

## International Framework Agreements

### An analysis of the international framework agreement as an instrument for improving working standards in global business operations

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#### 1. Introduction

##### 1.1. International framework agreements

As a result of globalising economies it is not unusual nowadays for companies' business organisations to be located all over the world. As there is no single regulatory body that has the authority to formulate universal rules applicable to these organisations, it is not guaranteed that they meet the human rights standards that have become common in most western jurisdictions.<sup>1</sup> A significant issue in this regard is the protection of fundamental working standards worldwide, as many workers connected to the business organisations of internationally operating companies live and work in developing countries with an underdeveloped legal system.<sup>2</sup> A recent example that represents possible consequences of this existing regulatory gap is the disaster in the Rana Plaza manufacturing building in Bangladesh.<sup>3</sup>

Among the instruments developed to deal with the problems described above is the international framework agreement (IFA). An IFA is an agreement concluded between (at least) a multinational company (MNC) and a global trade union (GTU), a trade union representing workers on the global level with regard to a specific sector and/or activities. 'Global framework agreement' is another term that is frequently used to designate these agreements. The primary goal of these agreements is to improve fundamental working standards in the worldwide business operations of the contracting enterprises. IFAs are different from other regulatory instruments aimed at improving the social dimension of doing business (e.g. corporate codes of conduct) in that one or more external parties (the GTU and/or its affiliates) often have an active role in the functioning of the agreement. This monitoring role can be laid down explicitly in the content of the agreement.<sup>4</sup> Being a fairly recent phenomenon (the first IFA was concluded in 1988), the number of IFAs is constantly increasing, particularly since 2000. At this moment 107 MNCs have committed themselves to improving fundamental working standards by signing a framework agreement.<sup>5</sup>

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1 H. Platzer & S. Rüb, 'International Framework Agreements: An Instrument for Enforcing Human Rights?' (2014), accessible at: <<http://library.fes.de/pdf-files/iez/10474.pdf>> (last visited 13 December 2015), pp. 2-3.

2 I. Schömann & P. Wilke, 'Towards a sustainable economy: the potential contribution of international framework agreements', in S. Vitols & N. Kluge (eds.), *The sustainable company: a new approach to corporate governance* (2011), p. 167.

3 'Bangladesh collapse search over; death toll 1,127', *Yahoo News*, 13 May 2013, accessible at: <<http://news.yahoo.com/bangladesh-collapse-search-over-death-toll-1-127-122554495.html>> (last visited 13 December 2015).

4 K. Papadakis (ed.), *Shaping Global Industrial Relations: the Impact of Global Framework Agreements* (2011), pp. 2-3.

5 This number is based on the information on the websites of the existing GTUs, see <<http://www.global-unions.org/+framework-agreements-+>> (last visited 13 December 2015). Some MNCs signed various IFAs, either with one GTU or with various GTUs.

The growing number of IFAs is, in principle, acknowledged as a positive development as it offers possibilities to increase working standards worldwide. The European Union considers supportive measures to stimulate the establishment of new framework agreements.<sup>6</sup> This being said, several comments are in order. The number of IFAs is unevenly distributed both geographically (with most signatory MNCs based in Europe) and amongst sectors.<sup>7</sup> In addition, the agreements vary significantly in their substantive and procedural contents. As a result, no generalizable statements can be made about the actual results that an IFA achieves. This paper aims to analyse the present state of the IFA as an instrument and formulate conclusions with regard to conditions an IFA has to fulfil in order to be able to meet its objectives. It does so by comparing information available in academic literature to experience of actors dealing with IFAs in practice. The following primary research question has been established to guide this study:

*Are the conditions under which the international framework agreement in academic literature is considered a suitable instrument for safeguarding fundamental working standards in the global business operations of contracting enterprises reflected in the experience of actors working with the international framework agreement in practice?*

This research question may need some clarification. An instrument is considered 'suitable' when it is capable of achieving concrete and demonstrable results. The 'fundamental working standards' are embodied in the fundamental conventions of the International Labour Organisation (ILO). These conventions deal with the freedom of association and recognition of the right to collective bargaining, the elimination of forced, compulsory and child labour and the elimination of discrimination in respect of employment.<sup>8</sup> In addition to these conventions, the 'fundamental working standards' include the duty to observe safety and health conditions and the duty to ensure fair wages and fair terms of contract (including social security and working hours).<sup>9</sup> The term 'enterprise' is used because the global business operations are considered to include not only the activities in the legal person(s) that constitute the company, but also additional activities in the supply chain. There is no uniform definition of 'supply chain'. For the purpose of this paper, it is defined as the process in which different actors collaborate in order to retrieve natural resources or knowledge, process these resources or this knowledge into products or services, and deliver these products or services to the public.<sup>10</sup>

## 1.2. Methodology and reading guidance

In order to answer the main research question described above, this paper combines information available from existing literature with empirical data derived from interviews with relevant actors, and desk research. In Section 2, existing legal and non-legal literature is examined. Factors on which the proper functioning of an IFA according to this literature depends are identified in Section 2.2. Thereafter, in Section 3, the experience of relevant actors from practice is described. In order to do so, interviews were first conducted with representatives of MNCs and GTUs. A total of four interviews took place, one with a company representative and three with representatives of GTUs. These interviews were set up in a semi-structured manner, i.e. a questionnaire was used but this was deviated from whenever it was deemed useful.<sup>11</sup> The conversations were processed into interview reports that were verified afterwards by the interviewees.

