

Research Article

Insights into Labour Commitments in the EVFTA and Policy Implications for Vietnam

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ABSTRACT: The article provides a comprehensive analysis of labour commitments under the EU-Vietnam Free Trade Agreement (EVFTA), a new-generation European Union (EU) free trade agreement (FTA). It sheds light on the historical and theoretical rationales that underlie trade-labour linkages in EU policy in general, as well as the labour commitments under the new-generation EU FTA in particular. This article further elaborates on three key pillars of labour commitments proposed in the EVFTA, including International Labour Organisation (ILO) core labour standards (CLS), the ILO Decent Work Agenda (DWA) and Corporate Social Responsibility (CSR), by revisiting FTAs between the EU and several typical developing countries in a comparative analysis, besides also employing the experience gained from relevant EU policies and the dispute between the EU and Korea under the labour commitments of the EU-Korea FTA to clarify the nature of these commitments in EU FTAs and finally suggest policy implications for Vietnam and other developing countries on how to effectively implement them within EU FTAs in the long run.

KEYWORDS: Core labour standards, Corporate social responsibility, Decent work, Free trade agreement, ILO, Labour commitments.

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I. INTRODUCTION

There is little doubt that the increase in FTAs has had a major impact on both multilateral and bilateral cooperation in the rapidly changing landscape of international economic integration.¹ The EU is considered a prominent partner for countries and regions globally. It is also recognised as a highly prosperous market for developing nations.² In addition to its ‘Trade for all’ policy,³ the EU places significant emphasis on social aspects in its trade agreements, for instance, the EU- Korea FTA in 2010 established a new type of FTA that encompasses both commercial and non-commercial elements, such as labour and environmental commitments.⁴ Following this vein, the EVFTA in 2020 stands out as the most comprehensive and promising FTA between the EU and a developing country, using a similar strategy as other agreements.⁵ Nevertheless, insights gained from international legal practice and labour dispute settlement cases demonstrate the constraints of adhering to labour commitments outlined in EU FTAs across states worldwide, including well-developed countries such as Korea.⁶ So it is crucial to have a thorough understanding of labour commitments under EU FTAs, not only for Vietnam and other developing nations, but also for EU upcoming trading partners, to avoid replicating the situation experienced by Korea.

On the other hand, as the pioneering role the research depicts, for the first time, three key pillars of labour commitments in the EVFTA as substantive commitments, including upholding ILO CLS, promoting CSR and ILO DWA; however, the special point here is that between something not really new - ILO CLS and DWA - and something new in EU policy - CSR - the research illustrates

¹ Urata Shujiro “Globalization and the Growth in Free Trade Agreements” (2002) 9:1 Asia Pacific Review at 27-28.

² “EU Position in World Trade”, online: *European Commission* <EU position in world trade - European Commission (europa.eu)>.

³ European Commission, *Trade for All: Towards a More Responsible Trade and Investment Policy* (Luxembourg: Publications Office of the European Union, 2014).

⁴ European Commission, *The EU-Korea Free Trade Agreement in Practice* (Luxembourg: Publications Office of the European Union, 2011) at 3.

⁵ Areg Navasartian “EU-Vietnam Free trade agreement: Insights on the substantial and procedural guarantees for labour protection in Vietnam” (2020) 1 European papers at 562.

⁶ Jill Murray et al, *Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea Free Trade Agreement* (2021) Report of the Panel of Experts at 17-18.

the relationship between them in the context of the Trade and Sustainable Development (TSD) Chapter in EU FTAs and therefore provides policy implications for Vietnam - the first developing country which signed an FTA with the EU in ASEAN, based on both legal and practical perspectives of the labour law in this country. The research may then be utilised as a blueprint and instructional tool for the EU's ongoing FTA negotiations with developing ASEAN countries (Thailand,⁷ Indonesia,⁸ and Malaysia)⁹ and then provide key recommendations and future lessons for other developing nations, for instance Laos and Cambodia, to effectively implement labour commitments included in new-generation EU FTAs in the long run because the EVFTA has something in common with previous EU FTAs like the FTA between the EU and Korea and upcoming EU FTAs in negotiations.

The research also reveals the circumstances in Vietnam recently that labour commitments in the EVFTA regarding the three key pillars mentioned have not had a great impact on the domestic labour market, especially not improving the working conditions of workers. Besides, with the procrastination in policymaking, in combination with the fast-growing codification of EU laws, the gap between the domestic labour legislation in Vietnam and the requirements of the EU policy has been broadened. That would require this country to revisit the labour commitments in the EVFTA systematically and further initiate urgent actions to fully comply with them.

This article divides the remaining portions into three sections, excluding the introduction, methodology and conclusion: The following section examines the connection between trade and labour in EU policy and the establishment of labour obligations in new-generation EU FTAs, such as the EVFTA. In Section III, we conduct a comparative analysis among FTAs between the EU and several typical developing countries. Furthermore, we use the experience of the EU and member states, as well as the panel of experts' decision and reasoning in the

⁷ “EU Trade Relations with Thailand. Facts, Figures and Latest Developments”, online: *European Commission* <EU trade relations with Thailand>.

⁸ “EU-Indonesia Comprehensive Economic Partnership Agreement and Investment Protection Agreement”, online: *European Commission* <EU-Indonesia>.

⁹ “EU trade relations with Malaysia. Facts, Figures and latest Developments”, online: *European Commission* <EU trade relations with Malaysia>.

dispute settlement regarding the EU-Korea FTA's labour commitments, to clarify the nature of labour commitments in EU FTAs, specifically in relation to the ILO CLS, CSR, and the ILO DWA. Based on the understanding of these three key pillars, Section IV proposes policy implications for Vietnam in the enforcement of the EVFTA labour commitments and subsequently provides a model lesson for other developing countries and upcoming EU trade partners.

II. METHODOLOGY

This study used comparative and evaluated methods to analyse and examine the labour provisions in the EU FTAs among developing countries, including the EVFTA as the central focus, regarding three key pillars of labour provisions. The authors also selected applicable laws, including international treaties and documents from the EU and ILO and especially a case study related to the labour dispute settlement between the EU and Korea under the EU-Korea FTA to clarify the nature and characteristics of key pillars of labour provisions in the EVFTA. Between something old and something new, the study contributed to proposing recommendations for not only Vietnam but also other developing countries to implement labour commitments in EU FTAs effectively.

III. TRADE-LABOUR NEXUS IN EU POLICY AND LABOUR COMMITMENTS IN THE EVFTA

In the 1990s, a heated discussion emerged around 'free trade versus fair trade'.¹⁰ Those in favour of 'free trade' argued that the ILO labour standards were unnecessary.¹¹ These restrictions would impede economic market access and hinder improvements in employment and working conditions,¹² and it is

¹⁰ Gerda Van Roozendaal, *Trade Unions and Global Governance: The Debate on A Social Clause* (London: Routledge: 2003) at 67.

¹¹ Drusilla Brown, Alan Deardorff & Robert Stern "Trade and Labour Standards" (1998) 9:2 *Open Economies Review* at 171-194.

¹² De Wet Erika "Labor Standards in the Globalized Economy: the Inclusion of A Social Clause in the General Agreement on Tariff and Trade/World Trade Organization" (1995) 17:3 *Human Rights Quarterly* at 3; Alston Philip "Post-Post-Modernism and International Labour Standards: The Quest for A New Complexity" in Werner Sengenberger/Duncan Campbell, eds, *International Labour Standards and Economic Interdependence* (Geneva, 1994) at 95-104; Vandaele Arne Daniel Albert, *International Labour Rights and the Social Clause: Friends or Foes* (Cameron May, 2005) at 73.

important to note that globalisation would benefit everyone, including employees. However, proponents of 'fair trade' aim to expose the undeniable negative aspects of globalisation.¹³ They believe that the ILO and international labour standards are crucial in preventing countries from engaging in harmful competition to lower labour standards and exploit workers.¹⁴

Furthermore, in response to increasing European unemployment, the adverse impacts of international commerce known as social dumping, and the influence of globalisation and human rights, the EU managed to integrate these issues into its trade policy.¹⁵ Nevertheless, the efforts made by the EU, US, and other advanced nations during that period to incorporate labour standards into the multilateral coordination of trade liberalisation (WTO discussions) proved to be fruitless. Because the EU and US faced strong opposition, particularly at the WTO's 1999 Seattle Ministerial Conference. This opposition stemmed from the belief that using labour rights to promote trade would be protectionist, leading to a stalemate where no consensus was reached on how to link labour standards with trade liberalisation.¹⁶ As a result, the EU and several governments resorted to bilateral coordination to advance their own objectives.¹⁷ Labour provisions have had a crucial role in EU trade policymaking through three important milestones with two generation FTAs.

The first-generation agreements with Egypt, Israel, Jordan, Lebanon, Tunisia and Morocco, signed in the early 2000s and collectively known as the Euro-Mediterranean Association Agreements, followed by the EU-Mexico Global Agreement, and the EU-Chile Association Agreement, signed in 2000 and 2002, respectively; and the second and newest generation of EU FTAs came into being after the signing of the European Commission's 'Global Europe: Competing in

¹³ Witte Jan Martin, *Realizing Core Labour Standards: The Potential and Limits of Voluntary Codes and Social Clauses: A Review of the Literature* (Eschborn: GTZ, 2008) at 16.

