

EURÓPAI MUNKAJOG

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TRANSFORMATIONS AND EVOLVING PARADIGM OF LABOUR COMMITMENT IN AN ERA OF EU NEW-GENERATION FREE TRADE AGREEMENTS: FROM LABOUR STANDARDS TO DECENT WORK

Abstract:

The purpose of this study is to clarify and highlight some transformations and evolving paradigm trends in labour commitments within the new-generation free trade agreements (FTAs) recently signed or negotiated by the European Union (EU). Specifically, the study first clarifies the content of labour commitments in current EU FTAs, which include three pillars: (i) Core labour standards (CLS); (ii) Decent work agenda (DWA); and (iii) Corporate social responsibility (CSR). Based on this, the study analyzes recent trends in these three pillars within EU FTAs. Additionally, the research provides several policy implications for Vietnam to effectively implement its labour commitments with EU partners.

1. Introduction

It is a fact that the context of stalled negotiations and diminished effectiveness of multilateral cooperation under the WTO framework, FTAs have become the leading alternative form of economic cooperation for protecting trade interests and improving access to new markets for the EU¹. In terms of EU, FTAs boost the trade system by adopting a deeper and broader approach to promoting openness and integration, as well as addressing issues that are not yet ready for multilateral discussion². Undoubtedly, the advent of the second-generation FTAs integrating labour commitments in the Trade and Sustainable Development (TSD) chapter has proven more effective in the ‘Global Europe: Competing in the World’ strategy that the EU is pursuing. Accordingly, the EU-Korea FTA in 2011 established a series of new-generation FTAs incorporating both trade and non-trade elements, such as labour and environmental commitments. These labour commitments focus not only on CLS from ILO’s fundamental conventions but

¹ Elzbieta Majchrowska: Trade Regionalism and its Relevance to the Multilateral System Within the WTO in Need of Reform – The Case of EVFTA. *Krakowskie Studia Międzynarodowe*, 17(1), 2020, p. 224.

² Commission of the European Communities: *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Global Europe - Competing in the world – A contribution to the EU’s Growth and Jobs Strategy*. European Commission, Brussel, 2006, p. 8

also reference the ILO DWA, forming substantive commitments, while CSR constitutes cross-cutting commitments.

So far, the EU has continuously negotiated and signed new-generation FTAs with various partners, with a recent trend towards negotiating FTAs with emerging economies in the ASEAN region. Recent FTAs, however, have shown significant transformations in the content and paradigm of labour commitments, leading to alterations in the implementation of these commitments, affecting not only newly signed countries but also those that had previously signed EU FTAs. Therefore, as the most comprehensive and anticipated FTA with a developing country, clarifying the transformations and evolving paradigm in labour commitment negotiations in recent and future FTAs is highly significant for Vietnam in terms of aligning with its signed commitments.

By examining ten second-generation EU FTAs currently in effect (including: (1) EU-Korea FTA; (2) EU-Colombia/Peru/Ecuador Trade Agreement; (3) EU-Central America Association Agreement; (4) EU-Canada Comprehensive and Economic Trade Agreement (CETA); (5) EU-Japan Economic Partnership Agreement (EPA); (6) EU-Singapore FTA; (7) EVFTA; (8) EU-UK Trade and Cooperation Agreement (TCA); (9) EU-Chile Interim Agreement on Trade (IAT); (10) EU – New Zealand FTA) and two FTAs under negotiation (EU-Indonesia FTA and EU-Thailand FTA), this paper focuses on examining the transformations and evolving in paradigm of labour commitments in recent EU FTAs. Thus, on one hand, the paper provides insights into labour commitments in the TSD chapter of new-generation EU FTAs, while on the other hand, it highlights future trends in the EU's trade negotiations with various countries. Consequently, the paper may offer suggestions for Vietnam and other current and potential EU partners to effectively implement their labour commitments in new-generation FTAs.

With this purpose, the remainder of this article is structured into four parts. The next section clarifies the nature of labour commitments at the present time. This leads to the new development trends of labour commitments in recent EU FTAs and those under negotiation. Finally, before concluding, the article points out some policy implications for Vietnam and other countries in the implementation of their labour commitments.

2. The Logic of Labour Commitment in EU New-Generation Free Trade Agreements

As it can be seen, labour commitments are included in the Trade and Sustainable Development (TSD) Chapter of EU FTAs, serving as both a management tool, as well as a means of promoting compliance with CLS. At the same time, they serve as a mechanism for dialogue and information exchange on numerous labour issues³. This means that labour commitments are made up of three main provisions (Table 1), which include: (i) substantive commitments refer to any labour principles or standards or rules that address labour relations, minimum working conditions, terms of

³ ILO: *Handbook on assessment of labour provisions in trade and investment arrangements*. International Labour Office, Geneva, 2017, pp. 11-12.

employment and/or other labour issues; (ii) procedural commitments denote frameworks designed to foster compliance with standards through cooperation, dialogue and/or monitoring of labour issues; and (iii) institutional mechanisms encompass any mechanisms established to ensure compliance with standards set out under national law or in an FTA⁴.