6 European Commission, 'Transnational company agreements: realising the potential of social dialogue', 10.9.2012, SWD/2012/264 final, accessible at: <<http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>> (last visited 19 May 2015).

7 Platzer & Rüb, supra note 1, pp. 6-7.

8 See the ILO website, accessible at: <<http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>> (last visited 19 May 2015).

9 The ILO has also drawn up conventions with regard to these standards, which are not considered 'fundamental', however, see the ILO website, accessible at: <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO:::~:::](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO:::)> (last visited 2 October 2015). These standards have also been laid down in the Universal Declaration of Human Rights of the United Nations, accessible at: <<http://www.un.org/en/documents/udhr/>> (last visited 2 October 2015), paras. 23-24.

10 Based on a definition used in: B. Beamon, 'Supply Chain Design and Analysis: Models and Methods', (1998) 55 *International Journal of Production Economics*, no. 3, [http://doi.org/10.1016/S0925-5273\(98\)00079-6](http://doi.org/10.1016/S0925-5273(98)00079-6), p. 281.

11 M. Saunders et al., *Research Methods for Business Students* (2009), pp. 320-321.

The interview reports were categorized making use of coding, thus linking parts of the interview reports to certain predefined categories,<sup>12</sup> in order to formulate sound conclusions. The categories that were used are the factors set out in Section 2.2. When dealing with these categories in Section 3, some overlap may inevitably occur between the information that is presented, as certain topics bear relevance to more than one category. The information collected from the interviews is supplemented by desk research,<sup>13</sup> in which 10 MNCs were examined. These MNCs were selected to represent 5 different sectors: (1) food retail (Sodexo and Carrefour); (2) ready-made garments (H&M and Mizuno); (3) building contracting (Royal BAM and Hochtief); (4) electronics (Bosch and Siemens); and (5) tourism (Club Méditerranée and Melia). Regrettably, given the European concentration of MNCs that have concluded an IFA, it was not possible to make a geographically evenly distributed selection as well. The desk research covered the MNCs' websites and the IFAs that the MNCs concluded. The IFAs are readily accessible on the website of the GTUs. Evidently, making use of a relatively small number of MNCs cannot lead to absolute conclusions. The information gathered was used to bring theory to life and substantiate the other research results. In Section 4, the research results presented in Section 3 are tested against the conclusions found in the literature as these are described in Section 2. On the basis of this comparative synthesis, the current value of the IFA as an instrument can be assessed, and critical success factors for its function can be identified. Section 5 concludes this paper's analysis.

Using semi-structured interviews allows both researcher and response bias to occur.<sup>14</sup> Still, this paper provides useful insights regarding the dynamics of the IFA as an instrument and the position it currently has in the range of available international instruments. By dealing with IFAs in relation both to existing literature and to the practical experience of the interviewees it is furthermore deemed a solid introduction for those getting acquainted with the subject.

## 2. Literature regarding international framework agreements

### 2.1. An overview

The literature takes a mainly positive attitude towards the existence of IFAs, as a result of their potential to (at least) strengthen fundamental basic rights for workers, especially in developing countries.<sup>15</sup> Furthermore, IFAs appear to be suitable instruments to influence the globalising business of enterprises in terms of their compliance with fundamental working standards, an area where (inter)national legislation and regulation currently fall short.<sup>16</sup> Through the initiation of this instrument, GTUs laid down the foundation for an international dialogue between international trade unions and MNCs.<sup>17</sup> It is emphasized, however, that the sole establishment of an IFA will not suffice; the actual achievement of positive effects is dependent on various factors. The main factors that were extracted from literature are: (1) the content of the agreement; (2) the composition of the parties to the agreement; (3) the incorporation of implementation and monitoring mechanisms; and (4) the degree to which specific attention is paid to the supply chain. These factors are elaborated below.

IFAs vary significantly in content; some are established to deal with one specific topic, e.g. a reorganisation, whereas the majority is committed to improving a broader range of fundamental working standards.<sup>18</sup> Notwithstanding these variations, all framework agreements contain some elements of the fundamental conventions established by the ILO<sup>19</sup> dealing with the freedom of association and recognition of the right

12 J. Saldana, *The Coding Manual for Qualitative Researchers* (2013), pp. 1-40.

13 Saunders et al., *supra* note 11, pp. 258-259.

14 J.A. Maxwell, *Qualitative research design – an interactive approach* (2013), pp. 124-125.

15 T. Müller et al., 'International Framework Agreements: Opportunities and Limitations of a New Tool of Global Trade Policy' (2008) accessible at: <<http://library.fes.de/pdf-files/iez/05814.pdf>> (last visited 18 September 2015), pp. 10-11.

16 A. Nollkaemper, *Kern van het internationaal publiekrecht* (2014), pp. 52-53.

17 A. Sobczak, 'Legal Dimensions of International Framework Agreements in the field of Corporate Social Responsibility', (2007) 62 *Relations Industrielles – Industrial Relations*, no. 3, <http://doi.org/10.7202/016489ar>, p. 479; Papadakis, *supra* note 4, p. 17.

