most critical challenge facing the negotiations of the immediate future. Most companies interviewed remarked that international union bodies are becoming more insistent on this issue. It is thus understandable that some companies seek a thorough risk-and-benefit analysis of inclusion of this issue within a TCA. Expectations in the area of fundamental labour rights can go beyond terminating a business relationship with a supplier that does not comply with international standards. As regards practices that developed in the textile sector in the aftermath of the Rana Plaza disaster, union federations aim also to include commitments that bolster the exercise of union rights within sub-contractors and suppliers.

TCA and supply chains: an overview of practices

In a Background paper for the ILO Office entitled 'global Framework Agreements, Achieving Decent Work in global Supply Chains', data and content from 54 agreements signed between 2009 and 2015 on how TCAs take the supply chain issue into account have been provided. About 80% include a reference to the global supply chain, and about 30% treat the respect of provisions in GFAs as a criterion for establishing and continuing business relations with suppliers and subcontractors. Drilling down further shows that the largest group of TCAs, 46%, include an obligation for the MNE to inform its suppliers and subcontractors of the relevant parts of the GFA and to encourage adherence. In all other agreements this obligation is combined with the duty of the MNE to encourage suppliers and subcontractors to adhere to the standards set out in the TCA. About a third of the agreements in the research sample use stronger wording; they treat respect for provisions in TCAs as a criterion for establishing and continuing business relations with suppliers and subcontractors. A continuing violation of standards set out in the TCA is seen, in the last resort, grounds for terminating business relations. Such termination is likely if the progress plan that aims to encourage business partners to uphold the standards fails to bring about the expected results.



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It must be added here that frequently these provisions reflect procedures that have been thoroughly established by the Purchasing and Procurement departments as well as the audit department. As regards subcontractors and suppliers, only a small fraction of GFAs address the entire supply chain.

8 Implementation and monitoring

8.1 What implementation entails

“ A TCA often leads us to react, you have to act when something is happening.

Group Industrial Relations Head.

”

TCA's are frequently used to call on central management to focus on a labour rights issue arising in one of its subsidiaries or in one of its suppliers or subcontractors. Under the 'Implementation' section some TCA's outline measures relating to the distribution of the agreement between management and workers.

Good internal communication and endorsement by local management of TCA agreements are key factors in their successful implementation. Some companies have training sessions to inform local managers on the key points of the agreement, communicate on best practices and bolster coordination with the industrial relations management teams within the company. This augments the opportunities for mutual interaction and facilitates communication if delicate issues arise.

In any case, creating a climate of trust also implies actions on the sidelines of the agreement. These can range from site visits that are jointly organized by company management and the GUF to joint project financing that aims at collaboration on improving local-level practice. Having trade unions capable of backing international causes and positioning themselves appropriately can also require specific training. All such initiatives could improve the chances of establishing a regular relationship, a two-way information exchange, and peaceful dispute resolution.



8.2 Monitoring

Monitoring will vary in accordance with the type of agreement, and follow-up provisions appear in most texts. These provisions include some form of monitoring commitment, usually by way of an annual review or meeting on the implementation of the text, or the setting-up of a monitoring committee. Companies are increasingly committed to providing social performance indicators while ensuring that subsidiaries are not overwhelmed by reporting requirements.

In the margins of the monitoring system that relies on international and national trade union bodies, some companies find it useful to facilitate a whistleblowing system to align with the the UNGPs' principles and as a way of promoting early warning sources from the ground up. Others believe the TCA should remain an instrument for the signatory parties only.

“ *This agreement is not a whistleblowing provision.* ”

Group Industrial Relations Head.

ThyssenKrupp launched an online violations reporting system as part of its global framework agreement

In its international framework agreement that was signed in March 2015 the company commits to complying with the principles of freedom of association, equal treatment and equal opportunities, the abolition of forced and child labour, a maximum working hours, reasonable remuneration tariffs, and occupational health and safety provisions. To ensure that the commitments made are actually adhered to, the company has set up an online system dedicated to rapid intervention. Violations can be reported either anonymously or on behalf of a named complainant via a secure electronic message system. All employees and their trade unions operating within the company can also report any violations of the agreement via email.

