

Strengths and weaknesses of Belgium's social label

How can we encourage respect for basic rights in our own countries, but also in someone else's, at a time of economic globalization? Belgium has just proposed one solution, by launching a "social label". A caring notion, but one that raises quite a few questions.

Bruno Melckmans*

Adviser

Research Services, Enterprise Dept.

General Labour Federation of Belgium (FGTB/ABVV)

Governments are supposed to ensure that their countries respect the ILO Conventions they have ratified. And simply by being members of the ILO, they are under an obligation "to respect, to promote and to realize" the principles concerning the fundamental labour rights, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. They are to do so whether or not they have ratified the eight ILO Conventions, known as the "core standards", which enshrine these rights and basic principles.¹

But what happens when a company sells products that have been made somewhere else?

Belgium has just attempted a response to this question, by launching a "social label" that should soon be seen on products sold on its territory. This label will, its backers say, enable consumers to identify precisely which goods have been produced in line with the ILO core standards.

Naturally, the General Labour Federation of Belgium (FGTB/ABVV) supports all initiatives that could help to improve

the living conditions of working people. It therefore gave a favourable response to the Belgian Government's initiative. Favourable, but not unreservedly so.

The label proposed by the Belgian Government aims to promote, to the consumers, goods that have been produced under decent working conditions for those who make them. So the approach is one of incitement, as the granting of the label should add value to the promotion of the product.

The initial proposal by the Belgian socialist parliamentarian Dirk Van Der Maelen was to label not only products but also enterprises that scrupulously respected people's basic rights at work. This "enterprise" option was ruled out after persistent campaigning by the liberal parties (closer to the employers), who no doubt found it too constraining.

The FGTB regretted this development, as it believes that the enterprise is indeed the place where standards on decent working conditions have to be applied.² Moreover, recourse to the enterprises quite naturally implied direct monitoring by the producers themselves, who are clearly defined by their workplace. In turn, monitoring demanded respect for trade union freedom, which is a *sine qua non* for any real independence of action.

The FGTB still regards this principle of monitoring by the workers themselves as essential, for two reasons. The first has

* Mr. Melckmans is also a member of the committee for socially responsible production, which is legally designated to advise the Minister of Economic Affairs on the granting of the label.

to do with the actual effectiveness of the method – who better to verify the decency of a production process than those who are directly involved in it? The second is that such monitoring is conceivable only where there is respect for the freedom to organize an independent trade union, equipped with the basic means of trade union action.

Respecting the rules

Thus, at the heart of the structure are the ILO standards, which are an embryonic world social code. These standards guarantee not only rights but also the means of getting them respected (including freedom of association and collective bargaining). All efforts should be directed towards respecting these standards.

As far as companies are concerned, it is essential to promote collective bargaining at the world level and to build respect for basic rights into the results of these negotiations. Under these conditions, and on the well-known principle that there are two sides to a bargain, each side can then act to ensure that the other lives up to its commitments. This is the very basis of trade union action, and it is right that it should take its place alongside the legal, constraining provisions.

Apart from that, mechanisms such as “codes of conduct” and “labels” can be no more than auxiliary. Certainly, they cannot serve as a pretext for eluding legal or contractual obligations, nor for sidelining industrial relations systems based on negotiators who are representative of, on the one hand, the workers and, on the other, the employers. The rules must be respected. Full stop.

A warning should also be sounded about the slide towards a sort of *soft law*.³ Certain norms may emerge that aim gradually to privatize parts of the social legislation. This is a slippery slope, and we are very much aware of the danger that the social fabric could be quietly eroded by experiments that reduce the unions’ sphere of action.

A first in the world

The Belgian social label is backed by a law that was adopted in February 2002 and is the only one of its kind in the world. So far, at least. Other countries, notably Denmark and Italy, are currently preparing similar schemes and the Netherlands are likely to adopt a code of conduct for Dutch companies soon. The label could even go European. A resolution passed by the European Parliament clearly points to this possibility, but the European authorities are apparently waiting to see the results of the national experiments in member States of the European Union. Which is probably the right approach.

Under the present law, any enterprise that “puts products on the Belgian market” may ask to be granted the social label. However, it will have to prove that it does indeed respect the eight ILO core Conventions, and that any subcontractors do likewise. It will also have to undergo checks by social auditing firms that will be accredited by the Belgian Minister of Economic Affairs. And applications for the social label will have to be co-signed by the representatives of the workers in the enterprise concerned. A “committee for socially responsible production” has been set up, under the law, to rule on applications for the granting of the label.