18 Sobczak, *supra* note 17, p. 476, Schömann & Wilke, *supra* note 2, p. 173.

19 V. Dehnen & L. Pries, 'International Framework Agreements: A thread in the web of transnational labour regulation', (2014) 20 *European Journal of Industrial Relations*, no. 4, <http://doi.org/10.1177/0959680113519187>, p. 338.

to collective bargaining, the elimination of forced, compulsory and child labour and the elimination of discrimination in respect of employment.<sup>20</sup>

Although formally only the MNC and the GTU may sign the IFA, as regularly is the case, a wide variety of actors may be involved in the negotiations that precede the conclusion of the agreement. These actors include national trade unions, a European Works Council (EWC) whenever relevant, national works councils, the management of subsidiary companies, public institutions or persons and non-governmental organisations (NGOs).<sup>21</sup> The extent to which these parties exercise influence during the negotiation process and will participate in upholding the regime that the IFA establishes is a relevant factor when trying to determine the effects of the agreement. Other elements that need to be considered (in addition to the substantive textual contents of the agreement) when examining the likeliness that an IFA will be able to meet its objectives are, for instance, the geographical scope of the enterprise's business, the implementation and monitoring mechanisms that are incorporated in the agreement, the *de facto* powers that the various parties involved are able to exercise and the ideology that encouraged the contract parties to conclude the agreement.<sup>22</sup> These elements are of major importance for the sake of understanding the functioning and dynamics of a specific agreement.<sup>23</sup>

The incorporation of implementation and monitoring mechanisms is considered in literature the most important prerequisite for the actual functioning of an IFA; without these mechanisms the agreement is nothing more than a noncommittal promise.<sup>24</sup> For the purpose of this paper, *implementation* of an IFA is defined as any act in or between companies that raises awareness regarding the existence of the framework agreement or contributes to the agreement's entering into force. The MNC and GTU can make collective efforts in this regard. Examples include publication of the agreement on the website and in the annual (sustainability) report of the MNC, distribution of flyers and posters at any location where business activities of the enterprise take place, informing subsidiary companies, companies in the supply chain, relevant national trade unions and local works councils about the IFA (e.g. in meetings organised for this purpose) and providing translations in local languages.<sup>25</sup> *Monitoring* an IFA in this paper means any act related to the supervision of compliance with the substantive content of the agreement in the enterprise's business organisation. Control may be constructed in various ways, such as the establishment of external supervision (e.g. by accountancy firms), local supervision by national trade unions, the establishment of multi-stakeholder initiatives (MSIs)<sup>26</sup> or the establishment by an MNC and a GTU of a mutual supervisory body that meets regularly and conducts inspections and field visits. GTUs prefer to be directly involved in some form of supervision, to avoid the risk of losing control over a specific agreement.<sup>27</sup> Their resources are limited, however. Whenever a violation of the agreement's content is discovered, parties will normally try to resolve this at the local level, between the local trade union and management. In case this approach fails to lead to a successful solution, the GTU will raise the issue at the MNC's central management. Some IFAs contain the possibility to appoint a mediator to facilitate a solution. As a last resort, the GTU can exercise pressure by informing the public about the violation and ultimately terminate the IFA.<sup>28</sup>

Influencing working standards in the supply chain of MNCs is regularly mentioned as an important challenge that an IFA faces.<sup>29</sup> In a buyer-dominated supply chain, in which many different parts of the

20 ILO website, supra note 8.

21 J. Sydow et al., 'Implementation of Global Framework Agreements: towards a multi-organizational perspective', (2014) 20 *Transfer*, no. 4, <http://doi.org/10.1177/1024258914546270>, p. 493, Dehnen & Pries, supra note 19, pp. 339-340.

22 Dehnen & Pries, supra note 19, pp. 344-348.

23 *Ibid.*, pp. 346-347.

24 Platzer & Rüb, supra note 1, pp. 9-10.

25 *Ibid.*, p. 11; Sobczak, supra note 17, pp. 476-477; Müller et al., supra note 15, p. 8.

26 These MSIs can be composed of companies, GTUs and NGOs, for example. They can be made responsible for overseeing (a number of) IFA(s).

27 Müller et al., supra note 15, pp. 7-8; Platzer & Rüb, supra note 1, p. 12.

28 Platzer & Rüb, supra note 1, p. 13. To the author's knowledge, termination of an IFA has not yet occurred.

29 N. Hammer, 'International Framework Agreement in the Context of Global Production', in K. Papadakis (ed.), *Cross-border Social Dialogue and Agreements: an Emerging Global Industrial Relations Framework?* (2008), pp. 94-95; Sobczak, supra note 17, pp. 469-470; Schömann & Wilke, supra note 2, pp. 174-175.

production process are carried out by different actors,<sup>30</sup> an MNC may not be able to inform every relevant actor about the existence of the agreement as a result of the complex network of suppliers. A supplier can furthermore be confronted with various IFAs at the same time, in case it does business with different MNCs that established an IFA. These different agreements may impose different and potentially conflicting requirements. In a producer-dominated supply chain, composed of a relatively small number of actors each of which has the capacity to implement various elements of the production process in its organisation,<sup>31</sup> the suppliers of an MNC can maintain such strong market positions that it is difficult to influence them.<sup>32</sup> Bearing in mind the goals for which the instrument was set up, influencing working standards in the supply chain is of major importance for the success of the IFA as an instrument, given their potential to end inhuman treatment and achieve actual change. Provided attention is paid to the supply chain during the drafting process and subsequent operation of an IFA, the impact of the agreement is therefore likely to increase.<sup>33</sup> Notwithstanding this importance, IFAs rarely explicitly state that the agreement's content applies to the supply chain and/or define methods in which fundamental working standards will be enhanced and compliance with the IFA will be controlled in the supply chain.<sup>34</sup>

## 2.2. Common threads

The literature described above allows identification of four common threads,<sup>35</sup> which can be tested against empirical data and provide the structure of the next section.

