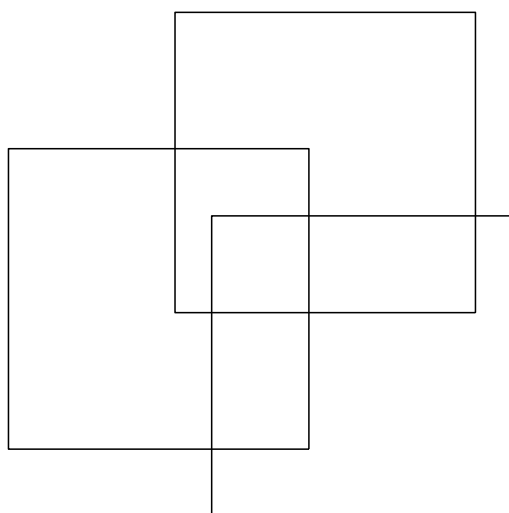




Cross-border social dialogue

**Report for discussion at the Meeting of Experts
on Cross-border Social Dialogue**
(Geneva, 12–15 February 2019)



MECBSD/2019

INTERNATIONAL LABOUR ORGANIZATION

Governance and Tripartism Department

Cross-border social dialogue

**Report for discussion at the Meeting of Experts
on Cross-border Social Dialogue**
(Geneva, 12–15 February 2019)

Geneva, 2019

INTERNATIONAL LABOUR OFFICE, GENEVA

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

Cross-border social dialogue, Report for discussion at the Meeting of Experts on Cross-border Social Dialogue (Geneva, 12–15 February 2019), International Labour Office, Governance and Tripartism Department, Geneva, ILO, 2019.

ISBN 978-92-2-132830-8 (print)
ISBN 978-92-2-132831-5 (Web pdf)

Also available in French: *Le dialogue social transnational*, Rapport pour discussion à la Réunion d'experts sur le dialogue social transnational (Genève, 12-15 février 2019), ISBN 978-92-2-132832-2 (print), ISBN 978-92-2-132833-9 (Web pdf), Geneva, 2019; and in Spanish: *Diálogo social transfronterizo*, Informe para el debate en la Reunión de expertos sobre el diálogo social transfronterizo (Ginebra, 12-15 de febrero de 2019), ISBN 978-92-2-132834-6 (print), ISBN 978-92-2-132835-3 (Web pdf), Geneva, 2019.

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Contents

	<i>Page</i>
Abbreviations and acronyms	vii
Introduction	1
Working definitions	2
Chapter 1. Setting the scene	3
Globalization and cross-border social dialogue	3
Multilateral and intergovernmental standards and processes	4
Human rights due diligence	4
National regulation on due diligence	5
Corporate social responsibility (CSR) and private compliance initiatives (PCIs)	6
Transnational company agreements	7
Regional integration, trade agreements and multilateral fora	7
The internationalization of trade unions and employers' and business organizations	7
Chapter 2. Multilateral instruments and cross-border social dialogue	11
ILO sectoral tools and instruments with relevance to cross-border social dialogue	11
Operationalization and outcomes	11
ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)	12
Operationalization and outcomes	13
The United Nations Framework for Business and Human Rights and the Guiding Principles (UNGPs) implementing the Framework	14
Operationalization and outcomes	15
OECD Guidelines for Multinational Enterprises	16
Operationalization and outcomes	16
The United Nations Global Compact (UNGCC)	17
Operationalization and outcomes	18
Chapter 3. Cross-border social dialogue in regional economic communities, bilateral and multilateral trade agreements and interregional arrangements	19
Regional economic communities	19
Europe	19
Africa	21
Asia and the Pacific	21
Americas	22
Interregional arrangements	23
Bilateral and multilateral trade agreements	23
Investment agreements	26

Chapter 4. Cross-border social dialogue through transnational company agreements (TCAs).....	27
Origins.....	27
Objectives.....	28
Number, content and evolution	29
IFAs	30
EFAs	32
Anticipation of change and management of restructuring	34
Multi-company TCAs and other forms of TCAs.....	35
Operationalization and outcomes	36
Outcomes relevant to GSCs.....	37
The legal nature of TCAs.....	38
Chapter 5. Corporate social responsibility, private compliance initiatives and cross-border social dialogue	40
Objectives.....	41
Labour-related content	41
The role of social dialogue in elaborating and implementing CSR	42
Operationalization and outcomes	45
Chapter 6. Concluding remarks.....	47

Abbreviations and acronyms

ASEAN	Association of Southeast Asian Nations
BIAC	Business and Industry Advisory Committee to the OECD
BWI	Building and Wood Workers' International
CSR	corporate social responsibility
EAC	East African Community
EC	European Commission
ECOWAS	European Community of West African States
EFA	European framework agreement
EPZ	export processing zone
ETI	Ethical Trading Initiative
ETUC	European Trade Union Confederation
EU	European Union
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions
EWC	European Works Council
FDI	foreign direct investment
GRI	Global Reporting Initiative
GSC	global supply chain
GUFs	Global Union federations
GWC	Global Works Council
ICSR	international corporate social responsibility
IFA	international framework agreement
ILC	International Labour Conference
ILO	International Labour Organization/International Labour Office
ILO 1998 Declaration	ILO Declaration on Fundamental Principles and Rights at Work
IMEC	International Maritime Employers Council
IOE	International Organisation of Employers
ITF	International Transport Workers' Federation
ITUC	International Trade Union Confederation

IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
MNE	multinational enterprise
MNE Declaration	ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
MSI	multi-stakeholder initiative
NAFTA	North American Free Trade Agreement
NAPs	national action plans
NCP	national contact point
NGO	non-governmental organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises
OEIGWG	open-ended intergovernmental working group
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSH	occupational safety and health
PCI	private compliance initiative
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
TCAs	transnational company agreements
TUAC	Trade Union Advisory Committee to the OECD
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNGC	United Nations Global Compact
UNGP UN	Guiding Principles on Business and Human Rights
WTO	World Trade Organization

Introduction

1. In 2013, the International Labour Conference (ILC) adopted the resolution concerning the recurrent discussion on social dialogue, which called on the International Labour Office (ILO) to “Convene a meeting of experts on cross-border social dialogue to analyse contemporary experiences, challenges and trends, as well as the role and value added of the ILO.”¹ Then, in 2016, following a general discussion on decent work in global supply chains (GSCs), the ILC called on the ILO to promote effective national and cross-border social dialogue and to undertake research on its effectiveness and impact. In response, the ILO Governing Body further specified that the meeting on cross-border social dialogue should “address decent work in global supply chain issues, including human rights due diligence ...”. In June 2018, the ILC reiterated the importance of cross-border social dialogue in its *Conclusions concerning the second recurrent discussion on social dialogue and tripartism*, which called on ILO member States to provide “an enabling environment for ... cross-border social dialogue” with emphasis on the needs of vulnerable workers in GSCs. It also called on the Office to “play a stronger role in an international context, in particular through cross-border social dialogue based on knowledge and research provided by the ILO”.² Finally, in June 2018, the Governing Body approved the holding of the meeting in the first quarter of 2019 in order to “analyse contemporary experiences, challenges and trends characterizing cross-border social dialogue initiatives, as well as the role and added-value of the ILO”, and “seek guidance from ILO constituents on the future work of the Organization in this area”.³
2. Against this background, the present report reviews existing standards, the practices developed at various levels and the instances that pave the way for cross-border social dialogue. Emphasis is placed on the “building blocks” of cross-border social dialogue, including the international instruments relevant to the promotion of fundamental principles and rights at work⁴ and human rights due diligence; public and private (self-)regulation in the form of bipartite, tripartite or multi-stakeholder dialogue; and policies or venues that reserve a role for the social partners in promoting decent work across borders as well as in GSCs. The report also describes the outcomes, challenges and trends associated with cross-border social dialogue. As “freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives”⁵ (employment, social protection, social dialogue, and rights at work), special emphasis is placed on the capacity of cross-border dialogue, standards and processes to promote fundamental principles and rights at work. Throughout this report, emphasis is also placed on the role and added value of the ILO in cross-border social dialogue, as most

¹ ILO: *Conclusions concerning the recurrent discussion on social dialogue*, International Labour Conference, 102nd Session, Geneva, 2013, para. 12(14).

² ILO, 2018a: *Conclusions concerning the second recurrent discussion on social dialogue and tripartism*, International Labour Conference, 107th Session, Geneva, 2018, paras 3(o) and 5(h).

³ ILO: *Programme, composition and agenda of standing bodies and meetings*, Governing Body, 333rd Session, Geneva, June 2018, GB.333/INS/9, para. 4.

⁴ The fundamental principles and rights at work 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.

⁵ ILO: *Declaration on Social Justice for a Fair Globalization*, International Labour Conference, 97th Session, Geneva, 2008, Part I(A)(iv).

standards, processes and instances of cross-border social dialogue rely on the ILO's normative agenda, its model of bipartite and tripartite social dialogue and its convening power to address socio-economic challenges that surpass national borders.

3. The report is intended to facilitate informed debate in the meeting of experts and conclusions, in response to the requests made by ILO constituents since 2013.

Working definitions

4. According to the ILO, social dialogue describes the involvement of workers, employers and governments in decision-making on issues of common interest related to economic and social policies. It includes all types of negotiation, consultation and exchange of information among representatives of these groups on common interests in economic, labour and social policy. Social dialogue is both a means of achieving social and economic progress, and an objective in itself, as it gives people a voice and a stake in their societies and workplaces. Social dialogue can be bipartite, between workers and employers (who the ILO refers to as the social partners), or tripartite, also including government. Bipartite social dialogue may take the form of collective bargaining or other forms of negotiation, cooperation and dispute resolution and prevention.⁶ Overall, social dialogue “comes in various forms and levels according to national traditions and contexts, including in the form of cross-border social dialogue in an increasingly complex globalized economy. There is no one-size-fits-all approach to organize and strengthen social dialogue. However, collective bargaining remains at the heart of social dialogue. Consultations, exchanges of information and other forms of dialogue between social partners and with governments are also important.”⁷
5. There is currently no official ILO definition of *cross-border* social dialogue. For the purposes of the present report, based on the above descriptions of social dialogue and existing literature, cross-border social dialogue describes the dialogue developed between or among governments, workers and employers or their representatives beyond national borders in order to promote decent work and sound labour–management relations. Such dialogue may focus on the opportunities and challenges associated with a country, economic sector, enterprise, region or group of countries. It may take place within ad hoc or institutionalized fora, mechanisms involving two or more parties, or as a result of public or private (self-)regulatory initiatives developed in the context of a dynamic of economic integration and the organization of production along increasingly complex GSCs.
6. It should be noted that the literature uses terms, often interchangeably, such as “global/international social dialogue”, “transnational collective bargaining” and “supra-national social dialogue”, even though they refer to different aspects and outcomes. The term “cross-border social dialogue” is intended to encompass all of these.

⁶ ILO: *Social dialogue: Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization*, Report VI, International Labour Conference, 102nd Session, Geneva, 2013, para. 16.

⁷ ILO, 2018a: op. cit.

Chapter 1. Setting the scene

7. Cross-border social dialogue is not new. Some 100 years ago, the practice of bringing representatives of governments, employers and workers together at the international level to seek solutions to socio-economic issues became a key feature of the multilateral system with the creation of the ILO.¹ Today, cross-border social dialogue continues in the executive bodies of the ILO, in global, sectoral and Regional Meetings and based on relevant instruments, such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the “MNE Declaration”). Cross-border social dialogue is also embedded in important technical assistance projects, including those addressing subjects that extend beyond national borders, such as international labour migration.

Globalization and cross-border social dialogue

8. Spaces for cross-border social dialogue have multiplied over the past century in response to deepening globalization and regional integration. Global trade and production systems play an important role as channels for economic development, employment, income generation and technology transfers.

Box 1

Globalization, trade, foreign direct investment and multinational enterprises

The progressive elimination of tariff barriers, expansion of world trade flows, organization of production along increasingly complex GSCs and the advent of dynamic regional economic integration have led, inter alia, to the growth of foreign direct investment (FDI). Since the 1990s, stocks of FDI have grown from under 10 per cent to 41 per cent of gross domestic product worldwide in 2017. However, global flows of FDI fell by 23 per cent in 2017, and the growth prospects are fragile. According to the United Nations Conference on Trade and Development (UNCTAD), 49.8 per cent of global FDI inflows in 2017 were directed into developed economies, 46.9 per cent into developing economies, and 1.8 per cent into the least developed economies.

FDI flows are driven by multinational enterprises (MNEs), their affiliates and suppliers as part of cross-border production systems. The most recent data shows that there are over 80,000 MNEs with more than 800,000 foreign affiliates, employing over 75 million people throughout the world. One in five jobs created globally is the result of MNE activity. In 2013 women made up 41.9 per cent of total employment in GSCs, although the proportion is higher in developing countries. In emerging economies, women's share of supply chain-related employment is higher than their share in total employment.

Source: <https://data.oecd.org/fdi/fdi-stocks.htm> [accessed 15 Aug. 2018]; UNCTAD: *World Investment Reports* (2011, 2015, 2017 and 2018); ILO: *World Employment and Social Outlook: The changing nature of jobs*, Geneva, 2015.

9. At the same time, globalization raises numerous challenges. The lack of effective implementation and enforcement of national labour laws and regulations in many countries may slow down or prevent the improvement of working conditions that could be possible as a result of increased participation in GSCs. Weak implementation and enforcement of national laws can also discourage trade and investment. For instance, companies and MNEs may be increasingly reluctant to do business in economies with weak institutions, not least in the presence of uncertainties and reputational risks. The relocation of some particularly labour-intensive processes from developed economies to countries with lower labour costs has intensified the fear of “social dumping”.² Social dialogue and collaboration between

¹ ILO, 2018b: *International Framework Agreements in the food retail, garment and chemicals sectors: Lessons learned from three case studies*, Sectoral Policies Department, Geneva, 2018.

² ILO: *A fair globalization: Creating opportunities for all*, World Commission on the Social Dimension of Globalization, Geneva, 2004, pp. 34, 86.

different stakeholders, including at the cross-border level, can help achieve the benefits of global trade and investment while tackling decent work challenges.

10. Against this background, a number of (self-)regulation initiatives, including private compliance initiatives (PCIs), have been developed at the cross-border, regional, national and enterprise levels to encourage governments and enterprises to adopt or strengthen sustainable and socially responsible policies and regulatory frameworks. These initiatives have often been developed through social dialogue and the collaborative efforts of many stakeholders with the aim of contributing to a fairer globalization and a better coordination and implementation of employment and social policies and regulations in increasingly interlinked economies.

Multilateral and intergovernmental standards and processes

11. The United Nations (UN) began discussing guidance to enhance the positive social and labour effects of the operation and governance of MNEs, while mitigating their negative impact, in the early 1970s. These discussions paved the way for the adoption of two important instruments addressed to MNEs: the OECD Guidelines for Multinational Enterprises (hereinafter the “OECD Guidelines”) and the MNE Declaration, which were first adopted in 1976 and 1977, respectively.
12. The United Nations Global Compact (UNGC) was established in 2000 and invited businesses to uphold principles based on internationally agreed standards, including the principles set out in the ILO Declaration on Fundamental Principles and Rights at Work (the ILO 1998 Declaration), namely, freedom of association and the effective recognition of the right to collective bargaining, 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.³ To advance and implement the mission of the UNGC, a standing multi-stakeholder advisory body, the United Nations Global Compact Board, has been established, composed of representatives of business, civil society and labour.
13. In 2008, the Special Representative of the United Nations Secretary-General presented the “Protect, Respect, Remedy” Framework for Business and Human Rights to the United Nations Human Rights Council which, in 2011, endorsed the UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (UNGPs). The UNGPs apply equally to all States and all business enterprises, regardless of size, sector, ownership, location and structure. They set out the duty of States to protect human rights (PROTECT), the responsibility of all business enterprises to comply with all applicable laws and to respect human rights (RESPECT), and the need for rights and obligations to be matched with appropriate and effective remedies when breached (REMEDY). In order to identify, prevent, mitigate and account for how they address their human rights impacts, the UNGPs call on enterprises to carry out human rights “due diligence”.

Human rights due diligence

14. The due diligence process spelled out in the UNGPs includes assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and

³ See <https://www.unglobalcompact.org/what-is-gc/our-work/social/labour>.

communicating how impacts are addressed.⁴ Human rights due diligence should cover the adverse impacts that business enterprises may cause or contribute to through their own activities, or which may be directly linked to their operations, products or services through a business relationship. It varies in complexity with the size of the business enterprises, the risk of severe human rights impacts and the nature and context of their operations, and should be ongoing. In order to gauge human rights risks, enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved. This process should draw on internal and/or independent external human rights expertise, and involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the enterprise and the nature and context of the operation.

15. Following the endorsement in 2011 by the UN Human Rights Council of the UNGPs, corporate human rights due diligence has been incorporated in other multilateral and intergovernmental instruments, such as the OECD Guidelines (the updated version adopted by the 2011 OECD Ministerial Council Meeting)⁵ and the MNE Declaration (the revised version adopted in 2017 by the Governing Body).

National regulation on due diligence

16. National legislation embracing human rights due diligence has been adopted in recent years in some European countries, such as France, and creates new opportunities for national and cross-border stakeholder consultation and dialogue. The French law provides, inter alia, for MNE vigilance plans to be formulated in association with stakeholders. It also includes legal recourse through civil liability, allowing a broad range of actors to sue MNEs for breaches of the law.

Box 2

The French “Duty of Care” Act, 2017

In France, a corporate “duty of care” Act was adopted in early 2017 following four years of consultations which involved such actors as non-governmental organizations (NGOs), members of Parliament, unions, lawyers, academics and enterprises. The Act follows the UNGPs and OECD Guidelines, and was inspired by the Californian Transparency in Supply Chains Act, 2010, and the United Kingdom Modern Slavery Act, 2015, which take into account the entire MNE value chain beyond first-tier suppliers.

