EXECUTIVE SUMMARY

The global economy, and in particular the organization of global production and international trade, has changed significantly in the last three decades. Today, international trade and global production are increasingly organised in highly fragmented and geographically dispersed production networks where transnational corporations (TNCs) break up the production process into different parts and locate them in different countries on a global scale. These transformations have important consequences for workers and the protection of labour rights. The rise of these complex global production arrangements together with a redefinition of the role of the state in the context of globalisation has led to an ‘accountability gap’ regarding labour rights. This raises the question of how transnational corporate activities and global production networks (GPN) can be regulated in order to secure labour and other human rights.

Taking into account these developments, the current report focuses on the options available to secure labour rights in GPN. The development of regulatory mechanisms that are or can be made applicable to secure labour rights in GPN has been slow. This is due to the cross-border dimension of these networks that require cross-territorial cooperation between state authorities as well as to the complexity of and asymmetric power relations between actors in GPN. In particular, GPN relationships have become increasingly complicated from a legal and labour rights perspective as supplier and subcontracting relationships have increased in comparison to subsidiary and equity relationships.

The human rights framework provides an avenue to address problems of responsibility and accountability for labour rights in GPN, as it offers a normative framework that identifies rights-holders and duty-bearers based on universally recognised normative standards. Although, the human rights framework focuses on the state as the key agent in the human rights arena, recently, the focus has started to shift and besides the state also non-state actors such as TNC have been identified as secondary duty bearers. In parallel, the redefinition of the role of the state in the context of globalisation has led to a new set of regulatory mechanisms that emerged at the national and international level. At the international level a variety of primarily soft law instruments which are not legally binding emerged in the attempt to secure key labour rights worldwide, including guidelines by international organisations and self-regulation at the sectoral or firm level. International Framework Agreements concluded between Global Union Federations and TNCs are more recent instruments aimed at securing workers rights on the international level. Given the existing and emerging options at the national, macro-regional (European) and international level, this report attempts to assess the effectiveness of different instruments with regard to labour rights protection in the context of GPN.

Our analysis shows that existing mechanisms to secure labour rights in GPN are still patchy. On the national level new promising instruments that reflect the host states responsibility to protect labour rights have emerged. For instance, some EU member states have introduced legislation to hold companies accountable for labour rights violations in supply chain relationships (“chain liability”). There are important limitations with regard to the territorial reach and categories of workers covered under the current regimes which could however be addressed in the future. The potential of incentive mechanisms such as socially responsible public procurement to enhance labour rights protection in GPN has not been realized so far as most emphasis has been put on national employment and issues of non-discrimination considerations without looking at labour rights further down in the production network. Moreover, host state responsibility for labour rights, especially in countries outside of the EU, may be compromised by a variety of factors in the context of GPN and related com-
petitive pressures and power asymmetries. States compete with each other to attract FDI and supplier contracts, and low wages and weak labour rights regulation are often ‘competitive advantages’ in GPN. Consequently, host states may be unable or unwilling to introduce and enforce severe obligations on TNCs with regard to labour rights and home state responsibility may become relevant. In this regard a very small number of states has been active and has provided for the possibility to bring companies to court for labour rights violations committed abroad. These regimes are promising but have currently some important limitations. They are restricted either to grave labour rights violations or require that a subsidiary commits the labour rights violation for the lead firm to be held accountable. Hence, the increasingly widespread supplier and subcontracting relationships in GPN are not covered. Further, a strong relation of the TNC to the labour rights violation has to be proven by workers which is likely to be arduous in GPN settings. This demonstrates that home state responsibility is the last resort concerning labour rights protection, and it should primarily be upon the host state to secure labour rights. But in parallel home state responsibility should be further developed and fortified.