Table 1: Key Pillars of Labour Commitments in the Trade and Sustainable Development Chapter

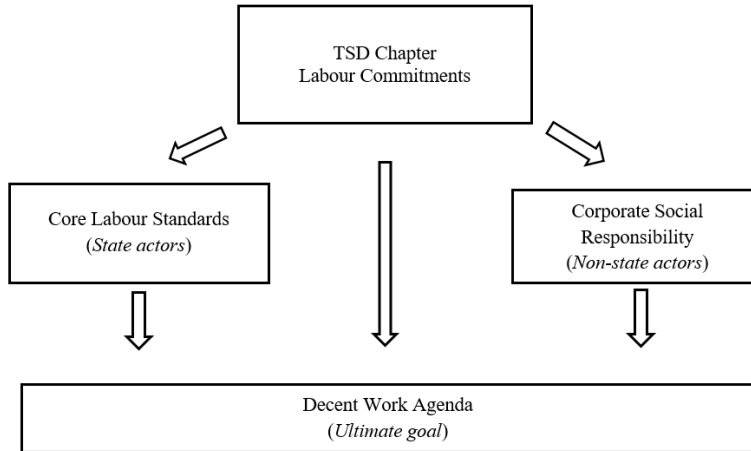
Substantive commitments	<ul style="list-style-type: none"> • CLS are embodied in the ILO fundamental conventions • ILO Decent Work Agenda • CSR is considered as Cross-cutting commitments⁵
Procedural commitments	<ul style="list-style-type: none"> • Dialogue and cooperation between the Parties • Transparency in introducing new labour standards • Upholding levels of domestic protection on labour standards • Monitoring and review of sustainability impacts of the FTA
Institutional mechanisms	<ul style="list-style-type: none"> • Committee on Trade and Sustainable Development • Domestic Advisory Groups • Panel of Experts • Joint Forum

Source: Authors derived from “Governing Labour Standards through Free Trade Agreements: Limits of the European Union’s Approach”

More precisely, the labour commitments emphasise the ILO CLS and DWA as the primary elements of the substantive commitments. Meanwhile, CSR is a cross-cutting commitment, helping to fill the legal gaps in specific policy areas, contributing to strengthening the monitoring and compliance of CLS. It is important to highlight that the three main pillars of labour commitments in the new-generation FTAs, including CLS, ILO DWA and CSR with the relationship as shown in Figure 1:

⁴ James Harrison et al.: Governing Labour Standards through Free Trade Agreements: Limits of the European Union’s Trade and Sustainable Development Chapter. *Journal of Common Market Studies*, 57(2), 2019, p. 261; Marva Corley-Coulibaly, Ira Postolachi, Netsanet Tesfay: *A Multi-faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends*, ILO, 2022, p. 4.
⁵ According to TSD Experts Group Meeting, Brussels, 06/07/2017.

Figure 1: Relationship between the key elements of the labour commitment of the Trade and Sustainable Development Chapter



Source: Authors analysis

Following this, the DWA in the labour commitment is structured into: (i) the overarching and cross-cutting objectives of the labour commitment; (ii) the mutual obligations that the parties commit to implement; (iii) the areas of cooperation between the parties⁶. Generally, FTAs primarily focus on ‘labour issues’, namely those pertaining to the DWA⁷. In essence, the labour issues in the TSD chapter are connected not just the approach to CLS, but also to the concept of decent work developed by the ILO⁸. Broadly speaking, decent work is the overarching objective of the TSD chapter, through supporting or promoting the endogenous development of labour standards⁹. As the Panel in the EU-Korea FTA dispute observed: “*decent work is at the heart of their aspirations for trade and sustainable development, with the ‘floor’ of labour rights an integral component of the system they commit to maintaining and developing*”¹⁰.

In terms of CSR, the EU acknowledges supplementary social commitments like corporate governance, and extensive socio-economic policy coordination notably

⁶ Nguyen Tien Dung, Nguyen Thi Thanh Huyen: Integrating Decent Work in New Generation Free Trade Agreements of the European Union: A Perspective from EVFTA. *Vietnamese Journal of Legal Sciences*, 11(138)/2024, 2024.

⁷ Footnote No. 84 EU – Korea FTA; Footnote No. 76 EU – Singapore FTA; Footnote No. 72 EVFTA; Footnote No. 1 EU – Chile IAT; Footnote No. 1 TSD Chapter EU-Indonesia FTA, Footnote No. 1 TSD Chapter EU – Thailand FTA.

⁸ Nguyen Tien Dung, Nguyen Thi Thanh Huyen: Integrating Decent Work in New Generation Free Trade Agreements of the European Union: A Perspective from EVFTA. *Vietnamese Journal of Legal Sciences*, 11(138)/2024, 2024.

⁹ Florence Arestoff-Izzo et al.: *The use, scope and effectiveness of labour and social provisions and sustainable development aspects in bilateral and regional free trade agreements*. Contract VC/2007/0638. European Commission. Employment, Social Affairs and Equal Opportunities DG, 2007, p. 12.

¹⁰ Jill Murray, Laurence Boisson de Chazournes, Jaemin Lee: *Panel of Experts Proceeding Constituted under Article 13.15 of the EU – Korea Free Trade Agreement*. Report of the Panel of Expert. 2021, paragraph 95, p. 27.

promoting CSR/Responsible Business Conduct (RBC)¹¹. In EU FTAs, CSR applies both to national obligations under international frameworks such as the OECD Guidelines for Multinational Enterprises, the United Nations Global Compact, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and to areas of cooperation between the parties¹². Indeed, this provision imposes a binding obligation on Member States to take the necessary measures and specific actions to establishing domestic legislation with appropriate instruments that holds enterprises accountable for their adhering to labour standards, especially due diligence¹³.