The French Act encourages large MNEs to adopt a “vigilance plan” to identify risks of serious violations of environmental and human rights. The plan must map, analyse and rank such risks, and establish alert and monitoring mechanisms. The plan and its alert and monitoring mechanisms should be formulated in consultation with stakeholders, including representative union organizations and, failing that, within the framework of multi-party initiatives by subsidiaries.

The Act covers all French companies employing at least 5,000 people themselves and through their French subsidiaries, or a minimum of 10,000 employees located in France and abroad, in both parent and foreign subsidiaries.

Source: <https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte>.

17. Other countries, such as the Netherlands, have opted for national multi-stakeholder dialogue and agreements on corporate conduct in GSCs.

⁴ ITC–ILO: *A guide on CSR and human rights: What does it mean for companies in supply chains?*, International Training Centre of the ILO, Turin, 2015, p. 2.

⁵ See <http://www.oecd.org/daf/inv/mne/2011update.htm>.

Box 3

Dutch international corporate social responsibility covenants

In 2016, the Government of the Netherlands launched international corporate social responsibility (ICSR) covenants in sectors considered to be at high risk in terms of human rights, labour rights and environmental protection.

That year, businesses, employers' organizations, trade unions, NGOs, international organizations and the Dutch Government signed an Agreement on a Sustainable Garment and Textile Sector, committing the parties to work together in countries considered at greater risk to promote fundamental principles and rights at work, a living wage, occupational safety and health (OSH) and environmental sustainability.

Businesses which participate in this Agreement produce over one third of the revenue generated in the Dutch market.

This was the first in a series of multi-stakeholder dialogues and agreements on international responsible business conduct in GSCs covering the garment and other sectors.

Source: https://www.imvoconvenanten.nl/garments-textile?sc_lang=en.

18. At the international level, an open-ended intergovernmental working group (OEIGWG) on transnational corporations and other business enterprises with respect to human rights, established by the UN Human Rights Council, has prepared a zero draft of a “legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”, as well as a zero draft of an optional protocol to be annexed to the draft legally binding instrument.⁶

Corporate social responsibility (CSR) and private compliance initiatives (PCIs)

19. In parallel with public regulatory action to ensure respect for labour rights and intergovernmental guidelines for MNEs on responsible business conduct, many companies have developed corporate policies and management systems since the 1970s to ensure compliance with the law, ethical standards of conduct and respect for international principles, over and above their legal obligations. Under the broad terms of “corporate social responsibility” (CSR), “responsible business conduct”, “business and human rights” and “sustainability”, companies have taken many actions and developed various instruments and initiatives, including corporate codes of conduct, supplier codes of conduct and multi-stakeholder initiatives.
20. Numerous company initiatives and actions use as benchmarks or reference points authoritative intergovernmental instruments and frameworks, including the ILO 1998 Declaration, the ILO MNE Declaration, the OECD Guidelines, the UNGPs and the Sustainable Development Goals (SDGs). Dialogue, in the form of multi-stakeholder engagement, is an important part of most CSR efforts.⁷ Many CSR programmes and private compliance initiatives include dialogue components in their adoption or implementation phases, for example to identify risks, which imply broad consultation with all those potentially affected by the operations of companies including, although not exclusively, workers and trade unions.

⁶ Human Rights Council: “Zero draft of a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”, 2018. See <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>.

⁷ R. Mayes, B. Pini and P. McDonald: “Corporate social responsibility and the parameters of dialogue with vulnerable others”, in *Organization*, 20(6), 2012, pp. 840–859.

Transnational company agreements

21. As a result of campaigns by international trade unions, some enterprises and global unions have increased cross-border collaboration through transnational company agreements, such as international framework agreements (IFAs) between Global Union federations (GUFs) and MNEs, and European Framework Agreements (EFAs) between MNEs and European trade union federations and/or European Works Councils.
22. IFAs are distinct from labour relations at the global level stemming from CSR initiatives. Above all, they entail corporate recognition and the participation of GUFs as core partners in the negotiation and implementation of agreements. They often include references to ILO Conventions, normally directed at States, and they focus predominantly on creating conditions conducive to the organization of workers, trade union activity and collective bargaining across MNE chains.

Regional integration, trade agreements and multilateral fora

23. The establishment of multilateral organizations and other supranational entities has been accompanied by new social dialogue institutions and processes to strengthen democratic governance on socio-economic policy issues. New roles of the social partners and institutionalized social dialogue mechanisms are found in (sub)regional integration initiatives (including the European Union (EU), MERCOSUR, the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC), in bilateral and multilateral trade agreements, and other intergovernmental arrangements (the G20).
24. The EU's internal experience of cross-border social dialogue remains by far the deepest of any other multilateral economic integration initiative, with results at the cross-industry, sectoral and enterprise levels.

The internationalization of trade unions and employers' and business organizations

25. With increased trade and globalization, the social partners recognize the relevance of bipartite and/or tripartite social dialogue above and beyond national borders. They are therefore seeking to strengthen their international presence and voice within global forums, including beyond the ILO, and to engage in international networking and cross-border dialogue.

Table 1. Employers' and workers' organizations at the cross-border level: A snapshot

	Employers	Workers
	Global	
Cross-industry	International Organisation of Employers (IOE)	International Trade Union Confederation (ITUC)
	International Chamber of Commerce (ICC)	World Federation of Trade Unions (WFTU)
	Business and Industry Advisory Committee to the OECD (BIAC)	World Organization of Workers (WOW)
		Trade Union Advisory Committee to the OECD (TUAC)

	Employers	Workers
Sectoral	<i>Selected examples</i> World Employment Confederation International Maritime Employers' Council (IMEC) International Council on Mining and Metals (also composed of sub-sectoral associations) International Federation of Pharmaceutical Manufacturers & Associations	Building and Wood Workers' International Education International IndustriALL Global Union International Affiliation of Writers Guilds International Arts and Entertainment Alliance International Federation of Journalists International Transport Workers' Federation International Federation of Actors International Federation of Musicians International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) Public Services International (PSI) UNI Global Union
	Regional and subregional	
Cross-industry	Africa	
	Business Africa	Democratic Organization of African Workers' Trade Union International Trade Union Confederation-Africa (ITUC-Africa) Organization of African Trade Union Unity (OATUU) East African Trade Union Confederation (EATUC) Southern African Trade Union Co-ordination Council (SATUCC)
	Americas	
	Business Technical Advisory Committee on Labor Matters (CEATAL)	Caribbean Congress of Labour Trade Union Confederation of the Americas (TUCA-CSA) Trade Union Technical Advisory Council (COSATE)
	Arab States	
		International Confederation of Arab Trade Unions
	Asia and the Pacific	
	Confederation of Asia-Pacific Employers (CAPE) ASEAN Confederation of Employers (ACE) South Asian Forum of Employers (SAFE)	South Asian Regional Trade Union Council (SARTUC) ITUC-AP ASEAN Services Employees Trade Union Council (ASETUC) ASEAN Trade Union Council (ATUC)
	Europe	
	Confederation of European Business (BusinessEurope) European Association of Craft, Small and Medium-Sized Enterprises European Centre of Employers and Enterprises providing Public Services and Services of General Interest (CEEP)	European Trade Union Confederation (ETUC) European Confederation of Independent Trade Unions General Confederation of Trade Unions

	Employers	Workers
	Europe	
	113 sectoral organizations	European industry federations represented in ETUC: European Arts and Entertainment Alliance European Confederation of Police European Federation of Building and Woodworkers European Federation of Public Service Unions European Federation of Food, Agriculture and Tourism Trade Unions European Federation of Journalists IndustriALL European Trade Union European Federation of Public Service Unions European Transport Workers' Federation European Trade Union Committee for Education European Trade Union Federation for Textiles, Clothing and Leather UNI-EUROPA – Uni Global Union European Confederation of Independent Trade Unions European Cockpit Association International Federation of Professional Footballers' Associations – Division Europe
Sectoral		

Source: ILO.

26. The global unions representing workers at the cross-industry or sectoral levels have been consolidating their structures and operations through mergers. In 2006, the International Confederation of Free Trade Unions and the World Confederation of Labour merged, creating the International Trade Union Confederation (ITUC), the largest body of global unions. In 2012, the sectoral confederation IndustriALL Global Union was the result of the merger of the International Metalworkers' Federation (IMF), the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) and the International Textile, Garment and Leather Workers' Federation (ITGLWF). The new entity, by far the largest GUF, represents 50 million workers in 140 countries. There have been other similar mergers of sectoral unions,⁸ or coordination platforms of unions from different countries.⁹
27. The organization of international solidarity campaigns, the coordination of negotiations in different subsidiaries of the same MNE and “integrated bargaining” with MNE headquarters management are among the main strategic priorities of GUFs,¹⁰ which therefore seek to develop alliances between unions in different countries by sector, as well as transnational workers' representation in specific MNEs, including through European Works Councils (EWCs) and Global Works Councils (GWCs). In seeking to achieve transnational frameworks for social dialogue and collective bargaining within MNEs, GUFs rely on trade union network-building at the sectoral level.

⁸ For example, in 2008, the United Kingdom-based union Unite and United States-based United Steelworkers merged into Workers Uniting.

⁹ For example, the ETUC Collective Bargaining Coordination Committee (created in 1999) and the “Doorn group”, bringing together Benelux and German unions.

¹⁰ A strategy envisaged as early as 1972 by Charles Levinson. See C. Levinson: *International trade unionism*, London, Allen & Unwin, 1972.

-
28. The establishment of transnational employee representation and transnational company agreements (TCAs) are interconnected. Some GWCs have been established as part of an IFA (such as in Peugeot Société Anonyme in 2010). Some deal with special themes, such as OSH (Solvay, 2013 and 2017). However, EWCs continue to be the main form of transnational worker representation in MNEs.
 29. Employers' and business associations have also expanded and strengthened their presence at the international, regional and subregional levels. At the global sectoral level, contrary to their counterparts (the GUFs), the primary objective of many business organizations is not to participate in social dialogue *sensu stricto*, but rather the provision of services to their constituents, interest representation and engagement in "civil dialogue".¹¹ One exception is in the maritime sector, where the International Maritime Employers Council (IMEC) has engaged with the International Transport Workers' Federation (ITF) in global collective bargaining, leading to a global collective agreement that is regularly updated, with ILO facilitation.
 30. The different types and outcomes of cross-border social dialogue are described further in the following chapters.

¹¹ K. Papadakis: "Global Framework Agreements: Bridging social dialogue and civil dialogue?", in J. De Munck, C. Didry, I. Ferreras, A. Jobert (eds): *Renewing democratic deliberation in Europe: The challenge of social and civil dialogue*, Travail et Société/Work and Society, 73, Peter Lang, Brussels/Berlin, 2012, pp. 127–143.

Chapter 2. Multilateral instruments and cross-border social dialogue

31. Fundamental labour rights are promoted by international standards, instruments and processes under the auspices of international organizations. They generate numerous opportunities for cross-border social dialogue during their adoption and implementation.

ILO sectoral tools and instruments with relevance to cross-border social dialogue

32. ILO meetings at the international or regional levels, focusing on specific sectors, regions or themes, are important venues for cross-border social dialogue. They shape policy and regulation at all levels, as well as ILO action, in the form of capacity building, policy advice, partnership building and knowledge sharing. For example, the ILO hosts tripartite meetings which develop codes of practice, guidelines, conclusions and points of consensus.¹ The agenda of such meetings are themselves the outcome of social dialogue. For instance, sectoral meetings, approved by the Governing Body every two years, are the result of social dialogue in “sectoral advisory bodies”, which are composed of governmental regional coordinators and other government representatives, IOE and ITUC coordinators and representatives of the relevant GUFs and IOE sectoral partners. Moreover, topics with a strong cross-border dimension, such as international labour migration, are increasingly addressed through cross-border social dialogue, often supported by the ILO’s convening power and mandate.

Operationalization and outcomes

33. The outcomes of global sectoral or expert meetings serve as a reference in shaping national and international policy and regulatory frameworks in key sectors and areas of the global economy. For instance, a Tripartite Meeting on Promoting Social Dialogue on Restructuring and its Effects on Employment in the Chemical and Pharmaceutical Industries, held in 2011, adopted conclusions that set out social dialogue procedures to promote an atmosphere conducive to better industrial relations in a context of restructuring in the chemical and pharmaceutical industries.² Similarly, the conclusions adopted in 2017 by the Tripartite Meeting of Experts to promote Decent Work and Protection of Fundamental Principles and Rights at Work for Workers in Export Processing Zones (EPZs) shed light on the key principles that should guide governments and the social partners when engaging in industrial relations and broader social dialogue addressing fundamental rights and decent work challenges and deficits in EPZs.
34. Sectoral meetings have also provided impetus for sectoral standard setting. In one of the most globalized industries, maritime transport, the Joint Maritime Commission (JMC), the ILO’s only permanent bipartite standing body, paved the way for the consolidation and updating of all maritime labour standards in the Maritime Labour Convention, 2006

¹ Three main types of meetings are coordinated by the ILO: meetings of experts, technical meetings and global dialogue forums.

² ILO: *Note on the proceedings: Tripartite Meeting on Promoting Social Dialogue on Restructuring and its Effects on Employment in the Chemical and Pharmaceutical Industries*.

(MLC, 2006) which has been ratified by 89 ILO member States, representing more than 90 per cent of the world fleet by gross tonnage.

35. The maritime sector is also covered by the only existing fully fledged global collective agreement between international social partners (shipowner and seafarer representatives from across the globe). The agreement regulates wages and other terms and conditions of work, including maternity protection, and draws heavily on ILO standards.³ Its negotiation and regular updating is facilitated by the ILO within the JMC. The conclusion of this unique global collective agreement also reflects the unique nature of the sector (most operations take place in international waters), as well as the existence of both a global employers' organization representing the interests of the sector since the early 1990s, namely the IMEC, together with the corresponding GUF, the ITF.⁴
36. As a cross-border labour market issue, international labour migration lends itself to social dialogue between the countries concerned by labour migration flows and issues. Between 2013 and 2017, four global, 55 regional or subregional and seven interregional tripartite meetings on labour migration were organized by the ILO. For instance, the Governments and social partners from Egypt, Morocco and Tunisia, with ILO support, organized a series of tripartite dialogues on the protection of migrant workers' rights. In 2016, they adopted the Hammamet Declaration and Programme of Action on the protection of migrant workers' rights, which focuses, inter alia, on strengthening dialogue, coordination and cooperation through the establishment of a tripartite steering committee.

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)

37. The aim of the MNE Declaration is to encourage the positive contribution of MNEs to economic and social progress and the realization of decent work for all, and to minimize and resolve the difficulties to which their various operations may give rise. To achieve this aim, the MNE Declaration addresses recommendations to governments (home and host), enterprises (multinational and national) and social partners. The most recent revision of the MNE Declaration, adopted by the ILO Governing Body in March 2017,⁵ incorporates the UNGPs in new paragraph 10, which emphasizes that:

In order to gauge human rights risks, enterprises – including multinational enterprises – should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should involve meaningful consultation with potentially affected groups and other relevant stakeholders including workers' organizations, as appropriate to the size of the enterprise and the nature and context of the operation. For the purpose of achieving the aim of the MNE Declaration, this process should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process.⁶

³ The [Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 \(No. 187\)](#), and the [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#).

⁴ K. Papadakis, G. Casale and K. Tsotroudi: "International framework agreements as elements of a cross-border industrial relations framework", in K. Papadakis (ed.): *Cross-border social dialogue and agreements: An emerging global industrial relations framework?*, Geneva, ILO, 2008.

⁵ Adopted by the Governing Body at its 329th Session, March 2017 ([GB.329/POL/7](#)).

⁶ *ibid.*, appendix, annex, paragraph 10(e).

-
38. The MNE Declaration paves the way for cross-border dialogue by encouraging the host and home country governments of MNEs to engage in consultations to promote good social practice by MNEs operating in their territories, or their MNEs operating abroad. Governments are urged to ensure that social partners with representation in MNEs can affiliate with international employers' and workers' organizations of their own choosing. It encourages MNEs to hold consultations with governments and representative national employers' and workers' organizations to facilitate the alignment of business policies and practices with general policy objectives, and with national social development policies relating to employment promotion in countries in which they operate or plan to operate. The MNE Declaration encourages the inclusion of national and local employers' and workers' organizations in host countries in dialogue at the company or global level. Governments are asked not to restrict the entry of employers' and workers' representatives from other countries at the invitation of local or national organizations for consultation on matters of mutual concern.

Operationalization and outcomes

39. To stimulate the uptake of the principles of the revised MNE Declaration by all parties, the ILO Governing Body has adopted a number of operational tools.
40. At the regional level, one follow-up mechanism consists of regional reports based on inputs received from governments, employers' and workers' organizations in member States in the region in response to a survey. By the autumn of 2018, the ILO had published five such regional reports, which were each presented and discussed at a special session of an ILO Regional Meeting providing a tripartite dialogue platform to discuss further promotional activities at the regional level. In March 2018, the Governing Body discussed a report analysing the regional follow-up in the Americas, Africa, Asia and the Pacific and Europe.⁷
41. At the national level, governments, employers and workers are encouraged to appoint national focal points on a tripartite basis (based on the guidance contained in the Tripartite Consultation (International labour Standards) Convention, 1976 (No. 144)) to promote the use of the MNE Declaration and its principles, whenever appropriate and meaningful in the national context. Where similar tools and processes exist in relation to the principles of the MNE Declaration, governments are encouraged to facilitate the involvement of the social partners in them. They can also organize tripartite-plus dialogue platforms for the tripartite constituents and MNEs, which may include dialogue between home and host countries. National focal points are invited to collaborate with their counterparts in other countries to exchange ideas and raise awareness of the MNE Declaration globally. As of September 2018, national focal points had been appointed in three member States (Côte d'Ivoire, Portugal and Senegal). Other member States are considering their appointment, while some may already have similar tools and processes to promote the instrument.
42. At the company level, a company–union dialogue procedure was adopted to support dialogue involving MNEs and representatives of the workers affected. When a company and a union voluntarily agree to use ILO facilities to meet and talk, without prejudice, the Office will provide a neutral ground for the discussion of issues of mutual concern. The Office has to identify and maintain a list of qualified facilitators and, if necessary, provide support to ensure that they execute their functions properly. The dialogue facilities provided by the Office may include providing a neutral ground for the parties to engage; input during the dialogue as a technical or expert adviser; and facilitating dialogue. Since the adoption of this

⁷ ILO: *Review of the MNE Declaration follow-up mechanism comprising promotional activities and an information-gathering system*, Governing Body, 332nd Session, Geneva, March 2018, GB.332/POL/6.

procedure in 2017, it has been used on one occasion, contributing to an agreement between the MNE and the union. The procedure and its outcomes are confidential.

