

# Towards a stronger EU approach on the trade-labour nexus? Pre- and post-ratification impacts, domestic labour reforms and social struggles in the context of the EU-Vietnam Free Trade Agreement

**Kristoffer Marslev**

Department of Social Sciences and Business, Roskilde University, Denmark, and  
Department of Development Studies, University of Vienna, Austria

**Cornelia Staritz**

Department of Development Studies, University of Vienna, Austria

Email corresponding author: [marslev@ruc.dk](mailto:marslev@ruc.dk)

**Paper prepared for presentation at the**

**“7th Conference of the Regulating for Decent Work Network”**

**Virtual Conference, International Labour Office Geneva, Switzerland**

**6-9 July 2021**

## **Abstract**

The EU-Vietnam Free Trade Agreement (EVFTA) seems to deviate from the poor track record of ‘trade and sustainable development’ (TSD) chapters in EU FTAs. Ahead of ratification, Vietnam embarked upon pathbreaking reforms, culminating in a new labor code and accession to outstanding ILO core conventions. This article assesses the pre-ratification impact of the EVFTA on these reforms as well as potential post-ratification impacts through the civil society mechanisms (CSMs) that are an integral part of EU FTAs. Building on literatures on the trade-labor nexus and externalization of EU governance, we call for a more comprehensive analysis of power dynamics in partner countries and address the lacunae by embedding FTAs and labor reform in a strategic-relational conceptualization of states. We argue that the pre-ratification success of the EVFTA was the outcome of specific conjunctures of socio-political forces in, and outside of, state institutions on both sides, and their mediation across transnational space. Amid free trade skepticism in the EU, particular members of the Parliament and the

Council wielded their veto powers to negotiate with Vietnam and pull the Commission into a stronger position. In Vietnam, the external pressure resonated with internal struggles and empowered reformists to drive forward labor reforms within the party-state. However, these reforms still need to be implemented, for which sustained external pressure and the institutional mechanism of the EVFTA could be supportive. In the authoritarian-communist system in Vietnam, the establishment of the CSM, including a domestic advisory group (DAG) made up of independent civil society organizations, is unprecedented, but it remains to be seen how it is implemented. The Vietnamese party-state is scrutinizing the text of the FTA and is reassessing the concessions it is willing to make, while the few independent labour NGOs are skeptical to apply for the DAG. The Commission seems to take the TSD chapter more seriously also post-ratification but has limited leverage in this phase. While this outcome supports pre-ratification conditionality in labor clauses, given the much stronger bargaining position that the EU has at this stage, it also stresses the importance of social struggles in the EU and particularly partner countries to leverage such clauses.

**Keywords:** Labour clauses, Free trade agreements, EU, Vietnam, labour reform

*Copyright 2021 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.*

# **Towards a stronger EU approach on the trade-labour nexus? Pre- and post-ratification impacts, domestic labour reforms and social struggles in the context of the EU-Vietnam Free Trade Agreement**

**PRELIMINARY DRAFT**

**PLEASE DO NOT CIRCULATE**

Kristoffer Marslev, Roskilde University and University of Vienna

Cornelia Staritz, University of Vienna

## **Abstract:**

The EU-Vietnam Free Trade Agreement (EVFTA) seems to deviate from the poor track record of ‘trade and sustainable development’ (TSD) chapters in EU FTAs. Ahead of ratification, Vietnam embarked upon pathbreaking reforms, culminating in a new labor code and accession to outstanding ILO core conventions. This article assesses the pre-ratification impact of the EVFTA on these reforms as well as potential post-ratification impacts through the civil society mechanisms (CSMs) that are an integral part of EU FTAs. Building on literatures on the trade-labor nexus and externalization of EU governance, we call for a more comprehensive analysis of power dynamics in partner countries and address the lacunae by embedding FTAs and labor reform in a strategic-relational conceptualization of states. We argue that the pre-ratification success of the EVFTA was the outcome of specific conjunctures of socio-political forces in, and outside of, state institutions on both sides, and their mediation across transnational space. Amid free trade skepticism in the EU, particular members of the Parliament and the Council wielded their veto powers to negotiate with Vietnam and pull the Commission into a stronger position. In Vietnam, the external pressure resonated with internal struggles and empowered reformists to drive forward labor reforms within the party-state. However, these reforms still need to be implemented, for which sustained external pressure and the institutional mechanism of the EVFTA could be supportive. In the authoritarian-communist system in Vietnam, the establishment of the CSM, including a domestic advisory group (DAG) made up of independent civil society organizations, is unprecedented, but it remains to be seen how it is implemented. The Vietnamese party-state is scrutinizing the text of the FTA and is reassessing the concessions it is willing to make, while the few independent labour NGOs are skeptical to apply for the DAG. The Commission seems to take the TSD chapter more seriously also post-ratification but has limited leverage in this phase. While this outcome supports pre-ratification conditionality in labor clauses, given the much stronger bargaining position that the EU has at this stage, it also stresses the importance of social struggles in the EU and particularly partner countries to leverage such clauses.