¹⁴ Namgoong June "Two Sides of One Coin: The US-Guatemala Arbitration and the Dual Structure of Labour Provisions in the CPTPP" (2019) 35:4 International Journal of Comparative Labour Law and Industrial Relations at 487-488.

¹⁵ Orbis Jan, Vos Hendrik & Taverniers Liesbeth "EU Trade Policy and A Social Clause: A Question of Competences?" (2005) 3 Politique européenne at 159-187.

¹⁶ "The Link between the Multilateral Trading System and Labour Standards", online: EUR-Lex <The link between the multilateral trading system and labour standards | EUR-Lex>.

¹⁷ Campling Liam et al "South Korea's Automotive Labour Regime, Hyundai Motors' Global Production Network and Trade-Based Integration with the European Union" (2021) 59:1 British Journal of Industrial Relations at 4.

the World' communication in 2006. Under its new strategy towards international trade laid out in this communication, the EU embarked on aggressive negotiations of bilateral trade deals in response to the US's successful wave of FTAs in the 1990s and early 2000s.

Multiple FTAs have been negotiated following this communication. The EU-Korea FTA, signed in 2010, was the first one signed under the new strategy and has been a model for the agreements that followed. Since this FTA, in the chapter titled 'Trade and Sustainable Development' (TSD), these provisions have been combined with a framework governing environmental protection. And these chapters are now a crucial component of the EU's 'new-generation' trade agreements.¹⁸ According to this, the FTAs between the EU and Colombia, Peru, and Ecuador, and the one between the EU and Central America, both signed in 2012, were significant FTAs in this period. It was not until 2020, with the signing of EVFTA, that the EU, for the first time, expected that this would be the most comprehensive and promising FTA between the EU and a developing country.¹⁹

While there are some variations across the different agreements, the TSD chapters in EU FTAs, as well as the EVFTA, share three key types of provisions (Table 1),²⁰ including substantive commitments, procedural commitments, and institutional mechanisms.

Table 1: Key Provisions in the EVFTA Trade and Sustainable Development Chapter

Substantive Commitments	Procedural Commitments
a) Upholding CLS as embodied by the ILO fundamental conventions;	a) Dialogue and cooperation between the Parties;
b) Promoting CSR;	b) Transparency in introducing new labour standards;
c) Promoting ILO DWA. ²¹	c) Upholding levels of domestic protection on labour standards;

¹⁸ Roberto Bendini, *In-Depth Analysis: The Future of the EU Trade Policy* (Belgium: Policy Department, DG EXPO, 2015).

¹⁹ Navasartian, *supra* note 5.

²⁰ Liam et al, *supra* note 17 at 5.

²¹ As referred to in the *ILO Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference at its 97th Session in Geneva on 10 June 2008.

d) Monitoring and review of sustainability impacts of the FTA.

Institutional Mechanisms

Committee on Trade and Sustainable Development

Senior officials from the EU and Vietnam oversee the overall implementation of the TSD chapter and report to the Trade Committee

Domestic Advisory Groups

A DAG each for Vietnam and the EU, with representatives ensuring employers' and workers' organisations, business and so on.

DAGs advise on the implementation of the TSD chapter.

Panel of Experts

Independent experts nominated by the Parties to be called upon to examine and make recommendations on matters not addressed satisfactorily by the Committee on Trade and Sustainable Development in the TSD chapter.

Joint Forum

Annual exchange of dialogue between the two DAGs and other civil society representatives on the sustainable development aspects of trade relations between the Parties.

Source: Author derived from agreement text

IV. LABOUR COMMITMENTS IN THE EVFTA: OLD WINE IN NEW BOTTLES?

In order to clarify the nature of labour commitments in the EVFTA, this study focuses on these commitments regarding the ILO CLS, CSR, and the ILO DWA when making a brief comparison of research among FTAs between the EU and developing countries. Six EU FTAs were picked up for this study.²² According

²² The six FTAs mentioned consist of the EU-Mexico Partnership Agreement (referred to as the Global Agreement) and the EU-Chile Association Agreement, which are considered the first-generation EU FTAs. We also classify the EU-Colombia/Peru/Ecuador Trade Agreement, the EU-Central America Association Agreement, and the EVFTA as second-generation EU FTAs because they involve both the EU and developing nations. Lastly, the study utilises the EU-Korea FTA as a model for a new generation of FTAs, drawing on experiences from the labour dispute settlement between the EU and Korea.

to the EU, they are all typical of FTAs that are currently in force and represent FTAs between the EU and developing nations.²³ As illustrated in Table 2 below:

Table 2: EU FTAs selected for the comparative study

FTA	Signature date ²⁴	Coming into effect ²⁵	Labour commitments & relevant regulations ²⁶
EU-Mexico	27/11/2000	01/7/2001 (full)	Not promulgated
EU-Chile ²⁷	18/11/2002	01/02/2003 (provisionally); 01/03/2005 (full)	Art. 44 on Social cooperation & Art. 10, 11 on Civil Society Dialogue
EU-Korea	06/10/2010	01/7/2011 (provisionally); 13/12/2015 (full)	Chapter 13 TSD includes provisions on labour and Annex 13 deals with Cooperation on TSD.
EU- Col/Pe/Ecu	26/6/2012	01/3/2013, 01/8/2013 & 01/01/2017 (provisionally with Peru, Colombia & Ecuador, respectively)	Title IX TSD includes labour provisions.
EU- Central America	29/6/2012	01/8/2013 (provisionally Honduras, Nicaragua; Panama); 01/10/2013 (provisionally Costa Rica, El Salvador); 01/12/2013 (provisionally Guatemala)	Part IV on Trade, Title VIII on TSD include provisions on labour. Part III on Cooperation, Title III on Social Development and Social Cohesion include provisions on employment and social protection, indigenous peoples and other ethnic

²³ “Free Trade Agreements”, online: *European Commission* <Free trade agreements | Access2Markets (europa.eu)>.

²⁴ Information cited from EUR-Lex.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Although the EU and Chile have concluded the modernisation of the existing EU-Chile Association Agreement recently, within the context of the paper, this only focuses on the EU-Chile Association Agreement as the representative of the first-generation EU FTAs. See: “EU-Chile Advanced Framework Agreement”, online: *Delegation of the European Union to Chile* <https://www.eeas.europa.eu/delegations/chile/eu-chile-advanced-framework-agreement_en?s=192>.

			groups, vulnerable groups, gender. Title VI on Economic and Trade Development includes Art. 63 on Cooperation and Technical Assistance on TSD.
EVFTA	30/6/2019	01/8/2020 (full)	Chapter 13 TSD includes provisions on labour. Chapter 16 on Cooperation and capacity building includes provisions on cooperation in TSD.

Source: Authors Analysis

Overall, the scope of labour commitments in first-generation EU FTAs often exceeds that of second-generation ones. Not all first-generation EU FTAs address social aspects, such as the EU-Mexico Partnership Agreement, which is currently undergoing upgrades and revisions. The EVFTA, like all the other second-generation FTAs, covers almost all aspects of "social dimensions" in EU policy, not only about labour but also related aspects, including gender and promotion of CSR/RBC. In addition, regarding some areas, for instance, the ILO CLS, the EVFTA even guarantees more standards than other developing countries and developed one like EU-Korea FTA.²⁸ The next part of this section aims to clarify the nature of the most important obligations derived from the EVFTA, which include upholding ILO CLS, promoting CSR, and ILO DWA.

A. Upholding ILO CLS

Except for the EU-Mexico Partnership Agreement, all the EU FTAs examined refer to the ILO and its significant role in reinforcing social standards in the country partners. However, the EU-Chile Association Agreement just mildly indicates the importance, and its relevant conventions related to the freedom of association, the right to collective bargaining and non-discrimination, the abolition of forced and child labour, and equal treatment between men and

²⁸ Tien Dung Nguyen "EVFTA: Going beyond Labour Commitments in a New Generation Free Trade Agreement" (2024) 31:1 Lex ET Scientia International Journal.

women.²⁹ All the remaining EU FTAs refer to globally accepted CLS as outlined in the core ILO Conventions. Specifically, they all refer to the ILO's 1998 Declaration on Fundamental Principles and Rights at Work as well as the eight ILO Core Conventions,³⁰ including freedom of association, the right to organise and collectively bargain, the eradication of forced labour, child labour abolition, and worker non-discrimination. Besides the aforementioned fundamental rights at work (ILO CLS), the EVFTA, as well as other new-generation EU FTAs, tend to broaden the scope of the referred international labour standards, for instance, occupational health and safety, the rights of migrant workers, and acceptable minimum employment standards for wage earners.³¹ For more details, see Table 3 below:

Table 3: International labour standards reference

FTA	Freedom of association	Right to organise & collectively bargain	Forced labour elimination	Child labour abolition	Non-discrimination	Occupational health &	Migrant workers rights
EU-Mexico							
EU-Chile	✓	✓	✓	✓	✓		
EU-Korea	✓	✓	✓	✓	✓		
EU- Col/Pe/Ecu	✓	✓	✓	✓	✓	✓	✓
EU-Central America	✓	✓	✓	✓	✓	✓	
EVFTA	✓	✓	✓	✓	✓	(✓)	✓

Source: Authors Analysis

Looking more closely at the new-generation FTAs, especially the EVFTA and EU-Korea FTA, the parties agree to adhere to, promote, and implement the four universally acknowledged principles on fundamental labour rights in their legislation, rules, and actions, as shown in the table above.³² The EU FTAs

²⁹ See Article 44.1 of the EU-Chile Association Agreement.