43. As part of country-level technical assistance, the ILO provides support for dialogue between national tripartite constituents, home and host country governments and MNEs, generating cross-border social dialogue in the concerned GSCs, such as in the electronics sector in Viet Nam since 2015.

Box 4

**Cross-border social dialogue applying the principles of the MNE Declaration:
The case of Viet Nam**

In 2015, a project entitled “More and Better Jobs through Socially Responsible Labour Practices in Viet Nam” was launched in the Vietnamese electronics sector to address decent work deficits in a sector dominated by Japanese and Korean MNEs operating in EPZs.

Funded by the Government of Japan, the project promoted the application of the MNE Declaration in collaboration with the Viet Nam Chamber of Commerce and Industry (VCCI), the Viet Nam General Confederation of Labour (VGCL), the Ministry of Labour, Invalids and Social Affairs (MoLISA), national enterprises, MNEs and their direct suppliers.

Policy dialogue at all levels, and between the home and host countries of MNEs, led in 2017 to a Plan of Action on More and Better Jobs, the establishment of a Tripartite-Plus Task Force on Promoting Socially Responsible Labour Practices in the Electronics Sector and an Electronics Business Coalition to Promote Socially Responsible Labour Practices as a standing platform for MNEs, local companies and business associations to exchange good practices in line with the MNE Declaration.

The VCCI and other actors are currently exploring the possibility of replicating this initiative in other sectors.

Source: ILO.

The United Nations Framework for Business and Human Rights and the Guiding Principles (UNGPs) implementing the Framework

44. The United Nations Framework for Business and Human Rights,⁸ and the Guiding Principles (UNGPs)⁹ for the implementation of the Framework, provide that the corporate responsibility to respect human rights refers to internationally recognized human rights, understood as a minimum as those set out in the International Bill of Human Rights and the principles contained in the ILO 1998 Declaration. The UNGPs cover the duty of the State to protect human rights, the corporate responsibility to respect human rights, and access to remedy, which includes the duty of the State to ensure access to effective remedy in its territory and/or jurisdiction through judicial and non-judicial mechanisms and the responsibility of enterprises to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by their operations.

⁸ Human Rights Council: *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Protect, Respect and Remedy: A Framework for Business and Human Rights*: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, New York, 2008. [A/HRC/8/5](#).

⁹ United Nations: *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, New York and Geneva, 2011.

-
45. The UNGPs provide that all enterprises should carry out human rights due diligence “to identify, prevent, mitigate and account for how they address their impacts on human rights”.¹⁰ The process should include “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”¹¹ The UNGPs also provide that all enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved, and that this process should draw on internal and/or independent external human rights expertise and involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Operationalization and outcomes

46. The UNGPs are widely recognized as the authoritative international and intergovernmental guidance on business and human rights. Soon after their endorsement, a range of international initiatives, frameworks and standards were updated to align them with the UNGPs. New ILO standards, including the Protocol of 2014 to the Forced Labour Convention, 1930, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), the Conclusions concerning decent work in global supply chains, adopted by the ILC in 2016, and the revised MNE Declaration contain references to the “Protect, Respect, Remedy” Framework on business and human rights and the UNGPs.
47. Through their follow-up and implementation, the UNGPs have generated additional instances of cross-border social dialogue. In 2011, the UN Human Rights Council established a Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights). The Working Group, composed of five independent experts, is mandated to consult all stakeholders, including through country visits, on the state of business and human rights. The Human Rights Council established the annual Forum on Business and Human Rights in 2011 to serve as a global platform for stakeholders to “discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices”. It is guided and chaired by the Working Group on Business and Human Rights, in accordance with Human Rights Council resolutions 17/4 and 35/7. The Forum gathers together some 2,000 participants from government, business, community groups and civil society, law firms, investor organizations, UN bodies, national human rights institutions, trade unions, academia and the media.¹²
48. At the national level, government-led processes have been under way since 2012 to establish national action plans (NAPs) for the implementation of the UNGPs, often involving multi-stakeholder consultations, including business representatives and trade unions. By the autumn of 2018, 21 such NAPs had been adopted, 23 States were developing a NAP or had committed to do so, and national human rights institutions or civil society organizations had

¹⁰ *ibid.*, Principle 15(b).

¹¹ *ibid.*, Principle 17.

¹² See <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx> [accessed 5 Oct. 2018].

taken steps to develop a NAP in nine States.¹³ As part of the NAPs, some governments have adopted laws on human rights due diligence, including measures to expand and extend supply chain responsibilities (for example, France), while other governments have decided to take different approaches, for instance by providing enterprises with tools to undertake human rights due diligence. An assessment of the first NAPs emphasized the need for States to enhance transparency during their drafting process, and to ensure the establishment of clear timelines and terms of references for such processes.¹⁴

49. At the company level, numerous company codes of conduct, industry initiatives and multi-stakeholder initiatives have incorporated the UNGPs. However, a recent Working Group assessing the implementation status of due diligence under the UNGPs found that “meaningful engagement with potentially affected stakeholders – in particular communities and workers – seems to be lagging” at the MNE level.¹⁵

OECD Guidelines for Multinational Enterprises

50. The OECD Guidelines are a set of recommendations on responsible business conduct, addressed by governments to MNEs operating in or from adhering countries.¹⁶ They set out voluntary principles and standards of good practice consistent with the applicable laws. The most recent revision of the OECD Guidelines, adopted in 2011, now contains a chapter on human rights that is aligned with the UNGPs and refers to the ILO 1998 Declaration. The OECD Guidelines also contain a chapter on employment and industrial relations with a commentary section that refers to ILO standards and the MNE Declaration.
51. Enterprises are encouraged to promote consultation and cooperation between employers and workers and their representatives on matters of mutual concern. Importantly, two advisory committees representing business and organized labour in the OECD, namely the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC), provide opportunities for cross-border dialogue on the implementation of the OECD Guidelines. The OECD Investment Committee and the Working Party on Responsible Business Conduct periodically invite the BIAC, the TUAC and other international partners to express their views on matters covered by the OECD Guidelines.

Operationalization and outcomes

52. Governments adhering to the OECD Guidelines are required to establish a national contact point (NCP) to further the principles of the OECD Guidelines through promotion and awareness-raising activities, to receive inquiries and to contribute to resolving issues arising out of their non-observance. NCPs are called upon to facilitate dialogue between the parties on questions or complaints relating to business conduct in OECD and non-OECD countries.

¹³ State national action plans on Business and Human Rights, <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> [accessed 5 Oct 2018].

¹⁴ International Corporate Accountability Roundtable (ICAR) and European Coalition for Corporate Justice (ECCJ): *Assessments of existing national action plans (NAPs) on business and human rights*, Aug. 2017, p. 4.

¹⁵ OHCHR: “Corporate human rights due diligence: Identifying and leveraging emerging practice”, Background note, 2018, p. 5.

¹⁶ OECD: *OECD Guidelines for Multinational Enterprises: Responsible business conduct matters*, Paris, 2018.

The BIAC and the TUAC meet the NCPs biannually to exchange experience on the implementation of the Guidelines and report to the OECD Investment Committee.

53. Since their establishment in 2000, the NCPs have handled over 400 specific instances, 55 per cent of which relate to the employment and industrial relations chapter, although with a strong increase over the past years of instances related to the human rights chapter. Through their mediation in specific cases, the NCPs have facilitated cross-border social dialogue between national trade unions and/or GUFs and MNEs. The final statements and reports on specific instances have served as a basis for future engagement between the parties. For example, the outcome of mediation by NCPs in Colombia, Germany and Turkey helped to clarify the main issues in contention between an MNE and two GUFs, which allowed them to address and eventually resolve the issues through further dialogue.¹⁷
54. The intergovernmental OECD Working Party on Responsible Business Conduct has developed a growing body of guidance for MNEs and others using multi-stakeholder processes that are examples of cross border social dialogue. The OECD Due Diligence Guidance for Responsible Business Conduct provides practical support to enterprises on the implementation of the OECD Guidelines by providing plain language explanations of its due diligence recommendations and associated provisions. The implementation of these recommendations can help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships. This general due diligence guidance complements the sectoral due diligence guidance in the extractive, minerals, agriculture, garment and financial sectors which was developed earlier through the same processes, as well as additional guidance developed on child labour in mineral supply chains, artisanal and small-scale gold mining, sports and corruption, and criminal exploitation of resources.¹⁸

The United Nations Global Compact (UNGC)

55. The UNGC is an initiative of the United Nations Secretary-General launched in 2000 which invites companies to align their policies and practices with ten principles derived from internationally agreed standards in the area of human rights, labour, environment and corruption. With over 12,000 signatories (principally companies) representing nearly every sector in over 160 countries, the UNGC is currently the largest global corporate sustainability initiative. The four labour principles of the UNGC are based on the principles concerning the fundamental rights contained in the ILO 1998 Declaration. The Global Compact Board includes representatives of business (including the IOE and the International Chamber of Commerce (ICC)), civil society and labour (the ITUC and one GUF).¹⁹
56. UNGC signatories are required to report on their progress in upholding the UNGC principles through an annual “Communication on Progress”, which is public and available for peer

¹⁷ Joint final statement by the German National Contact Point for the OECD Guidelines for Multinational enterprises (NCP), UNI Global Union (UNI) and International Transport Workers’ Federation (ITF) and Deutsche Post DHL (DP-DHL) on the complaint by UNI/ITF against DP-DHL/Bonn (2014).

¹⁸ See <http://mneguidelines.oecd.org/duediligence/> [accessed 5 Oct. 2018].

¹⁹ See <https://www.unglobalcompact.org/about/governance/board> [accessed 5 Oct. 2018].

review and stakeholder comment.²⁰ In addition, the “integrity measures” of the UNGC allow stakeholders to raise concerns regarding matters related to a participant company’s conduct and implementation of the UNGC. The matters raised should rise to the level of systematic or egregious abuse of the principles of the UNGC. In that case, the UNGC Office encourages dialogue, which may be cross-border, between the company and those who have raised concerns.²¹

Operationalization and outcomes

57. A 2017 progress report shows that the percentage of UNGC participants implementing its principles is growing. Over 90 per cent of participants reported that they have policies and practices in place covering the ten UNGC principles. While 61 per cent of companies set measurable targets, only 55 per cent monitor performance and only one in three engage in partnerships and conduct impact assessment. The engagement of participating companies in multi-stakeholder consultations seems to be one of the least developed types of action in the relevant strategies and operations.²² Moreover, the percentage of companies with collective bargaining arrangements has remained the same since 2008.²³
58. With a view to enhancing the business contribution to the 2030 Agenda for Sustainable Development, the Global Compact has developed “Action Platforms” in specific areas linked to the SDGs, including an Action Platform on “Decent Work in Global Supply Chains”.²⁴

²⁰ See https://www.unglobalcompact.org/docs/about_the_gc/Integrity_measures/FAQ_EN.pdf [accessed 5 Oct. 2018].

²¹ For example, a dialogue facilitation process was instituted between Vigeo Eiris and a third party on 16 Mar. 2017. See https://www.unglobalcompact.org/docs/publications/UN_Global_Compact_Statement_16%20May_2017.pdf.

²² UN: *United Nations Global Compact Progress Report: Business solutions to sustainable development*, New York, 2017, p. 31.

²³ *ibid.*, p. 47.

²⁴ See <https://www.unglobalcompact.org/sdgs/action-platforms> [accessed 5 Oct. 2018].

Chapter 3. Cross-border social dialogue in regional economic communities, bilateral and multilateral trade agreements and interregional arrangements

59. The involvement of the social partners in dialogue and policy-making across borders has been institutionalized to varying degrees in regional economic communities, bilateral and multilateral trade agreements and interregional arrangements. The modalities and outcomes of such dialogue differ. The EU has the longest and deepest experience in terms of cross-border social dialogue (also referred to as “supranational” social dialogue).

Regional economic communities

Europe

60. Social dialogue has developed at the level of the EU reflecting its widespread presence in EU Member States. It started to emerge in the 1970s, but gained momentum in the 1980s and 1990s. The initial aim was to respond to the economic recession of the time and to reach European-level agreements addressing the social and economic issues arising in the context of the European internal market.¹ In 1991, the European social partners defined the role that they should play in the development of EU socio-economic governance. The Maastricht Treaty (and since 2012, the Treaty on the Functioning of the European Union (TFEU)) provided a legal basis for EU-level social dialogue and an institutional role for the social partners.²
61. Article 154 of the TFEU provides that the European Commission (EC) shall consult with representatives of management and labour at the EU level before submitting legislative proposals in the social policy field. The social partners may then jointly choose to halt the Commission’s initiative and negotiate an agreement among themselves, which may then in certain circumstances be given legal force by an EU directive.
62. From the early 2000s, EU social dialogue became more independent from the programmes of the EC, as social partners at the EU level started to draft their own, autonomous multi-annual work programmes. The social partners have also progressively become involved in the social and employment aspects of the “European Semester”, a process of EU-level coordination of national policies and reforms.
63. Cross-industry European social dialogue has resulted in three framework agreements that have been transformed into EU directives (on parental leave, part-time work and fixed-term work), as well as various autonomous “framework agreements” (for example, the agreement on active ageing and an intergenerational approach of 2017, the agreement on inclusive labour markets of 2010 and the telework agreement of 2002), which have been implemented by the social partners themselves. Cross-industry dialogue has also resulted in a number of

¹ See <http://ec.europa.eu/social/BlobServlet?docId=7384&langId=en>.

² Workers are represented by the European Trade Union Confederation (ETUC), while employers are represented by BusinessEurope, the European Centre of Employers and Enterprises providing Public Services and Services of General Interest (CEEP) and the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME).

framework actions, as well as joint opinions and declarations intended to influence EU policies and actions.

- 64.** At the sectoral level, there are 43 sectoral social dialogue committees involving sectoral social partners. As far as possible, organizations should be representative of all EU Member States, while their national members must be recognized as social partners in the respective countries. Over 600 joint texts relevant to specific sectors have been adopted in the form of joint statements, opinions, policy guidelines, declarations and framework agreements. Some have led to legislative action. For example, an agreement concluded between the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) shaped the transposition of the MLC, 2006, into EU law. Even in sectors such as central administration and local government, which are rarely seen as cross-border in character, the EU social partners have negotiated and signed agreements and other joint declarations.³
- 65.** At the company level, cross-border social dialogue takes place in EWCs, which are a forum for transnational employee representation for information-sharing and consultation in MNEs operating in EU Member States.⁴ By August 2018, MNEs had concluded 1,532 EWC agreements, of which 1,153 are still active, covering an estimated workforce of 17 million.⁵ The scope of the information and consultation procedures in EWCs is limited to transnational issues.⁶ This includes issues such as the situation and probable trend of employment in the company, investments, substantial organizational changes, the introduction of new working methods or production processes, transfers of production, mergers, cutbacks or closures, and collective redundancies.⁷ As a result, many EWCs have dealt with, or even concluded specific TCAs on issues linked to enterprise restructuring, as well as other issues, such as lifelong learning and gender equality. According to a 2018 evaluation of the EWC Directive, all stakeholders consider that EWCs have made a significant contribution to ensuring transnational social dialogue at the company level.⁸ EWCs are the main monitoring bodies for TCAs concluded between European or global unions and specific MNEs.
- 66.** The European social partners are also represented in many EU bodies dealing with socio-economic policy, including the European Economic and Social Committee (EESC), a formal

³ L. Bordogna: *Social dialogue in the public service in selected countries of the European Union*, Sectoral Policies Department Working Paper No. 318, Geneva, ILO, 2018, p. 12.

⁴ [Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees](#) requires companies with more than 1,000 employees in EU Member States and at least 150 employees in each of at least two Member States to establish an EWC.

⁵ According to the [EWC Database of the European Trade Union Institute \(ETUI\)](#).

⁶ Article 1(3) of Directive 2009/38/EC, op. cit.

⁷ EC: *Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)*, COM(2018) 292 final, Brussels, 2018.

⁸ [Commission evaluation confirms the importance of European Works Councils](#) [accessed 5 Oct. 2018].

consultative body which addresses mandatory or optional opinions to the Council, the EC and the European Parliament.

