The Legal Regulation of a living wage through International Framework Agreements


By R.F. Hoekstra

Abstract

The liberalisation of the European and Global economies puts forward huge challenges for the regulation of labour. One of these challenges is to ensure that all workers make enough money to provide for themselves and their families. A daunting task at a time when some countries are involved in a ‘race to the bottom’ strategy, competing on the price of labour for the advancement of their economies as a whole, while some are finding the sustainability of their national wage policies threatened by the influx of foreign workers into their domestic labour markets. International, European and national institutions and governments have issued regulations to counteract these developments, but these may prove insufficient. To compensate for shortcomings of public regulation, labour lawyers may turn to alternative regulatory measures, such as the private initiatives known as International Framework Agreements (IFAs). These agreements between multinational companies and international union federations may prove invaluable for the regulation of wages, as they not only present an opportunity for setting transnational norms, but also for implementation at the local level. This article provides an investigation into the potential of IFAs for the regulation of the right to a living wage, on a European, as well as a global scale. The research comprises a review of scholarly literature on the subject and an analysis of existing IFA texts.

1. Introduction

Because our economies have increasingly (been) opened up to other countries over the past decades, competition on wages also seems to have taken on entirely new dynamics.

In the European Union, consequences of opening up the market internally and externally and the introduction of the freedom of movement for workers include production being

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increasingly outsourced from the wealthier countries to countries with lower wage levels,\(^2\) making it harder to sustain high labour costs for domestic labour in comparable industries, and the migration of workers from low-wage countries to wealthier ones, often competing at unfair prices by working at below domestic minimum wage levels.\(^3\)

On a global scale, countries seem to be involved in a ‘race to the bottom,’ governments in some regions of the world actively lowering their labour standards to attract foreign investors.\(^4\) Because wages are typically a significant component of the cost of production, they are among the conditions of employment most likely to be cut back on. As a consequence, many workers in countries such as Bangladesh, India or China have to work for pay rates on which they can hardly survive, or they are forced to do excessive amounts of overtime. Because the European economy is under pressure from Asian countries among others,\(^5\) the way these matters are dealt with could be relevant for European workers and citizens as well.\(^6\) The answers international organisations such as the International Labour Organization provide to these problems have generally proven to be insufficient. This may be the result of the International Labour Standards the organisation puts forward only applying to their member states, not corporations, and when it comes to their implementation many countries are unable or unwilling to resist the economic power exerted by multinational corporations.\(^7\) The general consensus among lawyers in the field of international labor law seems to be that these problems leave a substantial ‘regulatory gap,’\(^8\)

The ‘new dynamics’ mentioned above raise questions such as: ‘What level of wage reduction is still acceptable for achieving overall economic gains?’, and ‘Which method of regulation is effective at achieving this level?’ This article assumes that pay levels should not be lowered below the level of ‘a living wage’, and looks into particular difficulties in the use of this concept as a legal norm. It focuses specifically on the regulatory methods known as International Framework Agreements (IFAs), which are transnational agreements between multinational companies and international trade union federations. The central question to this

\(^2\) A. Smith, *Europe and an inter-dependent world: Uneven geo-economic and geo-political developments*, European Urban and Regional Studies 2013 20: 3


\(^4\) B. Langille, *What is international labour law for?*, Geneva March 2005


\(^6\) While Europe can be regarded as ‘a testing ground for globalization’ (S. Lalanne, *Posting of workers, EU enlargement and the globalization of trade in services*, International Labour Review, Vol. 150 (2011), No. 3–4, p. 230), Europe might also learn something from the rest of the world.


article is: ‘What is the regulatory potential of international framework agreements for the regulation of the right to a living wage?’ This question is addressed from a European, as well as a global perspective, as these seem to be strongly interconnected.

The next part of the article (2) will pay attention to the differences between a minimum wage, a decent wage, a fair wage, and a living wage. In addition some of the particular difficulties in using a living wage as a legal norm are discussed. The following section contains a short overview of existing international regulations on wages, and a discussion of their shortcomings (3). This will illustrate that there is a regulatory gap left open for IFAs to step into. After that I will discuss the general regulatory potential of IFAs, based on scholarly literature on the subject (4). Subsequently I will analyse provisions on living wages used in existing IFAs (5). The final analysis holds several suggestions for the improved application of IFAs to ensure living wages (6).

Before moving on, it should be noted that wages and the legal regulation thereof obviously are only one of many topics that in the end will determine the standard of living for workers and their families. Other issues such as working hours, social security measures, the abolishment of child labour, education and housing are also of great importance, and should not be ignored. Wages might however prove a good starting point for improvement in other areas.

2. The concept of ‘a living wage’ as a legal norm

When designing and implementing a minimum wage fixing system at national or regional levels, governments take many different considerations into account. Importantly, minimum wages may be used as an instrument of macro-economic policy in order to influence economic competitiveness and secure a high level of employment. Some particular difficulties of such polices are the fact that they need to account for the effect minimum wages can have on above-minimum rate wages, for inflation, for regional differences, for the (in)ability of employers to actually pay the minimum wage, as well as the tendency of companies to substitute relatively expensive workers with machines. When aiming for an acceptable balance between short-term economic growth and decent wage levels, the government’s political signature and the wishes of multinational companies can also be of influence.

The minimum wage level based on these considerations can vary greatly between countries, and have very different consequences for not only their own populations, but also for others involved in the international economy. This begs the question if there is any legal norm which has its own value independent of governments’ wage policies. One consider might consider using the terminology of ‘a fair wage,’ which implies a fair balance between a workers and the profit his employer stands to gain by it, or that of ‘a decent wage’, which term is as yet fairly undefined.


10 Ibid., pp. 47, 48, 55, 106, 156.
The terminology central to this article is that of ‘a living wage,’ which can be described as ‘the right to sufficient income for a decent living.’ This term provides us with a concept that goes beyond the legal minimum wage set by governments and is used in some IFAs. Furthermore, the requirement of paying a worker ‘a living wage’ seems usable as a legal norm at first glance, because it appears to be sufficiently specific about its goals. Or is it?

Before we can determine the rate of pay that will suffice, we need a criterion for what a ‘decent living’ entails. In her article on minimum wage, Hani-Ofek describes three models to determine the goals to be achieved through certain wage norms: the existential deficiency model, the welfare model, and the comfort model. The first limits the right to a minimum wage to meeting only the physical needs for survival. The second includes economic advancement, social and political welfare, and the ability to participate in family life and social, cultural and political domains. The third model adds needs that further enhance the comfort of existence.¹¹

Clearly, the right to a living wage at least entails what is described in the existential deficiency model. However, what level of physical well-being does “physical needs for survival” really mean? What products and services should workers be able to buy? One might even go as far as to discuss the contents of a healthy diet.¹² The second model raises the obvious question whether a single worker’s income should provide for the survival of the entire worker’s family, and if so, how many persons should this cover. Other unclear areas are the level of economic advancement, and the exact facilities for societal participation the model aims for. The third model is even more ambiguous, because it is unclear about the level of comfort to be reached.

Hani-Ofek takes the social welfare model as the leading perspective in her evaluation of legal norms on wages. In defence of this choice, she contends that ‘a workers’ wages should express the riches and complexity of the human existence as an intellectual and social creature including basic emotional and spiritual needs.’ Moreover, she claims the minimum wage, as an instrument to protect financial independence, is ‘a fundamental political-economic component and necessary for interaction in public-political life.’¹³ To Anker, ‘a living wage’ means that: ‘workers and families should be able to live above the poverty level, and participate in social and cultural life,’¹⁴ which seems to imply the same choice of model.