Regarding CLS, some of the principal obligations that the parties commit to fulfil are as follows:

The first, adopt or modify accordingly its relevant laws and policies in a manner consistent with the internationally recognised standards;

The second, reaffirms commitments to respect, promote and effectively implement the principles concerning the fundamental rights at work, in accordance with the obligations of ILO membership and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, namely:

- (a) the freedom of association and effective recognition of the right to collective bargaining (Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining);
- (b) the elimination of all forms of forced or compulsory labour (Convention No. 29 on Forced Labour and Convention No. 105 on the Abolition of Forced Labour);
- (c) the effective abolition of child labour (Convention No. 138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour);
- (d) the elimination of discrimination in respect of employment and occupation (Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (employment and occupation)).

The third, the Parties shall: (i) Make continued and sustained efforts towards ratifying the fundamental ILO conventions not yet ratified; (ii) consider the ratification of other conventions that are classified as up to date by the ILO, taking into account its domestic circumstances; (iii) exchange information with the other Party with regard to the ratifications the fundamental and other ILO conventions;

The fourth, each Party reaffirms its commitment to effectively implement in its domestic laws and regulations and practice the ILO conventions ratified. At the same time, the violation of fundamental principles and rights at work cannot be invoked or

¹¹ Marva Corley-Coulibaly, Ira Postolachi, Netsanet Tesfay: *A Multi-faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends*, ILO, 2022, p. 13-14.

¹² 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*. *Acta Universitatis Carolinae Iuridica*, 3/2024, 2024.

¹³ 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*. *Acta Universitatis Carolinae Iuridica*, 3/2024, 2024, p. 78.

otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

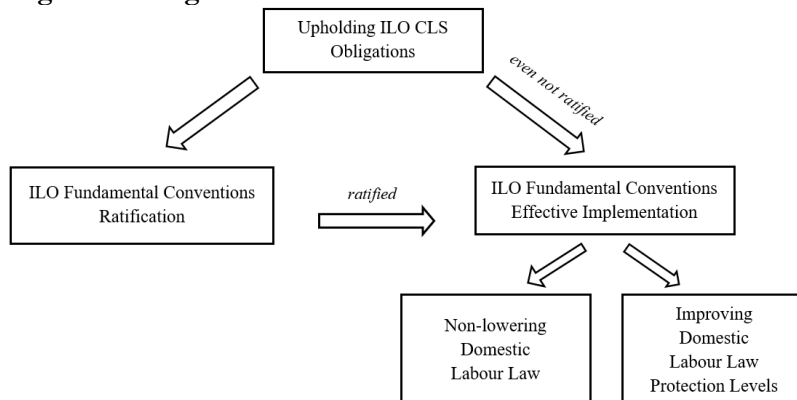
One point to be mentioned in this situation is that the obligations pertaining to CLS in the TSD Chapter include some critical aspects that need elucidation as follows:

Firstly, this commitment encompasses two primary obligations: (i) the obligation to “make continued and sustained efforts” to ratify the ILO core conventions; (ii) to ensure respect for, promotion and truthfully compliance of the CLS set out in the ILO conventions through domestic legislation and practice, regardless of ratification status¹⁴.

Secondly, the entitlement to institute a level of protection through domestic regulations or practices that is higher than, rather than lower than, the commitments to implement the ILO CLS and Conventions¹⁵, in particular not to lower them to encourage trade and investment¹⁶.

Thirdly, the implication of this obligation is a "best endeavours" requirement, necessitating maximum efforts that exceed mere minimal actions or inaction, yet fall short of mandating the exploration and mobilisation of all available measures at all times¹⁷. The objective is to ensure that domestic legal provisions align with the Convention, rather than merely striving for compatibility¹⁸.

Figure 2: Obligations related to CLS under labour commitments



Source: Authors analysis

¹⁴ Nguyen Tien Dung: EVFTA: Going Beyond Labour Commitments in a New-Generation Free Trade Agreement. *LESIJ*. XXXI, vol. 1/2024, 2024.

¹⁵ ILO: *Country Programme Review Viet Nam Decent Work Country Programme 2017-2021*. 2021, p. 28.

¹⁶ In other words, this obligation is also regarded as Labour regulatory sovereignty, according to this, all second-generation EU FTAs contain provisions on the domestic right to regulate in labour that prohibit derogations from domestic labour laws in order to promote trade/investment, however, this aspect is not available in the first-generation EU FTAs.

¹⁷ Jill Murray, Laurence Boisson de Chazournes, Jaemin Lee: Panel of Experts Proceeding Constituted under Article 13.15 of the EU – Korea Free Trade Agreement. Report of the Panel of Expert. 2021, paragraph 277, tr. 74

¹⁸ Steve Peers: Free Trade v Freedom of Association? The EU/South Korea Free Trade Agreement and the Panel Report on the EU Challenge to South Korean Labour Law. *EU Law Analysis: Expert insight into EU law developments*, 2021, EU Law Analysis: Free trade v freedom of association? The EU/South Korea free trade agreement and the panel report on the EU challenge to South Korean labour law, 8/8/2024.