Africa

67. The Protocol on Employment and Labour (2014) of the **Southern African Development Community (SADC)** sets out the commitment to “inclusive, participatory and institutionalised social dialogue structures”.⁹ The SADC Employment and Labour Sector includes several committees with social partner involvement, and particularly the SADC Employers’ Group (SEG) and the Southern African Trade Union Coordination Council (SATUCC). However, it is acknowledged that it is necessary to further strengthen SADC tripartite social dialogue structures for the effective coordination and monitoring of the Employment and Labour Protocol (ELP) Implementation Plan 2017–20.¹⁰
68. The **Economic Community of West African States (ECOWAS)** established a tripartite social dialogue forum in 2010 with a view to implementing the ECOWAS labour and employment policy and its Action Plan. In October 2017, the forum adopted a draft guide for policy-makers on labour migration and the protection of migrant workers in the region and the “Conakry Declaration”, which calls for the ratification and implementation of ILO Conventions on migration for employment.¹¹ It also adopted a draft Directive on the harmonization of labour laws in the region.
69. The Council of Labour and Social Dialogue (CTDS) of the **West African Economic and Monetary Union (UEMOA)**, which has been operational since 2010, includes civil society representation. The Council examines all issues likely to have a social impact in the region and promotes tripartite dialogue mechanisms in member countries. Its achievements to date include the adoption in 2013 of a declaration on social crises in its member States containing a series of recommendations for governments and the social partners, and a number of high-level opinions on critical issues.
70. In 2012, the Council of Ministers of the **East African Community (EAC)** established the Consultative Dialogue Framework (CDF) as a forum for inclusive and consultative participation of civil society, private sector organizations and other interest groups. At the regional level, the CDF requires civil society and interest groups to be organized through regional apex bodies. The East African Business Council (EABC) and the East African Civil Society Organizations’ Forum (EACSO) are currently recognized as the apex bodies for the private sector and civil society, respectively.¹²

Asia and the Pacific

71. The integration process of the **Association of Southeast Asian Nations (ASEAN)** countries in trade, investment and the free movement of skilled labour commenced in 2015. There is no institutional mechanism for tripartite dialogue or consultation. However, trade unions have created a regional Trade Union Council with observer status in the ASEAN Free Trade

⁹ SADC, 2014: [Protocol on Employment and Labour](#), Victoria Falls (Zimbabwe).

¹⁰ SADC: [Draft Implementation Plan, SADC Employment and Labour Protocol 2017–2020](#), 2017.

¹¹ ILO press release: [Promoting Social Dialogue and Decent Work in the ECOWAS Sub-Region](#), 2017 [accessed 5 Oct. 2018].

¹² East African Community: [Consultative Dialogue Framework](#) [accessed 5 Oct. 2018].

Area, and six of ASEAN's national employer federations have created the ASEAN Confederation of Employers. The 2016–20 work programme of the ASEAN Labour Ministers committed to social dialogue and tripartite cooperation in ASEAN as an intermediate target by 2020.

72. In view of the significance of migrant worker flows in the ASEAN region, where there are some 9.5 million international migrants, this issue has been discussed annually since the first tripartite ASEAN Forum on Migrant Labour in 2008 following the adoption of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu, 2007).¹³ In 2016, the ASEAN Confederation of Employers and the ASEAN Trade Union Council held their first bipartite regional dialogue and agreed on a joint statement which identifies as a joint priority the mutual recognition of skills for medium- and low-skilled workers, social protection for migrant workers, and ethical recruitment and the protection of workers throughout the migration cycle.¹⁴

Americas

73. Cross-border social dialogue takes place at the Inter-American Conference of Ministries of Labor (IACML), which is one of the oldest sectoral conferences of the **Organization of American States (OAS)**. The Trade Union Technical Advisory Council (COSATE) and the Business Technical Advisory Committee on Labor Matters (CEATAL) are permanent consultative bodies of the IACML. The OAS recognizes social dialogue as a fundamental mechanism for preventing and resolving labour issues and reaching agreement among the social partners at the enterprise, sectoral and national levels. In 2014, the OAS General Assembly endorsed the UNGPs and requested the Inter-American Commission on Human Rights (IACHR) to “continue supporting States in the promotion and application of State and business commitments in the area of human rights and business”.¹⁵ In 2016, the OAS General Assembly requested the IACHR to collaborate with and support member States in the development of NAPs on business and human rights.¹⁶
74. **MERCOSUR** includes among its permanent organs an Economic and Social Consultative Forum (FCES), in which the social partners are represented. The role of the FCES is limited to the exchange of views on negotiation agendas and non-binding recommendations.¹⁷ Tripartite commissions, working groups and subgroups with the involvement of the social partners have also been created to assist MERCOSUR decision-making organs when they discuss labour market, employment and social protection issues.¹⁸ In 2015, the presidents of the States parties to MERCOSUR signed a revised Social and Labour Declaration, which calls on States to promote social dialogue and tripartism in formulating active decent work

¹³ ILO: *International Migration in ASEAN at a Glance*, ILO ASEAN TRIANGLE Project, 2015.

¹⁴ See https://www.ilo.org/asia/events/WCMS_445049/lang--en/index.htm.

¹⁵ OAS: *Promotion and protection of human rights in business*, AG/RES. 2840 4 (XLIV-O/14), 4 June 2014.

¹⁶ OAS: *Promotion and protection of human rights*, AG/RES. 2887 (XLVI-O/16), 14 June 2016.

¹⁷ I. da Costa: *Cross border social dialogue and industrial relations: Recent trends and issues*, ILO/Dialogue working paper (unpublished ms).

¹⁸ F.C. Ebert and A. Posthuma: *Labour provisions in trade arrangements: Current trends and perspectives*, Geneva, ILO, 2011.

policies and effective mechanisms for permanent consultations between the representatives of governments, employers and workers.¹⁹

75. In 1995, the **Caribbean Community (CARICOM)** Declaration of Labour and Industrial Relations Principles was adopted, followed by the adoption of the CARICOM Charter of Civil Society in 1997. The Charter provides for, inter alia, a role for the social partners in decision-making processes. A regional consultation on the establishment of a regional tripartite social dialogue mechanism and a regional social protection floor was held in 2016, while in 2018 a tripartite meeting was organized on the role of regional social dialogue in shaping the future of work in the Caribbean.

Interregional arrangements

76. The G20 has two formal structures involving the social partners: the Labour 20 (L20), which brings together trade unions from G20 countries and global unions; and the Business 20 (B20), which represents employers and the business community. The B20 and L20 hold consultations with G20 leaders and ministers of finance and labour and employment, which have led to joint B20–L20 statements, for example on responses to the global economic crisis (2011); jobs, growth and decent work (2015); sustainable growth, decent work and cohesion in the digital economy (2017); and skills and social protection for inclusive growth (2018). All joint statements manifest a shared commitment to social dialogue as a core principle of the G20 process. In 2017, the G20 Leaders' Declaration emphasized the responsibility of businesses to exercise due diligence, report on the findings and provide access to remedies in GSCs.²⁰
77. Similarly, the G7 leaders have emphasized the need to foster safer and more sustainable workplaces within GSCs and the shared responsibility of all stakeholders in this respect. In 2015, the ILO and the G7 agreed on a series of measures, including the creation of a multi-donor Vision Zero Fund for action in producing countries to support the application of ILO standards on OSH in sectors linked to GSCs.²¹

Bilateral and multilateral trade agreements

78. The negotiation and implementation of bilateral and multilateral trade agreements provide opportunities for national and cross-border dialogue, particularly when the agreements contain labour or sustainability clauses, as is increasingly the case.²² As of September 2018, 84 trade agreements included trade-related labour provisions (out of 287 regional trade agreements in force and notified to the WTO).²³ Approximately 72 per cent of such provisions refer to ILO instruments, and most include legally binding commitments to fundamental principles and rights at work. Clauses include provisions requiring or allowing

¹⁹ MERCOSUR: [Social and Labour Declaration of the MERCOSUR](#), 2015.

²⁰ G20 Labour and Employment Ministers: *Towards an inclusive future: Shaping the world of work*, Ministerial Declaration, 19 May 2017, Bad Neunahr, Germany.

²¹ G7 Employment and Development Ministers: *Action for fair production*, Ministerial Declaration, Berlin, 13 Oct. 2015.

²² ILO, 2016a: [Assessment of labour provisions in trade and investment arrangements](#), Studies on Growth with Equity, Geneva, 2016, Chapter 3.

²³ ILO calculations based on the [WTO Regional Trade Agreements Information System \(RTA-IS\)](#) in Sep. 2018.

social dialogue in various forms to promote the effective implementation and monitoring of commitments.

- 79.** The approaches of trade agreements to social dialogue vary. Agreements concluded by Canada and the United States envisage consultations with any concerned entity, including national employers' and workers' organizations, on the implementation of their labour provisions and on failure by the parties to honour their labour commitments. Some recent EU trade agreements provide for special consultative committees, with the involvement of the social partners, to discuss economic, social and environmental issues.
- 80.** When monitoring compliance with labour provisions or investigating a public submission, governments often rely on social dialogue to obtain information, solicit the views of the social partners and reach a joint solution. Such submissions and the ensuing dialogue may lead to agreed action plans containing clauses on the strengthening of labour law, labour administration and freedom of association. Under the Canada–Colombia Agreement on Labour Cooperation, a public submission was filed in 2016 as a result of collaboration between trade unions in the two countries. The Canadian authorities examined the submission and published a report with recommendations in 2017, which led to the signature of an Action Plan (2018–21) to reinforce the rights to freedom of association and collective bargaining in Colombia and to hold meetings with civil society groups, including the social partners.
- 81.** Despite the existence of mechanisms to promote social dialogue in trade agreements, a recent ILO study concludes that the use of provisions and mechanisms that promote the participation of stakeholders is still limited in practice. A key challenge is to enhance accountability, for instance by informing stakeholders on how their input has been taken into consideration in the decision-making process.²⁴ Cross-border collaboration also remains a challenge due to the lack of capacity of counterpart institutions in some countries and the insufficient resources allocated for cross-border activities.²⁵ Nevertheless, a number of studies highlight how public submission procedures have provided a means of promoting strong long-term relationships between trade unions in different countries, raising awareness of labour rights issues and fostering dialogue.²⁶
- 82.** The 1999 United States–Cambodia Bilateral Textile Trade Agreement is one example on how trade agreements can trigger improvements in working conditions and industrial relations in MNE chains through social dialogue, as demonstrated by the ILO–IFC Better Work Programme.

²⁴ ILO: 2016a, op. cit., pp. 125–126.

²⁵ ILO: *Handbook on assessment of labour provisions in trade and investment arrangements*, Studies on Growth with Equity, Geneva, 2017.

²⁶ R. Buchanan and R.M. Chaparro: *International institutions and transnational advocacy: The case of the North American Agreement on Labour Cooperation*, CLPE Research Paper No. 22, 2008; J. Graubart: “Unexpected power: Conflict and change among transnational activists – by Shareen Hertel”, in *Peace & Change*, 33(2), Apr. 2008, pp. 313–315.

Box 5

The ILO Better Factories Cambodia project and the ILO–IFC Better Work Programme

Under the US–Cambodia Bilateral Trade Agreement (1999) the United States promised Cambodia better access to United States markets by giving it increased quotas in exchange for improved working conditions in the garment sector. In order to ensure a rigorous and continuous cycle of improvement, the ILO Better Factories Cambodia (BFC) project was launched in 2001. BFC combined monitoring, remediation and training designed to improve working conditions in garment factories participating in MNE chains, and was guided by a tripartite advisory committee.

Based on the experience of BFC, in 2006, the ILO and the International Finance Corporation (IFC), jointly established the Better Work Programme, in which social dialogue is central. At the global level, the Programme has established an advisory committee, which includes the IOE and the ITUC as key advisers. At the national and sectoral levels, tripartite committees serve as a mechanism for tripartite social dialogue to advise the programme and strengthen working relationships between governments, employers and workers. At the factory level, Better Work monitors compliance and offers assessments, and advisory and training services. Remediation for problems is pursued through bipartite factory committees in which workers and factory management seek to improve working conditions and compliance with labour standards.

An independent impact evaluation of Better Work factories in 2016 found that the Programme has had a significant positive impact on compliance with core labour standards and national laws, on workers' self-reported well-being, on businesses' bottom line and on broader social and human development indicators.

Source: ILO and IFC: *Progress and potential: How better work is improving garment workers' lives and boosting factory competitiveness*, summary of an independent assessment of the Better Work Programme, Geneva, 2016.

83. The North American Free Trade Agreement (NAFTA) Labor Side Agreement between Canada, Mexico and the United States, signed in 1993, was the first trade agreement to create a ministerial commission for labour cooperation and national advisory committees to advise on implementation, with the participation of employers' and workers' organizations, academics and civil society. Freedom of association, and particularly obstacles to union registration, make up the bulk of NAFTA labour complaints for all three countries. Under the current dispute settlement arrangements, such cases are subject to ministerial consultations, with no recourse to arbitration or penalties.²⁷
84. In late 2018, a consensus was reached on a new revised NAFTA, now known as the United States–Mexico–Canada Agreement, or USMCA. A key difference from NAFTA relates to the protections for workers in all three countries in a dedicated labour chapter.²⁸ The USMCA contains commitments to protect and promote the internationally recognized labour principles and rights contained in the ILO 1998 Declaration, which are fully subject to the dispute settlement provisions of the Agreement. The new Agreement contains specific commitments, inter alia, by Mexico to take legislative action to provide for the effective recognition of the right to collective bargaining, extend labour protections to migrant workers and protect women from discrimination (Annex 23-A). Unlike NAFTA, the new Agreement allows each country to sanction the others for labour violations that have an impact on trade, through a multi-step process to implement and monitor compliance with the commitments, and the establishment of a mechanism in each USMCA party for the public to raise concerns about labour issues addressed in the relevant chapter.

²⁷ K.A. Nolan García: "Labor rights under NAFTA: A potential renegotiation", in *Forbes*, 8 May 2017.

²⁸ See <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

Investment agreements

85. By December 2016, there were 3,324 international bilateral investment agreements.²⁹ Traditionally, such agreements tended to focus on the protection of foreign direct investment, but were not aimed at addressing labour and social matters.³⁰ A new generation of investment agreements is incorporating social issues to foster responsible investment: of the 18 agreements signed in 2016, 12 refer to the protection of labour rights.³¹ Some agreements prohibit the lowering of standards in labour matters with a view to encouraging, attracting or retaining investment. Such clauses also exist in the model agreements of Belgium (2002), United States (2004), Austria (2008) and the 2007 draft model agreement of Norway, while at least one model agreement (Belgium) refers directly to ILO standards.³² However, no information is currently available on the impact of investment agreements on social dialogue, the involvement of the social partners at any level or in the context of GSCs. Moreover, investment dispute settlement mechanisms have been questioned as they may generate conflict between the protection of investments and the policy space of the host country, including the space relating to national labour policies and legislation.³³

²⁹ UNCTAD: *World Investment Report 2017: Investment and the digital economy*, Geneva, 2017.

³⁰ ILO, 2016a, op. cit., pp. 26–27.

³¹ *ibid.*, p. 119.

³² B. Boie: *Labour related provisions in international investment agreements*, Employment Working Paper No. 126, ILO, Geneva, 2012.

³³ For further details, see ILO: 2016a, op. cit.

Chapter 4. Cross-border social dialogue through transnational company agreements (TCAs)

86. The EC defines a TCA as 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”.¹
87. TCAs usually take two forms: international (or global) framework agreements (IFAs) or regional framework agreements, notably European Framework Agreements (EFAs). IFAs are agreements signed between one or more Global Union federations (GUFs) and the central management of an MNE.² EFAs are agreements signed between MNEs and European trade union federations (ETUFs), as well as EWCs, and sometimes national unions.³ The scope of EFAs is mostly limited to Europe, while IFAs are intended to be global.
88. TCAs are distinct from CSR initiatives, as they entail the recognition and participation of unions as the core negotiating partners of MNEs. Similar to many CSR initiatives, the parties to IFAs pledge respect for labour standards, often with direct reference to ILO Conventions. TCAs aim to create conditions conducive to respect for rights at work in the MNE, its subsidiaries and, more rarely, subcontractors and suppliers.

Origins

89. The origins of TCAs can be traced back to trade union mobilization in the 1960s and 1970s against plant closures by MNEs due to the relocation of production from one country to another. Trade unions increasingly considered that national instruments and strategies needed to be supported by transnational action.⁴ As a result, the International Trade Secretariats (now GUFs) opted for negotiating directly with MNEs.
90. Transnational social dialogue was facilitated in the 1980s by a debate at the European level concerning a draft EC directive in 1980 (“Vredeling”) to make negotiations between MNE central management and workers compulsory in the event of transnational restructuring.⁵ In this context, a number of MNEs, particularly from France, voluntarily negotiated agreements at the transnational level. Most of the initial agreements by French MNEs were the result of

¹ EC: “Transnational company agreements: Realising the potential of social dialogue”, Commission Staff Working Document, SWD (2012) 264 final (Brussels, 2012).

² K. Papadakis (ed.): *Shaping global industrial relations: The impact of international framework agreements*, ILO and Palgrave Macmillan, Geneva, Basingstoke and New York, 2011.

³ Eurofound: “European Framework Agreement”, in *European Industrial Relations Dictionary*, Dublin, 2013.

⁴ C. Levinson, 1972, op. cit.

⁵ I. da Costa and U. Rehfeldt: “Transnational collective bargaining at company level: Historical developments”, in K. Papadakis, 2008, op. cit., pp. 43–64.

initiatives by MNE management.⁶ In 1988, a first IFA was signed between the management of the French group BSN (now Danone) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). Since 1994, IFAs have been signed by MNEs from a number of other countries, especially Germany.