- (1) There are significant differences between IFAs regarding the scope of the substantive content.
- (2) Every IFA has its own set of dynamics, depending on the parties involved in drawing up the agreement and supervising compliance with the agreement after signing.
- (3) The functioning of an IFA (almost) entirely depends on the existence of implementation and monitoring mechanisms in operation.
- (4) Ensuring fundamental working standards in the supply chain is one of the most important challenges IFAs face at the moment.

## 3. Beyond the books

This section describes the results of the interviews and desk research with respect to the four aforementioned common threads. These four common threads are used to guide this description.

### 3.1. Substantive content

The interviews confirmed that IFAs, although all containing elements of the fundamental ILO conventions, vary significantly with regard to their substantive content. This is firstly explained by the fact that IFAs were initially weakly worded agreements; GTUs focused on concluding as many IFAs as possible, thereby not paying sufficient attention to the scope the agreement would cover and results it would achieve. Over the years, the focus of the trade unions shifted from quantitative to qualitative, resulting in more comprehensive agreements. Secondly, the general attitude of the MNC involved can possibly affect the content of the IFA. Certain MNCs are prepared to agree to more than is necessary, e.g. on the basis of their core values or business principles. In this sense, for example, extensive health and safety warranties can be laid down in the agreement, something that is not directly required under the fundamental ILO conventions. In line with this, a constructive and inspired attitude of top level management was mentioned as an overall key to

30 E.g. the ready-made garments industry, see: D. Miller, 'Preparing for the long haul – negotiating international framework agreements in the global textile, garment, and footwear sector', (2004) 4 *Global social policy*, no. 2, <http://doi.org/10.1177/1468018104045110>, p. 218.

31 E.g. the automotive industry and complex electronics industry.

32 Platzer & Rüb, *supra* note 1, pp. 14-15.

33 Dehnen & Pries, *supra* note 19, p. 345.

34 Sobczak, *supra* note 17, pp. 470-471; I. Schömann, 'The Impact of Transnational Company Agreements on Social Dialogue and Industrial Relations', in K. Papadakis (ed.), *Shaping Global Industrial Relations: the Impact of Global Framework Agreements* (2011), p. 34.

35 It is submitted that other general conclusions may be based on the existing body of literature as well. Save for some additional insights, this paper is restricted to the four common threads listed in the text.

success. Thirdly, the cultural and historical background of the country an MNC is embedded in can influence the manner in which it perceives decent work issues. This is particularly evident in the extent to which it is common to collaborate with trade unions and allow them to actively participate in the functioning of an IFA, but may also be contained in the working standards that are acknowledged to be fundamental.<sup>36</sup>

The IFAs that were studied more closely in this paper also reveal great diversity in their substantive content, although maintaining a fairly homogeneous minimum standard. The analysed agreements, save for a few exceptions, have all incorporated the fundamental ILO conventions. This is visually presented in Table 1 below.

*Table 1 Stimulating the implementation of the fundamental ILO conventions*

	Prevention and abolition of forced labour	Freedom of association and protection of the right to organise	Right to collective bargaining	Setting a minimum age for work conducted by children	Prevention or eradication of child labour	Equal remuneration	Prevention of discrimination
Sodexo	X	X	X	X	X	X	X
Carrefour	X	X	X	-	X	-	X
H&M	X	X	X	X	X	X	X
Mizuno	X	X	X	X	X	X	X
Royal BAM	X	X	X	X	X	X	X
Hochtief	X	X	X	-	X	-	X
Bosch	X	X	X	X	X	X	X
Siemens	X	X	X	X	X	X	X
Club Méditerranée	X	X	X	X	X	X	X
Melia	X	X	X	X	X	X	X

However, looking beyond these fundamental conventions established by the ILO, the agreements to a varying degree include the additional safeguards identified in Section 1, as can be seen in Table 2 below.

*Table 2 Social and economic safeguards*

	Safe and healthy working conditions	Aids prevention	Pensions, health insurance, disability insurance and other social securities	Fair pay/ compensation (living wages/fair income)	Terms of employment
Sodexo	X	-	X	-	X
Carrefour	-	-	-	-	-
H&M	X	-	X	X	X
Mizuno	-	-	-	-	X
Royal BAM	X	X	X	X	X
Hochtief	X	-	X	X	X
Bosch	X	-	X	X	X
Siemens	X	-	-	X	X
Club Méditerranée	-	-	-	-	X
Melia	X	-	-	-	-

<sup>36</sup> It is admitted that the concentration of IFAs in Europe to a certain extent mitigates the disruptive influence of culture. However, keeping in mind the further development of the IFA as an instrument, and with a view to future research projects, it is still important to consider it.