3. Transformations and Evolving Paradigm of EU New-Generation Free Trade Agreements's Labour Commitment

3.1. Upholding CLS

Firstly, while the initial new-generation FTAs of the EU, namely EU-Korea FTA, EU-Central America FTA, CETA, EU-Japan EPA, EU-Singapore FTA, EVFTA, EU-UK TCA all use the ILO Declaration on Fundamental Principles and Rights at Work 1998, adopted at the 86th Session of the International Labour Conference as a reference point, certain EU FTAs signed post-2022, such as EU-Chile IAT, EU-Thailand FTA, explicitly reference to the revised ILO Declaration on Fundamental Principles and Rights at Work from its 110th Session in 2022. This has resulted in a significant adjustment of the content related to CLS, expanding from four to five fundamental standards, adding “safe and healthy working environment” in alignment with the revised Declaration. Conversely, the other FTAs, whilst still referencing to the 1998 Declaration, all require the enforcement of this fifth standard, for instance “*The Parties welcome the decision of the 110th International Labour Conference by which a safe and healthy working environment is added to the fundamental principles and rights at work. No later than at its first meeting the Trade Committee Trade Committee may adopt a decision to amend...accordingly to reflect this addition*” (Article 19.3(4) EU – New Zealand FTA). Essentially, the EU directs its partners to fulfil obligations stemming from their membership of the ILO. Regardless of the declaration, the parties consistently strive to ‘make continued and sustained efforts’ to ratify Conventions or Protocols classified according to the latest ILO update.

Secondly, four recent EU FTAs underscore the need of ratifying and effectively implementing the 2014 Protocol to the Forced Labour Convention, 1930, rather than just mandating pledges to the two basic conventions pertaining to forced labour, as was the case in prior new-generation EU FTAs. These include Article 26.17 of the EU-Chile IAT, Article 19.3(3) of the EU-New Zealand FTA, EU-Indonesia FTA and EU-Thailand FTA, which state: “*The Parties affirm the importance of ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, adopted at Geneva on 11 June 2014 by the International Labour Conference at its 103rd Session.*” The Forced Labour Protocol is a binding instrument requiring States Parties to implement adequate measures to prevent and provide victims with protection and access to appropriate and effective remedies, including compensation and punishment of perpetrators¹⁹. It necessitates heightened efforts to eradicate all manifestations of forced labour, including human trafficking²⁰. Above all, this Protocol reiterates the definition of forced labour as stated in Convention No. 29, while also affirming that this definition encompasses scenarios of trafficking for forced labour by mandating that measures enacted under the Protocol

¹⁹ ILO, Fundamental Principles and Rights at Work Branch: *ILO standards on forced labour–The new protocol and recommendation at a glance*. Geneva, 2016, p. 9.

²⁰ ILO: *Eliminating Forced Labour*. Handbook for Parliamentarians No. 30, 2019, p. 8.

incorporate targeted actions against human trafficking for the purpose of forced labour²¹.

Thirdly, the latest new-generation of EU FTAs increasingly contains broader and deeper commitments. They often broaden the range of fundamental labour standards referenced, also alluding to other international obligations to guarantee working conditions and safeguard workers (Table 2), which include the following commitments:

- (a) Safety and health at work, including the prevention of occupational accidents or diseases and compensation in case of such accidents or diseases;
- (b) Decent working conditions for all, with regard to, inter alia, wages and earnings, working hours, other conditions of work and social protection;
- (c) Non-discrimination in terms of working conditions, including for migrant workers;
- (d) Protect and promote social dialogue on labour matters among workers and employers and their respective organisations, and with relevant governmental authorities;
- (e) Maintain a labour inspection system in accordance with the relevant ILO standards on labour inspection.

Table 2: Labour standards in labour commitments

Trade Agreement	Freedom of association; Right to organise & collectively bargain	Forced labour elimination	Child labour abolition	Non-discrimination	Occupational health & safety	Migrant workers rights	Labour inspection	Decent working conditions	Social dialogue
EU-Korea	✓	✓	✓	✓					
EU- Col/Pe/Ecu	✓	✓	✓	✓					
EU-Central America	✓	✓	✓	✓					
EU – Canada	✓	✓	✓	✓	✓	✓		✓	
EU – Japan	✓	✓	✓	✓					
EU – Singapore	✓	✓	✓	✓					
EVFTA	✓	✓	✓	✓		✓			
EU – Anh	✓	✓	✓	✓	✓	✓		✓	✓
EU – Chile	✓	✓	✓	✓	✓		✓	✓	✓
EU – New Zealand	✓	✓	✓	✓	✓		✓	✓	✓
EU – Thailand	✓	✓	✓	✓	✓		✓	✓	✓
EU - Indonesia	✓	✓	✓	✓	✓	✓	✓	✓	

Source: Authors analysis

²¹ ILO, Fundamental Principles and Rights at Work Branch: *ILO standards on forced labour–The new protocol and recommendation at a glance*. Geneva, 2016, p. 9

3.2. Promoting DWA

Firstly, to tackle labour issues in the modern context, EU FTAs typically refer to newly adopted international legal instruments related to DWA such as the revised 2022 version of the ILO Declaration on Social Justice for a Fair Globalisation (EU-Chile IAT and EU-Thailand FTA) instead of using the Declaration adopted at the 97th International Labour Forum in Geneva on 10 June 2008 like most previous new generation EU FTAs. The EU-Thailand FTA even mentions to ILO Centenary Declaration for the Future of Work from its 108th session in Geneva on June 21, 2019.