Objectives

91. GUFs adopt different approaches to the negotiation of IFAs, depending on the characteristics of the sector. In sectors such as textiles and agricultural products with low unionization rates, the priority of GUFs has been to reach agreements on workers' organizing (also referred to as "rights agreements"). In sectors such as automobiles and aircraft with strong union representation, GUFs have focused on establishing an ongoing relationship with MNE central management through institution-building in bipartite monitoring commissions and (re)negotiations for the incremental enhancement of agreements (also known as "bargaining agreements").⁷ Such institution-building includes the creation of an international network of trade unions from the MNE, or a "Global Works Council". Many GUFs have also launched global campaigns that seek to pressure MNEs into signing an IFA.
92. In the 1990s, GUFs tried to sign as many IFAs as possible with MNEs with a view to creating a critical mass that would provide an incentive for other MNEs to sign IFAs. However, GUFs progressively decided to focus on improving the quality of the agreements and their implementation. In this context, most GUFs have tightened up the conditions for signing an IFA. In this context UNI Global Union and IndustriALL Global Union have stressed the need to include detailed provisions on unionization (notably "management neutrality" under which management pledges that the company will remain neutral during organizing campaigns), and on effective arbitration, mediation and conflict resolution mechanisms.⁸
93. Research shows that IFAs can be used as a communication tool to strengthen the status of MNEs as socially responsible firms that comply with social standards.⁹ Some non-European MNEs (including Russian and Japanese companies) have also signed IFAs to position their company as socially responsible when penetrating specific markets.¹⁰ A TCA can also be seen as a tool for the internal benchmarking of human resources practices,¹¹ or for the transnational coordination and harmonization of the human resources policy and similar

⁶ U. Rehfeldt: "European Works Councils: An assessment of French initiatives", in W. Lecher and H.-W. Platzer (eds): *European Union: European Industrial Relations? Global challenge, national development and transitional dynamics*, London and New York, Routledge, 1998.

⁷ N. Hammer: "International Framework Agreements: Global industrial relations between rights and bargaining", in *Transfer*, 11(4), 2005, pp. 511–530.

⁸ See, for example, IndustriALL: *IndustriALL Global Union's guidelines for Global Framework Agreements (GFAs)*, Geneva, 2014.

⁹ F. Hadwiger: "Global framework agreements: Achieving decent work in global supply chains", Background paper, Geneva, ILO, 2015; and *Contracting international employee participation: Global Framework Agreements*, Springer, 2018.

¹⁰ K. Papadakis: "Signing International Framework Agreements: Case studies from South Africa, Russia and Japan", Dialogue Working Paper No. 4, Geneva, ILO, 2009.

¹¹ M. Frapard: *Les accords d'entreprise transnationaux: Les firmes peuvent-elles s'autoréguler en matière sociale ?*, Presses des Mines/La Fabrique de l'Industrie, Paris, 2018.

objectives,¹² which are traditionally expressed in corporate responsibility principles and commitments in company policies.

94. Reports by the ILO and the IOE have also highlighted why some companies are not interested in negotiating TCAs.¹³ Some have doubts concerning the added value of IFAs in complementing the active CSR/responsible business conduct policies that are already in place in most of the companies concerned. Some may be unclear on the extent of the commitments created by IFAs for signatory MNEs and on the consequences of direct references to compliance with ILO Conventions, including when there are contradictions between ILO Conventions and national law. Others are concerned at reduced leeway in situations where the company already lacks complete control, including with subcontractors and suppliers, or fear the potential use of IFAs to put pressure on the company. Some simply prefer to deal with social issues at the local level. Other companies cannot accept the inclusion by some GUFs of “neutrality” clauses, particularly in new generation IFAs, and view such clauses as being inconsistent with the freedom of expression of management, as freedom of expression is a basic civil liberty, the protection of which is essential to the meaningful exercise of freedom of association in accordance, inter alia, with the Universal Declaration of Human Rights (Article 19), the MNE Declaration (paragraph 8) and ILO case law.¹⁴

Number, content and evolution

95. Between 1988 and 2017, a total of 336 TCAs were signed, of which 183 are IFAs, signed by 131 companies, and 153 are EFAs, signed by 72 companies.¹⁵ Of the 183 IFAs,¹⁶ 36 are renewals. IFAs and EFAs follow distinct dynamics. Very few MNEs, mainly from France, have signed both an IFA and an EFA. MNEs from Scandinavian countries (Denmark, Norway and Sweden) and the Netherlands have only signed IFAs, but no EFAs. Not all TCAs are still valid, as many were limited in time and not renewed. In some cases, the signatory companies have disappeared through merger or acquisition, such as GM Europe, GDF Suez and Rhodia. In some cases, these changes have no real impact on the validity of the agreement, which is transmitted to the new entity (for example, from “GDF Suez” to “Engie” and from “France Telecom” to “Orange”). An ILO study identified 119 active IFAs in 2017 (figure 1).

¹² ITC–ILO: *Transnational company agreements: Issues, approaches and practices. A guide for employers' organizations and companies*, Turin, 2018.

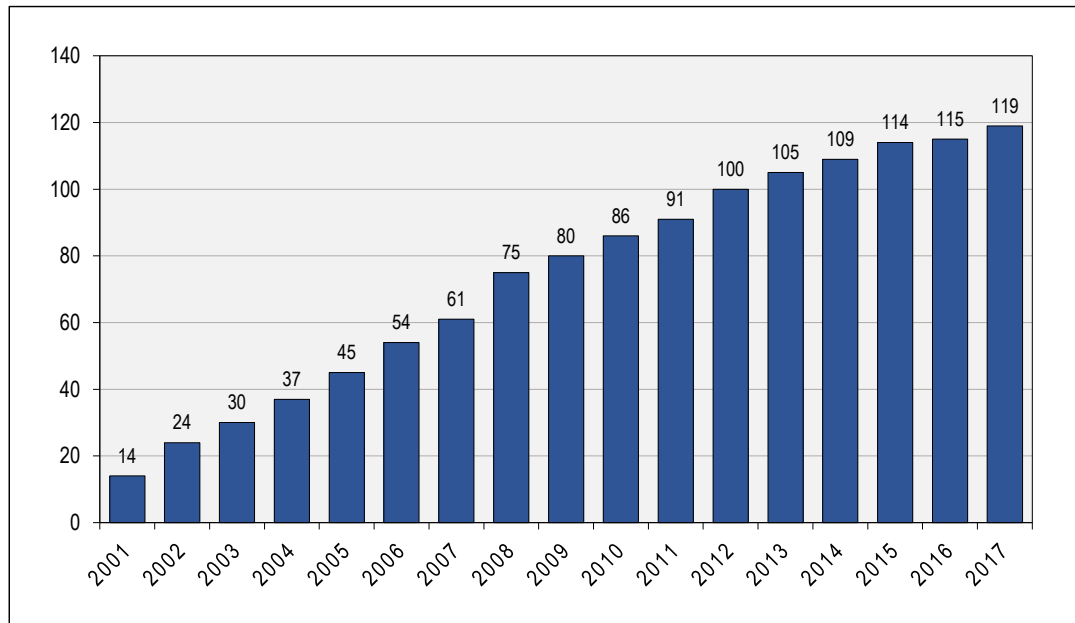
¹³ IOE: *International framework agreements: An employers' guide*, updated version, Geneva, Aug. 2007; ITC–ILO, 2018, op. cit.

¹⁴ The Committee on Freedom of Association (CFA) has stated in that respect: “While having stressed the importance which it attaches to freedom of expression as a fundamental corollary to freedom of association and the exercise of trade union rights ..., the Committee also considers that they must not become competing rights, one aimed at eliminating the other”, Case No. 2683 (United States), Report No. 357, ILO, Geneva, 2010, para. 584.

¹⁵ U. Rehfeldt: “A mapping of the transnational company agreements: Inventory and dynamic”, in F. Guarriello and C. Stanzani (eds): *Trade union and collective bargaining in multinationals: From international legal framework to empirical research*, Milan, FrancoAngeli, 2018.

¹⁶ Based on the EC/ILO TCA Database and GUF websites.

Figure 1. Development of IFAs*



* Active agreements, excluding renewals.

Source: ILO, 2018b, op. cit., p. 16, updated for the purposes of the present report.

IFAs

- 96.** IFAs deal mainly with fundamental labour rights and issues concerning social responsibility. Nearly all IFAs make explicit reference to the 1998 Declaration or enumerate the eight fundamental ILO Conventions and related instruments.¹⁷ IFAs also increasingly refer to other international standards and guidelines. A majority now refer to the OECD Guidelines, the Universal Declaration of Human Rights and the Global Compact. Since their adoption in 2011, some IFAs also mention the UNGPs. A small but growing number of IFAs also refer to the MNE Declaration.¹⁸ Other topics added to recent IFAs include working time, OSH and, more rarely, the anticipation of change and restructuring. An ILO review of 104 IFAs shows that environmental provisions have become more prominent and precise in recent IFAs, in line with the 2015 Paris Climate Agreement.¹⁹ In a few cases, companies that had already signed an IFA on fundamental labour rights have signed another on more specific topics, especially OSH (17 IFAs). An ILO report on IFAs signed by French MNEs points to a tendency to include clauses on human resources policies, notably in relation to the responsible management of employment and skills and attractive employment conditions

¹⁷ The Forced Labour Convention, 1930 (No. 29), 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 Workers' Representatives Convention, 1971 (No. 135), the Abolition of Forced Labour Convention, 1957 (No. 105), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

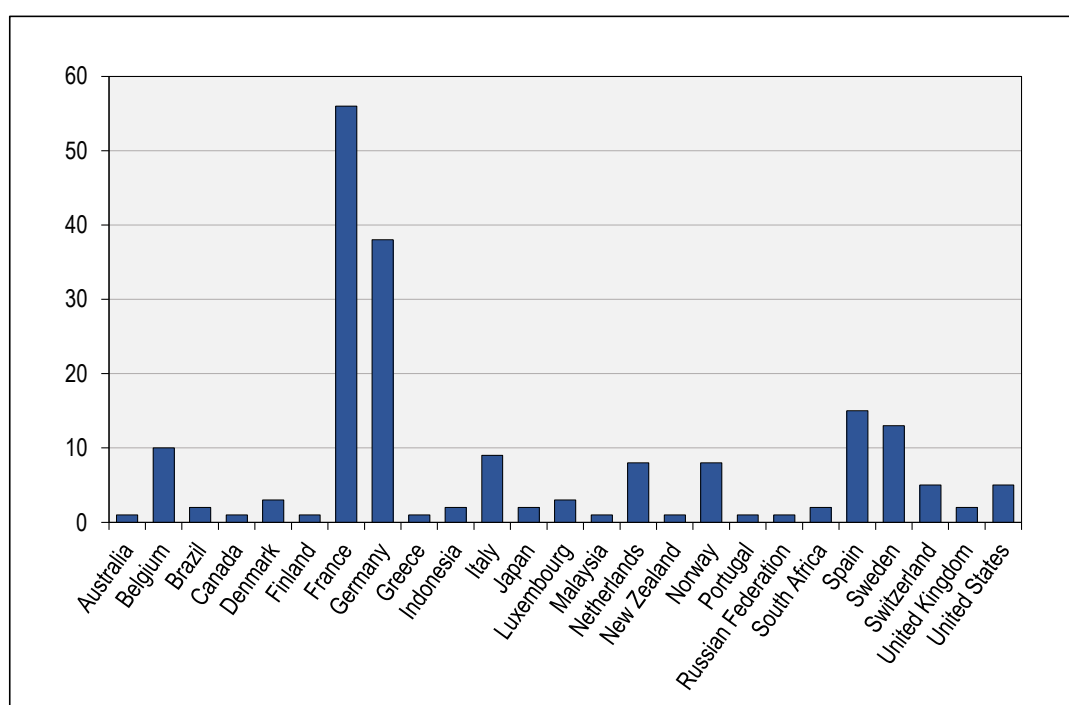
¹⁸ F. Hadwiger, 2015, op. cit.

¹⁹ ILO: *World Employment and Social Outlook 2018: Greening with jobs*, Geneva, 2018, p. 95.

and working conditions.²⁰ A number of IFAs exclusively cover the establishment of transnational employee representation.²¹

97. There is a strong European dimension to IFAs, with over 85 per cent of IFAs (156 out of 183) being signed by 104 European MNEs, of which 101 are from continental Europe, and mainly from France and Germany (figure 2). Only 26 non-European MNEs have signed IFAs: six from Brazil, five from the United States, three from Indonesia, Japan and South Africa, and one each from Australia, Canada, Malaysia, New Zealand, Qatar and the Russian Federation. Some IFAs are only regional in scope, limited to either Latin America or Asia. Some IFAs were co-signed by national unions and ETUFs. Twenty-four IFAs are co-signed by an EWC, a European company works council or a Global Works Council (GWC), mostly in MNEs from the German metal sector. Since 2006, the co-signature of IFAs by EWCs has almost disappeared, in parallel with a fall in the number of new IFAs signed by German companies. EWCs often participate in the preparation and monitoring of IFAs. The great majority of IFAs have been signed by MNEs that had previously established an EWC.

Figure 2. IFAs by country of origin of the company as of 2018



Source: ILO, based on the EC-ILO Database on TCAs.

98. Companies that have signed IFAs are concentrated in a limited number of sectors, particularly manufacturing, and especially the metal sector (30 MNEs), as well as building (18 MNEs). In the service sector, there is a concentration in communications (11 MNEs) and commerce (eight MNEs). Significantly, few IFAs have been signed in the garment industry (two MNEs) or the transport sector (four MNEs). Three GUFs have played a leading role in the negotiation of IFAs: IndustriALL Global Union (with 53 MNEs), UNI Global Union (25) and BWI (25).

²⁰ R. Bourguignon and A. Mias: *Les accords-cadres internationaux: Etude comparative des ACI conclus par les entreprises françaises*, Paris, ILO, 2017.

²¹ Falck (2005); Skandia (2004); Nordea (2001); and Barclays Africa (1999).

EFAs

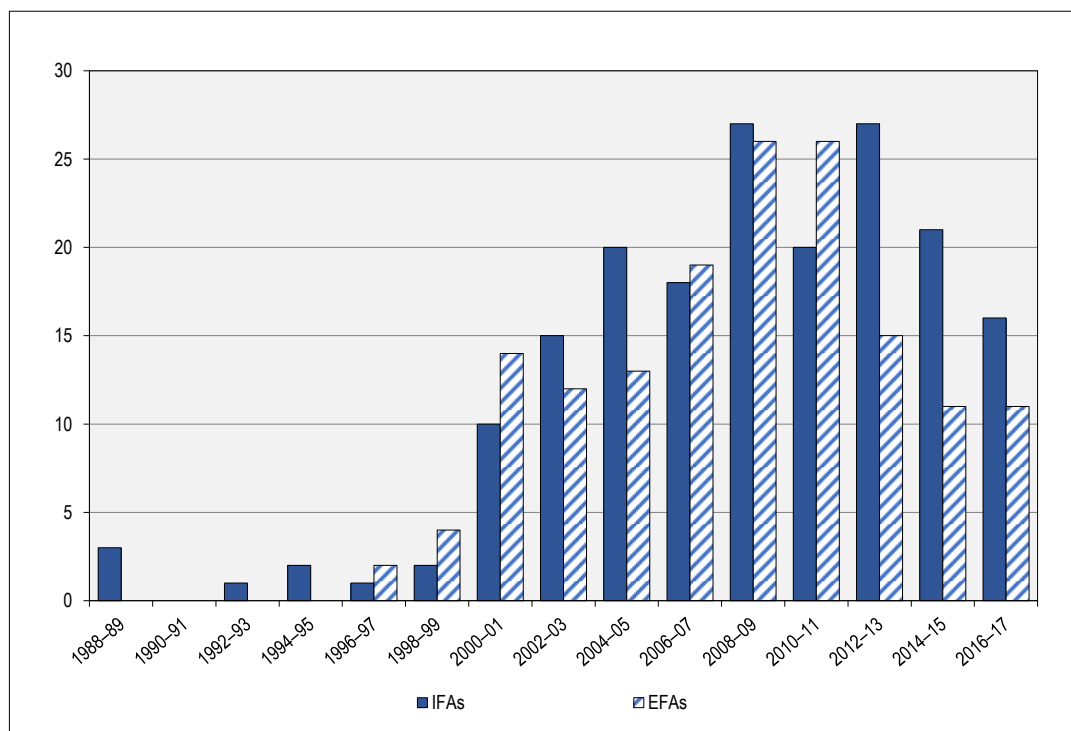
- 99.** While 153 EFAs are known to have been signed by 72 MNEs, the total number of EFAs is not known, particularly in the case of agreements signed by EWCs. A study of German MNEs in the metal industry estimates that one third of the agreements in this sector are informal and not made public by the EWC or the management.²² Compared to IFAs, EFAs cover a wider range of subjects, including enterprise restructuring, CSR, training, OSH, equality and social dialogue. Restructuring is the main theme of most EFAs, especially those signed by French MNEs, with 33 French companies having signed over half of all EFAs (81 out of 153), and 15 German companies having signed 26 of them. Two subsidiaries of United States companies have also signed a high number of EFAs, with General Motors Europe signing ten and Ford Europe five. Both companies are headquartered in Germany, where their European workforce is concentrated, and have a partly German human resources management.
- 100.** The signatories of EFAs are more diverse than for IFAs, with 110 of the 153 EFAs being signed by EWCs (or similar bodies), and nearly half (75) by an EWC alone. There are distinct country of origin effects: French MNEs prefer to negotiate with union representatives, German MNEs with an EWC.²³ In 2006, the European Metalworkers Federation (EMF) adopted a mandating procedure allowing it to negotiate and sign EFAs on behalf of its affiliates in MNEs,²⁴ and other ETUFs have adopted similar procedures. Since 2006, a growing number of EFAs have been signed by ETUFs alone (24 EFAs, 23 of which were signed by nine French MNEs). However, most EFAs are signed only by EWCs.
- 101.** Since 2012, the number of TCAs signed per year has decreased (figure 3). Excluding renewals, the slowdown has been greater for IFAs, although less sharp than for EFAs (figure 4). Several factors may account for this. In the case of IFAs, the decrease seems inevitable once the GUFs decided to give priority to improving the quality and effective implementation of agreements. As they have also decided to add new minimum provisions for IFAs, negotiations have become more difficult.