### 3.2. Parties involved

The interviews confirmed that there is a particular spectrum of actors connected to each IFA. These actors cannot be detected by solely looking at the signatory parties to the agreement; the actors responsible for the establishment, implementation and monitoring of the agreement do not always formally endorse the document. Not seeking to provide an exhaustive account of actors that may be involved, this section discusses some actors that were mentioned during the interviews.

Local trade unions (that are often affiliates of a GTU) are regularly involved in the different stages of setting up and keeping up a functioning framework agreement. In the establishment of an IFA, the local trade union in the country of the MNC's headquarters often takes part in the negotiation process. In various instances it was confirmed that the entire negotiation process was conducted by the local trade union, after which the GTU was included to enter the agreement as a signatory party. In those cases, the GTU was not involved until signing the agreement. It is believed that this is done by the local trade union to highlight its connection to the GTU and its (global) goals, as well as its resources and network. As already mentioned, the local trade unions can also play a significant role after the signing of an IFA through the implementation and monitoring of the agreement. The GTUs consider their local affiliates as a significant source of capacity. Given their presence on site, they are able to create awareness on the local level among workers about the agreement's existence and content and can monitor compliance with the agreement. An example was provided in which the local trade union is the sole actor engaged in the controlling process, presenting periodic reports to the GTU.

Whenever present, the works council and/or EWC (in the case of certain European MNCs) can play a significant role in the establishment and control of an IFA. They are regularly included as a signatory party, although certainly not always. The GTUs furthermore indicated that they closely collaborate with NGOs and other parties that may add value in certain cases (e.g. by giving advice or providing access to information and other resources). However, these parties are not usually included anywhere in the process of establishing an IFA and are therefore not a signatory party. This is because the GTUs believe that only trade unions have the right to negotiate on behalf of organised workers. Parties other than trade unions may be directly or indirectly included in the monitoring process, e.g. as a party to an MSI. The Clean Clothes Campaign, composed of two hundred different organisations, is a frequently mentioned example.<sup>37</sup>

The varying composition of signatories is apparent in the ten agreements that were studied for this paper, as presented in Table 3 below.

*Table 3 Signatory parties to the selected IFAs*

	MNC	GTU	Other
<b>Sodexo</b>	Sodexo	The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	–
<b>Carrefour</b>	Carrefour	Union Network International (UNI)	–
<b>H&amp;M<sup>38</sup></b>	H&M AB	Union Network International (UNI)   IndustriALL Global Union	None   Industriefacket Metall
<b>Mizuno</b>	Mizuno Corporation	International Textile, Garment & Leather Workers' Federation (ITGLWF, now IndustriALL)	Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers' Unions, Mizuno Workers' Union
<b>Royal BAM</b>	Royal BAM Group NV	Building and Woodworkers International (BWI)	–
<b>Hochtief</b>	Hochtief Executive Board	International Federation of Building and Wood Workers, (IFBWW, now the BWI)	German Construction Workers' Union (IG BAU), Hochtief General Works Council

<sup>37</sup> For more in-depth information, see their website, accessible at: <<http://www.cleanclothes.org/>> (last visited 2 September 2015).

<sup>38</sup> H&M has concluded two IFAs with different GTUs.

	<b>MNC</b>	<b>GTU</b>	<b>Other</b>
<b>Bosch</b>	Robbert Bosch GmbH	International Metalworkers' Federation (IMF, now IndustriALL) for the IMF member unions represented in the Bosch Group	European Committee of the Bosch Group (which is the Bosch Group's European Works Council)
<b>Siemens</b>	Siemens AG	IndustriALL Global Union	German Industrial Union of Metalworkers (IG Metall), Central Works Council of Siemens AG
<b>Club Méditerranée</b>	The Club Méditerranée company	The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUFA)	The European Federation of Trade Unions in the Food, Agriculture and Tourism sectors and allied branches (EFFAT)
<b>Melia</b>	Melia Hotels International S.A.	The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUFA)	-

### 3.3. Implementation and monitoring mechanisms

The interviews confirmed that the functioning of an IFA very strongly depends on the presence of implementation and monitoring mechanisms. One interviewee pointed out that without these mechanisms, an IFA would be a mere statement by an MNC that it accepts the fundamental working standards specified in the agreement. This would actually be inconsistent with the objective of IFAs, as it suggests that MNCs have a choice whether or not to recognize certain fundamental working standards.

The existing IFAs vary when it comes to implementing such mechanisms to ensure a proper functioning of the agreement. This is reflected in the ten agreements that were studied for this paper, as presented in Table 4 below.

*Table 4 Implementation and monitoring mechanisms*

	<b>Explicit implementation mechanisms</b>	<b>Explicit monitoring mechanisms</b>
<b>Sodexo</b>	X	X
<b>Carrefour</b>	-	-
<b>H&amp;M</b>	X	X
<b>Mizuno</b>	-	X
<b>Royal BAM</b>	X	X
<b>Hochtief</b>	-	X
<b>Bosch</b>	X	-
<b>Siemens</b>	X	X
<b>Club Méditerranée</b>	-	X
<b>Melia</b>	X	X

Some good practice examples were mentioned during the interviews, in which the agreement directly facilitated various activities aimed at improving and ensuring working standards in the business organisations of the enterprise involved. At the same time, some comments indicated that many of the activities are still underdeveloped, as stated not infrequently by the same person introducing a favourable effect of an IFA. It was said that, although the workers' (human) rights that IFAs aim to protect are not different, the local situations that might impede them are. Therefore the specificities of different local contexts need to be taken into account during the implementation and monitoring of an IFA, preferably through the establishment of local protocols. These local protocols can be negotiated between national trade unions and national or local managements, under supervision of the MNC. In this scenario, an IFA will have various local protocols, adapted to the various relevant local contexts. This method puts more direct pressure on the management

responsible for local workplaces and factories, where IFAs can have great impact.<sup>39</sup> While it is not possible to provide a conclusive overview of the functioning of existing implementation and monitoring mechanisms in this paper, some examples derived from the interviews are highlighted below.

