

Regulating for Globalization

Trade, Labor and EU Law Perspectives

Skills in Global Supply Chains: A European Perspective

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In a series of posts on this blog, I have emphasised the centrality of skills to work. I have identified skills' recognition as vital in facilitating access to and participation in the labour market. I have noted the importance of education and training in preparing people for work. And I have identified the role which skills recognition plays in the platform economy. In this post, I want to consider the role of skills in global supply chains. How are quality checks to be implemented in respect of them, ensuring that the skills and qualifications of workers in global supply chains are recognised in a manner consistent with the EU's market and values? Unfortunately, there is a significant lack of data and clarity in this area, notwithstanding its extraordinary significance. As one recent study noted,

“Supply chains tied to multinational corporations represent over 80% of global trade and engage over one in five workers. Supply-chain management therefore has a significant impact on key social and environmental challenges. Despite this importance, there is currently no comprehensive, empirically grounded understanding of how companies address sustainability in their supply chains.”^[1]

What are global labour supply chains or global value chains?^[2] Suppose a company in the European Union seeks to improve efficiency through lowering its labour costs. One way of doing so may be to outsource some of its labour functions to organisations elsewhere in the EU or outside the EU where labour costs are likely to be lower. In so doing, the production process becomes ‘globalised’; that is, the production process becomes global, not merely local. Different parts of the production process may occur in many different jurisdictions, involving different suppliers, standards governing labour provisions and codes of conduct. Such so-called ‘global value chains’ or ‘global labour supply chains’ are becoming increasingly common.

Labour Rights

The first site for enhancing skills' use, development and recognition in global supply chains is labour rights, broadly construed.^[3] The key loci of labour rights protection are those guaranteed in the EU's trade agreements. Relevant provisions in this respect are those concerning the willingness of the EU and its partners to ratify or comply with fundamental ILO conventions,^[4] cooperate in upgrading and developing education and training systems^[5] and cooperate in human resource

development.[6] Some such agreements envisage the coordination of education and training policy, up to and including participation in the Bologna Process and adoption of the European Qualifications Framework ('EQF').[7]

Franz Christian Ebert argues that while the labour provisions in the EU's trade agreements have not always been successfully deployed to enforce labour standards generally, they may nonetheless provide a useful basis for channelling certain 'capacity-building activities' in supply chains.[8] His argument runs as follows. First, empirical evidence has demonstrated the importance of public labour institutions, such as labour inspectorates, in facilitating and developing compliance with labour law by companies.[9] This point is distinctly relevant to multinational companies, in respect of which public labour authorities play a key role in ensuring compliance with those companies' own codes of conduct.[10] Second, the implementation of labour rights provisions in the EU's trade agreements could involve development cooperation in the form of funding or education and training for local civil organisations and large employers. For example, the EU's Development Cooperation Instrument[11] may provide a source of funding for capacity-building activities, such as cooperation in education and training, information exchanges, and so forth.

It is possible to extend the remit of Ebert's argument beyond the labour rights provisions of the EU's partnership and association agreements to those other provisions mentioned above, viz, the parties' obligations to cooperate in education and training and in human resource development. As some of the EU's partnership and trade agreements note, such human resource development may take the form of 'raising the level of general education and professional qualifications'.[12] These provisions, discussed in a previous entry on this blog, require cooperation in relation to skills and qualifications, and may provide grounds for capacity-building activities, such as ensuring that workers skills are utilised, developed and recognised appropriately in the workplace and in the labour market more generally, enabling workers to develop their skills and function in the competitive marketplace.