Secondly, in contrast to the aspirational provisions of numerous EU FTAs that acknowledge the role of achieving full, productive and decent work for all in responding to the challenges and opportunities presented by globalisation, recent FTAs concentrate on specific sectors, including impose binding obligations on parties to ensure that their labour laws and practices advance the objectives of the DWA. In this case, the EU–Thailand FTA, Article 19.3(8) of the EU–New Zealand FTA and Article 399(6) of the EU–UK TCA, and Article 23.3(2) of the EU–Canada CETA all provide that: “*Each Party shall promote the DWA through its laws and practices*”. In this view, in the EU Impact Assessment Report on Vietnam on EVFTA, the EU highlighted its objective to advance and enforce the DWA via national legislation and practices, despite it not being explicitly regulated²². From a legislative perspective, these variations indicate a propensity to enforce international responsibilities for the incorporation of international decent work frameworks into national legislation, while also demonstrating a growing commitment to decent work among the agreement members²³.

Thirdly, the trend of cooperation on DWA is progressively broadening across multiple fields that involve enhancing employment and safeguarding working conditions for employees. Taking into account the key areas of cooperation in all new-generation FTAs include the fundamental pillars of decent work, namely: (i) the inter-linkage between trade and full and productive employment; (ii) CLS; (iii) social protection and social inclusion; (iv) social dialogue; and (v) gender equality. It is worth mentioning that EVFTA is the only new-generation FTA that affirms a commitment to cooperation on linkages between trade and full and productive employment for all, including youth, women and people with disabilities, or a commitment to social protection for all, including vulnerable and disadvantaged groups, such as migrant workers, women, youth and people with disabilities. This agreement even affirms a commitment to cooperation on other labour standards, beyond CLS. Beyond that, this approach is also extended to other areas associated with the labour market, ranging from: labour market adjustment; labour statistics; human resource development and lifelong learning; skills development. It can also be seen that occupational health together with safety and labour inspection are not only CLS commitments but also an

²² *Commissions Services' Annex on Vietnam to the Position Paper on the Trade Sustainability Impact Assessment of the Free Trade Agreement between the EU and ASEAN*, p. 7.

²³ Nguyen Tien Dung, Nguyen Thi Thanh Huyen: Integrating Decent Work in New Generation Free Trade Agreements of the European Union: A Perspective from EVFTA. *Vietnamese Journal of Legal Sciences*, 11(138)/2024, 2024.

area of cooperation, through improving compliance and enforcement mechanisms. In other words, the current wave of responsible supply chain management has led to the inclusion of decent work in global supply chains as a focal area of collaboration in several EU FTA. It is worth noting that the areas of cooperation in the EU-Chile IAT distinctly illustrate the correlation between trade and labour policies towards the goal of promoting employment, while simultaneously tackling labour market challenges with flexibility, among others²⁴:

- (i) Job creation and the promotion of productive, high-quality employment, including policies to generate job-rich growth and promote sustainable enterprises and entrepreneurship;
- (ii) Promotion of improvements in business and labour productivity, in particular in respect of small and medium-sized enterprises;
- (iii) Human capital development, access to labour market and the enhancement of employability, in particular of young people, including through lifelong learning and vocational training, continuous education, training and the development and upgrading of skills, including in emerging and environmental industries;
- (iv) Work-life balance and innovative workplace practices to enhance workers' well-being;
- (v) Promotion of the awareness of the ILO Decent Work Agenda;
- (vi) Promotion of decent quality jobs through trade, including the safety and health at work of pregnant workers and workers who have recently given birth;
- (vii) Addressing the challenges and opportunities of a diverse, multigenerational workforce, including through the: Promotion of equality and elimination of discrimination in respect of employment and occupation; and protection of vulnerable workers.
- (viii) Improving labour relations, for example, through the exchange of best practices in alternative dispute resolution and tripartite consultation.

²⁴ Article 26.18 EU – Chile IAT.

Table 3: List of areas of cooperation of promoting Decent Work Agenda

Trade agreement	Inter-linkage between trade and full and productive employment	Labour market adjustment	Core labour standards	Other international labour standards	Labour statistics	Human resources development and lifelong learning	Social protection & Social inclusion	Social dialogue	Gender equality	Decent work in global supply chains	Occupational safety and health	Labour inspection	Skills development	Others
EU- Korea	✓	✓	✓		✓	✓	✓	✓	✓					
EU- Col/Pe/Ecu	✓	✓	✓				✓	✓						
EU- Central America														✓
EU – Canada														✓
EU – Japan														✓
EU – Singapore	✓	✓	✓		✓	✓	✓	✓	✓					
EVFTA	✓	✓	✓	✓	✓	✓	✓	✓	✓					✓
EU – Anh	✓	✓	✓				✓	✓	✓	✓				
EU – Chile	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU – New Zealand	✓	✓	✓				✓	✓	✓	✓				
EU – Thailand	✓	✓	✓				✓	✓	✓	✓				
EU - Indonesia	✓	✓	✓				✓		✓	✓	✓	✓	✓	

Source: Authors analysis

3.3. Promoting CSR

Firstly, the most notable alteration in current EU new-generation FTAs is the inclusion of a distinct CSR clause, which encompasses a broader scope of RBC including responsible supply chain management, rather than treating CSR just as a cooperative area as seen in earlier EU FTAs. It was also demonstrated how the parties agree to recognise the significance of RBC and CSR initiatives, including the management of a responsible value chain. To conclude, this illustrates the significance of CSR in EU bilateral trade agreements.