The activities that were mentioned include (semi)annual meetings between the MNC and the GTU, in which the progress made under the agreement is discussed and focal points for the near future are determined. These (semi)annual meetings are believed to facilitate regular communication between MNC and trade union representatives. They fail to deal with all events in the day-to-day business of the enterprise, however. As a result, some consider IFAs to be unsuitable for ensuring enduring compliance with all norms laid down in the agreement. In this regard, contact on a more frequent basis throughout the year, in which success is measured on the basis of concrete results, is said to be much more important. Another example is field visits, in which a team representing the MNC, national union(s) and/or the GTU visits some of the MNC's workplaces (sometimes also workplaces of its suppliers). The report of these visits is sometimes published on the website of the trade union(s) and/or MNC.<sup>40</sup> Reports submitted to the author of this paper by the interviewees revealed that these field visits were conducted by delegations representing the local and global trade union(s) as well as the MNC. The field visits aimed to uncover the local reality, e.g. paying attention to salaries, working times and conditions, health and safety issues and local trade union activity. The reliability of these field visits and other forms of local audits is disputed, as it is hard to verify whether workers conceal the truth under pressure or in fear of potential repressions.

The close involvement of its national affiliate unions gives the GTU great capacity and knowledge regarding local circumstances and customs. In some cases the local trade union is responsible for all monitoring activities of a specific IFA, regarding which it provides a periodic report to the GTU. An undesired side effect of an approach focusing on this local expertise is that it is difficult – if not impossible – for GTUs to act in regions where no national unions are present. This is the case in China and Vietnam, for example.<sup>41</sup> In places where GTUs have local capacity, they suffer from resource problems. At this moment, the financial and human resources GTUs have access to are insufficient to proactively oversee compliance with the existing IFAs. As a result of this resource problem, monitoring is said to be a reactive process too often, instead of objective and preventive, responding to indications that the agreement may be violated somewhere. While the number of IFAs concluded is steadily growing, the capacity of GTUs and their local counterparts remains constant. The resource problem is therefore set to increase. One interviewee suggested that governments committed to improving working standards should endeavour to strengthen the position of GTUs.

Parties committed to the success of IFAs are not indifferent to these observations, however. They attempt to improve the functioning of existing and future agreements. Some GTUs have established internal or public guidelines in which (minimum) standards are determined for IFAs.<sup>42</sup> In addition to the substantive content, these guidelines also deal with practical issues. These include the implementation of the agreement (e.g. in the form of language and financial issues) and the mandatory incorporation of sufficient implementation and monitoring mechanisms in the agreement (e.g. prescribing the establishment of local protocols). These guidelines offer the opportunity to establish coherent and similar agreements, applicable in different regions and sectors. Thus, newly negotiated agreements are likely to be more comprehensive than their predecessors. Whenever this is considered possible, existing weakly worded agreements are renegotiated. Still, it was mentioned that MNCs turn out to not always be aware of the practical implications of the agreement they enter into, complicating the agreement's implementation later on. For example, an interviewee explained that one MNC appeared unpleasantly surprised when the GTU exercised a competence laid down in the IFA.

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39 The concept of establishing a local protocol is elaborated in an internal policy document, sent to the author of this paper by an interviewee.

40 See for example a report on the website of Building and Woodworker's International, accessible at: <<http://www.bwint.org/default.asp?index=4638&Language=EN>> (last visited 13 December 2015).

41 Miller, *supra* note 30, p. 227.

42 See for example IndustriALL, 'IndustriALL Global Union's Guidelines for Global Framework Agreements', accessible at: <[http://www.industriall-union.org/sites/default/files/uploads/documents/GFAs/industriall\\_gfa\\_guidelines\\_final\\_version\\_exco\\_12-2014\\_english.pdf](http://www.industriall-union.org/sites/default/files/uploads/documents/GFAs/industriall_gfa_guidelines_final_version_exco_12-2014_english.pdf)> (last visited 13 December 2015). These guidelines are clearly reflected in the IFA concluded between IndustriALL and H&M on 3 November 2015.

### 3.4. The supply chain challenge

The interviewees confirmed that MNCs operating across borders have a potentially negative impact on the working environment in their supply chain. They order large quantities at sharp prices in countries where working standards are insufficiently guaranteed, for which they should know there is no capacity. As a result, the supplier will either violate decent working hours standards or hire subcontractors. In turn, these subcontractors may not observe decent working standards. Often, the supply chain becomes so complex that MNCs simply *cannot* be aware of what goes on in them. It was indicated that, although each sector has its peculiarities, this issue is present in all of them.