²² T. Müller, H.-W. Platzer and S. Rüb: *Transnational company agreements and the role of European Works Councils in negotiations*, ETUI Report 127, Brussels, 2013.

²³ U. Rehfeldt: “L’enjeu des canaux multiples de représentation pour la négociation collective d’entreprise transnationale”, in I. Daugareilh (ed.): *Le dialogue social dans les instances transnationales d’entreprises européennes*, Presses universitaires de Bordeaux, 2013, pp. 141–163; H.-W. Platzer and S. Rüb: “It takes two to tango: Management and European company agreements”, in *Transfer*, 20(2), 2014, pp. 255–270.

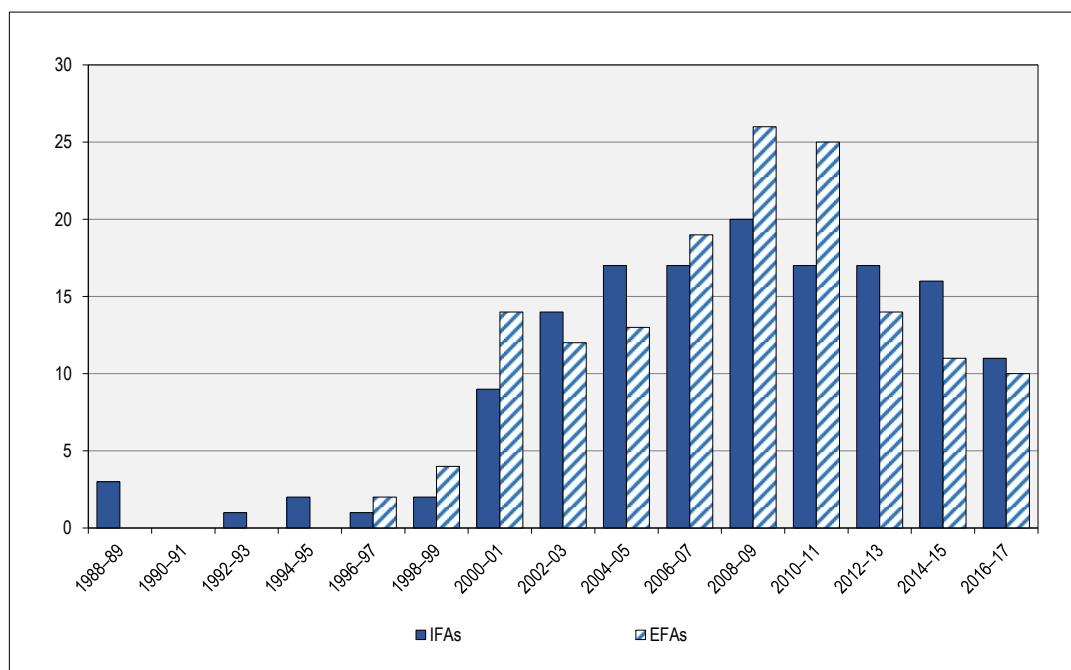
²⁴ EMF: *Internal EMF procedure for negotiations at multinational company level*, Brussels, European Metalworkers’ Federation, June 2006.

Figure 3. Number of TCAs 1988–2017



Source: ILO.

Figure 4. Number of TCAs 1988–2017 without renewals



Source: ILO.

- 102.** There has been a significant decrease in the number of reported TCAs, both IFAs and EFAs, signed by German companies. This may reflect the confidentiality that often characterizes

negotiations and agreements between EWCs and German MNEs.²⁵ They may be continuing to negotiate, but prefer not to make their agreements public. The current dynamic of EFAs is almost exclusively driven by French MNEs, which signed 28 of the 37 EFAs concluded during the period 2012–17.

Anticipation of change and management of restructuring

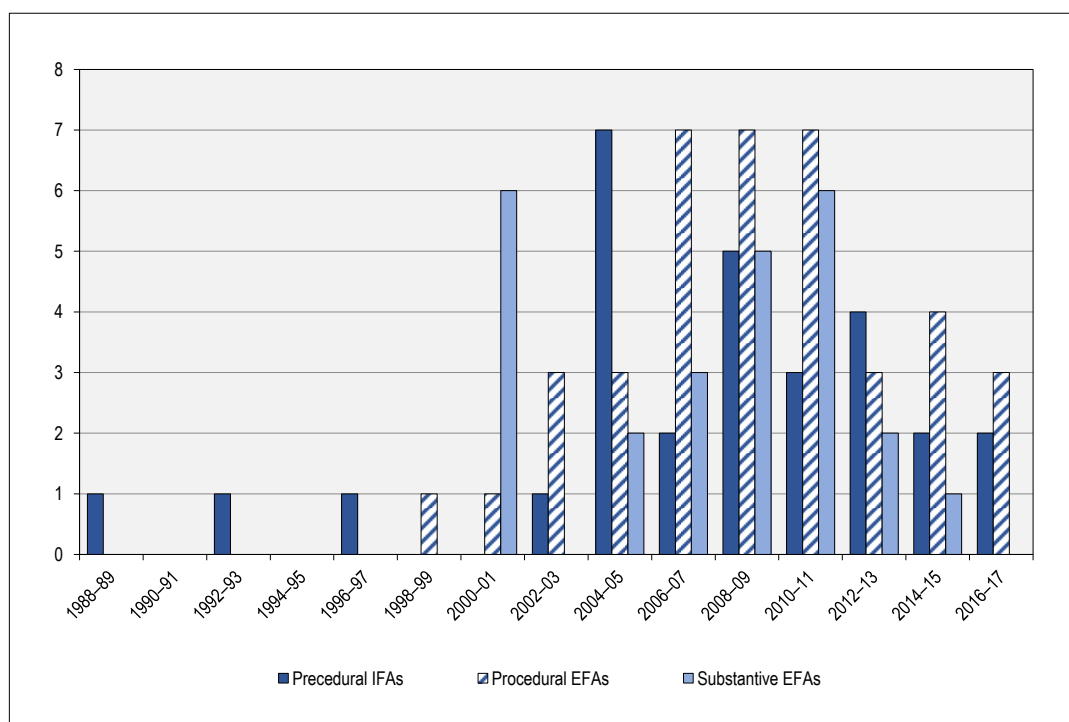
- 103.** The anticipation and management of restructuring is the main subject of EFAs which include clauses on forward-looking employment trends and skills management. TCAs on restructuring can be divided into “procedural” and “substantive” agreements.²⁶ *Procedural* TCAs set general principles to anticipate or accompany future restructuring processes, and particularly procedures for the consultation of workers’ representatives and measures such as skills development, outplacement assistance and intra-firm mobility. *Substantive* TCAs set rules for the management of specific instances of restructuring through concrete clauses. They define rules on job security, work organization and, in some cases, the choice of products and production sites, which may include a commitment to avoid plant closures and forced redundancies, or guarantees for outsourced employees. The European automotive industry showed interest in using TCAs for enterprise restructuring during the 2008 crisis.
- 104.** Few IFAs cover the areas of change management and company restructuring, whose contents almost exclusively address procedural aspects. To date, it would appear that only the Danone and Volkswagen IFA rules have effectively been applied to cases of restructuring. The fact that 28 of the 39 procedural restructuring EFAs and 20 of the 29 procedural restructuring IFAs were signed by French MNEs²⁷ is mainly due to the existence of dialogue-oriented human resources management in formerly nationalized companies, as well as French legislative provisions, which require large companies to negotiate an agreement every three years on forward-looking employment and skills management to prevent or accompany restructuring with measures for threatened jobs (skills assessment, training, occupational and geographical mobility), and the encouragement of voluntary separation. This may explain the sudden growth in the number of EFAs with procedural clauses on restructuring after 2006, as well as some IFAs with similar provisions.

²⁵ T. Müller, H.-W. Platzter and S. Rüb, 2013, op. cit.

²⁶ I. da Costa, and U. Rehfeldt: “Transnational restructuring agreements: General overview and specific evidence from the European automobile sector”, in K. Papadakis, 2011, op. cit., pp. 143–163.

²⁷ K. Papadakis: “Transnational company agreements on enterprise restructuring”, Dialogue in Brief No. 2, Geneva, ILO, 2010.

Figure 5. Number of TCAs on restructuring and anticipation of change 1988–2017



Sources: I. da Costa and U. Rehfeldt, 2011, op. cit. pp. 143–163. Updated based on the EC /ILO TCA database.

Multi-company TCAs and other forms of TCAs

- 105.** As a response to the 2013 Rana Plaza disaster in Bangladesh, multi-company bargaining led to the signing of a legally binding industry framework agreement between IndustriALL Global Union, UNI Global Union and several MNEs (220 apparel buyers covering over 2 million workers) with production facilities in Bangladesh (1,700 factories): the Accord on Fire and Building Safety, in which the ILO served as a neutral chair of its steering committee. In 2014, IndustriALL Global Union and a number of MNEs signed a Memorandum of Understanding (MOU) on “Action Collaboration Transformation” (ACT) with a view to establishing industry-level collective bargaining, including on wages, in a number of supplier countries.
- 106.** A number of agreements that are not with MNEs have also been signed by UNI, such as those with postal unions (ABU, APPU, EurMed, PAPU and UPU) and with FELABAN (2014), a federation of national banking associations in Latin America. In 2011, IndustriALL Global Union (then ICEM) and the International Chemical Employers’ Labour Relations Committee signed an agreement on “Global Social Dialogue in the Chemical Industry” on the regular exchange of information on labour relations and other emerging issues.²⁸ Similarly, two protocols concluded by the ITF, UNI and Deutsche Post-DHL in 2014 and 2015 include a commitment to continued dialogue on employment and industrial relations, following mediation by the German contact point for the OECD Guidelines concerning a complaint filed in 2012.
- 107.** Since 2015, the “Solvay Global Forum”, a type of GWC, has signed a series of agreements with the management of Solvay, notably on social welfare, introducing a minimum level of

²⁸ ILO, 2018b, op. cit., p. 54.

company social benefits for all direct workers in the group including maternity leave, medical care, disability and life insurance.²⁹

- 108.** Multi-company agreements have also been signed with no direct participation by GUFs or national or international employers' organizations, such as in 2011 in Indonesia, where a freedom of association protocol was signed by local unions, factory owners and major sportswear MNEs in order to promote freedom of association in the textile, garment and footwear sector. The protocol establishes specific grievance resolution procedures for violations of freedom of association laws in participating factories.³⁰

Operationalization and outcomes

- 109.** Most TCAs establish joint/bipartite monitoring bodies that meet annually. In EFAs, the monitoring body is generally the EWC. In EFAs that are negotiated by ETUFs, the ETUF officials participate in monitoring, mostly with EWC members. In IFAs, GUF officials generally participate in the monitoring bodies, sometimes with national union members and/or EWC or GWC members. There are often commitments to regular reporting by the management based on performance indicators and regular audits, which may include the assessment of suppliers.³¹ For example, the ENEL 2013 IFA establishes a complex system of multilateral committees on occupational safety and health (OSH), diversity and training, which produce joint recommendations, and their work has been supported by the ILO (ACTRAV), mainly through training courses.³² In some recent IFAs, annual site visits, generally limited to subsidiaries, are organized to monitor compliance.³³ In rare cases, MNEs and GUFs monitor IFA implementation within and beyond subsidiaries through joint visits. For instance, based on the Solvay–IndustriALL IFA joint labour and management monitoring missions have visited Solvay sites in five countries, and annual joint visits have been made to six countries to monitor OSH.³⁴
- 110.** Most EFAs establish internal conflict resolution mechanisms, and recent IFAs are often very detailed in this respect, with priority being given to the resolution of conflicts with local management. In these IFAs, if a conflict cannot be resolved locally, a multi-level procedure is foreseen involving national management, trade unions, the MNE, the GUF and its affiliated national organizations. In the last resort, conflicts are generally resolved between the signatories, with no specific role assigned to governments.
- 111.** In some IFAs, if the conflict cannot be resolved between the parties, it can be submitted by mutual consent to a jointly selected external mediator. The Tchibo IFA of 2016 envisages that both parties can seek ILO assistance with mediation and arbitration, in which case the

²⁹ *ibid.*, p. 51.

³⁰ T. Connor, A. Delaney and S. Rennie: "The Freedom of Association Protocol: A localised non-judicial grievance mechanism for workers' rights in global supply chains", in *Non-Judicial Redress Mechanisms Report*, Series No. 19, SSRN, 2016.

³¹ F. Hadwiger, 2015, *op. cit.*

³² M. Cirioni and M. Zito: "The Enel, Bosch and Salini-Impregilo agreements", in F. Guarriello and C. Stanzani, 2018, *op. cit.*

³³ U. Rehfeldt: "The Renault, Engie (GDF Suez) and Solvay agreements: The 'French imprint'", in F. Guarriello and C. Stanzani, 2018, *op. cit.*

³⁴ ILO, 2018b, *op. cit.*, p. 51.

parties “shall agree to abide by the final recommendations of the ILO”. In the Auchan IFA of 2015, they can submit an unresolved dispute to an agreed external arbitrator, but must share the arbitration costs. So far these dispute resolution mechanisms have not been used.

- 112.** Recent research on IFAs shows that in practice conflicts are generally resolved informally, often through phone calls between representatives of the signatories.³⁵ To date, no conflict has yet gone to court or resulted in a GUF denouncing an IFA, which points to a preference for consensual conflict resolution and the pursuit of ongoing dialogue. MNEs play a key role in implementing IFAs when they are able to adapt their work to local contexts, respond immediately to emerging issues and when relevant stakeholders, and particularly local management, are committed to the resolution of disputes.³⁶
- 113.** It is sometimes suggested that IFAs are not always widely disseminated among the managers of MNE subsidiaries, local suppliers and local trade unions, which is likely to reduce their impact. Even when local actors are aware of IFAs, they seldom have much understanding of their role, and they are rarely involved in the negotiation of IFAs. Gaps may therefore emerge in terms of the ownership of the agreements. Another potential gap in IFAs may be weak linkages between local unions and the GUFs that sign the agreements.³⁷ This raises the question of the various means that could be used by the concerned parties for the improved dissemination of IFAs and for capacity building for workers and economic units linked to the signatory MNEs to extend collective ownership beyond peak level MNE management and GUFs. This in turn relates to the issues of supply chain transparency, additional resources for monitoring and implementation and stronger dispute resolution mechanisms.³⁸

Outcomes relevant to GSCs

- 114.** The implementation of IFAs in MNE subsidiaries is far better documented than in suppliers and subcontractors. In particular, research has shown that, if properly implemented, IFAs can help to solve local conflicts, trigger trade union campaigns that may lead to an increase in the unionization rate and collective bargaining for trade union recognition and the improvement of working conditions.

Box 6

IFAs: Selected outcomes

In Colombia, in 2015, an IFA led to the establishment of a union with 7,000 members (60 per cent of the workforce) in the MNE subsidiary, enabling the union to negotiate collective agreements on working conditions and wages, and preventing dismissals when the subsidiary was subsequently sold. In Brazil, in the supply chains of an automaker, an IFA was used by local trade unions to reinstate dismissed representatives and negotiate new contracts with improved working conditions.

Similar outcomes have been possible through the implementation of an IFA by a French automaker in subcontractors and subsidiaries in Morocco and Turkey, while an IFA within a telecommunications MNE resulted in the creation of several new union structures at the company level across the African operations of the company.

In India, an IFA with an MNE in the security business led to increased local trade union membership and a collective bargaining contract covering almost 200,000 workers. Similarly, in Myanmar, an IFA within an apparel

³⁵ F. Guarriello and C. Stanzani, 2018, op. cit.

³⁶ ILO, 2018b, op. cit.

³⁷ J. Sydow, M. Fichter, M. Helfen et al.: “Implementation of Global Framework Agreements: Towards a multi-organizational practice perspective”, in *Transfer*, 20(4), 2014, pp. 489–503; ILO, 2018b, op. cit. p. 20.

³⁸ ILO, 2018b, op. cit., p. 30.

MNE led to the signature of a collective agreement in a supplier factory which recognized trade union rights. In China, an IFA in an MNE in the chemical sector led to an increase in unionization to two-thirds of the workforce.

In the United States, some IFAs signed by European MNEs have led to successful trade union recognition campaigns in MNE subsidiaries and suppliers, and have improved communication between United States management and local unions, resulting in improvements in working conditions, especially OSH.

Source: U. Rehfeldt: "A mapping of the transnational company agreements: Inventory and dynamic", 2018, op. cit.; ILO, 2018b, op. cit. pp. 41, 53; M. Fichter and D. Stevis: "Global framework agreements in a union-hostile environment: The case of the USA", SSRN, 2013; J. Barreau and A. Ngaha: "L'application d'accords-cadres internationaux (ACD): Enjeux et déterminants", in *Economies et Sociétés, Socio-Economie du travail*, 35, 5/2023, pp. 631–660.

- 115.** The impacts of IFAs on other core labour rights, such as the elimination of child labour and forced labour, and non-discrimination, are not so well documented. Little is also known about the impacts in second- and third-tier suppliers.³⁹ Very few empirical case studies focus on the effect of IFAs on the whole supply chain, and there is no information on whether the impacts expected by management, such as increased competitiveness or productivity, have been achieved. Moreover, only fragmented information exists on improvements in working conditions as a result of IFAs.⁴⁰

The legal nature of TCAs

- 116.** TCAs are voluntary. No legal framework regulates their design or implementation, and they are not therefore enforceable in the same way as most national collective agreements.⁴¹ TCAs can become legally binding if they are implemented through national collective agreements,⁴² or if this is the stated intention of their signatories, as in the case of the 2013 Accord on Fire and Building Safety in Bangladesh. For some experts, the effective implementation of TCAs through the commitment of local managers and employee representatives is more important than their legal status.⁴³ Legal experts continue to debate the legal nature of IFAs.⁴⁴ The debate has often been prompted by EU legislative action to regulate TCAs, which has so far been inconclusive.

