

International Transport – The Risk of Complicity in Modern Slavery

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1. Introduction

In 1948, the UN Universal Declaration for Human Rights declared that no one shall be held in slavery or servitude; and that slavery and slave trade shall be prohibited in all their forms. Today, modern slavery is an international crime but according to the globally slavery index more than 35.8 million people were still subject to modern slavery in 2014.

Modern slavery is not just about trafficking of people for sexual exploitation. It may also involve criminal exploitation; various forms of direct and indirect forced labor, child trafficking or domestic servitude. National legislation criminalizes modern slavery, but recent legal developments have increasingly focused on the facilitator of trafficking people. The latest, and probably the most far-reaching piece of national legislation, is the Modern Slavery Act that came into effect in 2015.

The UK Modern Slavery Act, and similar legislation, requires companies to carry out due diligence processes in relation to slavery and human trafficking in its business and supply chains. Companies should not be unfamiliar with the requirements in the Act or similar laws. Such requirements on assessing risks and address them adequately are also basic requirements in the UN Guiding Principles for Business and Human Rights, the UN Global Compact management model etc.

Companies are increasingly focusing on their responsibilities in relation to their value chain and most prominently on those business relations that are essential to their production – the supplying factories or production sites. Less attention is paid to those that actually carry the goods to the production site, the factories, the stores, the consumers etc.

However, international business requires that goods are transported from one destination to another within continents or between continents. Transport companies are suppliers of freight services by air, ship and road and consequently an important supplier in the value chain of any manufactory company.

Modern slavery also requires that people are moved from one place to another, and that is done by air, water or road implicating the transportation industry. Consequently, any company that depends on transport as part of its value chain, or that is supplying transportation services, must assess whether it is capable of management the risk of being complicit in modern slavery.

This paper focuses on the human rights challenges and risks that the road transportation industry is facing and which it is required to address in order to avoid direct or indirect complicity in negative human rights impacts and in the worst case – modern slavery. This is not only a concern that the road freight companies need to manage, it is also a concern that other industries must consider when carrying out a due diligence of their supply chain.

2. Highlights of the business model for road freight

Most companies depend on road freight delivered by a supplier but expect rapid, reliable, low costs and timely services without damages to the goods. Consequently, the transport companies are providing their services in a highly competitive market where fuel and wages are the largest costs.¹

The companies may also request that the transport company takes measures to ensure that the transport is safe with less environmental impact, that the vehicles comply with legislative standards and that measures are taken to prevent corrupt practice. The health of the drivers may also be of some concern as legislation often regulates the occupational health and safety of the drivers. The companies attempt to address their expectations to the transport companies through their general code of conduct for suppliers, but it is assumed that they are rarely focusing on the specific risks that are related to transport.

The market is also characterized by many small and medium sized companies providing services to the customer directly with their own fleet, as well as large companies with their own fleet or/and a network of business partners or smaller transport companies. Other companies do not have their own fleet but provides transport logistics through a network of transport companies. The relationship between the large companies and business partners, the so-called hauliers or carriers, is often governed by a short term contract and a code of conduct or ethics. Failure to comply may lead to a termination of the business relationship.

The smaller transport companies that provide services to the larger companies may represent a variety of states, in particular in Europe. In Europe, companies may flag out from their original base in one Member State to another Member State or use cross border labor to cut costs as salary has an impact upon the margin of profit. The drivers may not always have permanent employment contracts and practices, although in some jurisdictions unlawful, may link the salary to performance.

¹ See *Report from the commission to the European parliament and the council on the State of the Union Road Transport Market/COM/2014/0222.*

3. Human rights concerns

Road freight transport impacts on a number of human rights. The drivers' rights to enjoyment of just and favorable conditions of work, including the right to fair wages, a decent living for themselves and their families, safe and healthy working conditions as well as a right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay. Poor working conditions may at the end of the day result in road incident fatalities or other severe accidents.²

Road freight transport may also impact other rights holders than the drivers and indirectly their families. Poor working conditions may result in road accidents and contribute to the loss of life or other bodily harm. Insufficient maintenance of vehicles and equipment as well as the lack of training of the drivers may constitute a risk. Furthermore, foreign drivers face a number of challenges when driving on unfamiliar roads and in cities with another road user population than they are familiar with. Freight transport may also impact local communities' health and quality of life in they are situated close to transport hubs or corridors due to noise, emission of diesel pollution or traffic congestion.