8.3 Examples of implementation clauses developed for the textile sector following the Rana Plaza disaster.

In the aftermath of the Rana Plaza tragedy, textile companies (including Inditex that houses the Zara and H&M brands) signed TCAs containing stronger implementation provisions specifically aimed at suppliers. At Inditex, the agreement aims for contracts to be concluded with IndustriALL Global on making trade union experts available. The contracts will set out the different requirements for these experts to fulfil. The main trade union experts' task is to strengthen the exercise of their rights by local unions. They will then be informed of the factories that make up the entire supply chain, and of Inditex's audit processes. They will have access to the workplace, and also be apprised of the challenges detected through the local trade unions on enforcing the company's global agreement in order to implement the relevant action lines. Inditex will pay for the cost of the time they devote to carrying out the requirements as well the travel costs, and will also advance a predetermined amount at the start of each year so as to facilitate immediate operational effectiveness.

The H&M TCA has established a sophisticated three-level system of committees to implement and monitor the commitments outlined in the agreement. The first committee, which draws together management and workers' representatives, operates at factory level. The second committee operates at national level and comprises members designated by management and IndustriALL; its aim is to put in place national strategies for implementing the TCA as well as collaborating with local unions and suppliers to help them achieve better industrial relations and intervene in dispute resolution. The third committee operates at international level, and is tasked with developing and monitoring industrial relations. The first national committees will be put in place in Cambodia, Myanmar and Turkey.



8.4 Dispute settlement

TCA's aim to prioritize dialogue, resolve problems before they escalate and avoid unhelpful media attention. Some agreements include the possibility of turning to the courts if the parties do not respect 'the rules of the game' and tarnish the company's image.

TCA's are interpreted between the signatory parties, and when provisions actually exist on this aspect these are the only parties able to intervene if a member of a signatory raises an issue that involves a question of interpretation of the text.

Compatibility between the wish of global union organizations to strengthen the effectiveness of TCA's¹¹ and the companies' concerns that disputes will arise either from increasingly precise commitment frameworks or from the spreading of a remediation culture as part of applying the UNGPs, will necessitate more and more clauses being included that stipulate how local claims are to be treated, many of which are similar to the following:

- ▶ local level takes precedence in addressing disputes "as close as possible to grassroots";
- ▶ escalation procedures are needed that enable access to higher levels, right up to corporate level.

However practices in this regard remain varied depending on whether or not the company needs to address this type of issue. Some could see the inclusion of such clauses as creating legal risk exposure or the implicit admission by a company that it cannot manage effective implementation of its commitments, whereas for others a good conflict resolution system can actually minimize disputes.

Most of the companies interviewed indicated it was important to avoid situations in which the company was being called on to play the role of referee in local disputes that have little to do with fundamental rights.

¹¹ Provisions allowing for the recourse to an external mediator or to a judge are beginning to appear in some TCA's. These clauses are still rare, but the GUFs may require them more and more in the future. An example is in the Bangladesh Agreement, which is not technically a TCA but it could still set a precedent. The Agreement provides that in case of a dispute, the parties could address the Court of Arbitration at The Hague, the Netherlands. The GUFs triggered this clause against two companies: however, the parties settled before the Court decided on the matter. One of the companies agreed to pay \$2.3 million towards remediation of more than 150 garment factories in Bangladesh.

Examples of clauses addressing disputes resolution.

The joint European Commission and ILO Office database is a useful source of agreement content for companies to consider as input for their own TCAs.

➔ *AEON Global Framework agreement (2014)*

“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.”

➔ *Umicore Sustainable Development Agreement, latest renewal in 2015*

“According to Umicore’s Code of Conduct, all employees have the right and duty to address issues and problems related to this agreement to their superior or, if they deem this is not to be appropriate, to the heads of the Corporate Legal or Internal Audit Departments. This will not be to their detriment neither will it entail any sanctions. The concerns or complaints may be reported in the preferred language.”