At the same time, it is submitted that the presence of foreign MNCs in countries with poorly functioning regulations also entails the opportunity for these MNCs to impose their own standards on foreign suppliers. This way, MNCs can improve instead of maintain bad working standards abroad. It was stated that an MNC needs to accept that decent working standards are (most likely) not complied with throughout the supply chain. It needs to strive to change this situation and focus on what it does when supply chain issues are raised. This is what is called the ‘supply chain challenge.’ The interviewees mentioned some success stories in which the involvement of an MNC resulted in higher standards at the workplace.

Given its primary goal, an IFA seems a suitable instrument to promote fundamental working standards in the supply chains of MNCs operating across borders. As GTUs are vertically integrated organisations representing workers in each level of the supply chain, they attach major importance to the topic and aim to incorporate the supply chain challenge in newly negotiated agreements.

Existing IFAs vary with regard to the extent in which they mention the supply chain and specific measures that apply to it.<sup>43</sup> When an IFA states to be applicable to the supply chain, the controlling mechanisms as they are laid down in the agreement can be used to raise awareness in case of a violation of the agreement in the supply chain. In this case, the supply chain can also be addressed during periodic meetings, field visits and other monitoring mechanisms based in the IFA. Reports of field visits, as mentioned above, reveal that suppliers were indeed inspected during these visits. In other cases, the content of the IFA was processed in an MNC’s suppliers’ code of conduct.<sup>44</sup> An MNC may, under certain circumstances, terminate the contract with suppliers that do not comply with this suppliers’ code of conduct. Interviewees indicated that this happens quite often in practice. The legal basis for terminating the contract under those circumstances is not the IFA, however, but the suppliers’ code. In addition, the suppliers’ code of conduct is affected by other factors as well. Finally, the existence of an IFA sometimes allows a GTU in its mutual relationship with the MNC to raise awareness regarding specific supply chain issues, e.g. by informing them about suppliers that the MNC did not know.

Either by using the mechanisms as laid down in the IFA, by incorporating the content of the IFA in the suppliers’ code of conduct, or through the mutual relationship between GTU and MNC created by the agreement, the IFA can be used as an instrument to improve working standards in the supply chain. This way, IFAs can contribute to the supply chain challenge. According to the interviewees, the problem is that this is not yet common practice.

### 3.5. Additional insights

The previous sections dealt with the four common threads as identified in literature, approaching them from the perspective of relevant actors from practice. This section presents some additional insights derived from the interviews.

<sup>43</sup> The ten IFAs that were studied in the context of this paper, if they include the supply chain in the agreement, apply a variety of ways to do so. For example, the IFA concluded by Siemens states: ‘The principles of this agreement are reflected in the Siemens Code of Conduct for Suppliers. Thus Siemens also actively endeavors to have these principles incorporated into the business policy of its suppliers.’ The IFA concluded by Royal BAM states that the company will ‘refrain from using the services of those trading partners, subcontractors and suppliers which do not respect the criteria listed above’.

<sup>44</sup> For more about the functioning of suppliers’ codes of conduct, see L. Vytöpil, ‘Contractual Control and Labour-Related CSR Norms in the Supply Chain: Dutch Best Practices’, (2012) 8 *Utrecht Law Review*, no. 1, <http://doi.org/10.18352/ulr.186>, pp. 155-169.

All interviewees stated that they were satisfied that IFAs have achieved some positive results and various success stories were shared. At the same time, they all indicated that the IFA as an instrument needs to be perceived in a broader range of instruments that organisations may apply to meet the challenges the IFA was designed for. These instruments among other things include the (suppliers') code of conduct, the multi-stakeholder dialogue, the side letter (an agreement between a trade union and an MNC dealing with a specific issue) and specific projects focusing on a single issue or nation. GTUs are party in all of these instruments and strive to use one or more of them in their relationship with an MNC. In this regard, it is important that neither IFAs nor the other initiatives mentioned in this section can be used as a justification for the absence of binding regulation on fundamental working standards; they deal with issues regulators have omitted to address *until now* but are no substitute for clear and enforceable rules.

The interviewees showed varying degrees of enthusiasm about the possibility of IFAs reaching their objectives in their current form, referring to the issues described above, including the frequent absence of functioning implementation and monitoring mechanisms and the complexity of supply chains. However, the agreements have often been able to create a platform for communication between a GTU and an MNC, on the basis of which concrete issues could be identified, discussed and resolved. The company representative indicated that the on-going dialogue with GTUs allows companies to benefit from the expertise and network of the GTU involved and that this gives them the possibility to compare their policy and achievements to those of similar businesses. There is a growing awareness regarding the existence of GTUs and they receive increasing response from major brands and employers' organisations. These are desirable side effects of IFAs, but may be achieved through the use of other instruments as well. The interviewees agreed: creating a functional mutual dialogue between employee representatives and company is the main objective. When an IFA appears to be the right instrument in this regard, GTUs will proceed to concluding one. Thus, even when an IFA is not functioning optimally, its existence may still indirectly have useful results.