³⁹ F. Hadwiger, 2015, op. cit.

⁴⁰ ILO, 2018b, op. cit., p. 59.

⁴¹ A. Sobczak: "The legal dimensions of international framework agreements in the field of corporate social responsibility", in K. Papadakis, 2011, op. cit., pp. 115–130.

⁴² Clauses calling for implementing IFAs through collective bargaining agreements can be found in the IFAs of Total, 2005; PSA, 2010; and EADS, 2010.

⁴³ A. Sobczak: "Ensuring the effective implementation of transnational company agreements", in *European Journal of Industrial Relations*, 18(2), 2012, pp. 139–151.

⁴⁴ M.-A. Moreau: *La spécificité des accords mondiaux d'entreprise en 2017: Originalité, nature, fonctions*, Paris, ILO, 2017.

Box 7

The European Union debate on regulating TCAs

In accordance with the European Commission (EC) Social Agenda 2005–2010, the EC announced in 2005 the elaboration of an “optional legal framework” for transnational collective bargaining to regulate the negotiation of TCAs.

An EU expert group on TCAs, established in 2009 with the participation of ILO and European Parliament representatives as observers, led to a report by the Commission which proposed “operational conclusions” and outlined “options for further initiatives”. Following this initiative, the EC refrained from presenting a proposal for a legislative instrument. Employers’ organizations, and particularly BusinessEurope, expressed opposition to a legal framework, disputing the assumption that the lack of EU rules on TCAs discourages multinationals from opting for TCAs, emphasizing a preference for tailor-made arrangements and highlighting the practical and legal difficulties of developing an EU legal framework.

The ETUC has continued to campaign for an optional framework, supported by a 2013 resolution of the European Parliament. In 2014, the ETUC called for the elaboration of a Council Decision to make TCAs binding in EU Member States in the same way as national collective agreements. In 2016, the ETUC proposed a draft Council decision.

The ETUC has proposed, inter alia, clauses for signatory parties to disclose a negotiating mandate; the inclusion of a “non-regression” clause; the possibility of voluntary external mediation in the event of conflicts and the establishment by the EC of a list of available mediators; the official registration of TCAs; and possibility of public access to the texts of TCAs online.

Source: EC: “Transnational company agreements: Realising the potential of social dialogue”, Commission Staff Working Document, SWD(2012) 264 final; and *Report on cross-border collective bargaining and transnational social dialogue*, (2012/2292 (INI)), Strasbourg, European Parliament, 2013.

- 117.** ILO structures do not envisage either an institutional or regulatory role for TCAs.⁴⁵ However, the ILO has played a role in IFAs in various ways. First, the ILO, through the Director-General, has acted as a witness of the signature of new agreements, sometimes on the ILO premises in Geneva.⁴⁶ Second, it has acted as an unofficial registry for a handful of agreements at the initiative of the signatories,⁴⁷ with no further implications for the ILO or the signatories. Third, the ILO has noted the inclusion of a role for the Organization in relation to conflict resolution/mediation in disputes, an option included in two recent IFAs, but so far not yet used.⁴⁸ Fourth, the ILO (including through ACTRAV and ACT/EMP) has supported constituents through training sessions and materials (particularly the International Training Centre of the ILO (ITC-ILO)) on matters related to TCAs. Finally, it has conducted extensive research on TCAs, including in collaboration with IFA signatories. In 2013, it worked closely with the EC on the establishment of a joint EC/ILO TCA database, which was updated in 2018.⁴⁹

⁴⁵ *ibid.*

⁴⁶ For instance, the May 2018 IndustriALL–PSI–EDF agreement.

⁴⁷ The H&M–IndustriALL IFA provides that it should be registered with the ILO.

⁴⁸ Tchibo–IndustriALL (2016) and Asos–IndustriALL (2017).

⁴⁹ EC, 2012, *op. cit.*

Chapter 5. Corporate social responsibility, private compliance initiatives and cross-border social dialogue

- 118.** The term “corporate social responsibility” (CSR) is used to describe the responsibilities of businesses to society, that 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.”¹
- 119.** Under the generic terms of CSR, “private compliance initiatives” (PCIs) and “responsible business conduct”, companies adopt, implement, participate in, or abide by a variety of processes aimed at respecting internationally recognized principles and/or operationalizing standards or guidelines on responsible business conduct, including in the area of labour rights. These may include corporate codes of conduct, supplier codes of conduct, industry initiatives, multi-stakeholder and similar initiatives, each of which plays a different role and has different structures and processes. Company codes of conduct often involve formal policies that are reflected in strategies, implementation plans, operations and related activities of the company, with the intent to guide and direct the actions of all employees.² Supplier codes of conduct usually contain minimum standards with which suppliers are expected to comply, including compliance with national laws, as a condition of the business contract. Industry and multi-stakeholder initiatives are generally designed to address CSR issues in a particular sector or commodity, or on a particular subject area, such as environmental protection, OSH, child labour, forced labour, working conditions, human rights, indigenous people or community engagement. A growing number of industry initiatives also include chain of custody standards, under which all the enterprises in a supply chain comply with the same code of conduct and use a chain of custody approach to ensure the coherence of the system as products flow downstream.
- 120.** The exact number of these initiatives is not known, although research shows that the vast majority of companies have a CSR strategy integrated into their business model, which usually includes a process of stakeholder engagement that may include trade unions and workers’ representatives in various ways.³

¹ ILO: *InFocus Initiative on Corporate Social Responsibility (CSR)*, Governing Body, 295th Session, Geneva, March 2006, GB.295/MNE/2/1, p. 1.

² ILO, 2016b: *Decent work in global supply chains*, Report IV, International Labour Conference, 105th Session, Geneva, 2016, paras 135–158.

³ I. Daugareilh: “Employee participation, ethics and corporate social responsibility”, in *Transfer*, 14(1), 2008, pp. 93–110; D. Vogel: “The private regulation of global corporate conduct: Achievements and limitations”, in *Business & Society*, 49(1), 2010, pp. 68–87; T. Bartley and N. Egels-Zandén: “Responsibility and neglect in global production networks: The uneven significance of codes of conduct in Indonesian factories”, in *Global Networks*, 2015, 15(s1), pp. S21–S44; ILO: “Purchasing practices and working conditions in global supply chains: Global Survey results”, INWORK Issue Brief No. 10, Geneva, 2017.

Objectives

121. Company policies are tailored according to the type of business and the economic and social environment in which it operates, in order to reflect the company's values and principles, engage and motivate employees, attract and retain top talent, strengthen relationships with local communities and regulators, increase customer loyalty and investor confidence.⁴ While many CSR initiatives are prompted by the company's ethical concerns and human resources strategy, others are adopted in an effort to address reputational risks, enhance the company's public image, or as a response to activist pressure and awareness-raising campaigns by trade unions, NGOs, ethical investors, social movements and consumers' associations.⁵

Labour-related content

122. Corporate responsibility covers a wide array of topics. The social or labour dimension of the majority of company actions and PCIs draws on authoritative international instruments as benchmarks, particularly the Universal Declaration of Human Rights, the UNGP, the ILO 1998 Declaration, the OECD Guidelines and the ILO MNE Declaration, as well as relevant regional initiatives. Key elements of these instruments, including "due diligence", the promotion of fundamental principles and rights at work, and of sound labour-management relations, shape the design and implementation of CSR strategies.⁶ CSR and PCIs may or may not include direct references to these instruments.
123. Research shows that MNEs tend to adopt initiatives that mainly address as a priority the more easily detectable violations of labour standards, such as child and forced labour, and suboptimal OSH.⁷ In contrast, the level of commitment through CSR to freedom of association, effective recognition of the right to collective bargaining and non-discrimination is globally lower than for other CSR dimensions.⁸ Furthermore, there is limited disclosure on the policies and efforts deployed by companies in their CSR strategies to deal with labour relations and social dialogue (figure 6).⁹

⁴ M. Orlitzky, F.L. Schmidt and S.L. Rynes: "Corporate social and financial performance: A meta-analysis", in *Organization Studies*, 24(3), 2003, pp. 403–441; J.D. Mgis, H.A. Elfenbein and J.P. Walsh: "Does it pay to be good ... And does it matter? A meta-analysis of the relationship between corporate social and financial performance", Working Paper, SSRN, 2009; D.W. Greening and D.B. Turban: "Corporate social performance as a competitive advantage in attracting a quality workforce", in *Business & Society*, 39(3), 2000, pp. 254–280.

⁵ M.E. Keck and K. Sikkink: *Activists beyond borders: Advocacy networks in international politics*, Ithaca, Cornell University Press, 1998; D. O'Rourke: "Multi-stakeholder regulation: Privatizing or socializing global labor standards?", in *World Development*, 34(5), 2006, pp. 899–918.

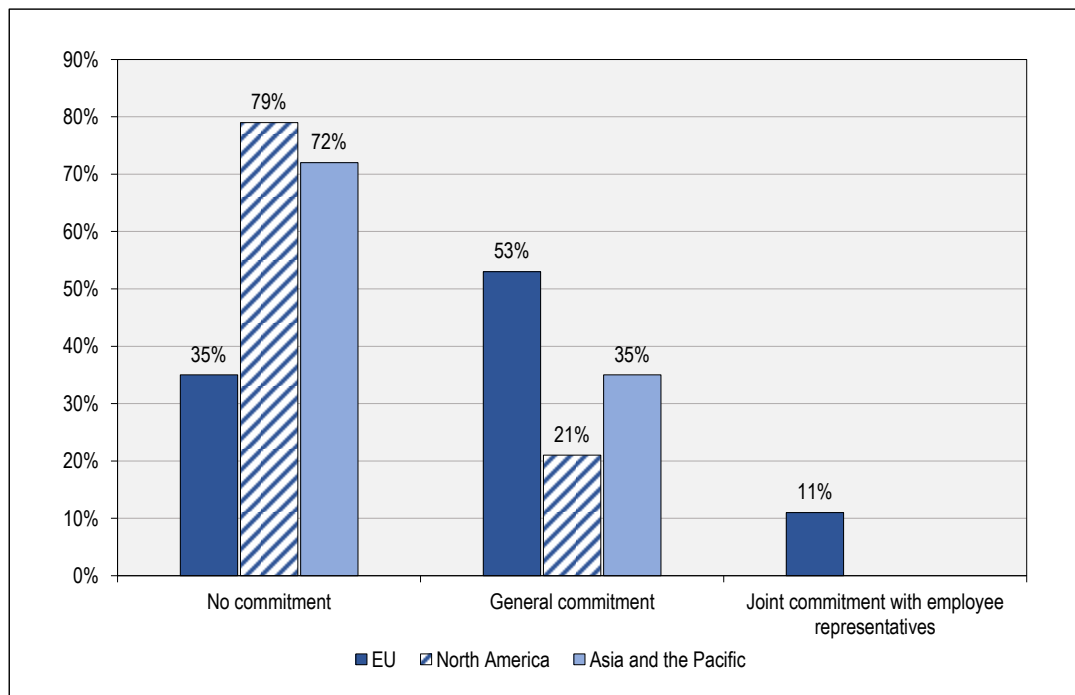
⁶ IOE: *Corporate social responsibility for all best practice compilation*, 2015.

⁷ M. Anner: "Corporate social responsibility and freedom of association rights: The precarious quest for legitimacy and control in global supply chains", in *Politics & Society*, 40(4), 2012, pp. 609–644; S. Barrientos and S. Smith: "Do workers benefit from ethical trade? Assessing codes of labour practice in global production systems", in *Third World Quarterly*, 28(4), 2007, pp. 713–729.

⁸ G. Delautre: *Uneven practices in voluntary labour commitments: An exploration of major listed companies through the VigeoEiris database*, Research Department Working Paper No. 22, ILO, Geneva, 2017.

⁹ Vigeo Eiris: *Social dialogue: A corporate social responsibility 'blind spot'*, Sustainability Focus, June 2018.

Figure 6. Commitments to promote labour relations in the 2016–17 research cycle: Comparison by region



Source: Vigeo Eiris, 2018, op. cit.

The role of social dialogue in elaborating and implementing CSR

124. Management initiatives and PCIs which involve stakeholder consultation with civil society on labour-related commitments show contrasting levels of engagement with workers' representatives and trade unions in their adoption, implementation and monitoring. In the case of MNEs, the attribution of a role to workers and their organizations in the development and application of social responsibility policies depends on several factors, and particularly the country of origin and industrial relations culture prevailing at headquarters. A study conducted in 2007 found that one fifth of UK MNEs with international CSR codes had negotiated them with an international trade union organization or an EWC. While MNEs from the United States were the most likely to have adopted CSR codes, they were the least likely to have negotiated them. In contrast, German and Nordic firms were least likely to develop CSR codes, but they were generally negotiated.¹⁰ Other determinants may include the level of coordination and autonomy between management policy in the country of origin and local management regarding employee matters, and the institutional and political context in host countries.

125. Company codes of conduct are the most prevalent form of CSR.¹¹ Most include commitments to “multi-stakeholder engagement” or consultation with “civil society”. A

¹⁰ T. Edwards, P. Marginson, P. Edwards et al: “Corporate social responsibility in multinational companies: Management initiatives or negotiated agreements?”, Discussion Paper Series, ILO, Geneva, 2007.

¹¹ J. Esbenshade: “Corporate social responsibility: Moving from checklist monitoring to contractual obligation?”, in R.P. Appelbaum and N. Lichtenstein (eds): *Achieving workers' rights in the global economy*, Ithaca, Cornell University Press, 2016.

number of CSR codes explicitly envisage dialogue with workers' organizations, including for their implementation. For example, in its Human Rights Progress Report, Unilever refers to a range of formal and informal consultations with trade unions, including twice a year through a forum with the IUF and IndustriALL Global Union, where local and global rights issues, and new developments, policies and programmes affecting workers are discussed. As a result of this engagement, a working group with the IUF on sustainable employment helped Unilever to address challenges associated with the use of casual workers in its supply chains. Unilever also conducts auditing to measure non-compliance with the freedom of association-related commitment of its CSR strategy (747 cases in 2015–16), which has paved the way for training and communication for managers and the formation of trade unions in a number of operations.¹² Similarly, Coca Cola's engagement strategy involves consultation and collaboration with the IUF¹³ on the basis of a "Joint Statement" which commits the company to allow its workers "to exercise rights to union membership and collective bargaining without pressure or interference".¹⁴ Audits to identify non-compliance with the labour-related commitments of the company's "Human Rights Policy" (192 cases in 2016), led to corrective action plans, such as management training, and re-auditing to assess improvements.¹⁵ In 2010, the International Organization for Standardization (ISO) adopted cross-industry guidance standards on social responsibility following five years of global consultations through a multi-stakeholder process, including both employers' and workers' organizations, as well as the ILO.

- 126.** Supplier codes of conduct may also be developed following consultations with a broad range of stakeholders. When developing performance standards to assess the implementation of supplier codes of conduct, companies often rely on industry standards that collectively address economic, social and environmental issues related to the industry, most of which are designed through stakeholder consultation. Examples include the Responsible Care (chemicals), IPIECA (oil and gas), ICTI Care (toys), EICC/RBA (electronics), Automotive Industry Action Group (autos), ICCM (mining), World Gold Council, Responsible Jewellery Council, Aluminium Stewardship Initiative, Better Cotton Initiative and Better Coal Initiative. ISEAL, a platform that certifies certification initiatives, lists hundreds of such initiatives that meet its "credibility principles", which have also been developed through consultation with a diverse group of over 400 stakeholders, including unions.¹⁶ The vast majority of, if not all, supplier codes of conduct include the minimum requirement to comply with the applicable laws and regulations, as well as international principles that are generally consistent across all supplier codes.
- 127.** The implementation of supplier codes is complex, and is usually operationalized through legally binding contracts between buyers and suppliers. This often entails the establishment of monitoring and enforcement systems, sometimes with detailed questionnaires on practices in supplier plants, unannounced visits by auditors and reviews by company officials. The process normally includes supplier assessments and audits, the development and implementation of corrective action plans to address non-compliance and capacity-building

¹² Unilever: *Human Rights Progress Report 2017*, p. 39.

¹³ See <https://www.coca-colacompany.com/our-company/human-workplace-rights/stakeholder-engagement>.

¹⁴ See https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/unknown/unknown/global_union_relations.pdf.

¹⁵ See <https://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/human-and-workplace-rights/Human-Rights-Report-2016-2017-TCCC.pdf>.

¹⁶ ISEAL Alliance Consultations [accessed 5 Oct. 2018].

programmes that seek to address the root causes of non-compliance. The monitoring of supplier codes is often entrusted to a third party, such as an NGO or an external social auditor.¹⁷ The role of trade unions and workers' representatives in the follow-up phase of supplier codes of conduct is much less evident, as is the role of social dialogue institutions.¹⁸

Box 8

Purchasing contracts and social dialogue

An ILO survey of purchasing practices between buyers and suppliers shows that most purchasing contracts specify basic terms and conditions regulating the buyer–supplier relationship (type of contract, volume, price, quality, delivery dates). Some 41 per cent of the contracts surveyed specify minimum labour standards. Importantly, 35 per cent of the contracts with buyers are unwritten.

Over 90 per cent of the suppliers surveyed are expected by buyers to follow a code of conduct, which includes social standards. Some 51 per cent have received assistance from buyers to achieve the required social standards, mostly in the form of staff training and joint identification of breaches.

The presence of social dialogue and workers' representation in the surveyed suppliers (on average 28 per cent) varied greatly depending on the country (43 per cent in Bangladesh, 15 per cent in Turkey) and sector (45 per cent of suppliers in the chemical paper industry, 22 per cent in food and agriculture). Finally, despite the presence of workers' representative bodies, the survey reveals that they rarely generate opportunities for workers to change their working conditions.