³⁰ See Article 13.4 of the EU-Korea FTA; Article 269 of the EU-Colombia/Peru/Ecuador Trade Agreement; Article 63 of the EU-Central America Association Agreement; Article 13.1 & 13.4 of the EVFTA.

³¹ See Article 276 & 278 of the EU-Colombia/Peru/Ecuador Trade Agreement; Article 49 & 292 of the EU-Central America Association Agreement; Article 13.14 of the EVFTA.

³² See Article 13.4 of the EU-Korea FTA; Article 13.4 of the EVFTA.

require the parties involved to make ‘continued and sustained efforts’ to officially ratify the remaining ILO fundamental conventions and effectively incorporate them into their national laws, regulations, and practices, along with the other conventions that the parties have already ratified.³³ Despite the panel’s significant conclusion that these provisions lack a specific target date or milestone for the ratification process,³⁴ it’s important to clarify some key points.³⁵ *Firstly*, these commitments cover two main obligations: (i) the first is to ratify the outstanding ILO fundamental conventions (mandatory); (ii) the second is to guarantee the effective respect of fundamental labour norms embedded in ILO fundamental conventions, whether they have been ratified or not,³⁶ in terms of national laws, regulations, and practices. *Secondly*, these EU FTAs include several provisions seeking to guarantee the effective respect of the fundamental labour norms above (obligations related to domestic legislation and practice). One of these is the obligation not to weaken/lower the level of protection provided by national labour laws and not to derogate from them to encourage trade (and investment). Meanwhile, it is crucial for the parties to consistently and actively enforce their domestic legislation through a sustained or recurring course of action or inaction in a way that promotes trade and investment (improving levels of domestic protection on labour standards).³⁷ And *thirdly*, the essence of these commitments should be seen as necessitating the utmost endeavours from the parties involved, beyond simply compliance with minimal activities or complete inaction, but not going so far as to demand that every possible measure be used constantly.³⁸

Therefore, regarding the obligations related to ILO CLS in the EVFTA, on the one hand, the EU has continued to employ and reinforce the importance of the ILO and required Vietnam to fulfil the obligations derived from the ILO membership. Besides that, within the context of the EVFTA, the EU has also

³³ See Article 13.4 of the EU-Korea FTA; Article 13.4 of the EVFTA.

³⁴ Murray et al, *supra* note 6 at 74.

³⁵ Zamfir Ionel, *Labour rights in EU trade agreements: Towards stronger enforcement* (2022) European Parliamentary Research Service at 6-7.

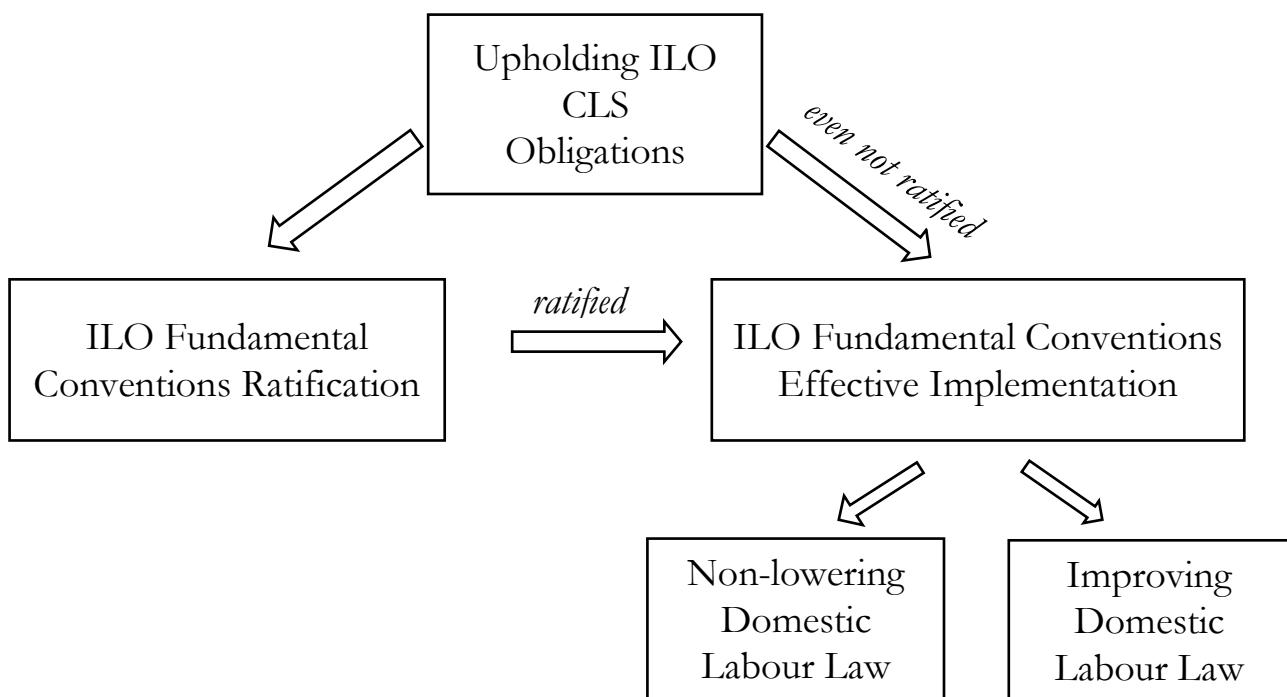
³⁶ “ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022”, online: *ILO* <Key document - ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022>.

³⁷ See Article 13.7 of the EU-Korea FTA; Article 13.3 of the EVFTA; ILO, *Country Programme Review: Viet Nam Decent Work Country Programme 2017-2021* (Hanoi: ILO, 2021) at 28.

³⁸ Murray et al, *supra* note 6 at 74.

introduced relatively ‘new’ obligations that would guarantee the implementation of ILO CLS would not negatively affect the trade relationship between the EU and Vietnam, as mentioned above. These obligations related to upholding ILO CLS are depicted in Figure 1 below.

Figure 1: Obligations related to upholding ILO CLS under the EVFTA



Source: Tien Dung Nguyen ‘Transformations and Evolving Paradigm of Labour Commitment in an Era of EU New Generation Free Trade Agreements: From Labour Standards to Decent Work (2024) 17:57 Pécsi Munkajogi Közlemények at 62.

B. Promoting CSR

Once again, except for the EU-Mexico Partnership Agreement, and the EU-Chile Association Agreement, the other EU FTAs include CSR and Responsible Business Conduct (RBC) commitments. This cross-cutting commitment,³⁹ is an important area within the scope of labour commitments.⁴⁰ In addition to CLS, the EU recognises additional social commitments such as corporate governance

³⁹ European Commission, *Trade and Sustainable Development Chapters in EU Trade Agreements* (Brussels: TSD Experts Group Meeting, 2017).

⁴⁰ Chen Ying & Sheehy Benedict “Exporting Corporate Social Responsibility through Free Trade Agreements: Improving Coherence in the EU’s New-Generation Trade and Sustainable Development FTAs” (2023) 58:2 Texas International Law Journal at 199.

and broader socio-economic policy coordination, such as promoting CSR/RBC.⁴¹ Therefore, CSR provisions serve to address legal loopholes in certain policy domains, thereby bolstering oversight and adherence to CLS.⁴² Besides, four out of six agreements also refer to gender, as shown in Table 4 below:

Table 4: Other Social Commitments

FTA	Gender	CSR/RBC Promotion
EU-Mexico		
EU-Chile	✓	
EU-Korea	✓	✓
EU- Col/Pe/Ecu		✓
EU-Central America	✓	✓
EVFTA	✓	✓

Source: Tien Dung Nguyen ‘EVFTA: Going Beyond Labour Commitments in a New Generation Free Trade Agreement’ (2024) 1 LESIJ at 121

Within the context of the EVFTA,⁴³ first of all, the language used to articulate the CSR commitment in this FTA is rather ‘lenient’, even going so far as to include a best-efforts provision,⁴⁴ which explicitly pertains to the effort to ‘agree to promote’ CSR activities. In this case, the EU-Korea Dispute Panel of experts defined the word ‘promote’ as meaning to ‘further the development, progress, or establishment of (a thing), encourage, help forward, or support activity’.⁴⁵ It suggests that governments have a positive duty to ensure that they encourage and facilitate the application of best business practices.⁴⁶ It also means the same as the ‘upholding ILO CLS’ above, that the inherent nature of this commitment should be seen as requiring significant efforts, above the minimum required steps or complete inaction, but falling short of necessitating the implementation of

⁴¹ Marva Corley-Coulibaly, Ira Postolachi & Netsanet Tesfay, *A Multi-faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends* (ILO, 2022) at 13-14.

⁴² Chen & Sheehy, *supra* note 40.

⁴³ See Article 13.10(2)(e) & 13.14(1)(i) of the EVFTA.

⁴⁴ Waleson Joshua ‘Corporate Social Responsibility in EU Comprehensive Free Trade Agreements: Towards Sustainable Trade and Investment’ (2015) 42:2 Legal Issues of Economic Integration at 163.