➔ *Carrefour global on social dialogue and diversity (latest renewal 2015)*

Along with a dispute resolution clause, the agreement aims for specific early dialogue on any conflict between the international standards being taken up in the agreement and local legislation.

CARREFOUR is firmly committed to the principles outlined in the texts and Conventions as well as the following provisions (in the TCA). Nevertheless CARREFOUR reserves the right to interpret their application and, failing this, to adapt them if local regulations (laws, rules, jurisprudence,...) impose contrary provisions. In such cases CARREFOUR will inform UNI Global Union of the issue.



➔ *Uni-ISS Global Agreement (2008)*

“In the event that the parties are unable to resolve a dispute (...) 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.”

“(...) the parties agree that the local ISS management and Union officials should first attempt to resolve the matter at the local or (...) national level.”

“For the avoidance of doubt, the dispute resolution procedure set out in Section above shall not apply to disputes, which – directly or indirectly – relates to, affects or involves any collective bargaining agreement and/or any other local agreement. Such disputes shall be settled in accordance with the dispute resolution procedures set out in the relevant collective bargaining agreements and/or local agreements. However, the parties agree that the local ISS management and Union officials should first attempt to resolve the matter at the local or, as the case may be, national level.”

“UNI agrees that it will not take any public or legal action against or affecting ISS without a fair prior notice to leaving ISS a reasonable period of time to resolve the dispute before any such public or legal actions are taken against the company.”

➔ *GDF Suez (Engie) Global Agreement on Fundamental Rights, Social Dialogue and Sustainable Development 2010*

“In the event of a complaint or an alleged violation of the agreement the following procedure will apply:

- a) Firstly, the complaint will be raised with the local site management. Workers may seek trade union representation.
- b) If the complaint is not resolved with local management, it should be referred to the appropriate national union who will raise the issue with the company.



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- c) Any infractions which could not be resolved through discussion at the workplace or national level will be addressed by the signatories to the agreement in close cooperation with the GUF affiliates in the country concerned and will be reported to the responsible manager, who will ensure that corrective measures are implemented in a timely manner. This process will take place as needed and may include, but does not require a meeting of the reference group. The reference group can consider the matter and propose appropriate action.
- d) Informal discussions may also be considered appropriate at the same time as efforts are being made to resolve conflicts at local or national level.
- e) If agreement is not possible, the signatories may seek mediation based on agreement on the selection of the mediator by the parties.”

➤ *Tchibo Global agreement (2016)*

[...]

“16. Tchibo and IndustriALL Global Union cooperate with each other in confidence that together they can solve problems and issues that may arise in the implementation and monitoring of the measures as stipulated in this Agreement. Both Parties shall undertake to inform each other of any breach in connection with the enforcement of the Agreement, as soon as the breach is discovered, to enable the Parties to implement a remediation action plan without undue delay.

17. In case a local trade union affiliated to IndustriALL Global Union detects a potential breach regarding the enforcement of this Agreement within the Tchibo Non Food supply chain and its attempts to solve such breach have failed, it shall notify Tchibo and IndustriALL Global Union contact persons designated for such purposes.

18. Tchibo shall in consultation with IndustriALL Global Union assess and investigate the potential breach and shall, where needed, directly address the Tchibo Non Food suppliers and producers.

19. In case a breach regarding the enforcement of this Agreement has been confirmed, Tchibo and IndustriALL Global Union shall jointly develop and implement a remediation plan.





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20. 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.”

The ILO Office's role in TCAs

The ILO Office reflects on and reviews its place and the role it can play as part of this fresh momentum for negotiation.

Some companies actually choose to sign their TCAs at the ILO Office, as this gives a certain visibility and significance to the event. For the past years the ILO Office has provided a help desk that essentially makes a ‘neutral’ area available so that disputes have a better chance of finding resolution, and certain companies happily make use of this space.

As part of its conclusions on decent work along global supply chains the ILO Office is studying the scope for going even further.