Table 4: Location of CSR/RBC clauses

Trade agreement	One provision	In other provisions
EU- Korea		✓
EU- Col/Pe/Ecu		✓
EU- Central America		✓
EU – Canada		✓
EU – Japan		✓
EU – Singapore		✓
EVFTA		✓
EU – Anh	✓	
EU – Chile	✓	
EU – New Zealand	✓	
EU – Thailand	✓	
EU - Indonesia	✓	

Source: Authors analysis

Secondly, beyond the ‘soft’ language encouraging parties to consider internationally accepted instruments, recent FTAs explicitly require ‘adherence, implementation, follow-up and dissemination of relevant international instruments’. Notably, the EU-Thailand FTA incorporates sector-specific guidelines and obligates parties to promote the application of the OECD Due Diligence Guidelines, which can be found in Article 26.3(3) EU-Chile IAT, Article 19.12(3) EU-New Zealand FTA, Article 406(3) EU-UK TCA. It should be added that the EU has adopted the Directive on Due Diligence of Enterprises and the Proposal on the Prohibition of Products Made with Forced Labour, and has required partner countries to ensure consistency with these EU initiatives²⁵.

Thirdly, tracing back to the CSR provision in the EVFTA is assessed as demonstrating progress in the EU's objectives, however it just acknowledges “*in accordance with their domestic laws or policies agree to promote CSR*”²⁶. Compared to previous EU FTAs, the nature of the obligations of the members of the agreement is delineated as providing supportive policy frameworks, in accordance with national law or policy, to encourage businesses to apply relevant practices, through the provision: “*promote RBC and CSR, including responsible value chain management, by providing supportive policy frameworks that encourage the uptake of relevant practices by businesses*” (Article 406(2)(a) EU - UK TCA, EU - Thailand FTA, EU - New Zealand FTA).

4. Future Implementation Labour Commitment in Vietnam

First, continue to ratify the fundamental international conventions and other ILO conventions

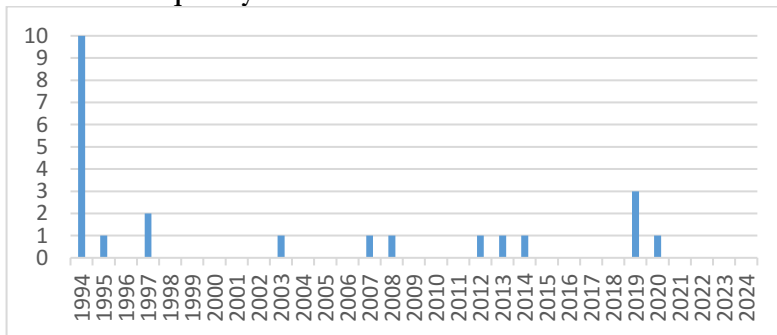
Vietnam has achieved complete ratification of the ILO fundamental conventions. Stemming from Vietnam has ratified 25 treaties and is obligated by 23 ILO

²⁵ EU Domestic Advisory Group under the EVFTA: Statement from the European Union Domestic Advisory Group, 2023, eu-vn_dag_-_3rd_dag-to-dag_meeting_2023_-_eu_dag_statement_final.pdf (europa.eu), 02/10/2024.

²⁶ Article 13.10(2)(e) EVFTA.

conventions. Noting that Vietnam has ratified 9 out of 10 fundamental conventions, with the exception of Convention No. 87, which remains unratified. Among the ILO Governance Conventions, Conventions No. 81, No. 122, and No. 144 have been ratified, whilst Convention No. 129 remains unratified²⁷. While this indicates Vietnam's preparedness to meet its international commitments²⁸ (Figure 3), the postponement in ratifying the fundamental conventions to which Vietnam has pledged as a participant in the EVFTA may result in numerous future repercussions, including delays in the incorporation of ILO conventions or additional conflicts akin to the one between the EU and Korea. It so happens that Vietnam's primary task is to promptly ratify ILO Convention No. 87, contemplate the ratification of further conventions, particularly the DWA extension treaties, and include the requirements while ensuring their effective implementation in practice²⁹.

Figure 3: Time and frequency of ratification of ILO Conventions in Vietnam



Source: Authors analysis

Second, strengthen the implementation of procedural commitments and institutional mechanisms in labour commitments

As mentioned, in addition to the substantive commitments, the labour commitments in the EVFTA also contain commitments on procedures and institutional mechanisms. This means that to effectively execute the labour commitments of the EVFTA, it is essential to enhance cooperative efforts through technical assistance, capacity building, knowledge dissemination, and training in the development and finalisation of the legal framework, alongside the implementation of labour commitments between Vietnam, the EU, and EU member states³⁰. Simultaneously with the establishment of a cooperation mechanism, Vietnam must also enhance systems for monitoring the execution of labour commitments via the TSD Committee, and augment information exchange and goodwill to fulfil recommendations from the annual

²⁷ ILO: International Labour Standards country profile: Viet Nam (ilo.org), 02/10/2024.

²⁸ ILO: *Country Programme Review Viet Nam Decent Work Country Programme 2017-2021*, 2021, p. 71.

²⁹ Nguyen Tien Dung, Nguyen Thi Thanh Huyen: Integrating Decent Work in New Generation Free Trade Agreements of the European Union: A Perspective from EVFTA. *Vietnamese Journal of Legal Sciences*, 11(138)/2024, 2024.