⁴⁵ William Trumble & Martin Brown, *Shorter Oxford English Dictionary*, 5th edition (Oxford University Press, 2002).

⁴⁶ Murray et al, *supra* note 6 at 38.

every possible measure at all times.⁴⁷ It can be understood that the EVFTA imposes necessary obligations on member nations to implement necessary measures and specific actions on CSR, even though it does not provide for direct obligations for corporations. These procedures include more than just approving the agreement and involve a mix of actions, policies, the enactment of laws, and the accountability framework to ensure that companies comply with labour standards.

CSR commitments on labour under the EVFTA also refer to norms that are internationally voluntarily recognised,⁴⁸ such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, the United Nations Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Non-binding instruments initially included in FTAs may be transformed into instruments that are legally binding on the parties,⁴⁹ which are subject to the jurisdiction of the enforcement mechanism established by agreement.⁵⁰ That means EVFTA creates a horizontal obligation for signatory countries to promote a comprehensive set of labour CSR guidelines without having a direct vertical impact on enterprises.⁵¹ And ‘voluntary’ here refers to enterprises’ CSR enforcement efforts, not countries’ obligations.⁵² With regards to labour content, it is evident that all three guidelines have a similarity in being based on basic principles and rights at work, as mandated by the duties of member nations of the ILO and the 1998 ILO Declaration.⁵³ This means that CSR’s international guidelines are aimed at addressing matters that the EVFTA necessitates parties pledge their commitment to upholding, advancing, and efficiently executing labour commitments outlined in Chapter 13.

⁴⁷ *Ibid* at 74.

⁴⁸ Jacur Francesca Romanin “Corporate Social Responsibility in Recent Bilateral and Regional Free Trade Agreements: An Early Assessment” (2018) 23:4 European Foreign Affairs Review at 475.

⁴⁹ *Ibid*.

⁵⁰ *Ibid* at 476.

⁵¹ Waleson, *supra* note 44 at 164.

⁵² *Ibid*.

⁵³ Vu Cong Giao & Nguyen Minh Tuan “Overview of International Regulations on Corporate Social Responsibility” in School-level Scientific Conference Corporate Social Responsibility: International Regulations and Legal Issues Facing Vietnam (Hanoi: Hanoi Law University, 2023) at 14.

As a result, it is worth wondering if the ‘upholding ILO CLS’ rules for the workplace could overlap with the introduction of CSR under the EVFTA. This is because both pillars are based on basic rights and principles at work, which the ILO recognises on a global level. And what is the EU’s ultimate goal when integrating CSR obligations into this FTA? It is believed that CSR will serve as the primary platform for addressing human rights issues with businesses, particularly in the labour sector, and subsequently assist the EU in enhancing its interactions with ‘non-state’ actors.⁵⁴ In other words, under these CSR, the EU requests that Vietnam and other trading partners encourage companies to comply with labour commitments, CLS via domestic law, accountability, and compliance duties that are commensurate with international standards. This means a lot to achieve ‘truly’ compliance with labour commitments in the EVFTA and helps the EU fulfil the ‘dream’ of ensuring that its trade policy supports sustainable development within its own boundaries, in its partner countries, and globally.⁵⁵

C. Promoting ILO DWA

Almost all EU FTAs mention DWA in the TSD chapter with the same approach (except for the EU-Mexico Partnership Agreement and the EU-Chile Association Agreement), including: (1) context and objectives; (2) multilateral labour standards and agreements; (3) trade and investment favouring sustainable development; and (4) cooperation on TSD (See Table 6 below). Even what the EVFTA considers to be ‘labour issues’ is ‘the DWA, as referred to in the ILO Declaration on Social Justice for a Fair Globalisation, adopted by the International Labour Conference at its 97th Session in Geneva on 10 June 2008’.⁵⁶ Beyond the basic standards approach, the TSD chapter links labour issues to the ILO DWA’s proposed concept of decent work. In a broader sense, DWA is the overarching goal of the TSD chapter in the EVFTA and the EU FTAs, though, in part, bolstering or promoting the endogenous growth of labour standards.⁵⁷

⁵⁴ Benedek Wolfgang et al, *Improving EU Engagement with Non-State Actors* (FRAME, 2015) Working Package No. 7 – Deliverable No. 2.

⁵⁵ *Country Programme Review: Viet Nam Decent Work Country Programme 2017-2021* (Hanoi: ILO, 2021) at 27.

⁵⁶ See Footnote no. 72 of the EVFTA.

⁵⁷ Arrestoff-Izzo Florence et al “The use, scope and effectiveness of labour and social provisions and sustainable development aspects in bilateral and regional free trade agreements” (2007) in: *Contract VC/2007/0638, European Commission, Employment, Social Affairs and Equal Opportunities DG* at 12.

Table 5: Decent work commitments

FTA	Context & Objective	Multilateral labour standards and agreements	Trade and investment favouring sustainable development	Cooperation on TSD
EU-Mexico				
EU-Chile				
EU-Korea	✓	✓	✓	✓
EU-Col/Pe/Ecu	✓	✓	✓	✓
EU-Central America	✓	✓	✓	✓
EVFTA	✓	✓	✓	✓

Source: author analysis

Upon its incorporation into the EVFTA, the DWA has transitioned from being a not binding framework and set of principles that member countries are urged to adopt and execute voluntarily, to being legally enforceable obligations for the parties involved. Even within the TSD chapter, the EU emphasizes the promotion and realization of DWA through domestic law and practice.⁵⁸ The notion of "decent work" was introduced in 1999 at the 87th Session of the International Labour Conference, as stated in the Report of the Director-General. The idea both conveys the broad and varied dimensions associated with work today and encapsulates them in an expression that everyone can appreciate,⁵⁹ including four pillars: (i) promoting employment; (ii) social protection; (iii) rights at work; (iv) social dialogue and gender equality and non-discrimination must be considered cross-cutting objectives.⁶⁰ These pillars are inherently 'inseparable, interrelated, and mutually supportive'.⁶¹ In actuality, CLS, which stands for basic rights at work, is not just a goal but also an efficient way

⁵⁸ European Commission, *Commissions Service' Annex on Vietnam to the Position Paper on the Trade Sustainability Impact Assessment of the Free Trade Agreement Between the EU and ASEAN* (2013) at 7.

⁵⁹ Dharam Ghai "Decent Work: Concept and Indicators" (2003) 142:2 International Labour Review at 113.

⁶⁰ "Decent work: Report of the Director-General—International Labour Conference (87th Session)" (1999), online: *ILO* <ILC87 - Report of the Director-General: Decent work (ilo.org)>

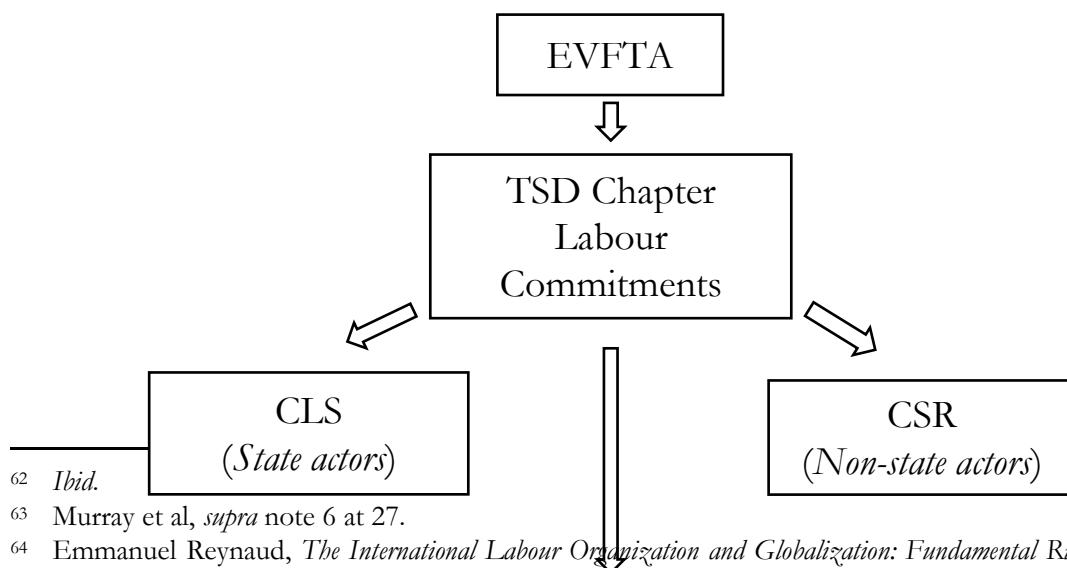
⁶¹ ILO, *ILO Declaration on Social Justice for A Fair Globalization* (2008) at 2.

to accomplish all of the other objectives that the ILO DWA has set for itself.⁶² As the Panel stated in the dispute relating to the EU-Korea FTA, decent work is at the core of the TSD Chapter's trade and sustainable development ambitions, with a 'floor' on worker rights as an essential component in the system that the parties promise to maintain and enhance.⁶³

Although CLS is a precondition for DWA,⁶⁴ DWA, by its own definition, encompasses a larger range of aspects than simply CLS. In doing so, it draws together a wide variety of development and normative concerns,⁶⁵ that are based on a more dynamic approach to social advancement.⁶⁶ In this way, the 2008 Declaration included the ILO DWA, which incorporates more ILO conventions than the fundamental labour standards conventions outlined in the 1998 Declaration, such as the Labour Inspection Convention, 1947 (No. 81), and the Tripartite Consultation, 1976 (No. 144).⁶⁷

As a result of the above factors, the objective of the TSD Chapter is to cultivate bilateral trade and investment ties in a manner that contributes to the overarching objective of sustainable development, with content provisions referring to CLS, CSR, and DWA, as shown in Figure 2 below.