Knowing that an estimated 842 million people around the world are chronically underfed, one also could justify starting out with the first model.

Whichever model one chooses, the difficulties with setting an actual rate as related above make clear that the legal norm of itself is so ambiguous that it cannot be applied directly to practice without further explanation or interpretation. As mentioned, the term ‘living wage’ is actually used in some IFAs, and the main goal of this article is to investigate the potential of that particular regulatory instrument in using the term as a legal norm. In order to do so, I will analyse existing IFA texts. The next section first contains an overview of existing international regulations on (living) wages which gives an impression of the ‘regulatory gap’ to be filled.

3. International Regulation of the right to a living wage

This section briefly discusses international regulations relevant to wages, an overview of which is provided in Appendix A. The selection of the legal instruments was made from a European point of view, meaning that no regional instruments are included outside of European regulations. I will cover instruments that stem from institutions active on a global level, which are potentially relevant to the European legal order. Included are relevant legal documents issued by the United Nations, ILO, OECD, Council of Europe, and the European Union.

In the context of the United Nations, the norm provided by the International Covenant on Economic, Social and Cultural Rights (1966) stands out, because it not only speaks of ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing’ but also requires ‘continuous improvement of living conditions,’ thus providing a more elaborate norm than the Universal Declaration of Human Rights (which is non-binding anyway). Besides a country report monitoring mechanism, it also provides a platform for enforcement in the Committee on Economic, Social and Cultural Rights, which also handles individual complaints, so long as member states have ratified the optional protocol. The UN-Global Compact, although strictly not a source of actual regulation but a UN-initiative for private actors, stands out for not including specific regulation on wages among its ten core principles.

The International Labour Organization (ILO) mentions ‘the right to a minimum living wage’ and the goal of ‘ensuring a just share of the fruits of progress to all’ (or variations thereof) in its constitutional texts, as well as in the most recent major restatement of its goals and overall

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16 At the bottom of this article.

17 Clearly this short overview does no justice to all existing global and public regulation on wages. The scope of this article does not allow for that. Hopefully, it will provide the reader with some useful insight into the regulatory context in which IFAs are situated.

18 Only 15 countries have done so (information ascertained via https://treaties.un.org/, consulted on June 29th, 2014).
While not very specific on what these norms mean, the texts do make clear that the organization’s members have a certain freedom in how they seek to achieve these goals, so they can take national circumstances into account. The ILO Minimum Wage Fixing Convention of 1970 (no. 131) and the recommendation accompanying it (no. 135) reflect the same principle, requiring countries to implement a minimum wage fixing system that not only takes into account ‘the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups’ but also specifying that these systems should look at ‘economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.’ However, only fifty-two countries have ratified this convention, and these do not include China, Germany, India, the United Kingdom and the United States. The convention thus does not seem to be very broadly accepted, although interest for it appears to have grown in the past decades. Taking into account this number of ratifications, and the freedom countries retain to incorporate their own economic policies into the minimum wage fixing system, the ILO’s influence on wages setting through direct regulation seems to be a limited one. Instead, the ILO might be more influential through its activities in the way of tripartism and ensuring the right of freedom of association and collective bargaining, which are covered in the ‘core labour standards’ conventions that are binding upon members regardless of ratification.

The Organization for Economic Cooperation and Development’s Guidelines for Multinational Enterprises on Responsible Business Conduct instructs multinational enterprises not to treat (and therefore: pay) workers any less favourable than comparable employers in their host countries do. However, the added provision that applies when operating in developing countries seems to leave quite a lot of room for interpretation, as it mentions the economic position of the enterprise as one of the factors to be taken into account, besides the (also quite ambiguous) ‘basic needs of the workers and their families.’ Although the guidelines are technically non-binding, parties concerned can file complaints with the National Contact Points which the member states are required to install. Because of the negative effects publicity can have for multinational companies when a complaint is found to be justified (for instance by scaring off investors), the guidelines might be regarded as ‘Soft law with hard consequences.’

Of the European fundamental rights charters, the European Council’s European Social Charter seems the most promising. The Charter not only contains its own norm on what kind

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of wages member states should ensure minimally (‘*a fair remuneration sufficient for a decent standard of living for themselves and their families*’), but also has a platform for enforcement (the European Committee of Social Rights) to which member countries have a duty to report and to which complaints regarding non-compliance can be made. The Committee made the standard more concrete by requiring that wages must at least be above 50 per cent of the average national wage (the poverty line) to be considered fair, and if it is between 50 and 60 percent, the country has to demonstrate that such a wage is sufficient for a decent standard of living.\(^{23}\) The European Convention on Human Rights only stands out for not containing any provision on wages at all.

The European Union itself has no say in the level of wages in it member countries, as article 153 (5) of the Treaty of the Functioning of the European Union explicitly excludes it from the Union’s competences. By issuing the Posting of Workers Directive (96/71/EC), which specifies that core labour provisions as regulated by local governments or social partners (among which provisions on pay) should be upheld in trans-national work relations, the European Union has tried to ensure that the freedom of movement of workers does not lead to national minimum wage policies becoming untenable, but this effort seems not entirely successful.\(^{24}\) Despite the lack of legal authority, the topic of regulation minimum wages has been discussed in the European Parliament in the past, and recently resurfaced in European political debate, probably due to concerns about recent developments on the European labour market.\(^{25}\) In the European Parliament Elections of May 2014, some political parties made the European regulation of wages part of their election programmes.

Most of the minimum wage systems of European countries have the same main objective, namely to provide social security for workers by ensuring a minimum acceptable level of employment-related income, and to reduce wage differentials between groups.\(^{26}\) While there is a lot of variation in regulatory mechanics, ranging from setting the minimum rate by statute to extending the legal status of a collective bargaining agreement through law or even leaving the minimum wage to be regulated by collective bargaining agreements entirely,\(^{27}\) the minimum rate is almost always determined after some form of consultation of the social partners.\(^{28}\) There is also quite a large variation in terms of the actual minimum rate levels.\(^{29}\)

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\(^{26}\) Ibid., pp. 24-25

\(^{27}\) Ibid., p. 8-10

\(^{28}\) Ibid., p. 25

\(^{29}\) Ibid., p. 30
Taking inventory of all these regulatory measures, it becomes clear that although ‘a living wage’ is not the legal term used in all legal texts, the basic concept that wage standards should aim to provide workers with enough income to survive does play a role in most of them. The legal norms are, however, mostly quite abstract and addressed to states that are in turn responsible for implementing the norms into their own wage setting systems, leaving room for local economic or political considerations, so their actual results may vary (and do!). While in most European countries social partners are consulted in the process of determining the minimum wage, this is not the case in all parts of the world.\(^{30}\) The reporting and complaints procedures that come with some of the instruments may not be very effective, largely relying on ‘naming and shaming’ instead of enforceable legal measures, although the example of the OECD guidelines shows that this kind of mechanism can work when it comes to multinational companies.

4. The regulatory potential of International Framework Agreements in general

**Introduction**

Having identified some of the shortcomings in the public regulation of the right to a living wage, we now turn to the private instruments called International Framework Agreements, to see if they might be an adequate replacement or useful supplement.

**Nature, contents and scope**

International Framework Agreements (IFAs) are voluntary agreements between multinational companies and International Union Federations. Other parties may include European Federations, national unions, works councils and NGOs.