³⁰ Hung Nguyen Xuan, Huyen Nguyen: Trend in the Development of Labour Commitment in the EU FTA – Policy Implication for Vietnam, *International Conference on Science, Innovations and Global Solutions*, 2024, p. 437.

Joint Forums between the DAG of Vietnam and the EU. During the third meeting between the Vietnam and EU DAGs, the EU DAG urged Vietnam to promptly ratify Convention No. 87, encouraged the ratification of Protocol No. 29, and reminded Vietnam of its obligation to adhere to the stipulations of the TSD Chapter.

***Third, strengthen the capacity to implement labour commitments*³¹**

*Firstly, develop, implement and allocate resources for National Action Plans on the implementation*³² of the contents of the labour commitments. Alongside to developing legal frameworks under domestic laws, National Action Plans operate as the mechanisms for the practical implementation of labour commitments. With regard to DWA, Vietnam has launched national strategies on decent work, targeting on a set of priorities to achieve objectives, including promoting basic rights and principles at work. Since Vietnam rejoined the ILO in 1992, Vietnam and the ILO have been carrying out four framework programs on decent work, such as: (1) a cooperation programme to support Vietnam in developing its Labour Code when Vietnam had to create a new legal framework to govern the labour market as part of the Doi Moi process (1994); (2) Decent Work Country Programme in Viet Nam, 2012–2016; (3) Decent Work Country Programme in Viet Nam, 2017-2021 (4) Decent Work Country Programme in Viet Nam, 2022-2026³³. Parallely, the Program on Prevention and Reduction of Child Labour for the 2021-2025 period, with a vision to 2030, is being executed with the objective of preventing, identifying, supporting, and intervening in cases of unlawful child labour and children at risk of getting involved in such labour³⁴. Apart from that, Vietnam has also issued the first National Action Program related to CSR called 'National Action Plan for Enhancing Responsible Business Practices in Viet Nam' for the 2023-2024 period³⁵. It is also worth noting that the US Department of State has recommended the implementation of the National Action Plans to Eliminate Forced Labour and the National Action Plan to Combat Trafficking in Persons in Vietnam³⁶.

*Secondly, strengthening the capacity of the labour inspection system*³⁷. Labour inspection has emerged as a significant aspect of labour commitment in the recent new-generation FTA of the EU. The EU and ILO see the Labour Inspection Convention. 1947 (No. 81) and the Labour Inspection Convention (in agriculture) 1969 (No. 129) as essential

³¹ Decision No. 1061/QĐ-LĐTBXH dated September 3, 2020 promulgating the Plan for implementing the Free Trade Agreement between Vietnam and the European Union (EVFTA) of the Ministry of Labor, War Invalids and Social Affairs.

³² Decision No. 1061/QĐ-LĐTBXH dated September 3, 2020 promulgating the Plan for implementing the Free Trade Agreement between Vietnam and the European Union (EVFTA) of the Ministry of Labor, War Invalids and Social Affairs.

³³ ILO: ILO, Viet Nam agree on new cooperation framework in employment, social protection, and labour market governance. 2023, ILO, Viet Nam agree on new cooperation framework in employment, social protection, and labour market governance | International Labour Organization, 02/10/2024.

³⁴ Decision No. 782/QĐ-TTg dated May 27, 2021 of the Prime Minister approving the Program on prevention and reduction of illegal child labor for the period 2021 - 2025, with a vision to 2030.

³⁵ BakerMcKenzie: Vietnam: Operationalizing ESG - The National Action Plan for promoting Responsible Business Practices. 2024, Vietnam: Operationalizing ESG - The National Action Plan for promoting Responsible Business Practices - Baker McKenzie InsightPlus, 02/10/2024.

³⁶ Vietnam - United States Department of State, 02/10/2024

³⁷ Decision No. 1061/QĐ-LĐTBXH dated September 3, 2020 promulgating the Plan for implementing the Free Trade Agreement between Vietnam and the European Union (EVFTA) of the Ministry of Labor, War Invalids and Social Affairs.

governance treaties warranting adoption and effective implementation³⁸. It's important to clarify that's the legislative framework governing labour inspection in Vietnam's industry and trade has mostly aligned with the norms set out in Convention No. 81³⁹. Nonetheless, a thorough investigation into the existence of forced labour, the identification and management of discrimination and interference, as well as the manipulation of grassroots workers' representative organisations, has not been conducted; furthermore, a mechanism for gathering information on various forms of forced labour has yet to be established⁴⁰. This is how the ILO asserts the need of enhancing the allocation of people and material resources to labour inspectors to successfully execute their inspection duties regarding the enforcement of labour obligations⁴¹.

Third, thoroughly execute the need to regularly report to the nation about the application of the basic conventions and other ILO agreements. Given that Vietnam diligently fulfils its commitment to report on ILO conventions. These reports address both the incorporation of the conventions' provisions into the Vietnamese legal framework and the practical application of these treaties. Besides, the reporting process has experienced numerous modifications; reports are constructed not solely on the outcomes of meetings, consultation workshops, and discussions among ministries, branches, authorities, organisations, and tripartite labour relations partners, but also through investigations and field surveys pertaining to core conventions. It should come as no surprise that the ILO Vietnam Office evaluates that the execution of Vietnam's reports progressively aligns with the expert committee's standards. Nevertheless, several factors contribute to the situation: (i) the absence of a standardised procedure for report draughting; (ii) the lack of clear and rational delineation of coordination and responsibilities among pertinent authorities in the report development process; (iii) Vietnam's incomplete information database system, characterised by insufficient data, with information from the Ministry and various branches being fragmented and lacking specificity. In response to this, Vietnam must sustain and further execute this initiative, in addition to enhancing the quality of reporting in both legal and practical dimensions. As well as, Vietnam must establish a database about the conventions to which it is a signatory, together with the reporting mechanism⁴².