Source: ILO: *Purchasing practices and working conditions in global supply chains: Global Survey results*, 2017, op. cit.

- 128.** Multi-stakeholder initiatives normally involve “private and non-governmental stakeholders in negotiating labour, health and safety, and environmental standards, monitoring compliance with these standards, and establishing mechanisms of certification and labelling that provide incentives for firms to meet these standards”.¹⁹ Through multipartite dialogue, the ultimate objective of multi-stakeholder initiatives is to make business processes more responsible and sustainable. Multi-stakeholder initiatives have been gaining momentum in many supply chains for consumer goods (such as garment and horticulture) and extractive industries (diamonds, gold and steel). They can be launched at the initiative of businesses, civil society organizations, governments, or under the impulse of international organizations. Multi-stakeholder initiatives are dynamic processes and some have evolved through different phases, from dialogue platforms to formalization, implementation and continuous improvement.²⁰ In some cases, they have evolved into independent international organizations, including with strong trade union presence.

Box 9

Ethical Trading Initiative and Global Reporting Initiative

The Ethical Trading Initiative (ETI) is an alliance of companies, trade unions and NGOs which promotes respect for workers' rights around the world. Participant companies are called upon to abide by the ETI Base Code of labour practices, which is based on ILO standards, and to commit that all their suppliers will work towards its implementation. The Base Code addresses issues such as wages, hours of work, occupational safety and

¹⁷ N. Egels-Zandén and J. Merk: “Private regulation and trade union rights: Why codes of conduct have limited impact on trade union rights”, in *Journal of Business Ethics*, 123(3), 2014, pp. 461–473.

¹⁸ A. Marx and J. Wouters: “Redesigning enforcement in private labour regulation: Will it work?”, in *International Labour Review*, 155(3), 2016, pp. 435–459.

¹⁹ D. O'Rourke: “Locally accountable good governance: Strengthening non-governmental systems of labor regulation”, Global Economic Governance Working Paper 2005/16, University of Oxford, Department of Politics and International Relations, 2006, p. 2.

²⁰ M. van Huijstee: “Multi-stakeholder initiatives: A strategic guide for civil society organizations”, Centre for Research on Multinational Corporations (SOMO), Amsterdam, 2012.

health and freedom of association. The ETI is governed by a board of directors which includes representatives of business, NGOs and trade unions, including the ITUC, the Trade Union Congress (TUC) and the IUF.

The Global Reporting Initiative (GRI) is an international organization which helps businesses to understand and communicate their impact on sustainability issues. In 2016, it developed “Sustainability Reporting Standards” (“GRI Standards”), the first global standards for sustainability reporting. The GRI Board of Directors is advised by a stakeholder council, composed of representatives of business enterprises, civil society organizations, investment institutions, labour organizations and mediating institutions.

Both initiatives emphasize the key role that independent worker representation and trade unions, and collective bargaining are expected to play in implementing the GRI Standards and ETI Base Code.

Source: GRI and ETI websites.

Operationalization and outcomes

- 129.** CSR and PCIs cover a very diverse range of measures, and include a great variety of monitoring and reporting methods. Hence, as in the case of IFAs, it is generally very difficult to make a structured assessment of how company policies shape working conditions and promote fundamental principles and rights at work down MNE supply chains.²¹ A lack of synchronization of CSR reports between different units in the same MNE has been highlighted as another impediment to assessing effectiveness.²²
- 130.** Research produces mixed findings on the effects of private compliance initiatives on labour rights and working conditions. A positive albeit limited impact on promoting labour rights has been observed, not least because CSR triggers a “race to ethical and legal minimum”.²³ The context in which firms operate (for example sector, firm size, country of operations) seems to influence the effectiveness of CSR policies.²⁴ Labour violations in such areas as child labour, forced labour and OSH seem to have a relatively higher chance of being detected through CSR audits, and thus addressed.²⁵ Other forms of violations, such as forced overtime or the non-payment of legal minimum wages, may see uneven improvement, whereas violations of trade union, collective bargaining and non-discrimination rights are more difficult to assess and remedy through CSR audits.²⁶
- 131.** There is evidence that effective protection of workers’ health and safety depends, inter alia, on the efficiency of the monitoring systems and the degree of involvement of workers in the

²¹ P.L. Fall and M.M. Zahran: *United Nations corporate partnerships: The role and functioning of the Global Compact*, Joint Inspection Unit Report 9, UN, Geneva, 2010.

²² UNCTAD: *Corporate social responsibility in global value chains: Evaluation and monitoring challenges for small and medium sized suppliers in developing countries*, New York and Geneva, 2012, p. 13.

²³ X. Yu: “Upholding labour standards through corporate social responsibility policies in China”, in *Global Social Policy*, 15(2), 2015, p. 182.

²⁴ H. Görg, A. Hanley and A. Seric: “Corporate social responsibility in global supply chains: Deeds not words”, in *Sustainability*, 10(10), 2018, 3675.

²⁵ M. Anner, 2012, op. cit.; X. Yu, 2015, op. cit.

²⁶ N. Egels-Zandén and H. Lindholm: “Do codes of conduct improve worker rights in supply chains? A study of Fair Wear Foundation”, in *Journal of Cleaner Production*, 107, 2015, pp. 31–40.

design, implementation and assessment of OSH programmes.²⁷ It is considered by some that a minimal role of organized workers in CSR, in contrast with NGOs and private auditing firms, is associated with suboptimal outcomes in the process of auditing and monitoring PCI outcomes and is a challenge for their effectiveness.²⁸ As freedom of association is an enabling right, if it is disregarded, it is likely to have an adverse influence on other dimensions of CSR. Inversely, research shows that an increase in the level of public commitment to freedom of association is generally associated, in the following years, with an increase in the level of commitment to other dimensions of CSR relevant to both internal employees and external stakeholders.²⁹

- 132.** Some research sees a certain complementarity between corporate compliance initiatives that do not involve trade unions, and initiatives in which the involvement of both business and workers' representatives is a prerequisite. An analysis of both forms of governance that emerged in the aftermath of the Rana Plaza catastrophe in Bangladesh, namely the "Accord" (which involves global and local social partners, MNEs and the public authorities), and the "Alliance for Bangladesh Worker Safety" (launched by mainly North American MNEs) which does not include such involvement, found that the two approaches are not mutually exclusive. While the "Alliance" has not brought about institutional change, it has helped to solve immediate problems associated with a weak institutional framework. At the same time, the mechanisms established through the "Accord" have paved the way to strengthening institutions and empowering workers in the long term.³⁰
- 133.** One core finding of most research is that there is no evidence that private compliance initiatives can be a substitute for state protection of labour rights.³¹ This finding echoes earlier ILO observations that "governments have an especially important role which cannot be ceded to private systems of defining workers' rights"³² and that efforts of "other stakeholders [through private compliance initiatives] to promote workplace compliance can support, but not replace, the effectiveness and efficiency of public governance systems".³³

²⁷ G.D. Brown: "Effective protection of workers' health and safety in global supply chains", in *International Journal of Labour Research*, 7(1-2), 2015, pp. 35–53.

²⁸ N. Lichtenstein: "The demise of tripartite governance and the rise of the corporate social responsibility regime", in R.P. Appelbaum and N. Lichtenstein, 2016, op. cit.; ILO: 2016b, op. cit., para. 139; R. Locke, M. Amengual and A. Mangla: "Virtue out of necessity? Compliance, commitment, and the improvement of labor conditions in global supply chains", in *Politics & Society*, 37(3), 2009, pp. 319–351; A. Marx and J. Wouters, 2016, op. cit.

²⁹ G. Delautre and B.D. Abriata: "Exploring the determinants of CSR and the complementarities between its dimensions", ILO, Geneva (forthcoming).

³⁰ J. Donaghey and J. Reinecke: "When Industrial Democracy Meets Corporate Social Responsibility – A Comparison of the Bangladesh Accord and Alliance as Responses to the Rana Plaza Disaster", in *British Journal of Industrial Relations*, 56, 2018, pp.14–42.

³¹ G. Distelhorst and D. Fu: *Wages and working conditions in and out of global supply chains: A comparative empirical review*, ACT/EMP Research note, ILO, Geneva, 2018, pp. 12–13; R. Locke: *The promise and limits of private power: Promoting labor standards in a global economy*, Cambridge University Press, 2013.

³² ILO: *Freedom of association in practice: Lessons learned*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference, 97th Session, Geneva, 2008, para. 143.

³³ ILO, 2016c: *Conclusions concerning decent work in global supply chains*, International Labour Conference, 105th Session, Geneva, 2016.

Chapter 6. Concluding remarks

- 134. Opportunities and spaces for cross-border social dialogue have multiplied** over the past century, including outside the ILO, in response to deepening globalization and regional integrations. The drivers of cross-border social dialogue have been manifold, including the willingness to establish a level playing field in social standards, coordinate social policies in more interlinked economies, address specific issues of a cross-border nature, such as migration, and exchange experience between different countries. The issues of the sustainability of enterprises and CSR across GSCs have also been key drivers of cross-border social dialogue.
- 135. The promotion of dialogue in all its forms, including across supply chains, lies at the heart of many authoritative international instruments**, such as the UN Guiding Principles on Business and Human Rights (2011), the revised MNE Declaration (2017) and the revised OECD Guidelines (2011). The adoption of the MNE Declaration was in itself the outcome of cross-border social dialogue processes, in which the global social partners had an institutional voice. The OECD Guidelines were negotiated and adopted by governments, following consultations with the BIAC and the TUAC. In addition, their follow-up and implementation are generating additional instances of cross-border social dialogue involving MNEs and unions at the national and enterprise levels.
- 136. Regional cross-border social dialogue is also on the rise.** In the last 30 years, significant progress has been achieved in the EU in institutionalizing cross-border social dialogue at the cross-industry, sectoral and company levels to accompany the development of the EU internal market. Crucially, social dialogue has developed at the EU level reflecting its widespread practice in EU Member States. Beyond Europe, initiatives have been taken more recently to establish cross-border social dialogue in regional groupings such as MERCOSUR, ECOWAS, SADC, UEMOA, EAC, ASEAN, OAS and CARICOM, and the voice of the social partners is progressively being institutionalized at the cross-border level.
- 137. Labour-related clauses in some bilateral and multilateral trade agreements envisage consultations** with national employers' and workers' organizations on the implementation of their labour provisions. They also allow any concerned entity, including workers' and employers' organizations, to submit concerns about the failure of the parties to the agreements to honour their labour commitments. However, the operationalization of social dialogue provisions has room for improvement. A lack of capacity of institutions and social partners in certain countries, limited transparency and the allocation of insufficient resources to facilitate cross-border dialogue are among the possible constraints.
- 138. Cross-border social dialogue also occurs in the context of interstate arrangements** within groupings of countries in one region or across regions, such as the G20 and the G7. Such dialogue generates business/employer–union dialogue on important policy matters for the governance of globalization, including in the areas of skills and social protection for inclusive growth. Bipartite and tripartite high-level statements also address issues related to GSCs.
- 139. At the company level, TCAs are an expression of cross-border social dialogue**, aimed particularly at providing a framework for constructive labour relations within MNEs. While only a small minority of MNEs have signed a TCA, and most of them are headquartered in European countries, the agreements have implications for enterprises and workers in other regions and countries. There is evidence that TCAs can help to improve relationships between management and workers in the enterprises concerned, and to prevent and manage labour disputes. In particular, TCAs focus on the promotion of freedom of association and the right to organize within MNE subsidiaries, but rarely their suppliers. At the same time,

the overwhelming majority of MNEs globally have not signed a TCA and use different processes and approaches to manage social responsibility. There are different reasons for this, including doubts about the added value of TCAs compared with existing CSR policies, multi-stakeholder initiatives and engagement processes; a preference for decentralized policies on social issues; a reluctance to engage under pressure from a campaign, or a view that IFAs may limit room for manoeuvre or even create conflicts with existing company commitments, national laws or local industrial relations systems.

- 140. Since the first IFA was signed in the late 1980s, they have evolved in their numbers and content.** As in the case of company-driven codes of conduct, IFAs have become more ambitious in terms of their references to suppliers, contractors and subcontractors and are, in some instances, attached to purchasing contracts. Yet, their monitoring and implementation remain a challenge, in particular due to the immensity of the task of monitoring the hundreds or sometimes thousands of suppliers and subcontractors. Further assessing the impact of IFAs on working conditions and enterprises down the supply chain, particularly where labour administration is weak and workers are not effectively represented, may help to improve the operationalization and impact of IFAs.
- 141. Various factors may have an impact on the broader use of IFAs,** such as the expansion of their content to embrace areas that go beyond core labour standards and deal with other important issues affecting workers in GSCs, such as the promotion of OSH and social protection and the management of industrial change and company restructuring (as is currently the case in most EFAs and some IFAs). The other factor is the geographical coverage of IFAs, and the existence of GWCs within each MNE, or the expansion of EWCs to include the representation of workers outside the EU and the United States, especially from developing economies. Finally, dissemination of the agreements to all relevant parties can also have a positive impact.
- 142. For a vast majority of MNEs, CSR and PCIs are the main means through which they manage their sustainability and human rights performance,** including human rights due diligence. CSR and PCI initiatives are often developed in a collaborative way, as they usually involve consultation with a wide range of stakeholders, including employees and trade unions. CSR and PCI standards and mechanisms have been updated to align them with international instruments on human rights, and particularly the UNGPs. However, the operationalization of due diligence to prevent human rights abuses, particularly beyond MNEs, remains limited. More information about these initiatives and their impact on domestic enterprises, including small and medium-sized enterprises, might help to improve their uptake, operationalization and impact, including in relation to freedom of association and collective bargaining, which are enabling rights that are key to achieving other objectives, including working conditions.
- 143. National regulation is also addressing due diligence.** Notwithstanding the central role of businesses in self-regulation for human rights due diligence, governments are increasingly playing a role in providing frameworks and incentives for the private sector, including through national legislation on diligence. Some countries have also adopted national action plans and covenants involving MNEs, the social partners and stakeholders to address the same issues. This development offers additional opportunities for the ILO to expand its knowledge base and enhance its technical assistance to constituents.
- 144. Complementarities are not always ensured.** The multi-stakeholder approach embedded in most private and public corporate responsibility standards and initiatives incorporates dialogue with trade unions and extends to other actors that might be affected by enterprise activities, including local communities, local and national governments, vulnerable groups, suppliers and consumers. Such broad-based stakeholder engagement generates legitimate expectations of helping to build a business culture of respect for the rule of law, especially in countries where labour administration and inspection capacity is weak. From this point of

view, multi-stakeholder engagement can complement the efforts of governments and the social partners to promote workers' rights and sound industrial relations. However, private initiatives cannot replace national or international labour law and their enforcement, nor replace mature industrial relations systems at the national level based on social dialogue and tripartism. Especially in countries where respect for the rule of law is weak, and the establishment and operation of independent and democratic trade unions is a challenge, the implementation of TCAs, CSR codes and multi-stakeholder initiatives is likely to remain difficult.

- 145. The capacities of the actors and partnerships are essential.** There is a rich multilevel/multi-stakeholder (self-)regulatory landscape of initiatives to promote compliance in supply chains. Duplication of public and private standards and processes, including CSR, multi-stakeholder initiatives and TCAs, is therefore inevitable. An MNE that signs a TCA with a global union may also be participating in a range of industry initiatives, the UN Global Compact, private certification schemes and, recently, in processes triggered by national legislation. As monitoring and reporting obligations increase in complexity, legitimate questions can be raised as to the actual capacity of companies, global and local unions, NGOs and other relevant stakeholders to follow up on them effectively. Within such a diverse landscape of standards and initiatives, the operationalization of due diligence through cross-border social dialogue, in order to prevent human rights abuses in GSCs, particularly beyond first-tier suppliers, is likely to remain a complex challenge which necessitates concerted action on behalf of all the relevant actors. Partnerships between governments, employers' and workers' organizations, companies, international organizations and NGOs are therefore more relevant than ever in order to achieve complementarity and inject more cohesion into the current multilevel/multi-stakeholder system of social governance.
- 146. Employers' and workers' organizations continue to strengthen their international presence** with a view to harnessing the full potential of cross-border social dialogue. Depending on their respective mandates, they have engaged in dialogues resulting in global tripartite and bipartite outcomes, including codes of practice, guidelines, conclusions and points of consensus, which are of particular relevance to the promotion of decent work in major global sectors. Meanwhile, maritime transport remains the only sector with a fully fledged global collective agreement between organized international social partners.
- 147. The ILO is called upon to support cross-border social dialogue.** Many standards, processes and instances which pave the way for cross-border social dialogue, in both the public and private realms, rely upon the ILO's normative agenda on fundamental labour rights, its bipartite and tripartite approach to addressing decent work deficits and promoting sound industrial relations, and its convening power to address international issues, including at the sectoral level. The ILO is also operationalizing the revised MNE Declaration, which places strong emphasis on tripartism, while distinguishing between the specific roles of each actor. Since 2013, there have also been a number of requests for ILO technical support, capacity building and research in relation to cross-border social dialogue. The 2016 ILC Conclusions concerning decent work in GSCs call on the Office to "[p]romote effective national and cross-border social dialogue, thereby respecting the autonomy of the social partners". The Conclusions add that "[w]hen social partners decide to negotiate international framework agreements, the ILO could support and facilitate the process, on joint request, and assist in the follow-up process, including monitoring, mediation and dispute settlement where appropriate".¹ The 2018 ILC Conclusions concerning the second recurrent discussion on social dialogue and tripartism also call on the Office to enhance the capacity of constituents and social dialogue institutions to "play a stronger role in an international

¹ ILO, 2016c, op. cit., para. 23(c).

context, in particular through cross-border social dialogue based on knowledge and research provided by the ILO”.²

² ILO, 2018a, op. cit., para. 5(h).