From the multinational company’s point of view, the main function of an IFA may be ‘to define a set of shared moral standards and values, and to communicate these throughout the company worldwide,’ acting from a public image and reputation point of view, ‘rather than to engage in an industrial relations exercise of negotiating terms and conditions.’\(^{31}\) In addition, the sheer efficiency of transnational regulation, avoiding time-consuming parallel negotiations in different countries may be an attractive point for employers.\(^{32}\) Important advantages of IFAs from the workers point of view may that such an agreement could provide them with a floor of minimum social standards that apply to all the company’s operations worldwide, working towards global representative structures, and strengthening collective bargaining locally.\(^{33}\)

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\(^{31}\) V. Telljohan et al., *European and international framework agreements: Practical experiences and strategic approaches, European Foundation for the improvement of Living and Working Conditions, Dublin 2009*, pp. 5-6

\(^{32}\) Ibid., p. 2

\(^{33}\) Ibid., p. 8
In practice, IFAs generally establish frameworks of principles rather than detailed agreements, creating space for workers to organise and bargain locally, rather than competing or being at conflict with collective bargaining agreements at national level.\textsuperscript{34} IFAs therefore probably should not be regarded as real collective bargaining agreements.\textsuperscript{35} The lack of clear provisions might be explained by the different views employers and trade unions have on the purpose of IFAs, the former regarding it as elaborations on their one-sided CSR-codes,\textsuperscript{36} the latter aiming for a fully grown worldwide industrial relations system.\textsuperscript{37}

Many IFAs make reference to ILO conventions or other international labour standards, which may serve an important function when not all of the countries in which the multinational operates have ratified or correctly implemented such treaties.\textsuperscript{38} When the International Union Federation is the only party involved in negotiating IFA with the multinational company, this does not bode well for local unions from a procedural rights point of view. If bargaining is left to parties at the highest central level, local unions may find they will not get a chance to make a difference for the workers they represent. If no procedures for the implementation of substantive rights on a local level are provided, the IFA could in fact undermine the local unions’ position.\textsuperscript{39}

In terms of their scope, IFAs are not only relevant for workers employed with any single multinational company or its subsidiaries. Most IFAs stipulate that the content of the agreement is to be promoted or otherwise applied to the multinational’s business partners, so they can potentially impact the entire supply and production chain.\textsuperscript{40} Not all IFAs are explicit on the consequences of non-compliance by third parties. Even if termination of the contract is mentioned as a possible measure, this is typically reserved to violations of the most important provisions.\textsuperscript{41} Some multinational companies directly include their code of conduct in their

\textsuperscript{34} Ibid., p. 7
\textsuperscript{37} V. Telljohan et al., \textit{European and international framework agreements: Practical experiences and strategic approaches}, European Foundation for the improvement of Living and Working Conditions, Dublin 2009, p. 42
\textsuperscript{39} A risk which was noted in a case study by C. Niforou, \textit{International Framework Agreements and Industrial Relations Governance: Global Rhetoric versus Local Realities}, British Journal of Industrial Relations, 50:2, 2012, p. 361
\textsuperscript{41} Ibid., p. 472
business contracts. This is also an option with IFAs. Competitors who themselves are not necessarily multinational companies might also be influenced by the agreement. Their workers may demand improved conditions similar to those of the multinational party to an IFA while threatening to leave the company, or the International Union Federations might use public opinion to exert pressure on such companies to agree to similar conditions.

While most IFAs so far have been conducted with multinational companies based in Europe, this does not mean their impact is contained to that area, as these companies typically also operate in other parts of the world. Still, a distinction can be made between framework agreements to which an internationally operating company and a global union federation are parties (IFAs), and agreements that are signed by companies that (mainly) operate in Europe, and European Industry Federations, European Works Councils and/or European national unions (European Framework agreements or EFAs).

Aside from the difference in signatory parties, they also seem to differ in terms of their content: IFAs generally pay more attention to fundamental social rights than EFA’s, while the latter more often seem to contain provisions on other subjects such as health, safety and company restructuring.

Having historically evolved from European Union’s initiatives on European Works Councils, differences between EFA’s and IFAs might be reflective of the particularities of European industrial relations. The limited number of existing IFAs in relation to the number of multinational companies suggests that IFAs may not have a great quantitative impact, yet.

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43 As was the case with the international agreement known as the ‘Bangladesh Accord.’

44 A. Sobczak, Legal Dimensions of International Framework Agreements, Relations Industrielles, vol 62, no. 3, 2007, p. 468. Also see part 4 of this article, in which this general picture was seen to still be true.

45 V. Telljohan et al., European and international framework agreements: Practical experiences and strategic approaches, European Foundation for the improvement of Living and Working Conditions, Dublin 2009, p. 1

46 Ibid., pp. 1, 28

47 Ibid., pp. 18-20.

48 Ibid., p. 29


Implementation, monitoring and enforcement

Most IFAs contain implementation and enforcement mechanisms, but in many cases these are not very far-reaching. The concrete measures often merely consist of communicating the contents of the IFA to workers, and ‘monitoring,’ an ongoing observation process either by a special implementation body made up of signatory parties’ representatives that meets on a regular basis, or in some cases by external parties.\(^5\)

For enforcement purposes, some IFAs contain their own grievance structure in which employees can file complaints at increasingly higher levels up the social partners’ ladder when a solution has not been found at lower levels.\(^5\) While these provisions may look good on paper, they may not be very effective in practice, because local management may not have internalized the IFA standards in their day to day operations,\(^5\) central management may be unwilling or unable to effectively promote subsidiaries’ compliance with the agreement,\(^5\) local unions may not exist yet and workers might be afraid of victimization.\(^5\) The lack of union strength may be an even bigger problem for monitoring suppliers and subcontractors.\(^5\)

Despite these shortcomings in their implementation, monitoring and enforcement procedures, IFAs in practice have shown not to be without positive results.\(^5\)

For regular legal enforcement, the lack of a legal framework means that the agreements first need to be converted into collective bargaining agreements at the national level,\(^5\) which requires negotiations at the national level in accordance with national laws and practices.\(^5\)

With a firmly established system of industrial relations at most European countries’ national


\(^5\) V. Telljohan et al., *European and international framework agreements: Practical experiences and strategic approaches* (European Foundation for the Improvement of Living and Working Conditions, 2009), p. 36


level this may be a manageable task, although problems might arise from different interpretations or a lack of solidarity between national unions. Structural and cultural differences between national industrial relations systems and legal systems might also pose problems. On a global scale, these problems are probably even more serious, because countries in some parts of the world lack a culture that supports collective bargaining at all, and may have poorly developed judicial apparatuses. An alternative to enforcing IFAs as collective bargaining agreements would be to treat them as normal contracts. However, this opens up a number of entirely different questions, such as whether obligations contained in the IFA are sufficiently concrete, the law of which country should apply and which judge should have legal competence in its enforcement. Except in the most extreme cases, it seems unlikely that Union Federations themselves would want to go to court on the basis of the IFAs at all, as this could be counterproductive to their goal of establishing a continuous positive dialogue.

**International solidarity and the need for a legal framework**

The attitude of (potential) signatory parties towards IFAs and their use in practice could be improved upon by the introduction of a legal framework that contains a legal impetus for signing them. Such a legal framework might also shed some light on the legal competence of the actors involved to actually negotiate internationally, the relation between the IFA and local collective agreements in case they contradict each other and the extent to which workers are legally bound. Another way to ensure more efficient negotiation, implementation and

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60 Ibid., p. 85.