Fifth, issue regulations that are binding on social responsibilities.

The design of labour commitments in recent new-generation EU FTAs is markedly transitioning towards the private sector via binding commitment that promote

³⁸ ILO: *Normative Stock-taking for Decent Work in Viet Nam 2020*. 2020, p. 53; EU Domestic Advisory Group under the EVFTA: Statement from the European Union Domestic Advisory Group, 2023, eu-vn_dag_-_3rd_dag-to-dag_meeting_2023_-_eu_dag_statement_final.pdf (europa.eu), 02/10/2024.

³⁹ Report No. 142/BC-LDTBXH dated October 5, 2021 on the implementation of Decision No. 2528/QD-TTg.

⁴⁰ Nguyen Thi My Linh, Vu Cong Giao: Implementing the decision of the 2013 Constitution on the abolition of forced labour. *Scientific Workshop on Evaluation of 5 Years of Implementation of the Constitution of the Socialist Republic of Vietnam in 2013*, Hanoi, 2018, p. 339.

⁴¹ Comments (ilo.org), 02/10/2024.

⁴² Report No. 142/BC-LDTBXH dated October 5, 2021 on the implementation of Decision No. 2528/QD-TTg.

private sector collaboration with the Government in adhering to labour regulations⁴³. In light of this, Vietnam is making active efforts beyond the legal aspect to support businesses, business associations, and suppliers to strengthen responsible supply chain management. Noting that Vietnam was selected as one of the 15 pathfinder countries of the Global Alliance to Ending Forced Labour, Modern Slavery, Human Trafficking, and Child Labour⁴⁴ due to its support for sub-regional, regional and global initiatives on the elimination of child labour, forced labour and human trafficking⁴⁵. Not only that, Vietnam has strong commitments, demonstrated through forums ‘Responsible Business Conduct for Vietnam's Thriving Next Generation’⁴⁶, proposals to build programs ‘Viet Nam Award towards Child Labour Free Business’, or certifications targeting enterprises striving to eradicate child labour within their supply chains⁴⁷.

With respect to the legal framework on this issue, one key point should be noted that the EU requires Vietnam to align with EU initiatives, especially recent proposals. So, to be in line with the EU's legislative paradigm, first of all, Vietnam must formulate a distinct legal framework for enterprise appraisal with the objectives of: (i) broadening the range of enterprises required to disclose labour information beyond those listed on the stock market; (ii) elucidating the components of labour-related policies, including the identification of labour risks associated with CLS in business operations and the establishment and execution of risk mitigation strategies; (iii) specifying the responsibilities of the board of directors in enterprise appraisal processes⁴⁸. Vietnam must proactively establish a ‘Responsible Sourcing Policy’ to eliminate forced labour and child labour within the supply chain, implement a ‘Social Labelling Policy’, and refrain from importing items manufactured via forced labour and child labour⁴⁹.

5. Conclusion

This study has analysed a limited sample of second-generation EU FTAs to identify emerging patterns in employment obligations in both recently completed agreements and ongoing negotiations for future EU FTAs. The research evaluated the modifications of EU FTAs in relation to three key elements of labour commitments:

⁴³ Hung Nguyen Xuan, Huyen Nguyen: Trend in the Development of Labour Commitment in the EU FTA – Policy Implication for Vietnam, *International Conference on Science, Innovations and Global Solutions*, 2024, p. 437

⁴⁴ ILO: *National strategic planning workshop to develop a roadmap to achieve Target 8.7*. 2019, National strategic planning workshop to develop a roadmap to achieve Target 8.7 | International Labour Organization (ilo.org), 2/10/2024.

⁴⁵ Alliance 8.7: *Vietnam Annual Pathfinder Progress Report May 2020-April 2021*. 2021, p. 22.

⁴⁶ Vietnamplus: *Responsible businesses for Vietnam's thriving next generation: forum*. 2023, Responsible businesses for Vietnam's thriving next generation: forum | Vietnam+ (VietnamPlus), 02/10/2024.

⁴⁷ Alliance 8.7: *Vietnam Annual Pathfinder Progress Report May 2020-April 2021*. 2021, pp. 15-16.

⁴⁸ Nguyen Tien Dung, Nguyen Xuan Thu, Nguyen Thi Thanh Huyen: Corporate Social Responsibility on Labour under the European Union – Vietnam Free Trade Agreement and Policy Implications for Vietnam. *VNU Journal of Science: Legal Studies*. 40(3), 2024, p. 35

⁴⁹ Nguyen Tien Dung, Nguyen Thi Thanh Huyen: Elimination of Forced or Compulsory Workers under Vietnam's Law, Viewpoints from the European Union and Some Member Countries. *Legal Professions Review*, 4/2023, 2023, p. 81, 90.

CLS, DWA, and CSR. The evolving legal framework of the ILO and the EU significantly impacts the development trend of labour obligations in FTAs. EU policy specifically transitions from non-binding agreements to legally binding commitments. The research then suggests many policy implications for Vietnam and other countries that have signed or are in the process of negotiating FTAs with the EU, considering the numerous changes and more stringent legislative rules.

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