When social partners decide to negotiate global framework agreements, the ILO Office could support and facilitate the process, on joint request, and assist in the follow-up process, including monitoring, mediation, and dispute settlement where appropriate. Furthermore, the ILO Office should undertake research on the effectiveness and impact of cross-border social dialogue.

As part of the overhaul of the 2013 Tripartite Declaration on Multinational Enterprises, the ILO availed itself of a monitoring mechanism and in particular implemented a system of ‘national focal points on a tripartite basis that will promote the Declaration and, for instance, identify national level problems arising from certain businesses activities. Each country can decide how they can use these national focal points with potentially attributing them mediation rights and even establishing links with the OECD Multinational Guidelines related national contact points for situations specifically addressing workers’ rights.’

9 Legal context and considerations

The legal status of these agreements is unclear. They have never been tested in a court, so questions remain about their status and enforceability. However given codes of conduct that national-level courts could consider as legally accountable company commitments, the question of the relative legal risk between TCAs and unilateral instruments tends to balance out.

However, for the companies that have a TCA legal status was not a key issue when considering entering into this type of agreement. A lack of legal certainty may actually be an expression of general intent.

To overcome this uncertainty, some believe it is helpful to state what law would apply in the event of a legal dispute or even include a jurisdiction clause. Similarly, some agreements specify which language version to refer to, which can reassure parties when the agreement is being translated into several languages and the company is unable to verify the accuracy of the various versions.

The development of clauses over alternative dispute resolution (see Part III G d) indicate the willingness of the parties to avoid court involvement and to resolve any disputes among themselves.

In any case it is important to thoroughly understand the legal implications of the text and take into account the wider implication of developments in international standards along with the trend at national level to move away from 'soft law' towards 'hard law'. If, as recent changes appear to indicate, due diligence requirements continue to develop, TCAs will in practice be understood and recognized as part of multinational companies' due diligence actions. It is difficult at this stage to say whether that would be for the companies' good or to their detriment.



Part IV

Issues to consider if you decide to engage in a TCA

- ☑ First engage with the employers' organisations at the appropriate levels (international, and/or regional, and/or national) to gather more information about TCAs, about their potential impact on the industrial relations context where they will be applied, and learn from the experience of other member companies that already have TCAs.

- ☑ Assess the «pros» and «cons» of the negotiation of a TCA taking into account, among other things, the context of your company (culture of social dialogue, geographical locations of its operations, etc.), the strengths and weaknesses of your union interlocutor, its political agenda, the particularities of the negotiation at this level, and the benchmarks set by others companies.
 - ➔ Part II and Part III points C and D of this brochure could help in undertaking this assessment.

- ☑ Reflect on the role the TCA will play in the company's industrial relations strategy and how it can be a communications tool regarding the group's social policies.
 - ➔ It is important for a company to look at the TCA as part of its long-term IR strategy. The TCA can be an industrial relations instrument for developing mutual trust (e.g. social partnership at global level and enhanced engagement in implementing global social dialogue). TCAs are also increasingly a way of giving visibility to the employees of the group's general culture and overall social policies.

- ☑ Ensure local management involvement before and during the negotiation.
 - ➔ It is crucial to keep local management up to speed when negotiating an agreement. Organizing an efficient consultation with local management is helpful in assessing how the TCA could add value and what potential risks there could be. Training in international fundamental rights at work can be useful here.

- ☑ Do not underestimate what implementation entails.
 - ➔ It is important to remember that, for the agreement to work effectively, commitment and resources will be needed. Monitoring meetings may not suffice and implementation may for example include joint training sessions allowing wider engagement. See for example Part III, Point H.

- ☑ Conduct a thorough reflection when expanding the commitments made to the supply chain in the agreement.
 - ➔ Check Part III Point H of this brochure in particular.

- ☑ Carefully draft the dispute resolution clause.
 - ➔ The provision for resolving disputes can have significant impact on the operation of the agreement and great attention has to be paid to this. The brochure contains examples of relevant clauses from recent agreements (see Part III Point H-d)

- ☑ Careful language use.
 - ➔ It is important to use language that does not leave the company exposed to any unwanted legal repercussions.