Figure 2: Relation between key elements in labour commitments under the EVFTA TSD Chapter



⁶² *Ibid.*

⁶³ Murray et al, *supra* note 6 at 27.

⁶⁴ Emmanuel Reynaud, *The International Labour Organization and Globalization: Fundamental Rights, Decent work and Social Justice* (2018) ILO Research Paper No. 21 at 22.

⁶⁵ Katsaroumpas Ioannis "Different Shades of Minimalism: The Multilateral Construction of Labour Clauses in the UK-Australia and UK-New Zealand FTAs" (2023) 34:1 King's Law Journal at 82.

⁶⁶ Arrestoff-Izzo et al, *supra* note 57 at 18.

⁶⁷ Katsaroumpas, *supra* note 65 at 83.



Source: Tien Dung Nguyen, "Transformations and Evolving Paradigm of Labour Commitment in an Era of EU New Generation Free Trade Agreements: From Labour Standards to Decent Work (2024) 17:57 Pécsi Munkajogi Közlemények at 60.

Overall, back to the earlier question, may labour commitments in the EVFTA be regarded as old wine in new bottles? Probably, it depends on the point of view, but it cannot be denied that these commitments are not totally brand new; they also refer to essential issues in labour like fundamental rights and principles at work, and highlight the importance of the ILO as a partner of the EU in trade negotiations.⁶⁸ However, as discussed above, it cannot be denied that the way the EU has integrated ILO norms into its new-generation FTAs somehow brings more 'colours' to these principles, even changing the nature of these ones and making them more legally binding. For instance, given the ILO CLS, besides the traditional mechanisms, including the specialised committee of experts to assess the effectiveness of ILO CLS implementation in countries,⁶⁹ the EU has introduced supplement methods in order to make sure that the ILO CLS implementation would not be harmful to trade relations between the EU and Vietnam or other trading partners.⁷⁰ Or regarding CSR, by the way to promulgate these commitments in an official treaty, the EU has changed them from 'soft' to 'hard' regulation of CSR and further made CSR a mandatory obligation for Vietnam, including at the national and enterprise levels.⁷¹ Or in terms of DWA, from being just programmes encouraged by the ILO, with no-sanctioning

⁶⁸ Sicurelli Daniela "The EU as A Partner of ILO in Trade Negotiations. Explaining Labour Reform in Vietnam" (2022) 30:3 Journal of Contemporary European Studies at 461-473.

⁶⁹ "ILO releases 2023 report of the Committee of the Experts on the Application of Conventions and Recommendations" (2023), online: *ILO* <<https://www.ilo.org/resource/news/ilo-releases-2023-report-committee-experts-application-conventions-and>>.

⁷⁰ See Table 4.

⁷¹ Szabados Tamas "Multilevel Hardening in Progress-Transition from Soft Towards Hard Regulation of CSR in the EU" (2021) 28:1 Maastricht Journal of European and Comparative Law at 83-101.

capacity, to the ultimate goals of labour commitments in TSD Chapter - an important part of an international treaty that Vietnam must truly comply with. In short, from 'old wine' - ILO fundamental principles, the EU has made them more and more legally binding and increased the effectiveness of ILO principles implementation to enhance the level of compliance with EVFTA labour commitments. So, between something old and something new, what Vietnam has to do in order to fulfil labour commitments regarding the three key pillars would set a good example for developing nations in trade negotiation and implementation with the EU under new-generation FTA circumstances, and that would be explained in the next section.

V. POLICY IMPLICATIONS FOR VIETNAM

Before providing policy implications for Vietnam, the context of the implementation of the EVFTA and its labour commitments' impact on this country should be highlighted. Accordingly, Vietnam has conducted an impact assessment of employment and labour after two years of EVFTA execution.⁷² Specifically, the EVFTA will affect the rate of labour participation in social insurance, affecting wages and creating more jobs in urban and rural areas. In the main evaluation results, the EVFTA will create about 146,000 jobs for the period 2022-2025, an average of about 36.5 thousand jobs/year. Some industries have a strong impact, benefiting from the EVFTA, such as: Construction (up 0.065%); Processing and manufacturing industry (up 0.063%); Finance, banking and insurance (up 0.061%); Especially compared to other areas, salaries in areas participating in the EVFTA are higher than in the remaining area by about 17% - 28%, about 11% higher than the time when the EVFTA had not been valid.⁷³

In terms of the impact on labour, the EVFTA also has many impacts on gender-working demand, age group, technical qualifications, and satisfactory job opportunities for workers. Accordingly, the EVFTA is expected to have a strong impact on the labour group from 15 to 34 years old, create job opportunities for

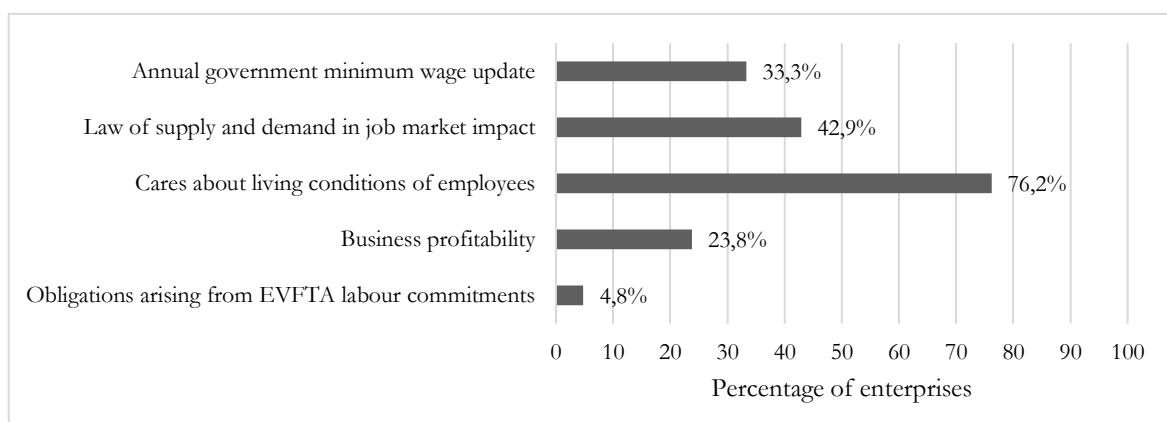
⁷² The remaining assessment for 2023-2025 would be expected to be published at the end of 2025.

⁷³ "An Assessment of the Impact of the EVFTA on Labour and Employment after Two Years of Implementation", online: molisa.gov.vn, <BỘ LAO ĐỘNG - THƯƠNG BINH VÀ XÃ HỘI-Đánh giá tác động của EVFTA đối với vấn đề lao động – việc làm sau 02 năm thực thi>.

low-level labour groups, and provide satisfactory jobs for workers with higher qualifications, bringing many benefits to female labour groups, high-tech qualifications, and urban labour.⁷⁴

Unfortunately, in contrast to expectations, it seems like the labour commitments in the EVFTA have a negligible impact on enterprises in Vietnam, especially in improving working conditions for workers. For instance, looking more closely at the two most important rights and interests of workers, according to the empirical research conducted among over 300 enterprises in Vietnam from June 2023 to June 2025, nearly all enterprises (over 90%) that participated in the survey have increased employee salaries since 2020, when the EVFTA came into effect. The reasons for this increase primarily include the enterprise's concern for its employees' living conditions, the influence of supply and demand in the job market, annual adjustments to regional minimum wage by the government, and business profitability (with nearly 80%, 45%, 35%, and 25% of enterprises citing these reasons, respectively). In contrast, obligations arising from labour commitments under EVFTA account for less than 5% of an enterprise's motivation. See Figure 3 below:

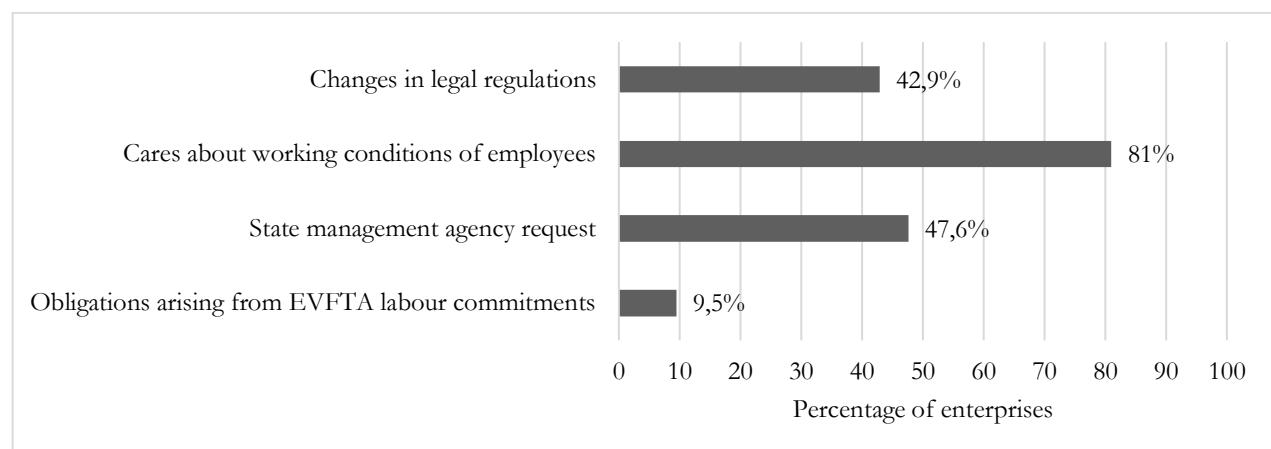
Figure 3. Reasons for the increase in salary for employees



⁷⁴ According to the Institute of Labour Science and Social Affairs (MOLISA), expert's statement at the Conference "Assess the Impact of the EVFTA on Labour-Employment Issues" (Hanoi, Nov 23, 2022).