The implications of these measures for the EU, and EU businesses more specifically, are as follows. For the sake of consistency and coherence in EU law and policy, when EU businesses have global value chains, particularly those in the EU's partner countries, they should strive to cooperate with EU and domestic authorities in improving the skills utilisation, development and recognition of those workers employed by, or under the control of, their suppliers. There are at least two methods of doing this. The first is by way of the implication of a term into the contractual relationship existing between such businesses, requiring that suppliers upgrade and develop their businesses as and when EU-based businesses require and/or ensure that their employees attain certain skill levels in the supply chain, thereby enhancing their competitiveness. Such a term may require that certain quality standards be met in respect of education, training and labour benchmarks. It seems appropriate that such standards may be linked to, and involve the use of, the EQF. A second, alternative but related approach may be to develop voluntary codes of conduct on a sector-wide or company-specific basis.

Codes of Conduct[13]

While many codes of conduct address compliance with labour standards and working conditions at supplier bases, most do not require any degree of cooperation or activity designed to improve or develop human capital; that is, to use, develop and recognise the skills of workers in the supply chain. Some companies do, however, invest, or require investment, in the human capital of their suppliers. Samsung, for example, one of the world's largest technology companies, requires

employees at its suppliers to undertake capacity-building courses in areas such as leadership, as well as role-specific training. This is in line with the company's philosophy that it will 'encourage self-development of employees and actively support opportunities to improve their capabilities'. Such capacity building, however, requires nuance in its approach. As the ILO recognised in its report concerning *Decent Work in Global Supply Chains*, there are different types of human resource development or 'upgrading'. On one view—'economic process upgrading'—such developments involve the substitution of capital for labour, thereby *reducing* skilled or unskilled work. By contrast, on the 'economic product upgrading' view, suppliers move up the supply chain: the product or service in question becomes more advanced, requiring more highly skilled and trained workers.[14] Only 'product upgrading', then, is consistent with the development of human capital in the supply chain because it emphasises the centrality of the role which labour plays in the production process.

But there are problems with codes of conduct. These problems are of two types. The first is the *principled* objection to codes of conduct. According to the principled objection, voluntary codes of conduct and self-regulation is inappropriate; instead, some form of public regulation is preferred. The second is the *practical* objection. According to this objection, permitting the proliferation of voluntary codes of conduct will result in inadequate and diverse labour standards being adopted. Moreover, it will be difficult for consumers to assess which products and services adopt the best standards.

The response to these criticisms comes in two parts. The first is the possibility of introducing mandatory reporting in respect of compliance with certain labour standards. The most prominent example of this method is the obligation to report any violations of anti-slavery and human trafficking laws in global value chains and to report on the steps taken by companies to ensure that these laws are guaranteed. One example of this approach is found in the Modern Slavery Act 2015 in the UK,[15] but others are available.[16] The obligation to report annually on compliance with basic standards at the very least provides potential consumers of goods and services with a central repository of reports concerning compliance. The second response is to accept the role of voluntary or private codes of conduct or other self-regulatory measures and acknowledge the need for convergence towards one or more (but not many) common standards concerning labelling or validation in respect of adherence to standards.

A European Social Label?

The possibility of labelling products and services for quality assurance in the supply chain is one which most consumers are aware of and familiar with.[17] The possibility of doing so from a distinctive labour market regulation perspective, however, is not so familiar. That possibility is advocated, most directly, by Francis Maupain. According to Maupain, there is a 'market for social justice', evidenced in the growing role of corporate social responsibility and the increasing demands, from consumers and investors, for sustainable development and investment, ecologically, socially and economically. The question then arises as to how states might best capitalise on the market for social justice, and how they might intervene therein. The answer, for Maupain, is the adoption and use of a 'social label'. A social label is a label on a product or service which states that the product or service in question has been produced in a manner which complies with fundamental labour standards. And, according to Maupain, the costs associated with the label should be borne by firms. It is therefore for firms to ensure that workers in their supply chains receive adequate training and re-training opportunities for the purposes of using, developing and recognising their skills in a competitive market.[18]