Annex

As a way of completing the review we reproduce here some extracts referring to supply chains. These extracts allow us to gain some understanding of the latest developments. The agreements that focus specifically on supply chains in the textile sector are covered in the section on implementation as they have very marked characteristics.

GEOPOST Global agreement (2017)

GEOPOST shall endeavor 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.

PSA Global CSR agreement (latest renewal 2017)

PSA Group has already committed to the respect of human rights as being a key criterion in selecting suppliers. Its Responsible Procurement Charter has been signed by more than 7,000 1st tier suppliers whereby they undertake to apply the same criteria in selecting their sub-contractors (2nd tier PSA Group suppliers). The new agreement puts a due diligence plan in place regarding respect for human rights following the recommendations of the OECD that operates at these levels:

- ▶ Risk mapping of failure to respect human rights according to an analytic approach by country, by product and by decision-making process which enables the procurement teams to focus their attention on the parts or groups of goods identified as being at risk.
- ▶ Preventive actions to deal with the identified risks. The suppliers are evaluated by a third party.
- ▶ Implementation of corrective measures required for suppliers potentially or actually involved in violations of human rights.
- ▶ Monitoring the action plans: following a timeline in keeping with the seriousness of the non-compliance. An overview is presented to the social partners every year within the framework of a status report on the agreement. The annual CSR report of the PSA Group makes these results public.

Solvay Global Framework Agreement on social responsibility and sustainable development between (2017)

Solvay expects its suppliers, contractors and subcontractors to comply with the law and with statutory regulations, as well as basic human rights stipulated by international agreements and standards, and therefore contribute to Solvay's compliance with the provisions of this agreement. Solvay will encourage them in this and offer the benefit of its expertise in these areas whenever needed. Therefore the content of the present agreement is communicated to each supplier, contractor and sub-contractor.

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.

ENI Global agreement on CSR (2016)

Suppliers

Eni is committed to finding suppliers and independent contractors that have suitable professional qualifications and a commitment to sharing its corporate values. A supplier is required to declare its own acceptance of the principles and international standards of human rights, including the Universal Declaration of Human Rights, the Global Compact and the Eni Code of Ethics, as well as the specific safety requirements that Eni adopts. The assessment of suppliers concludes with definition of the qualification status indicating the result of the assessment and the principal faults or areas for improvement that are found. Eni requests its suppliers to ensure that, when activities are performed through subcontractors, these last meet the same requirements.



Umicore Global agreement on sustainable development (latest renewal 2015)

4.3. Umicore seeks business partners whose policies regarding ethical, social and environmental issues are consistent with its own Sustainable Procurement Charter, which is complementary to this agreement. Umicore requires its business partners (subcontractors and suppliers) to adhere and comply with the ILO core labour standards in their own corporate policy. Umicore takes the view that in doing so it lays the basis for promising future business relations.

Carrefour global on social dialogue and diversity (latest renewal 2015)

Carrefour's GFA commitments apply both within the group and across its suppliers and franchisees even including franchisees located outside the EU. Such franchisees will have to sign the "Charter of Commitment to protect Human Rights" that refers to the associated ILO conventions. Existing franchisees will examine this subject during negotiations to amend their current agreements. Specific exchanges will be held between Carrefour management and UNI Global on the issue of suppliers and franchisees.

Carrefour's approach with the suppliers of its brand name products uses a methodology that monitors compliance with ILO fundamental rights. The large-scale retailer requires its brand name goods suppliers to sign its Suppliers Charter and ensure it is adhered to in the facilities that produce the products.

ABN AMRO Global agreement (2015)

The signatory parties are jointly responsible for the implementation and communication of this framework agreement. ABN AMRO shall communicate it to its national and local management teams and on an annual basis make this agreement 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.

 **Société Général Global agreement (2015)**

RELATIONS WITH BUSINESS PARTNERS

Relations with suppliers and subcontractors shall be bound by “the code of conduct for responsible procurement and ethical standards applicable to procurement” which sets out the SOCIETE GENERALE group’s principles on this subject (instructions are appended to this agreement for information purposes).



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