Although the transport companies' own business model may contribute to such impacts, other contributing factors are for instance clients that require unreasonable low prices or tight delivery schedules.

While the rights of the drivers have been the main focus of transport companies' sustainability policies and code of ethics or conducts together with environmental and corrupt practice concerns, less attention is paid to impact on other rights holders.

With the globalization and movement of people, the role of companies in facilitating, even unintentionally, modern slavery has become an important matter to address. The term "modern slavery" is based on the general prohibition in international human rights conventions of slavery, servitude and forced or compulsory labour. The most common modern slavery today is trafficked women for prostitution but also trafficked persons for labor, often illegally, to other countries for industries such as service, agriculture or construction. Trafficked persons might be transported across borders in lorries by drivers working for road freight companies as part of a transport for their clients. The drivers may not know about the fact that persons are being trafficked, but the lesser permanent relations the driver has to the transport company or the lower the salary is, the higher risk that the driver will not be equipped to prevent trafficking or have an interest in doing so.³

If the persons transported by a vehicle belonging to the company or its sub-contractors are not trafficked but refugees or immigrants, then the companies risk being regarded as contributing to smuggling of human beings with a potential risk that the persons may die in the lorry during the transport.

² The European Commission has estimated that a fatal road incident costs society 1,018,200 Euro. A severe incident costs 142,100 Euro and a slight incident costs 23,100 Euro, cf. Cost-Benefit Assessment and Prioritisation of Vehicle Safety Technologies, 2006, DG-TREN, European Commission

³ See <http://www.telegraph.co.uk/news/uknews/immigration/11653288/68-suspected-illegal-immigrants-found-crammed-in-a-container-at-Harwich.html> or http://www.huffingtonpost.co.uk/2015/11/19/two-dead-migrants-found-ferroli-container-staffordshire-industrial-park_n_8598310.html

4. Prohibition of facilitation of trafficking

4.1 Trafficking persons is one of the most salient human rights risks for international road freight companies.

International instruments such as the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* and the *UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* require states to address the role of transportation companies and make them accountable for trafficking of persons.

In most countries, the act of trafficking in persons is subject to criminal law. If, a person or a company has been convicted for trafficking the result might be exclusion from public contracts. Under the European Conference of Ministers of Transport (ECMT) permit scheme it is a requirement that the transport undertaking and its transport manager(s)/responsible person(s) has (or have) not been convicted of a serious criminal offence or incurred a penalty for serious infringements of national rules in force in the fields such as, for example, trafficking in human beings.

Some 29 states in the USA and the District of Columbia have enacted statutes that specifically subject those who facilitate sex trafficking to the same punishment as those who use direct force or coercion to compel commercial sex acts. This may include those who transport the persons. The Federal legislation *Trafficking Victims Protection Act of 2000* likewise include those who facilitated labor trafficking and several states have enacted laws penalizing the facilitator.⁴

4.2 The UK Modern Slavery Act

The Modern Slavery Act determines that it is an offence to hold a person in slavery, servitude or forced or compulsory labour and to arrange or to facilitate the travel of another person with a view to that person being exploited. It is important to note that the Act emphasizes that it is irrelevant whether the person consents to the travel as long as the transporting person knows or ought to know that another person is likely to exploit the transported person (in any part of the world) during or after the travel.

According to the Act, a non-UK national also commits an offence if any part of the arranging or facilitating takes place in the United Kingdom, or the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.

The Modern Slavery Act 2015 further states that any company supplying goods or services with an annual turnover of more than 36 million pound and that carries out a business or is part of a business in the UK is subject to the Act and must prepare a slavery and human trafficking statement for each

⁴ See the Polaris Project 2013 analysis of state human trafficking laws published at <https://polarisproject.org/sites/default/files/2013-State-Ratings-Analysis.pdf>

financial year of the organization. Consequently, road freight companies (even those that are not headquartered or listed in the UK) may be subject to the Act.

In case the company fails to produce and publish such statements for a particular financial year the Secretary of State may seek an injunction through the High Court requiring the organization to comply. If it does not comply with the injunction, it will be in contempt of a court order, which is punishable by an unlimited fine.

The Act does not dictate in precise detail what a statement must include or how it should be structured. It does, however, provide a non-exhaustive list of information that may be included. A statement may include:

- the organisation’s structure, its business and its supply chains;
- its policies in relation to slavery and human trafficking approved and signed by an appropriate senior person in the business
- its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- the training and capacity building about slavery and human trafficking available to its staff.