The committee

The committee is composed of 16 members representing the government, the employers, the trade unions and non-governmental organizations (NGOs) of consumers and development cooperation. Its composition is not as the FGTB, ideally, would have wished. Ministerial offices and NGOs are overrepresented in relation to the social partners, i.e. the trade unions and the employers.

The FGTB has ceded one of its seats to the International Confederation of Free Trade Unions (ICFTU), in the belief that a social label with worldwide implications is best served by the inclusion of an inter-

national element in the committee set up to advise the minister. From the start, the FGTB and the ICFTU have worked closely together.

What the FGTB and the ICFTU fear is that the label mechanism could be moved away from its original purpose towards a derivative, even diversionary, role vis-à-vis the serious instruments. In the preparatory discussions before the rules were set for the application of the label, the FGTB and ICFTU tried to add, as a condition for granting it, the requirement that the enterprise respect the OECD Guidelines for multinationals. This request was rejected.

Monitoring and verification

As we know, the question of monitoring is essential to the credibility of the label itself. The fact that it will be applied to products and not to firms makes things more difficult. It will entail keeping an eye on the successive phases of a production process which, by definition, is constantly being renewed. Ideally, therefore, the monitoring should also be continuous and should be performed at all stages of production.

This last point is important, and it gives rise to new difficulties – where exactly does the production process for any particular good begin?

For example, does the granting of a label to a T-shirt imply monitoring the production conditions for the cotton that ultimately went into its manufacture? When granting a label to chocolate, can the conditions of cultivation and harvesting for the original cocoa beans be left out of consideration? As they are marketed through a trading exchange where the beans are mixed, it is not possible to follow the production chain back up beyond that exchange. Therefore, it would be impossible to grant a social label to a chocolate product, as it is well known that there are problems upstream from the trading exchange.

Certainly – contrary to the codes of conduct, which are often a unilateral, PR-oriented move by the company – the Belgian social label attempts to combine voluntary

initiatives with legal constraints. It also avoids contravening the rules of the World Trade Organization, as it does not ban any firm from doing business in Belgium, and the label is not imposed on anyone. It does, however, include a constraint that is absent from the codes of conduct: a firm that has requested and received the social label and is then caught cheating is liable to penalties of up to 2.5 million euros under the legislation, and its executives face prison sentences of up to five years. But what about implementation? At first, the idea was to create a real corps of public inspectors tasked with conducting on-the-spot checks on the conditions of manufacture of products for which a label was requested.

In reality, though, quite a few elements still have to be established or elaborated as regards, amongst other things, the accreditation of monitoring bodies, the quality of on-the-spot monitoring (in the producer countries), corrective measures and the complaints procedure.

Specifications for firms

Not surprisingly, discussion within the committee for socially responsible production tended to centre on drawing up specifications. Amongst other things, the FGTB and the ICFTU wanted the specifications list to include the maximum of guarantees on the effectiveness and transparency of the monitoring. The specifications communicated to firms by the Minister of Economic Affairs have not reassured us in this regard. Far from it.

The specifications set out the procedure, the commitments which the various partners must make and the guidelines and specific rules for the monitoring.

Unfortunately, the examples currently available show that, in the field of social auditing or certification, despite the good intentions of the auditors and the establishment of compulsory procedures, it is not easy to discern the reality of the situations assessed (see also the article by Anne Renaut on page 35). It is very difficult to evaluate parameters such as distrust on the

part of local workers, pressures exerted by local management, possible corruption and prior organization of the sites visited...

The consequence of all this is that, on the one hand, some people and organizations no longer believe that it is possible to conduct proper verification and, on the other, it is recognized that precise, detailed procedures will be absolutely essential.

That is why the FGTB and ICFTU tried to draw up specifications that contained a maximum of constraining prior rules – this despite the expressed wish of some committee members that the process should be self-regulated by leaving it up to the market forces, with as few precise criteria and rules as possible.

Criteria for auditors

At the request of the Minister of Economic Affairs, Mr. Charles Picqué, the committee decided to postpone discussion of a series of criteria at the level of a syllabus or procedure that auditors should follow when carrying out checks.