63 Ibid, p. 623


66 The ultimate weapon for union federations would be the right of transnational collective action, but the future of transnational collective action in Europe seems rather bleak since the European Court of Justice’s rulings in the Viking and Laval cases. See for instance: I. Domurath, *The Three Dimensions of Solidarity in the EU Legal Order: Limits of the Judicial and Legal Approach*, Journal of European Integration 2013, 35:4, p. 463.

enforcement of IFAs is to improve cross-border solidarity between unions and workers. Some studies show that this could currently be lacking at both the European and global levels, which might explain the low number of IFAs specifically dealing with investments, job transfer and social aspects of mass layoffs.  

**General picture**

The common opinion in scholarly literature seems to be that although IFAs are far from perfect regulatory instruments, they hold a lot of potential. Focusing on the positive points in this general review, one can identify the following areas in which IFAs might contribute to the regulation of wages:

1. They could make relevant international labour standards applicable in countries where they were not ratified;
2. They could set more specific standards or requirements for ‘a living wage’, and provide mechanisms for its calculation;
3. They could strengthen local social dialogue in order to locally establish the amount of pay that constitutes a living wage;
4. They might provide implementation, monitoring and enforcement mechanisms in order to actually put the legal norm of a living wage into practice.
5. They might extend the application of norms to subcontractors and suppliers.

The next section will elaborate on these five areas and incorporate an analysis of existing IFA texts.

**5. Analysis of actual International Framework Agreements**

In this section, I will analyse the content of existing IFAs on the topic of wages. A random sample of fifty agreements is included. The analysis specifically looks at the areas of interest that were identified in the last section.

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70 Taking the agreements found in the sources as mentioned supra at 49 as a starting point.

71 Using the random number sequence generator at [www.psychicscience.org](http://www.psychicscience.org). Agreements that clearly were only intended for the regulation of a specific other topic, such as health and safety, work related stress, the installation of a new body of representation, or a specific instance of company restructuring, were not included in the sample. Date was not used as a criterion. On the basis of these criteria, the following 106 of 251 agreements were excluded, mentioned by their in the European Commission Database on Transnational Company Agreements Masterlist (ECD), version July 2013: 4, 6, 8, 9, 10, 11, 15, 16, 17, 20, 27, 29, 33, 37, 38, 39, 42, 43,
5.1 Making relevant international labour standards applicable in countries where they were not ratified

Like most IFAs when it comes to the right of association and collective bargaining, the IFAs in the sample also could have referred to any or several of the provisions of international public regulations on wages as discussed in part 3. In practice, only three out of the total of fifty do so. These three refer to the ILO Minimum Wage Fixing Convention 131.

In the specific instance of Italcementi (2008), the advantage of mentioning the convention seems marginal, as the actual provision already requires wages more favourable than provided by the national minimum wage fixing system (although without specifying how much more). Perhaps added value could be found by reading the requirement of consulting representative social partners as stated in article 1 of the Convention into the provision, but this requires a rather extensive interpretation. In general, one might interpret an IFA’s reference to a relevant convention as including the clarification given to it by ILO bodies, such as the Committee on Freedom of Association, but because the Convention on Wages is very much aimed at governments and leaves room for sub-living wage amounts of pay, this is not very helpful. It thus seems that when it comes to wages, IFAs fail at creating a useful link between international and local regulation.

5.2 Setting more specific standards or requirements for ‘a living wage’, and providing mechanisms for its calculation

IFAs could be instruments of ‘centrally controlled decentralization’, meaning that strategy for an entire multinational group is increasingly decided at the top level of the company, while

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72 In fact, all of the 50 IFAs under reviewed mention these rights in one way or the other, many of them pointing at the relevant ILO conventions.

73 ECD number 142 (OTE 2001), and Portugal Telecom (2006), Italcementi (2008) (the last two are not included in the database).

74 ‘Living wages are paid

Workers shall be paid wages and benefits for a standard working week that will enable them and their families to enjoy a reasonable standard of living which are more favourable than the minimum conditions established by national legislation or agreements. All workers must be provided with clear verbal and written information about wage conditions, as well as specific information regarding every payment period (ILO Conventions 131 Minimum Wage Fixing, 1970, C95. Protection of Wages, 1949, C. 94 Labour Clauses (Public Contracts)’


76 It should however be noted that many more IFAs refer to ILO Convention no. 100 on equal pay for equally valued work, but this is outside of the scope of this article.
local management is given some more leeway in the way they act upon such strategies. If this view were accepted by the top levels of management of multinational corporations, provisions that allow local workers’ representatives to bargain for living wages with local management would fit perfectly into this model. IFAs might contribute by setting uniform principles of living wage setting to be implemented locally, taking local circumstances into account. However, the efficiency of global negotiation, which companies regard as one of the main advantages of IFAs (as mentioned earlier), is probably lost along the way, unless very specific standards and calculation mechanisms are provided.

Informing workers about the practical meaning of provisions on living wages seems undoable without local social partners already having discussed and negotiated the actual wage level. Without this information, what is a worker, with a fragile position and probably fearing victimisation, to do with the promise of ‘a living wage’?

In examining the fifty IFAs under review, I identified four ‘profiles’ of provisions on wages, namely a) the ‘empty’ profile, b) the ‘minimum’ profile c) the ‘decent’ profile and d) the ‘living wage’ profile. These will be discussed below.

a) The ‘empty’ profile: IFAs that contain no provisions on wages at all

Disappointingly, ten of the fifty agreements looked into belong to this category. This does not appear to be a result of their origins, date, industry or the union involved, as they do not have any of these traits in common.

b) The ‘minimum’ profile: IFAs that merely refer to the local minimum wage level as set by national statute or local collective bargaining agreements

The distinction between this profile and the ‘decent’ profile (to be discussed below) is sometimes hard to make, as some IFAs imply that upholding the standards that are already applicable locally fulfils the requirement of decency by definition. An example of such an IFA is that of SCA (2004). Fourteen were identified to belong to the ‘minimum’ profile.

The added value of such a reference must be questioned thoroughly, as compliance with the local statutory or collectively bargained minimum wage should be regarded as a natural given, and should not need to be reconfirmed in an IFA. The only way in which IFAs can make a positive contribution here is for them to provide the applicable norms with an extra

\[77\] V. Telljohan et al., European and international framework agreements: Practical experiences and strategic approaches, European Foundation for the Improvement of Living and Working Conditions, 2009, p. 46

\[78\] ECD numbers: 12, 13, 30, 32, 103, 114, 133, 209, 228.

\[79\] ‘SCA is committed to paying fair wages and benefits according to relevant market standards wherever it operates.’

\[80\] ECD numbers: 61, 64, 73, 102, 109, 123, 153, 165, 240, 243, 244, 245, Lafarge (2013), Shoprite Checkers (2010) (the last two are not included in the database).
mechanism for implementation and enforcement in addition to those already in place.\textsuperscript{81} However, as we will see below, it can be questioned whether IFAs do a very good job at this. Reaffirming the local minimum wage as the applicable standard can also potentially be disadvantageous for workers. Although the risk of local statutory law forbidding the payment of a decent wage or a living wage\textsuperscript{82} seems minimal, local employers might use such a reference as an excuse for not increasing the level of pay.\textsuperscript{83} One specific provision of interest here is that of EDF Group (2009).\textsuperscript{84} Although it does not require ‘a living wage’, its aim for constant improvement is an inspiring one.

c) The ‘decent’ profile: IFAs that not only refer to the local minimum wage level, but also state that wages should be ‘decent’, ‘fair’ or something similar

An example of an IFA that belongs to the ‘decent’ profile is that of Brunel (2007).\textsuperscript{85} Out of the total fifty, fifteen IFAs were identified to contain similar provisions.\textsuperscript{86} The provision in the IFA of Vallourec (2008)\textsuperscript{87} stands out here, as it requires a ‘motivating’ wage. This begs the question if a ‘motivating’ amount of pay is a very high one that keeps the workers happy, or a very low one that makes them work harder. In cases in which both ‘a decent wage’ and the statutory minimum wage are mentioned, it can be argued that the latter is included to ensure that the ‘decent’ rate will not fall below the legally required one.\textsuperscript{88}

d) The ‘living wage’ profile: IFAs that mention that wages should be adequate, or enough for a worker (and his family) to live on.