What might such a social label look like? I have already raised the prospect of a digital skills profile like the European Skills Passport and Skills Profile Tool for Third-Country Nationals which currently exist. A social label could operate in a similar manner but be less individualised. That is, while an individualised skills profile may be appropriate for workers coming to the EU or those who work for people or organisations in the EU via online platforms, for those workers who will never come to the EU and merely form part of a global value chain, such an individualised tool should not be necessary. Instead, a label or statement on the final product or service available in the Single Market should suffice to access and participate in what Maupain describes as the ‘market for social justice’. Such a label or statement should state that workers in the supply chain are being given opportunities to use, develop and recognise their skills in their place of employment, rendering them more employable and highly trained. That is to say, such a label should reflect a degree of investment in the human capital involved in production to ensure sustainability in the supply process through an increased use, development and recognition of a worker’s skills. As such, the label would only apply to products or services which involve product or service upgrading rather than process upgrading. That is, the label would only apply where participation in the supply chain entails development and sustainability in the business itself which does not entail a significant reduction in the role of labour in the production process.

This approach has several benefits and limitations. First, it applies to a limited category of value chains: those which involve product or service upgrading. Second, it is a market-led initiative. A European Social Label should primarily be designed by private enterprises. Once one or several social labels emerge in the market for social justice, it may then be necessary and appropriate for states to intervene to provide guidance, or even template labels, so that consumers can be confident in trusting the social label.

[1] Tannis Thorlakson, Joann F de Zegher and Eric Lambin, ‘Companies’ contribution to sustainability through global supply chains’ (2018) 115 PNAS 2072.

[2] See, generally, Bob Hepple, *Social and Labour Rights in a Global Context* (OUP 2002); Joanne Conaghan, Richard Michael Fischl and Karl Klare (eds), *Labour Law in an Era of Globalisation: Transformative Practices and Possibilities* (OUP 2002); Bob Hepple, *Labour Laws and Global Trade* (OUP 2005); Philip Alston (ed), *Labour Rights as Human Rights* (OUP 2005); Christine Kaufmann, *Globalisation and Labour Rights: The Conflict Between Core Labour Rights and International Economic Law* (Hart 2007); Brian Bercusson and Cynthia Estlund (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions* (Hart 2008); Li-Wen Lin, ‘Legal Transplants through Private Contracting: Codes of Vendor Conduct in Global Supply Chains as an Example’ (2009) 57 Am J Comp L 711; Manfred Weiss, ‘International Labour Standards: a Complex Public-Private Mix’ (2013) 29 IJCLIR 7; Francis Maupain, *The Future of the ILO in the Global Economy* (Hart 2013); Daniel Berliner, Anne Regan Greenleaf, Milli Lake, Margaret Levi and Jennifer Noveck (eds), *Labour Standards in International Supply Chains: Aligning Rights and Incentives* (Edward Elgar 2015); ILO Report IV, *Decent Work in Global Supply Chains* (2016); Yossi Dahan, Hanna Lerner and Faina Milman-Sivan (eds), *Global Justice and International Labour Rights* (CUP 2016); and Jimmy Donaghey and Juliane Reinecke, ‘Global Supply Chains and Employment Relations’ in Adrian Wilkinson, Tony Dundon, Jimmy Donaghey and Alexander Colvin (eds), *The Routledge Companion to Employment Relations* (Routledge 2018).

[3] There is a significant literature on this: see the articles on labour standards and sustainable development in (2015) 31 IJCLIR 233-349; Axel Marx, Brecht Lein and Nicolás Brando, ‘The

Protection of Labour Rights in Trade Agreements: The Case of the EU-Columbia Agreement' (2016) 50 JWT 587; the articles on labour rights in international agreements in (2016) 155 Int'l Lab Rev 339-475; the articles on labour standards in a global environment in (2017) 5 Politics and Governance 1-105; Billy Melo Araujo, 'Labour Provisions in EU and US Mega-Regional Trade Agreements: Rhetoric and Reality' (2018) 67 ICLQ 233; Jonas Aissi, Rafael Peels and Daniel Samaan, 'Evaluating the effectiveness of labour provisions in trade agreements: An analytical and methodological framework' (2018) 157 Int'l Lab Rev 671; Clair Gammage, '(Re)Imagining the Trade-Labour Linkage: The Capabilities Approach' in Brian Langille (ed), *The Capability Approach to Labour Law* (OUP 2019); and James Harrison, Mirela Barbu, Liam Campling, Ben Richardson and Adrian Smith, 'Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters' (2019) 57 JCMS 260.