It is not compulsory for an organisation to include these points in its statement. If, the information is included but does not reflect the reality, the company may risk allegations about unfair marketing practices.

The Act requires that statement must be published on the website and include a link in a prominent place on its homepage. This should increase transparency and make the statement easily accessible to anyone who wants to see it, e.g. the public, consumers, employees, NGOs or investors.

The Modern Slavery appears to have been inspired by the California Transparency in Supply Chains Act of 2010. However, this Act has not really been implemented effectively. Recent studies show that only 14% of Californian companies comply with the law⁵

4.3 EU regulation or initiatives

The European Union has recently adopted the Directive (2014/95/EU) which amended the EU Accounting Directive (2013/34/EU). This Directive requires large undertakings that are public interest entities with an average number of 500 employees to prepare a ‘non-financial statement’ as part of their management report.

The non-financial statement must provide information “to the extent necessary for an understanding of the undertaking’s development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”.

⁵ See <http://www.theguardian.com/sustainable-business/2016/jan/22/california-anti-slavery-law-development-international-sun-maid-asia-human-trafficking>

The directive requires that the national legislation contains an obligation to include:

- a brief description of the undertaking's business model;
- a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;
- the outcome of those policies;
- the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;
- non-financial key performance indicators relevant to the particular business.

Companies that decide to comply with the national implementation of the directive may have to provide information on their suppliers of transport services and how they manage such risks.

4.4 Modern slavery and corruption

Modern slavery requires, as mentioned, that people are moved from one place to another and often across borders. At the same time, the victims of modern slavery are e.g. working within illegal industries or in industries with cheap labour (forced or bonded).

All these aspects of modern slavery involve a high risk of corruption, as well, in order to ensure that authorities are not enforcing the laws, that border controls are not preventing the transport of victims to cross the borders or that authorities are not becoming suspicious about working conditions, labour contracts or payment of salaries. Corruption facilitates the modern slavery.

The failure of companies to manage their value chain or their suppliers may result in allegations of failure to show due diligence in relation to prevention of corruption. Management of the modern slavery risks are, consequently, prevention of corrupt practices, too.

5. Human rights impacts are expected to be managed

Since the adoption of the UN Guiding Principles for business and human rights the international expectations have increasingly been focusing on the capability of companies to show that they are able to identify and manage their human rights risks throughout their value chain. Transport is an essential part of most companies' value chain and hauliers or carriers are part of larger transport companies' value chain.

Although the guiding principles are not a legally binding or enforceable instrument, they are integrated into the OECD guidelines for multinational enterprises and their requirement of identifying risks and manage them as part of their due diligence. If a company has impacted human or labor rights and cannot show that it has implemented due diligence process in relation to its value chain, the company risk being criticized by a national contact point publicly based on a complaint against the company.

If the transport crosses European borders the hauliers can get permits to cross into other countries by using the EECMT multilateral permit scheme for journeys between its 43 member countries subject to some restrictions. The quality charter for international road haulage operations under the ECMT Multilateral Quota system governs many of the human and labor aspects under the headings of reputation and professionalism and requires certain driver standards.

Finally, expectations to comply with international human rights and labor standards may also be included in the contract between the client and transportation company. Whether such clauses are enforced or monitored is not commonly known.

6. Recommendations

Companies are increasingly required to management a number of risks. Financial risks and risks of corruption have for years been on the agenda. Risk to the environment has also become an integrated part of a company's risk management. The most recent risk management trend is the expectation of managing and address human rights risk and such expectations has even been translated into legal requirements in particular in relation to modern slavery; the use of child or forced labor or unfair labor practices.

Companies should approach such risk management in a similar manner as in the case on prevention corruption or negative environmental impact by:

- Adopting a policy
- Assessing and identifying potential negative impacts throughout the value chain measured against the standards of the policy
- Addressing the gaps adequately and systematically
- Mitigating negative impacts and measuring the performance
- Ensuring access to efficient and credible grievance mechanisms
- Communicating internally and externally findings and corresponding actions

To carry out these tasks in a satisfactory way, there is considerable value in moving from a pure compliance approach to one which is grounded in integrated planning, business model adjustments, engagement with stakeholders throughout the value chain as well as in external perceptions and that seeks to influence those perceptions in a proactive manner. This would mean in particular marshaling evidence of change through good impact evaluations, and presenting this evidence in a way which fosters engagement with specific target groups, and a constructive dialogue.