\textsuperscript{81} A. Sobczak, Legal Dimensions of International Framework Agreements, Relations Industrielles, vol 62, no. 3, 2007, pp. 473, 476

\textsuperscript{82} C. Niforou, International Framework Agreements and Industrial Relations Governance: Global Rhetoric versus Local Realities, British Journal of Industrial Relations, 50:2, 2012, p. 365, which mentions the impediment of the right of collective bargaining by Peruvian law

\textsuperscript{83} As for instance in some African countries, wages were only raised when the statutory minimum wage was adjusted. See: G. F. Starr, Minimum wage fixing : an international review of practices and problems (International Labour Office, 1981), p. 50

\textsuperscript{84} “…consultation on the Initiatives to be taken and the conditions for the implementation of this Agreement. These initiatives shall take into account the local economic, cultural, professional or regulatory characteristics and set out conditions for enforcement within a policy of ongoing improvement.”

\textsuperscript{85} “Brunel is committed to ensuring that remuneration is better than, or at least equal to, the conditions set forth in the national legislation or collective bargaining agreements. (...) Salary and other payments made for full-time work correspond at least to the minimum amount mandated by law and the guaranteed minimum for the profession or as set forth in the relevant collective bargaining agreements. They should therefore ensure that employees enjoy decent living conditions.”


\textsuperscript{87} “A policy of fair and motivating remuneration that allows the employees to share in the company’s profits.”

\textsuperscript{88} C. Niforou, International Framework Agreements and Industrial Relations Governance: Global Rhetoric versus Local Realities, British Journal of Industrial Relations, 50:2, 2012, p. 361
Some provisions such as for instance those of Lafarge (2013), are actually titled ‘living wages’, but in reality only refer to the local legal minimum wage. These provisions do not qualify for this profile. An example of an IFA that does fit the profile is that of Portugal Telecom (2006). The provision in the Pfleiderer IFA (2010) even goes as far as to include the needs of the worker’s family. Some other interesting examples are those of Inditex (2009), Gaz de France (2008), and Triumph (2001). In total, eleven out of fifty IFAs somehow mention ‘a living wage’ or something similar and thus fit the profile.

While this number is not entirely discouraging, none of these provisions seem detailed enough for workers or their representatives to base solid claims on. It is not clarified what ‘the basic needs’, ‘the minimum standard of living’, ‘reasonable needs’ or ‘the basic needs, and some amount for free disposal’ amounts to. A real mechanism for determining the ‘living wage’ level is absent in all of them.

89 “Living wages
Workers shall be paid wages and benefits for a standard working week that should be at least at the level of current national legislation or collective agreements, as applied in the industry/sector concerned.”

90 “Decent minimum wages
The workers shall receive minimum wages, allowances and other benefits, at least equal to those established in the law or in national agreements for work in a commercial or industrial enterprise or for any other service in the branch of activity in which the work is carried out. (…)

No worker shall receive a wage that is less favourable than the legal minimum, and the wage should always be sufficient for the worker and his family, taking into consideration the basic needs (ILO Conventions nos. 94, 95, and 131).”

91 “Employees receive wages and additional remuneration that do not fall below the minimum levels established by law or by agreement and that, for work within normal working hours for the location, allow them and their families enjoy at least the minimum standard of living (…).”

92 “External manufacturers, suppliers and their subcontractors shall ensure that wages paid for a standard working week shall meet at least the minimum legal or collective bargaining agreement, whichever is higher. In any event, wages should always be enough to need at least the basic needs of workers and their families and any other which may be considered as reasonable needs.”

93 ‘The Gaz de France Group undertakes to ensure that remuneration is at least equal to, if not higher than the conditions set out in National Legislation or, where applicable, the appropriate labour agreement with the aim of providing employees with a decent standard of living with respect to local context. / The Gaz de France Group’s remuneration policy aims to ensure objectivity and transparency with regard to rules governing wage fixing. / In order to reinforce social cohesion within the Group, Gaz de France strives to redistribute to its employees the benefits of the company's growth and creation of value, to which they have contributed. This redistribution takes the form of salary increases, bonuses, or any other means of sharing in the company's growth profit (profit-sharing bonuses, employee saving schemes, free shares, etc.).”

94 ‘Wages and other performance related payments conform the legal, or for the industry applicable, minimum wage, which is enough to fulfil the basic needs of the employee and also leaves an amount, for free disposal (…).”

5.3 Providing implementation, monitoring and enforcement mechanisms to secure the legal norm of a living wage actually being put into practice

For provisions on (living) wages to make a real difference in practice, it is important that they are accompanied by sound implementation, monitoring and enforcement mechanisms.

Seven out of fifty IFAs contain no specific provisions on implementation at all.\(^96\) Twenty promise to make an effort to at least notify all workers of their existence and/or contents,\(^97\) and thirteen also contain a provision on training local management on how to put the agreement into practice.\(^98\)

In the way of monitoring, seven of the IFAs under review do not contain any specific provisions,\(^99\) two mention internal and/or external audits will be performed,\(^100\) six mention activity of a joint monitoring body as well as audits,\(^101\) while the other thirty-five only mention the periodic meetings of a joint monitoring body in which the signatory parties are represented. The Groupe Danone IFA (2004) holds an interesting monitoring system in which a large number of social indicators (among which remuneration) is reviewed annually, investigating all companies in the group, and the report is made available to all employees. Rhodia’s IFA (2011) also has quite an elaborate implementation and monitoring scheme.

Enforcement-wise, fourteen out of fifty IFAs contain no provisions on workers being allowed to submit complaints if the agreement is not properly complied with,\(^102\) two of them do mention the possibility of a worker’s complaint, but not the way it should be resolved,\(^103\) eight specify that management will deal with any complaints,\(^104\) twenty-four establish a procedure by which complaints will be handled jointly by the agreement’s signatory parties,\(^105\) and only two feature some kind of independent arbitration procedure by a third party.\(^106\) Some IFAs specifically mention that no parties other than the signatory parties can make rights-related

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\(^96\) ECD numbers: 30, 46, 64, 103, 132, 133, 245.


\(^99\) ECD numbers: 28, 56, 73, 103, 209, 220, 243

\(^100\) ECD numbers: 13, 46

\(^101\) ECD numbers: 36, 85, 111, 143, Rhodia (2011), Italcementi (2008)

\(^102\) ECD numbers: 13, 30, 46, 61, 73, 102, 103, 109, 114, 132, 133, 180, 197, 209.

\(^103\) ECD numbers: 89, 158.