On the other side, in terms of health and safety at work, the empirical research has also shown that nearly all enterprises (nearly 80%) that participated in the survey have had positive changes in policies related to occupational safety and health since 2020. The reasons for these changes primarily include the enterprise's concern for its employees' working conditions, the request from the state management agency, and changes in legal regulations (with nearly 85%, 50%, and 45% of enterprises citing these reasons, respectively). In contrast, obligations arising from labour commitments under EVFTA account for less than 10% of an enterprise's motivation. See Figure 4 below:

Figure 4. Reasons for positive changes in policies related to occupational safety and health



In addition, the implementation of substantive commitments, including upholding ILO CLS or promoting CSR and ILO DWA, still has inherent limitations that have been criticised by the EU and pointed out in recent research. Especially the procrastination in the ratification of ILO C087 on Freedom of Association and Protection of the Right to Organise and the adoption of the decree on workers' representative organisations has been under more and more pressure and criticism by the EU through the DAG mechanism,⁷⁵ or the ambiguous endeavor to promote CSR and ILO DWA under the EVFTA labour

⁷⁵ "Statement under the EU–Viet Nam Free Trade Agreement," online: *EU Domestic Advisory Group under the EVFTA*, June 6, 2024, <https://www.eesc.europa.eu/sites/default/files/2024-06/euvn_dag_statement_final.pdf>.

commitments has left significant gaps in both legal and practical perspectives in Vietnam.⁷⁶

Under these circumstances, it calls for analytical insights into these substantive commitments to support Vietnam to fully comply with international obligations and further to guarantee the safety of the domestic labour market in the context of the proliferation of EU new-generation FTAs. In this vein, it also sets a modelling approach and delivers valuable experience for other developing countries when they become EU trading partners in the future.

A. Upholding ILO CLS

As discussed, labour commitments in the TSD chapter under the new-generation EU FTAs, including the EVFTA, refer to principles and obligations derived from membership of the ILO and to maintaining laws that ensure that, in practice, there is freedom of association, no forced labour, and so on.⁷⁷ In other words, to fulfil the long-term purpose to incorporate social standards into their FTAs,⁷⁸ The EU, by the way, regarding the ILO as a partner in trade negotiations,⁷⁹ has employed and reinforced the parties' principles and obligations under the ILO membership, but at a more comprehensive and higher level.⁸⁰

First and foremost, as a state member of the ILO, the EU requests that Vietnam and other party members fully comply with ILO fundamental principles and rights at work, which are also deemed to be ILO CLS promulgated in eight ILO fundamental Conventions and so on.⁸¹ Regarding these labour standards, it is noteworthy that there are differences between ILO CLS and other international

⁷⁶ Xuan Thu Nguyen, Tien Dung Nguyen & Huyen Nguyen “Towards the Corporate Social Responsibility on Labour in the Era of New-Generation Free Trade Agreements: The Case of EVFTA” (2024) 3 *Acta Universitatis Carolinae Iuridica* at 71-89; Nguyen Tien Dung & Nguyen Thi Thanh Huyen “Commitment to Decent Work in the EU’s New Generation Free Trade Agreements: Analyzing the European Union – Vietnam Free Trade Agreement” (2024) 11:183 *Vietnamese Journal of Legal Sciences* at 86-96.

⁷⁷ García J María “Sanctioning Capacity in Trade and Sustainability Chapters in EU Trade Agreements: The EU–Korea Case” (2022) 10:1 *Politics and Governance* at 64.

⁷⁸ The historical and theoretical perspectives are revisited in the Section III of the paper.

⁷⁹ Sicurelli, *supra* note 68.

⁸⁰ See Section IV of the paper.

⁸¹ In the EVFTA and several FTAs outlined in Section IV, there is an extended scope of fundamental Conventions on occupational health and safety and migrant workers rights. Recently, this tendency has also been employed in EU FTAs among developing countries like Canada and the UK in terms of fundamental Conventions on minimum wage and labour inspection.

labour standards.⁸² All members, not only Vietnam, even if they have not ratified the fundamental conventions in question, have an obligation arising from the very fact of their ILO membership to respect, promote, and realise, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights.⁸³

So a key priority obligation for Vietnam and other EU parties under the context of the EU TSD Chapter regarding upholding the ILO CLS has been the ratification of ILO Convention No. 87 without delay first,⁸⁴ and the implementation of these CLS, besides the other ones that have already been ratified, provided that the ILO Conventions ratification would come along with timing domestic legal internalisation because of the inherent limits in legislation, for instance in Korea,⁸⁵ and Vietnam as well.⁸⁶ Last but not least, there is the obligation to guarantee that the implementation of CLS and other labour standards will be effective.⁸⁷ However, to fulfil all the requirements from labour commitments indicated or to avoid putting parties in Korea's place at least, based on lessons from the case between Korea and the EU aforementioned,⁸⁸ it is believed that Vietnam and other parties should carefully follow annual recommendations from the ILO in terms of ILO fundamental convention ratification and implementation.⁸⁹

⁸² *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation and Enforcement of EU Trade Agreements, COM(2021) 654 final*, (Brussels: European Commission, 2021) at 18.

⁸³ ILO, *supra* note 32.

⁸⁴ EU Domestic Advisory Group under the EVFTA, *Statement from the European Union Domestic Advisory Group* (2023), online: <eu-vn_dag_-_3rd_dag-to-dag_meeting_2023_-_eu_dag_statement_final.pdf (europa.eu)>.

⁸⁵ Murray et al, *supra* note 36 at 79.

⁸⁶ Nguyen Xuan Thu, Nguyen Tien Dung & Nguyen Xuan Hung “Labour Commitments in the EVFTA: Amendments and Supplements to Vietnamese Law and Recommendations” (2022) 125 JL Pol'y & Globalization.

⁸⁷ See Article 13.4 of the EU-Korea FTA; Article 286 of the EU-Colombia/Peru/Ecuador Trade Agreement; Article 285 of the EU-Central America Association Agreement; Article 13.4 of the EVFTA.

⁸⁸ Campling et al., *supra* note 17 at 139-166.

⁸⁹ ILO, *supra* note 60.

Furthermore, in the same vein as the remaining obligations related to promoting CSR and ILO DWA, in the long run, Vietnam also must consider satisfying the obligations related to domestic legislation and practice in Section III indicated by the EU. Therefore, this nation should have strategies in place to establish domestic levels of labour protection that it deems appropriate beyond, but not below, the commitments to ILO standards.⁹⁰ Accordingly, in addition to internal legalisation and codification, Vietnam must more intentionally fulfil reporting obligations under the role of the ILO and the EU trading partner in the EVFTA annually and periodically.

B. Promoting CSR

Through an examination of the fundamental characteristics of CSR provisions related to labour, it can be argued that the CSR outlined in the TSD Chapter aims to encourage adherence to labour commitments and ILO CLS. However, it also imposes obligations on member states and nations to fulfil their international obligations by creating domestic legal frameworks that include effective mechanisms for holding enterprises accountable for their actions.⁹¹ In essence, its goal is to promote cooperation between the EU and Vietnam to enhance the development of legislation related to CSR within their own countries, in accordance with their international commitments, especially the basic norms of the ILO.⁹² Moreover, the EU mandates that partner nations must guarantee alignment with EU activities.⁹³

Under the circumstances that CSR policy has become the ‘vogue’ between the EU and State members, even regulations related to CSR have already become mandatory in many countries, so it is time for Vietnam to examine the lessons from the EU and State members and prepare further domestic legislation regarding CSR. Within this research, a legislative framework surrounding CSR on

⁹⁰ ILO, *Country Programme Review: Viet Nam Decent Work Country Programme 2017-2021* (Hanoi: ILO, 2021) at 28.

⁹¹ Zandvliet Ruben, *Trade, Investment and Labour: Interactions in International Law* (BRILL, 2022) 9 at 192.

⁹² Antonie Oger, *Environmental and Social Impacts Embedded in EU Trade Policies: The Case of EU Trade-related Autonomous Measures in Vietnam* (Institute European Environmental Policy, 2023) at 21.