On the European level, the EU has been rather reluctant in terms of company regulation to ensure the protection of labour rights in GPN. Although the EU does not have an explicit mandate in this matter, cross-border labour rights protection is an issue of EU wide relevance and EU member states face limits at the national level. Thus, the EU is in an unique position and better suited than any other organization to enact legislation with binding effect on EU based companies operating transnationally. However, efforts have been limited and decisive steps into the direction of labour rights accountability of companies abroad still wait to be taken. With regard to current initiatives, an extension of the aforementioned national chain liability regimes to the EU level would be one important step to secure labour rights and ensure fair competition throughout the EU. However, relationships outside the EU would not be covered under such a structure but in principle liability could be extended to incorporate operations abroad of EU based TNCs. For instance, existing EU regimes such as the Brussels I Regulation involve home state responsibility and have been used to make EU subsidiaries accountable for labour rights violations which occur outside the EU's territory. In the area of EU trade policy, the European Commission (EC) seeks to include ILO core labour standards via sustainability chapters in its bilateral trade agreements. The major weakness of this instrument is the enforcement process which is limited to cooperation mechanisms. In contrast, a dispute settlement system including sanctions is foreseen for the remaining agreement. Hence, labour rights protection is not implemented on the same level as trade issues.

On the international level, the ILO has been the primary body within the international institutional system that deals with labour issues. The ILO MNE Declaration sets forth recommendations for “good corporate conduct” and enjoys a broad backing by ILO member states and national social partners. However, it does not provide legally binding instruments to secure and monitor the implementation of the MNE Declaration. The recently established ILO Helpdesk also focuses primarily on the provision of information for management and workers’ representatives of TNCs in day-to-day operations. In contrast, a third initiative, the newly established “Better Work” programme, represents a new avenue in the ILO approach as for the first time the ILO engages in monitoring the private sector. Attempts to introduce binding regulations on human rights (including core labour rights) in other UN bodies were opposed by (business) interests as well as some states. Instead, the UN appointed a special representative - John Ruggie - who introduced the ‘Ruggie framework’ called “Protect, Respect, Remedy”. Notwithstanding its merits the framework presents a minimum baseline for companies and it is not yet ensured that companies that are not willing to respect human rights will be held accountable due to the lack of an effective legal framework of accountability, including effective complaint mechanisms. The OECD Guidelines are to date the only international soft law regime with a complaint mechanism. Since the guidelines generally require an "investment nexus", i.e. an
operation equivalent to investment for a TNC to be accountable, their effectiveness is limited from the onset. Concerning the definition of the investment nexus there exists considerable uncertainty and the interpretations of the NCPs - the complaint mechanisms of the Guidelines - differ significantly.

As a response to public pressure, Codes of Conduct (CoC) have been introduced at the company level which generally include basic labour rights along the lines of the ILO core labour standards. Evidence shows that although company CoC have had – to some extent – a positive influence on the protection of labour rights in GPN, they are less effective in practice. Thus, they must be seen as only one, and certainly not the most promising, avenue to global labour rights protection. The biggest limitations are the voluntary and non-standardized nature of this approach with regard to design and content as well as implementation and monitoring; the limited coherence of TNC’s buying and sourcing practice on the one hand and CSR demands stipulated in CoC on the other hand; and the lack of engagement with public labour inspectorates and labour ministries as well as workers organisations which impedes on the long-term effectiveness of this instrument.

On the level of social dialogue, European and International Framework Agreements between TNCs and European and Global Trade Unions have been signed to extend cooperative industrial relations to the company’s locations outside the home country. Their effectiveness depends on a number of factors such as the type of production network, the commitment of the lead firm, and the capacities as well as the political environment of the trade unions involved. European Framework Agreements (EFAs) and International Framework Agreements (IFAs) are certainly very promising instruments and should be supported and embedded in a wider regulatory framework which strengthens their enforcement structures.

Besides the proposals made in the report to improve the existing instruments for labour rights protection to make them more effective in the context of transnational corporate activities and complex global production arrangements, an international legal framework which holds TNCs accountable for labour rights violations in GPN, such as an International Convention on Combating of Human Rights Violations by Transnational Corporations, is needed. Although it will take time to reach the political consent for such a structure, the pressure from public interest groups, including trade unions, critical consumers and NGOs is rising and court cases seeking to hold TNCs accountable for labour rights violations are increasing. The current international institutional bias which favours legally binding enforcement mechanisms regarding trade and investment while showing reluctance to introduce such mechanisms for labour rights must be changed. Thus, the patchwork activities that became apparent in the analysis of instruments in this study must be on the one hand supported and further developed but on the other hand also broadened and complemented by a concerted effort to establish international binding regulations for labour rights and other human rights violations of TNCs.