\(^106\) ECD numbers: 112, 228.
claims based on them, and/or specify that any grievances can only be submitted to the joint complaints handling committee and not to national courts.\textsuperscript{107} The Inditex IFA stands out for specifically mentioning the possibility of consulting the ILO for dispute resolution.\textsuperscript{108}

5.4 Strengthening local social dialogue in order to locally establish the amount of pay that constitutes a living wage

One of the union’s key objectives with the conclusion of IFAs is creating a continuous social dialogue.\textsuperscript{109} Wages, as a prime subject of negotiation between management and local unions, might provide a valuable strategic opportunity for achieving this goal. For local unions to benefit, it seems only logical that negotiations should be conducted at the local level, or at least local input should specifically be requested before negotiating at the national or international levels. As noted before, if negotiations at the international level were to act as a substitute for local social dialogue, this might be regarded as a setback rather than an improvement.

Whereas according to Telljohan et al. over half of all IFAs contain provisions on strengthening the position of unions, either acting locally or on a larger scale,\textsuperscript{110} only twelve of the IFAs contained in this research specifically mention a role for local unions in the implementation or monitoring of the agreement,\textsuperscript{111} and only two of those specifically mention their role in relation to wages.\textsuperscript{112} Of the provisions that do not specifically refer to wages, some nevertheless interesting ones are those of EDF (2009),\textsuperscript{113} GDF (2008)\textsuperscript{114} and Metro (2007).\textsuperscript{115}

\textsuperscript{107} The Europcar IFA for instance states that: “Third parties cannot derive or enforce any right from the declaration.” The Sodexo IFA mentions: “The procedures for resolution of differences set forth above shall be the exclusive remedy available to the parties, and nothing in this agreement shall provide the basis for any cause of action of any kind in any court or administrative body by “IUF”, “Sodexo”, or any other entity or individual.”, and the IFA of Statoil (2010) says: “The Parties agree that neither the Parties nor third parties may derive or enforce any legal rights from this agreement.”

\textsuperscript{108} ECD number: 111, Inditex (2009): “Every effort will be made to find common agreements but where this is not possible Inditex and ITGLWF will, in appropriate circumstances, seek the expert advice of the ILO.”

\textsuperscript{109} Ibid., p. 46

\textsuperscript{110} Ibid., p. 37

\textsuperscript{111} ECD numbers: 61, 85, 88, 102, 127, 132, 138, 180, 197, 228, Italcementi (2008), Lafarge (2013)

\textsuperscript{112} ECD number 102 (GeoPost, 2005): “Regarding social rights (notably working conditions such as the organisation of working time, wage, etc...), GIMD recommends, on the basis of the applicable national law, regulations via collective contracts (collective agreements with employees’ legal representatives) or referring to them. “. 197 (Triumph 2001): “Every employee has the right to establish and join unions and the right for wage negotiations is acknowledged (ILO Agreement 87 and 98).”

\textsuperscript{113} “At the local level, the conditions for monitoring and enforcement are specific to each company concerned. However, at a minimum they must be based on an annual written review (translated into French or English). This review shall be forwarded to the employee representatives in charge of monitoring the CSR agreement, before being integrated in the internal annual review on the implementation of the Agreement at the Group level. The companies concerned will take care to work on all the Chapters of the Agreement and, annually, more in particular on the priorities set out at the Group level and on their own local priorities.”
Overall it is hard to say if IFAs are actually aimed at strengthening local unions, or if perhaps their signatory parties’ preference lies with collective bargaining at a European or global scale. The former might be indicated by the overwhelming support for collective bargaining in general, but the important role the signatory parties at group level often play in monitoring and complaints procedures might indicate the latter. On the other hand, nineteen of fifty IFAs in this research have national unions as cosignatories. In an ideal world, the negotiation of the IFA would also have involved local managers. Had bargaining for ‘a living wage’ on a local scale really been the intention, one might have expected this to have been mentioned explicitly more often.

An interesting provision on freedom of association and union activity in general is that of Ford (2012). It begs the question what a fair balance between the company’s interests and those of workers is, and who will decide on this. The Lukoil IFA (2004) holds an interesting provision that explicitly mentions the relation between the IFA and regular collective bargaining.

5.5 Extending the application of the IFAs norms to subcontractors and suppliers

Six of the fifty IFAs in this research mention that the multinational company involved expects its suppliers and/or subcontractors to fully comply with the contents of the agreement, but do not provide any information on the consequences in case these businesses do not do so. In eighteen IFAs, instead of stating that compliance is expected, the multinational company takes upon itself the duty to stimulate its suppliers or subcontractors to comply with the

114 “Even if local laws do not make this a legal requirement as such, the Gaz de France Group seeks to facilitate the designation of representatives by employees or unions, and to respect their aims and their independence.”

115 “The local management is responsible for concrete embodiment of both the social dialogue with the employees and employees’ representatives as well as fair working conditions in each country within the scope of these principles.” (article 2 of the CSR code to which the IFA refers)


118 “(…) Cooperation with employees, employees’ representatives and trade unions will be constructive. The aim of such cooperation will be to seek a fair balance between the commercial interests of the Company and the interests of the employees. (…)”

119 “The agreement made by and between the Parties shall be consistently implemented in all LUKOIL Group organizations, however it shall not be considered a replacement for the outcomes of collective negotiations and applicable tariff agreements and shall not run contrary to the local production relations practices governing information exchange, resolution of problems and holding the negotiations, but shall be supplementary to such processes. the parties hereto acknowledge the principle that stipulates that production relations issues shall be best of all resolved as close to the work place as possible.”

120 ECD numbers: 22, 31, 64, 88, 111, 206
agreement, again without specifically mentioning a sanction on non-compliance.\textsuperscript{121} Nine agreements state that the multinational company will use compliance with the IFA as a criterion for selecting its business partners,\textsuperscript{122} and five IFAs go as far as to mention termination of contractual relationships as a possible consequence of non-compliance.\textsuperscript{123} Two IFAs only mention the extension of the agreement to the multinationals’ own subsidiaries,\textsuperscript{124} and ten out of fifty IFAs do not mention anything about being applicable to subcontractors and suppliers at all.\textsuperscript{125} Only one of the IFAs contains a specific provision on the wages that subcontractors and suppliers are supposed to pay their workers.\textsuperscript{126}

Verifying their business partners’ compliance with an IFA, or any legal norm for that matter, is quite a hard task for multinational companies. This is especially the case for those with thousands of suppliers and subcontractors. Identification of all relevant parties, the cost of monitoring, corruption among monitoring officials and workers’ fear of victimisation are among the major obstacles involved. In addition to these, the requirement to pay ‘a living wage’ brings several problems of its own to the table.

First of all, the required amount of pay may differ from business to business, and a living wage for suppliers and subcontractors will not necessarily require the same amount that the multinational company pays its own workers. Besides variation in local circumstances between business locations, there might also be differences between the modalities of payment, which could complicate things. For instance, a supplier of food-related goods might partially pay its workers in kind. For a multinational company that does business with this supplier, it may be difficult to verify whether the total payment fulfils the living wage requirement.

Secondly, the payment of a living wage by suppliers and subcontractors may result in the multinational company having to pay substantially more for the goods or services involved. Alternatively, the profit margin of company owners down the supply and production chain will have to drop. For some business owners, this could mean this specific enterprise does not provide them with an attractive business model anymore, possibly leading to the termination of the enterprise, and thus to that of employment. For the workers involved, this result might be even worse than working at a below living wage rate of pay. This dilemma is not exclusive to the topic of pay, as other labour rights such as decent working conditions might suffer from the same dynamics. However, unlike some labour rights like freedom of association and the

\textsuperscript{121} ECD numbers: 12, 36, 46, 73, 102, 109, 123, 127, 138, 158, 180, 220, 240, 243, 244, Lafarge (2013), Italcementi (2008)

\textsuperscript{122} ECD numbers: 13, 28, 56, 142, 143, 171, 245, Portugal Telecom (2006), Shoprite Checkers (2010).