⁹³ European Commission, *Joint Statement - 2nd Meeting of the EU Domestic Advisory Group and the Viet Nam Domestic Advisory Group under the EU- Viet Nam FTA* (2022), online: <1st meeting of the EU DAG and the Viet Nam DAG under the EU-Viet Nam FTA - Joint Report (europa.eu)>.

labour in the EU and other countries would be indicated and suggested, focusing on three main aspects:

1. ESG Regulations

ESG is a concept that emerged subsequent to CSR; however, it places a stronger emphasis on quantitative indicators and the measurement of specific criteria. As of now, the EU is the first jurisdiction to have comprehensively codified ESG, or in other words, the EU stands as the global “frontrunner” with a complete ESG legal framework consisting of regulations, directives, and interlinked mechanisms whose scope extends beyond the Union’s territorial boundaries. Similar to CSR, ESG in the EU context serves as a legal instrument through which the Union advances its social and human rights policies within the economic and commercial sphere. The EU’s legal framework on ESG comprises four closely interconnected legal instruments that differ in scope, objectives, subjects of application, and legal nature: (1) The Sustainable Finance Disclosure Regulation (SFDR); (2) The Corporate Sustainability Reporting Directive (CSRD); (3) The Corporate Sustainability Due Diligence Directive (CSDDD); and (4) The ESG Rating Regulation.

i. Regulation (EU) 2019/2088 – SFDR (Sustainable Finance Disclosure Regulation)

The SFDR was enacted with the purpose of ensuring transparency and harmonizing ESG disclosure requirements across the EU, particularly within the sectors of financial services, investment, insurance, and pension funds. For this reason, the SFDR constitutes a central pillar of the EU’s Sustainable Finance Strategy. It mandates that investment funds, insurance companies, pension institutions, investment banks, and other financial market participants disclose sustainability risks and the principal adverse impacts related to ESG factors in their strategies and financial products, under the supervision of the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA). Accordingly, the SFDR incorporates employee matters as a component of sustainability factors. Moreover, it defines sustainable investment in a manner that embeds the protection of workers’ rights, as: “an investment in an economic activity that contributes to a social objective, in particular an

investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance”.⁹⁴ Therefore, the SFDR clearly embodies the spirit of the CSR clause under the EVFTA, as it demonstrates how the EU employs financial instruments to promote and regulate responsible business conduct, including the respect for labour rights, social equity, and welfare.

ii. Regulation (EU) 2022/2464 – CSRD (Corporate Sustainability Reporting Directive)

The CSRD was enacted to create a standardized and obligatory framework for non-financial reporting. The CSRD, building on the Non-Financial Reporting Directive (NFRD), imposes mandatory requirements for large enterprises and small and medium-sized enterprises (excluding micro-enterprises) to incorporate comprehensive and measurable information about ESG performance in their management reports. This information must be independently audited and supervised by national authorities and the European Commission. According to the principle of double materiality, companies must implement a dual approach to guarantee that sustainability reporting is thorough addressing both the effects of corporate actions on the environment and society, and the effects of external factors on business operations. The mandated disclosures must encompass labour-related information, including:

- (i) Equal treatment and opportunities for all, including gender equality and equal pay for work of equal value, training and skills development, the employment and inclusion of people with disabilities, measures against violence and harassment in the workplace, and diversity;
- (ii) Working conditions, including secure employment, working time, adequate wages, social dialogue, freedom of association, existence of works councils, collective bargaining, including the proportion of workers covered by collective

⁹⁴ Article 17 of the Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

agreements, the information, consultation, and participation rights of workers, worklife balance, and health and safety;

(iii) Respect for the human rights, fundamental freedoms, democratic principles and standards established in, the ILO's Declaration on Fundamental Principles and Rights at Work and the fundamental conventions of the ILO.⁹⁵

Furthermore, the sustainability reporting standards identify information relating to working conditions, social partner involvement, collective bargaining, equality, non-discrimination, diversity and inclusion, and human rights as central components. Such information should cover the enterprise's impacts on people, including workers and public health. Disclosures concerning human rights must include, where relevant, information on forced labour and child labour within the value chain. However, the sustainability reporting obligations related to forced labour do not absolve public authorities of their responsibility to address, through trade and diplomatic means, the importation of goods produced in violation of human rights, including through forced labour. Undertakings are also encouraged to report potential risks and trends concerning employment and income.⁹⁶

Moreover, the sustainability reporting standards must take into account internationally recognised principles and frameworks on responsible business conduct, corporate social responsibility, and sustainable development, such as the Sustainable Development Goals (SDGs), the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct, the UN Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment. It can be seen that these requirements directly reflect the ILO conventions, as well as the sets of rules referenced by EU FTAs in their CSR related provisions. These requirements directly reflect the ILO conventions and the codes of conduct set forth in the CSR provisions of the EU's FTAs. In addition, the disclosure requirements under the CSRD must be carried out in accordance with the

⁹⁵ Article 2 of the Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

⁹⁶ *Ibid*, Article 49.

European Sustainability Reporting Standards (ESRS). Within this framework, ESRS establishes two criteria for assessing labour rights: S1 (Own Workforce) and S2 (Workers in the Value Chain). These standards prescribe disclosure obligations concerning the working environment, equal treatment and opportunities for advancement, child labour, forced labour, access to housing, and the protection of personal data-both within the enterprise and throughout its value chain. These elements align closely with the core ILO conventions and the CSR-related provisions under the TSD Chapter of the EVFTA. Thus, the CSRD represents the comprehensive institutionalisation of CSR, transforming human rights and labour commitments under the EVFTA into binding legal obligations for enterprises engaging with the EU market.

iii. Regulation (EU) Corporate Sustainability Due Diligence Directive (CSDDD)

Mandated due diligence is the dominant legislative framework for CSR, particularly in relation to labour-related CSR/ESG. This framework requires corporations to disclose comprehensive details about their labour, social, and environmental practices through their policies, initiatives, or performance outcomes. Reporting on sustainability is presently considered to be a component of CSR/ESG, and mandatory due diligence, at least from the perspective of the EU, is somewhat analogous to either CSR or RBC.⁹⁷ Inside the EU, the European Commission has put out a proposal called the CSDDD, with the intention of “fostering sustainable and responsible corporate behaviour throughout global value chains”.⁹⁸ The EU CSDDD prioritises the promotion of sustainable corporate governance,⁹⁹ via the company's legal obligations and directors' duty of care and supervisory directors. This obligation requires directors to consider the long-, medium-, and short-term effects of their actions on sustainability and employment concerns.¹⁰⁰ Additionally, beyond that, CSDDD plays a significant role in the commerce between the EU and Vietnam.¹⁰¹ In the previous meeting on Oct 18, 2022, the DAG of the EU and Vietnam made the decision to create

⁹⁷ Oger, *supra* note 92 at 22.

⁹⁸ *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence* COM(2022) 71 final (Brussels: European Commission, 2022).

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.* Article 25.

¹⁰¹ “Statement from the European Union Domestic Advisory Group”, *supra* note 84.

a collaborative working group. This group's goal is to facilitate discussions on EU-Vietnam supply chains in the context of due diligence.¹⁰² The CSDDD promotes the development and improvement of a legislative framework that explicitly controls CSR/ESG reporting and mandatory due diligence in Vietnam, ensuring uniformity between the EU and Vietnamese institutions in bilateral trade relations.

iv. Regulation (EU) 2024/3005 – ESG Rating Regulation 2024

This regulation represents the conclusive phase of the EU's Sustainable Finance Framework, finalising the incorporation of ESG data, reports, and ratings into a cohesive and transparent system. The ESG Rating Regulation requires rating agencies and assessment bodies to operate with transparency, honesty, impartiality, and dependability in their use of data supporting ESG ratings. Regarding labour-related factors, rating agencies must provide their techniques for assessing labour and human rights performance, necessitating that rated firms improve their working conditions and employee welfare. Companies that infringe upon labour rights in their supply chains face decreased ESG scores, potentially resulting in direct financial consequences, including restricted access to investments or financing. The EU's strategy for sustainable and inclusive growth is based on the 20 principles of the European Pillar of Social Rights, outlined in the European Commission's Communication dated 26 April 2017, titled "Establishing a European Pillar of Social Rights." These principles seek to guarantee an equitable transition to sustainable development and to advocate for policies that foster inclusivity. Furthermore, the Union's social acquis, encompassing the Union of Equality Strategies, sets forth obligatory norms in labour law, equality, accessibility, workplace health and safety, and anti-discrimination.¹⁰³ Moreover, the EU mandates that ESG rating providers maintain quality and international standards for each assessment dimension, particularly adherence to the ILO's core conventions, especially those related to the right to organise and collective bargaining, as essential criteria within the

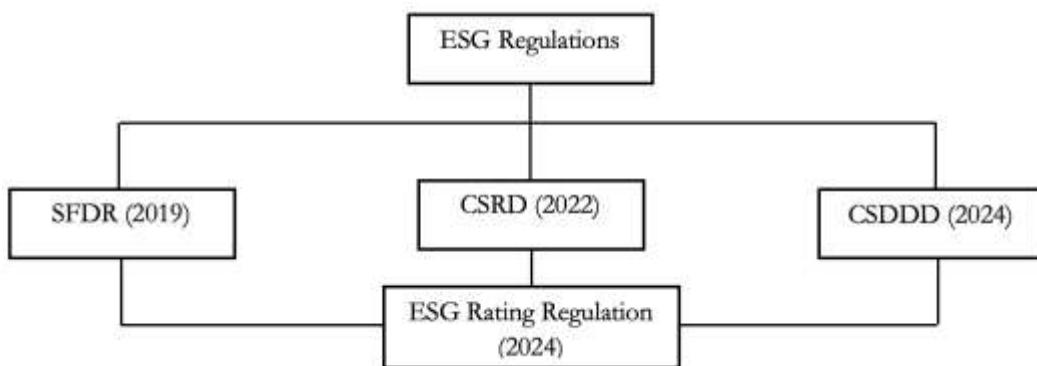
¹⁰² European Comission, *supra* note 93.