The FGTB and ICFTU have, with other members of the committee, proposed the creation of a working party with the aim of drawing up a specific syllabus. This would, on the basis of the eight ILO core Conventions, establish a standardized methodology for carrying out audits, as well as indicators for each criterion. The auditing bodies must be certified under the standard EN 45004, and this implies that a specific checklist must be developed for the social label.⁴

And the means?

A firm that wants the label for one of its products must put in an application and bear the costs of the procedure. It may therefore build this process into its advertising policy. This also supposes that the firm has the financial means to apply for the label and to finance the investigation.

What happens in the case of firms that do not have the wherewithal? And more par-

ticularly for those that do have decent conditions of production but are unable to proclaim this by means of a label? The law does provide for technical and financial assistance to enterprises in developing countries, so as to enable them to “respect the criteria of conformity for the granting of the label”, but this assistance does not cover the initial application itself, and it may in any case be uncertain whether the aid will be sufficient and how its use will be controlled.

A “false good idea”?

In the view of the FGTB and the ICFTU, care must be taken to respect a certain hierarchy of means, in order to ensure respect for working people’s rights.

The product label, as proposed by the Belgian Government could, if we are not wary, become a “false good idea”, with the negative effects outweighing the positive ones.

For the FGTB and ICFTU, the key to promoting workers’ rights is still to respect the conditions for *free trade union action*, wanted and led by the workers themselves.

For this reason, and to make its auxiliary role clear, the granting of a social label, to a firm or a product, should always be subordinated to at least this first condition, from which all the others flow.

The FGTB and the ICFTU therefore concluded that it is not possible to grant a label to a product made, wholly or in part, in a country where free trade unions are not tolerated, or in a country where there is only one tolerated union, which is linked to the government. Although the majority of the partners on the committee seem to back this idea, nowhere is it explicitly mentioned in the texts. Within the Ministry of Economic Affairs, which has responsibility for this dossier, some people still believe that “the idea is to create, with the enterprises that sign up to the proposed project, ‘social locomotives’ that will bring about improvements in well-being”, even in countries that have not been very respectful of rights so far. Let’s hope so, but it’s a bit of a gamble.

In reality, it is this first point about trade union freedom that should be the subject of monitoring anchored in the workplace, conducted by the workers themselves and possibly reinforced by a Belgian or international public initiative.

As regards the contents, the label clearly must cover all operations linked to the manufacture of the product, from the production of the raw material right up to the installation of the finished article.

Encouraging responsible consumption by building the social and environmental conditions of production into the evaluation criteria is a good thing in itself. But in this as in all things, priority should not be given to the “laws of the market” (with the consumer being supposed to favour the “good” producer).

Respecting the conditions for decent work (ranging from working conditions as such to the degree of social protection and freedom of association) entails mechanisms for monitoring and sanctions that are both serious and institutional. Respect has to be ensured by a general structure, applicable to all in the name of the public good (and not just to those who feel like it). That is how a well-made law is supposed to work in a functioning democracy. This is what we advocate and will continue to advocate.

Watch this space

All the partners recognize that the process which has been launched is a difficult one. That is why it is regarded as evolutive, meaning that it should evolve in line with the experience gained when examining re-

quests for the label. This is not without its dangers. A label can quickly lose its credibility, particularly if there are problems at the outset.

Nonetheless, the FGTB and ICFTU have agreed to keep on following the experiment, in the hope of being able to improve it. However, if the system is later shown not to be working, they reserve the right to draw the conclusion that the label was a false good idea.

Notes

¹ The core standards are Convention No. 29 on forced labour (1930), Convention No. 87 on freedom of association and protection of the right to organize (1948), Convention No. 98 on the right to organize and collective bargaining (1949), Convention No. 100 on equal remuneration (1951), Convention No. 105 on the abolition of forced labour (1957), Convention No. 111 on discrimination (employment and occupation) (1958), Convention No. 138 on the minimum age (1973) and Convention No. 182 on the worst forms of child labour (1999).

² “Enterprise” in the sense of the unit that carries out the production or part of the production locally.

³ Soft law is a non-constraining rule whose force derives purely from a willingness to apply it by those concerned who have agreed to submit themselves to it, that exists only for as long as that willingness remains, and which generally has not been passed by a legislator.

⁴ To be able to “certify” (products, quality systems or persons), a body has to be “accredited” (for example, by the State). So accreditation is the official recognition of the technical competence and independence of the bodies certified. It is done on the basis of criteria which constitute a standard. The criteria of the standard EN 45004 are those used to accredit monitoring bodies.