\textsuperscript{123} ECD numbers: 61, 85, 197, 249, Rhodia (2011).

\textsuperscript{124} ECD numbers: 228, 248

\textsuperscript{125} ECD numbers: 30, 32, 89, 103, 112, 114, 132, 133, 153, 209

\textsuperscript{126} Inditex (2009), see at 92 supra.
right not to be discriminated at work, compliance by the employer in this case almost necessarily means extra expenses involved, and the costs are structural rather than incidental.

A prerequisite for multinational companies to be able to make a difference with their suppliers and subcontractors is for them to have influence over them. Some IFAs specifically take this fact into account, probably to limit the risk of liability. Instead of using the lack of influence as an excuse, multinational companies should try to actively help their business partners to comply with the IFA. This will in turn probably strengthen the business relationship.

When termination of the contract with a supplier or subcontractor is only mentioned in relation to clauses on health and safety issues and ‘basic human rights’, this begs the question if the payment of a living wage is considered to be one of the rights concerned. If this is not the case, this will be detrimental to the IFA’s credibility on this topic, and may lead Global Union Federations to prefer not making any agreements on ‘a living wage’ at all.

6. Final analysis and recommendations

The analysis of existing IFAs shows us that the shortcomings of public regulations on wages were not solved by them, and the potential advantages of regulation by means of IFA do not seem to fully come to fruition in practice.

The problem of non-ratification of relevant international conventions is not overcome, because hardly any of the agreements refer to these conventions, and the ones that do fail to specify how private actors should apply a norm that was primarily aimed at national governments. Whenever the agreements contain any norms on wages at all, most of them simply refer to the applicable minimum wage as set by statute or collective agreement, thereby not necessarily securing an adequate wage. The provisions that do require a living wage fail to specify how the right amount would have to be established. Although all agreements stress the freedom of association or collective bargaining, it is not clear if negotiations were meant to be conducted at the local, national or international levels, thus possibly missing out on the opportunity to secure an adequate living wage for workers, as well as a chance of strengthening local unions. Many IFAs’ mechanisms for implementation, monitoring and enforcement also could have been a fair bit stronger, currently failing to provide the optimal ‘remedy’ to (human) rights violations by businesses that the special Representative of the United Nations Human Rights Council seeks to achieve. Finally, the obligation to stimulate suppliers and subcontractors to comply with the agreement without

127 Chiquita (2001): “The parties agree that the effective implementation of this provision is dependent on a number of factors such as Chiquita’s relative degree of influence over its suppliers and the availability of appropriate and commercially viable supply alternatives.”


129 For a description of the Protect, Respect and Remedy Framework introduced by Special Representative prof. J. Ruggie, see: http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples
any information on what will be the consequence if they do not, seems quite open-ended, although the dilemma of what a correct course of action would be is not easily resolved.

One might say that for the topic of ‘a living wage’, this research confirms the status of IFAs as mere public relations instruments for both multinational companies and unions, instead of substantial results of transnational collective bargaining. Because unions need to be able to show concrete improvements to the situations of the workers they represent, or else run the risk of being implicated as being part of multinational companies’ marketing strategies, they should consider very carefully if they want to agree on living wage provisions in IFAs at all. The wisest course of action in this respect will depend on strategic considerations of the individual unions as well as further research into this specific aspect of the matter.

The present data yields the following recommendations for making full use of the regulatory potential of IFAs. First of all, a reference to international standards on wages might in fact be useful, not so much because they provide any clear norms on the required amount of pay is required, but because they might provide workers with some additional authority to base claims on. Alternatively, the interpretation of the European Committee of Social Rights is to be considered an inherent part of the norm, the European Social Charter might also provide a norm that is specific enough to be used in practice. The ILO recommendation that accompanies its convention on minimum wage fixing does not offer enough guidance for it to be directly applied. Secondly, IFAs could in fact incorporate more detailed provisions of their own, thereby providing local management and workers with tools to establish the amount required for payment of a living wage. Social partners at the international level might agree on the particular goods and services workers should be able to afford with his wages, which could then be put into practice locally, taking into account local circumstances, among which the cost of living, taxes and subsidies, family relations and cultural specifics. The advantage IFAs can have over local statutory law is that they could give a feeling of ‘collective ownership’, and the above recommendations will likely reinforce such a feeling. If for any reason the parties do not establish such an instrument themselves, the IFA might refer to a calculations mechanism established by NGOs and private parties, and use the criteria as established by those organisations as the basis for local arrangements. The need for periodical updates to the ‘living wage’ level, could well prove to be a natural way of maintaining a constructive social dialogue, which is one of the advantages of periodical renegotiation of

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130 One IFA that takes this very literally is that of Kimberly-Clark (2010), which states: “During this period both parties will work to promote the relationship and the public acknowledgement that K-C is a socially responsible employer.”


132 Ibid., p. 470


134 Several living calculators are available on-line, for at example at http://livingwage.mit.edu/ and http://fairwageguide.org/
IFAs in general. The typical advantage Global Union Federations have over local unions in terms of expertise and financial resources to the negotiating table could apply very strongly here, at least when it comes to establishing general criteria. It seems questionable if Global Unions could play a supporting role in wage negotiation at the local level. Specifically requiring that local unions be involved in these arrangements will prove invaluable for strengthening local unions, but also raises the question who should be involved instead if there is no local representation. If there is a total lack of enthusiasm for unionisation among local workers, it does not seem appropriate for the multinational’s management and global union federations to artificially construct a union or force one upon them. Instead, they might jointly appoint some kind of independent committee, consisting of local experts, to establish the correct living wage. IFAs should also more specifically involve local unions in monitoring and enforcement, as this will produce the best results, but if this does not resolve things, global management should not wash their hands of the matter on the pretext of the problem being a local issue. For enforcement to be at its most effective, the living wage provision would have to be incorporated into a local collective bargaining agreement or individual labour contracts under local law, so as to directly provide grounds for legal claims in local courts. A legal framework for IFAs might contribute to this by somehow regulating the automatic integration of the international agreement into the national system of labour law. However, for such a framework to come into being on a large international or even global scale, nations would have to hand over part of their sovereignty, making this a highly unlikely event. Perhaps it could be achieved regionally in Europe. If such a legal framework were to be created, and its direct effect into the national legal order were inescapable, it remains to be seen how many IFAs would be agreed upon at all. For an optional legal framework for IFAs to really have any added value for the topic of wages, it would have to hold favourable answers to matters such as: are multinationals obligated to be a party to one, to which workers will the IFA apply, and what will be the relation between the IFAs provisions and other sources of law. The question to which employees the IFA should apply is quite a hard one to answer. It could be advantageous to require trade union membership in order to stimulate the growth of those institutions, but on the other hand this may lead to union member victimization in some countries. Alternatively, any worker might be allowed to make claims based on the IFA. This latter option will more easily facilitate workers of suppliers and subcontractors. As for the relationship between IFAs and local collective agreements, it


137 As was seen in C. Nițoforou, International Framework Agreements and Industrial Relations Governance: Global Rhetoric versus Local Realities, British Journal of Industrial Relations, 50:2, 2012, p. 370


naturally it would be preferential to have a legal system in place that prioritises the agreement that offers the highest amount of pay in the event of contradiction between the two. This does however potentially mean an impediment to local agreements on maximum wages, which may have been conducted for good reasons.