¹⁰³ Article 4 of the Regulation (EU) 2024/3005 of the European Parliament and of the Council of 27 November 2024 on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, and amending Regulations (EU) 2019/2088 and (EU) 2023/2859.

Social (S) component of ESG evaluation.¹⁰⁴ ESG Rating Regulation 2024 is the normative apex and operational safeguard of the EU's ESG regulatory framework, ensuring the successful integration of social and labour factors in financial and corporate governance systems.

In summary, akin to the notion of CSR, the EU's ESG legal framework, which includes the SFDR, CSRD, CSDDD, and the ESG Rating Regulation, has thoroughly enshrined the concepts of CSR, converting formerly “voluntary” commitments to sustainable development into enforceable, transnational legal responsibilities. These four legislative instruments collectively form a complete ESG framework for the EU, simultaneously acting as an enforcement mechanism for the ILO Conventions, with a primary focus on the preservation of workers' rights. The EU's ESG legal framework signifies both a progression and an augmentation of the CSR clause in the EVFTA, transforming CSR concepts from mere policy promises into binding legal norms inside the Union's internal and external economic governance. The diagram below depicts the interconnections among the legal instruments under the ESG legal framework:

Figure 9. The relationship among the legal instruments within the ESG legal framework



Source: Author's analysis.

2. Gender Pay Equity Act

One of the European Union's fundamental principles, guaranteed in Article 157 of the Treaty on the Functioning of the EU, is the idea of equal payment for equal work.¹⁰⁵ It, then, has evolved into the EU CSR's governance policy in the

¹⁰⁴ *Ibid*, Article 34.

¹⁰⁵ EU Action for Equal Pay, online: European Commission <EU action for equal pay (europa.eu)>.

labour field.¹⁰⁶ and its member states. That led to the Pay Transparency Directive, which went into effect on June 6, 2023, has the potential to improve transparency and enforcement of the equal pay principle between men and women, as well as improve access to justice for victims of wage discrimination.¹⁰⁷ Whereby, transparency is evident in many significant aspects, such as the disclosure of remuneration information prior to employment,¹⁰⁸ along with transparency of pay setting and pay progression policy.¹⁰⁹ Companies must simultaneously facilitate workers' access to information and provide reports on the gender-based wage disparity among their employees.¹¹⁰ Vietnam has committed to implementing the principle of equal pay for male and female workers as part of the EVFTA's core labour norm on eradicating discrimination in employment and profession (Convention No. 100 – Equal Remuneration Convention), which is critical to the country. Furthermore, the CEACR report underlines the problems Vietnam faces in implementing this paradigm.¹¹¹ Given the idea of adherence, Vietnam must enact a legislative instrument that clarifies this issue.

3. Responsible Value Chain Management

It seems that the risks associated with the infringement of labour norms and rights in global supply chains have cross-border consequences, impacting both EU and non-EU nations.¹¹² With this in mind, the Commission recognises that 'when necessary and appropriate, adopting legislation represents another option'.¹¹³ As a result, the Commission has taken a highly constructive approach to CSR at the EU-wide level on the basis of legislative tools that seek to minimise distortions in the functioning of the internal market, safeguard public interests,

¹⁰⁶ *Governance Policies on Corporate Social Responsibility*, online: European Commission <Governance policies on corporate social responsibility (europa.eu)>.

¹⁰⁷ *Ibid.*

¹⁰⁸ Article 5 of the Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value Between Men and Women through Pay Transparency and Enforcement Mechanisms.

¹⁰⁹ *Ibid*, Article 6.

¹¹⁰ *Ibid*, Article 8.

¹¹¹ ILO, *supra* note 36.

¹¹² *Proposal for a Regulation of the European Parliament and the Council on Prohibiting Products Made with Forced Labour on the Union Market COM(2022) 453 final* (Brussels: European Commission, 2022).

¹¹³ Kletia Noti et al, *Corporate Social Responsibility (CSR) and Its Implementation into EU Company Law* (Brussels: Policy Department for Citizens' Rights and Constitutional Affairs, 2020) at 20.

and provide a fair playing field for both EU and non-EU firms.¹¹⁴ This is why the most effective means for the EU to accomplish these objectives are the implementation of socially responsible public procurement initiatives and the proposal to prohibit the sale of goods manufactured using forced labour on the market. In other words, contracting authorities should give utmost importance to social factors at every stage of the procurement process. This entails requiring prospective suppliers to possess a sustainable, ethical, and transparent supply chain, ensure equitable treatment of their workers, and employ those who have obstacles in accessing the labour market.¹¹⁵ Furthermore, it is essential to guarantee that goods manufactured by forced labour are not traded inside the EU.¹¹⁶ Vietnam has the distinction of being the EU's second-largest trading partner among the countries in ASEAN.¹¹⁷ Furthermore, it functions as a substantial market for exporters and investors hailing from the EU.¹¹⁸ Therefore, the EU specifically urges Vietnam to carefully assess the consequences of this compulsory work proposition. Given that these restrictions would apply to the entire supply chain, governments and manufacturers must ensure that subcontractors abstain from engaging in any form of labour-related forced labour.¹¹⁹

C. Promoting ILO DWA

It is quite true that the commitment to decent work is not completely novel; rather, it is a strengthening of the ILO DWA. Nevertheless, the incorporation of decent work commitment into the trade-development connection of the EVFTA must also illustrate the role of combining trade and investment policies with labour policies that facilitate the achievement of the sustainable development aim. It is apparent that Vietnam's national policies on decent work primarily prioritise participation in the ILO as a means to achieve socioeconomic growth and social fairness. Instead, it is a strategic initiative designed to promote

¹¹⁴ "Forced Labour Proposal, COM(2022), 453 final," *supra* note 112.

¹¹⁵ European Commission, *Commission Notice "Buying Social - a Guide to Taking Account of Social Considerations in Public Procurement (2nd edition)" C(2021) 3572 final* (Brussels: European Commission, 2021).

¹¹⁶ "Forced Labour Proposal, COM(2022) 453 final," *supra* note 112.

¹¹⁷ Elzbieta Majchrowska "Trade Regionalism and its Relevance to the Multilateral System Within the WTO in Need of Reform – The Case of EVFTA" (2020) 2020: 1 Krakowskie Studia Miedzynarodowe at 229.

¹¹⁸ *Ibid.*

¹¹⁹ EU Domestic Advisory Group under the EVFTA, *supra* note 75.

bilateral commerce with the aim of facilitating full, productive employment and decent work for all, derived from the objective of the TSD chapter of the EVFTA. With this approach, labour issues in the TSD Chapter are seen as nothing more than CLS from the perspective of Vietnam, rather than putting an emphasis on decent work. It would seem that the promise of decent work in the EVFTA is not taken seriously, despite the fact that it is designated as the ultimate goal of sustainable development.

Therefore, Vietnam must first identify CLS as an essential platform to realise the TSD Chapter's ultimate goal, namely, the attainment of decent work. This leads to both current and future action plans for implementing the EVFTA, clearly articulating the objective of fostering decent work integrated into bilateral trade relationships between the two countries on both sides (including policy and practices to fulfil decent work cooperation areas). In this regard, it is absolutely critical that the reports from the meetings of the Committee of Experts on TSD include efforts aimed at really enforcing the commitment to decent work. Furthermore, the domestic advisory group's discussions and consultations should focus on this objective in line with the EVFTA regime. Similarly, we need to conduct empirical research using sociological surveys to assess the adherence to the EVFTA's decent work provisions. Although DWA concerns may be trade-related, they are, first and foremost, domestic issues that must be addressed by domestic law policy. As a result, enhancing labour laws and boosting domestic labour standards is a critical instrument for properly implementing DWA obligations under the EVFTA.

VI. CONCLUSION

Underlying the EU's claim that the EVFTA is the most comprehensive new-generation FTA between the EU and developing countries, the study elucidates the labour commitments in EU FTAs and highlights the primary responsibilities of parties to these new-generation EU FTAs in three areas: upholding ILO CLS, promoting CSR, and promoting ILO DWA in the context of Vietnam. The study also suggests longer-term policy implications for this country and the EU's trading partners. Accordingly, to truly comply with international obligations and achieve the ultimate goals of the TSD chapter in the EVFTA, Vietnam must

dedicate increasing time and effort to domestic legalisation and codification, and bear in mind that, besides something old, something new has to be done and Vietnam has to fulfil both obligations derived from membership roles of international organisations and a trading partner in the EVFTA. Furthermore, conducting further empirical research to guarantee the effectiveness of the change in policies regarding the three pillars aforementioned and then protecting employees against the impact of globalisation, besides the trading development, is necessary and meaningful for this country in the upcoming time, regarding the context of new-generation FTA compliance.

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COMPETING INTEREST

The authors will be asked to sign this statement once the submission has been accepted.

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