#### 4. Assessing the international framework agreement

In general, the common threads identified in literature are confirmed by the experiences from practice discussed in the previous section: (1) IFAs indeed vary significantly regarding their substantive content, although the fundamental ILO conventions are applied as a plain minimum standard; (2) there are often multiple parties involved in the IFA-related processes, who are not always signatories to the agreement; (3) implementation and monitoring mechanisms are of vital importance for the actual functioning of an IFA; and (4) the supply chain challenge is difficult but important to pay attention to. At the same time, the interviews showed that the relevant actors are very much aware of the shortcomings of the IFA and they are proactively working to address these limitations. These efforts, which have been described, allow for the identification of circumstances that are necessary for an IFA to function as it was meant to, i.e. as a legally binding contractual arrangement between (at least) an MNC and a GTU, aimed at strengthening fundamental working standards in the worldwide business operations of the contracting enterprise.

In order to achieve the intended results, an IFA firstly needs to establish proper implementation and control mechanisms. With regard to these mechanisms, attention has to be paid explicitly to practical issues, e.g. regulating what measures will be carried out, which parties are responsible for carrying out these measures and who bears financial responsibility for the functioning of the agreement. They need to be specified according to different local circumstances and sectoral particularities. A selection of possible measures that can be taken is given in Table 5 below.

*Table 5 Possible implementation and monitoring mechanisms<sup>45</sup>*

Implementation mechanisms	Monitoring mechanisms
Publish IFA on website and in social report	Organise joint and/or separate monitoring activities, e.g. in the form of field visits and audits
Distribute agreement, both digitally and in print, including necessary guidelines and translations, to employees, suppliers, local and regional trade unions and other relevant stakeholders	Establish formalized and accessible complaint mechanisms, including hotlines
Provide digital and real-life training to management and suppliers at all levels	Organise periodic joint meetings to discuss the functioning of the IFA
Organise public presentations, obtain press coverage	Establish various local or national protocols to adapt the mechanisms that are in place to the specificities of each local or national situation

Secondly, the parties to an IFA, or the parties involved in preparing an IFA, need to explore which actors can be of value and are willing to contribute to the preparation and subsequent operation of the agreement. Addressing the right parties, and thereby their resources, may improve the extent to which the IFA corresponds with reality and is able to realise concrete results.

Thirdly, the supply chain of the MNC has to be explicitly included in the scope of the agreement, thus making it possible to apply the implementation and monitoring mechanisms to parties in the MNC's supply chain as well. An alternative would be to incorporate the content of the IFA in the MNC's suppliers' code of conduct. A single reference to the IFA appears sufficient in this regard. In this case, however, not the IFA but the suppliers' code of conduct will be the direct contractual basis that imposes requirements (and potentially penalties) on suppliers. Paying explicit attention to the supply chain is important, since it is otherwise unclear whether the agreement is applicable to the MNC's suppliers in the first place, and if it does apply, what the practical consequences are.

This being said, the research results demonstrate that even if an IFA is not a functioning contractual arrangement between the MNC and the GTU (i.e. when parties agreed to guarantee certain fundamental working standards, but no, or few, activities take place on the basis of the agreement) the existence of an IFA or IFAs in general may already generate positive side effects. The agreement can serve as a basis for a mutual dialogue between the MNC and the GTU, in which concrete problems can be identified, discussed and resolved. In this scenario, the IFA indirectly achieves concrete positive results. These results are not made possible solely by the IFA; rather, the framework agreement is a single element in the mutual relationship between the MNC and the GTU. It is important to realise that both MNC and GTU representatives consider this mutual relationship to be the primary key to success. However, it is doubtful whether these side effects connected to the existence of an IFA – on their own – can justify the existence of an agreement. It seems inappropriate to accept that a contractual arrangement may not (in its entirety) be fulfilled, only because through its existence it indirectly generates some welcome results. These results are also generated by the other instruments mentioned by the interviewees. It seems appropriate for GTUs to only pursue the establishment of new IFAs and the keeping up of existing IFAs on the condition that the agreements can realise their goals on the basis of their own substantive content. An agreement that is presented as a binding contractual arrangement that is not, or cannot, be enforced in court, is rather paradoxical; it may exert some pressure on the counterparty, but in the end is likely to leave you empty-handed.

## 5. Concluding remarks

The IFA is a relatively new instrument, used by GTUs to respond to the impact of globalization on the business operations of companies operating worldwide. This way, they address an issue (inter)national legislators and regulators have difficulties dealing with. Although in general the emergence of IFAs is perceived as a positive

<sup>45</sup> For a more comprehensive overview of possible measures, see: Sydow et al., *supra* note 21, p. 496.

development with the potential to improve fundamental working standards in global business operations, some comments are made in literature. These comments were confirmed and fleshed out by the empirical data presented in this paper. For an IFA to be able to reach its objectives, extensive attention must firstly be paid to the context in which the agreement operates, including the sectors, countries and cultures involved. Secondly, the practical issues connected to the functioning of the agreement need to be considered, including the parties involved and their responsibilities, the establishment of decent implementation and monitoring mechanisms and the allocation of financial and human resources. The supply chain of major companies includes great opportunities to improve working standards in countries with an underdeveloped legal system. This study shows that, as a side effect, the mere existence of an IFA may create a platform for negotiation between MNCs and GTUs. However, the question is whether this is appropriate and sensible.

The issues identified in literature and in this paper show that the IFA can be a compelling tool for GTUs to pursue their aims. Unfortunately, not all existing IFAs deal with these issues and some appear to achieve no direct practical impact at all. ■