Finally, for IFAs to have the biggest possible impact, multinationals should take their responsibility towards the workers of their suppliers and subcontractors very seriously, and not limit application of the IFA to a mere polite request to oblige. This, however, is not an easy task. A good start would be to identify those suppliers and subcontractors where the risk of non-compliance is the greatest, with a lot of workers involved, and with whom the multinational company does extensive business. If these subcontractors are financially dependent on a multinational company, this give the multinational company a significant amount of influence of the latter over them. These subcontractors should be the main focus of multinational’s efforts of stimulation and monitoring. Non-compliance should not result in the immediate termination of contractual relations. Preferably such occurrences would lead to a dialogue about the causes of the violation at hand, and eventually to a joint solution. However, even if the parties involved are willing to openly discuss such competition-sensitive matters as their internal costs structures and revenue model, it is questionable if this will bring a solution about, especially in very competitive (international) industrial branches.¹⁴⁰

Multinational corporations’ management may not care for these ‘improvements,’ as it will probably cost them more than the current systems of industrial relations. The correct response by unions and NGOs might be to raise the cost of not making these improvements, by mobilising public opinion. If they could make businesses and consumers avoid multinational companies who are involved in sub-living wage labour, this might positively influence the choices those companies make, among which the conclusion of a decent IFA. The risk of such a strategy is that it could be counter-productive by making the multinational company withdraw from that particular industrial sector entirely. To achieve a better result, consumers would have to be willing to pay a small premium for products whose production does not involve any violation of fundamental labour rights. Although there are signs that consumers are prepared to pay extra,¹⁴¹ the ‘naming and shaming’ method is unlikely to be truly effective if every last one of the world’s 82.000 multinational companies were subjected to it, because the customers would undoubtedly quickly be overcome by ‘consumer fatigue.’¹⁴²

¹⁴⁰ The IFA of Sodexo (228, 2011) for instance mentions: “The parties acknowledge that "Sodexo" operates in a highly competitive environment and is facing, in numerous countries, competition by enterprises that disregard national law and practice with respect to the principles set forth in this Agreement. (...) "Sodexo" human resource leadership and the "IUF Secretariat" will work cooperatively in order to examine the conditions under which they may progressively address these concerns, without creating a competitive disadvantage which could hinder "Sodexo’s" business growth or have negative consequences on employment."


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## Appendix A

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<tr>
<th>Actor</th>
<th>Name of the legal document</th>
<th>Type of document</th>
<th>Adressee(s)</th>
<th>Scope</th>
<th>Relevant article numbers</th>
<th>(Selected parts of) provisions</th>
<th>Enforcement mechanism</th>
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<tbody>
<tr>
<td>United Nations</td>
<td>UN Universal Declaration of Human Rights (1948)</td>
<td>Non-binding declaration</td>
<td>‘All peoples and all nations, (...) every individual and every organ of society’</td>
<td>Universal</td>
<td>23 (3), 25 (1)</td>
<td>23 (1): <em>Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</em> 25(1): ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’</td>
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<tr>
<td>United Nations</td>
<td>International Covenant on Economic, Social and Cultural Rights (1966)</td>
<td>Binding Treaty</td>
<td>States</td>
<td>Universal</td>
<td>7 (a), (i) and (ii), 11 (1) and (2)</td>
<td>11 (1): <em>The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.</em></td>
<td>Committee on Economic, Social and Cultural Rights; country reports, complaints (when the country has ratified the optional protocol).</td>
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<td>United Nations / companies</td>
<td>UN Global Compact</td>
<td>UN Initiative</td>
<td>Businesses</td>
<td>Member companies</td>
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<td>Conference recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;</td>
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<th>International Labor Organization</th>
<th>Minimum Wage Fixing Convention, 1970 (No. 131)</th>
<th>Binding Treaty</th>
<th>Member states who ratified</th>
<th>Universal</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.</td>
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<thead>
<tr>
<th>International Labor Organization</th>
<th>R135 - Minimum Wage Fixing Recommendation, 1970 (No. 135)</th>
<th>Non-binding guideline</th>
<th>All member states</th>
<th>Universal</th>
<th>1, 2, 3, 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>“1. Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the See above (in case of ratification of the convention).</td>
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needs of all workers and their families.
2. The fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.
3. In determining the level of minimum wages, account should be taken of the following criteria, amongst others: (a) the needs of workers and their families; (b) the general level of wages in the country; (c) the cost of living and changes therein; (d) social security benefits; (e) the relative living standards of other social groups; (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”

<table>
<thead>
<tr>
<th>Organization</th>
<th>Declaration</th>
<th>Ratification</th>
<th>Accessibility</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>International Labour Organization</td>
<td>ILO Declaration on Fundamental Principles and Rights at Work 1998</td>
<td>All ILO member states, regardless of ratification of core conventions</td>
<td>Universal</td>
<td>Reports by countries who have not ratified the core conventions, Global reports by the ILO</td>
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<tr>
<td></td>
<td>Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</td>
<td>‘MNEs, governments, and employers’ and workers’ organizations</td>
<td>Universal</td>
<td>34. When multinational enterprises operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and Periodic surveys, complaint to the ILO Committee on Multinational Enterprises</td>
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</tbody>
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<table>
<thead>
<tr>
<th>International Labour Organization</th>
<th>ILO Declaration on Social Justice for a Fair Globalization 2008</th>
<th>Declaration</th>
<th>Member States</th>
<th>Universal Section A, part II</th>
<th>cyclical reviews by the ILO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>“(…) policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection; (…)”</td>
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<td></td>
<td>“All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.’, Part II article 4 (1): ‘…the Parties”</td>
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<thead>
<tr>
<th>Council of Europe</th>
<th>European Social Charter</th>
<th>Binding treaty</th>
<th>Member states</th>
<th>Part I article 4, Part II article 4 (1)</th>
<th>European Committee of Social Rights; reports and complaints procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europea n Union</td>
<td>Community Charter of the Fundamental Social Rights of Workers (1989)</td>
<td>Declaration</td>
<td>Member States</td>
<td>European</td>
<td>5</td>
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<tr>
<td>Europea n Union</td>
<td>Charter of Fundamental Rights of The European Union (Treaty of Lisbon)</td>
<td>Binding Charter</td>
<td>EU institutions, bodies under EU law and member states</td>
<td>European</td>
<td>31 (1)</td>
</tr>
<tr>
<td>Europea n Union</td>
<td>Treaty on the Functioning of the European Union</td>
<td>Binding Treaty</td>
<td>Member States</td>
<td>European</td>
<td>153 (5)</td>
</tr>
<tr>
<td>Organisa tion for Economi c Cooperat ion and Develop ment</td>
<td>OECD guidelines for Multinational Enterprises on Responsible Business Conduct</td>
<td>Non-binding guidelines</td>
<td>Member states, MNE’s</td>
<td>Universal</td>
<td>Section V: 4 (a), (b)</td>
</tr>
</tbody>
</table>
| | | | | | | 4 (b) 'When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of
the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.'

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<thead>
<tr>
<th>European countries</th>
<th>National Legislation</th>
<th>Varies</th>
<th>National</th>
<th>National</th>
<th>Variable</th>
<th>National court procedures</th>
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