[4] See, for example, Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2011] OJ L127/6, art 13.4.3; Free Trade Agreement between the European Union and the Republic of Singapore, art 12.3.3; Economic Partnership Agreement between the European Union, of the one part, and Japan, of the other part, art 16.3.2.

[5] See, for example, Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part [2006] OJ L276/45, art 30; Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part [1999] OJ L246/3, art 53; Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part [2006] OJ L143/2, art 43; Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part [2002] OJ L129/3, art 63.

[6] See, for example, Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part [2016] OJ L29/3, art 44.3; Cooperation Agreement between the European Community and the Islamic Republic of Pakistan on partnership and development [2004] OJ L378/23, art 14; Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development [2001] OJ L118/48, art 10; and Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part [2013] OJ L173/1, art 25(1)(a).

[7] See, for example, Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part [2010] OJ L108/3, art 102; Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261/4, art 359; Stabilisation and Association between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part [2006] OJ L71/3, art 107.

[8] Franz Christian Ebert, 'Labour provisions in EU trade agreements: What potential for channelling labour standards-related capacity building?' (2016) 155 Int'l Lab Rev 407.

- [9] *ibid* 413, citing Lucas Ronconi, ‘Enforcement and compliance with labour regulations in Argentina’ (2010) 63 *Industrial and Labour Relations Review* 719, 734.
- [10] *ibid*, citing Daniel Berliner, Anne Greenleaf, Milli Lake and Jennifer Noveck, ‘Building capacity, building rights? State capacity and labour rights in developing countries’ (2015) 72 *World Development* 127, 128.
- [11] Regulation 233/2014/EU of the European Parliament and Council establishing a financing instrument for development cooperation for the period 2014-2020 [2014] OJ L77/44.
- [12] Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, art 53(1); Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part [2004] OJ L84/13, art 91(1); Cooperation Agreement between the European Community and the People’s Republic of Bangladesh on partnership and development, art 10.
- [13] There is a vast literature on the role of corporate codes of conduct in this respect: see, eg, Lance Compa and Tashia Hinchliffe-Darricarrère, ‘Enforcing International Labour Rights through Corporate Codes of Conduct’ (1995) 33 *Colum J Transnat’l L* 663; Owen Herrnsstadt, ‘Voluntary Corporate Codes of Conduct: What’s Missing?’ (2001) 16 *Labor Lawyer* 349; Ivanka Mamic, *Implementing Codes of Conduct: How Businesses Manage Social Performance in Global Supply Chains* (ILO 2004); Sean Murphy, ‘Taking Multinational Corporate Codes of Conduct to the Next Level’ (2005) 43 *Colum J Transnat’l L* 389; Li-Wen (n 2); Marzo, ‘From Codes of Conduct to International Framework Agreements: Contractualising the Protection of Human Rights’ (2011) 62 *NILQ* 469; Tim Connor, Annie Delaney and Sarah Rennie, ‘The Ethical Trading Initiative: Negotiated Solutions to Human Rights Violations in Global Supply Chains?’ *Non-Judicial Redress Mechanism Report Series* (2016); and Donaghey and Reinecke (n 2).
- [14] *Decent Work in Global Supply Chains* (n 2) 27.
- [15] Virginia Mantouvalou, ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81 *MLR* 1017.
- [16] In France, see the *Proposition de loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre*; in the Netherlands, see the *Wet Zorgplicht Kinderarbeid*.
- [17] The example of ‘Fair Trade’ is most obvious in this respect. See Kate MacDonald and Shelley Marshall (eds), *Fair Trade, Corporate Accountability and Beyond: Experiments in Globalising Justice* (Ashgate 2010).
- [18] Maupain (n 2).

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