## Introduction

The job crisis caused by COVID-19 has once again exposed the vulnerability of workers in global production networks (GPNs) and the need for effective tools for protecting labour standards. An approach that has gained recent popularity, and which represents a rare public governance mechanism on a regulatory scene dominated by private regimes, is the inclusion of labour clauses in free trade agreements (FTAs). Since 2015, all EU FTAs with third countries have contained chapters on “trade and sustainable development” (TSD), linking market access to respect for international labour and environmental standards. The EU follows a promotional approach to the trade-labor nexus focusing on dialogue and cooperation, assigning the role of monitoring the implementation of the TSD provisions to a set of civil society mechanisms (CSMs), including ‘domestic advisory groups’ (DAGs) in the EU and partner countries and joint civil society fora for transnational dialogue. Prior research has identified a series of weaknesses of labour clauses in FTAs generally and specifically of the EU approach, critiquing its lack of pre-ratification conditionality, its allegedly toothless sanction-free dispute settlement and practically every aspect of the CSMs (for an overview, see Harrison et al. 2018; 2019).

In this paper, we contribute to this literature by examining the effectiveness of the EU-Vietnam FTA (EVFTA), which entered into force in August 2020. Our assessment focuses on two levels – the pre-ratification and the post-ratification phase. Regarding its pre-ratification impact, the EVFTA seems to be a deviation from the EU’s poor track record as the Vietnamese party-state embarked upon path breaking reforms of its labor and industrial relations laws ahead of ratification, including the ratification of, or plan to ratify, outstanding ILO core conventions. On paper, this led to a remarkable departure from the existing trade union structure, where the Vietnam General Confederation of Labor (VGCL), as the only legally permitted worker representative, is subordinated to the Vietnamese Communist Party (VCP) and not directly accountable to workers. Regarding post-ratification impacts, the institutional mechanisms, including the CSMs, are just being set up at the EU and Vietnam level. This process is rather unprecedented in Vietnam given the context of its authoritarian-communist system, and the composition of the Vietnamese DAG will have an important bearing on its functioning. The Vietnamese context will create different opportunities and constraints for civil society than in the democratic settings of other countries with similar CSMs.

Our conceptual point of departure is a critique of the literature on the trade-labor nexus in FTAs for focusing too narrowly on the legal and institutional details of FTAs and labour clauses (as important as they are). This leads to paying insufficient attention to relations to, and power dynamics in, partner countries in FTAs. We argue that understanding the potential of TSD chapters in FTAs for stimulating pro-labour reform – pre- and post-ratification – requires an appreciation of their embeddedness in

both GPNs and specific political economy contexts, state-society relations and geopolitical and -economic positions around FTAs and labor reform in partner countries. A question of particular importance is whether the external pressure brought to bear on the partner country resonates with internal social struggles and can be leveraged by reformist actors to amplify their influence on, and within, the state.

Against this backdrop, we examine the role of the EVFTA in labor reforms and struggles in Vietnam prior to ratification by linking developments related to the EVFTA with domestic reform processes and power dynamics within and outside the Vietnamese state, and whether the CSMs established under the EVFTA post-ratification offer new avenues of state-society interaction, with strategic relevance to actors engaged in domestic labour struggles in Vietnam. As these institutions are in the process of being set up, we can only assess this process and the perceptions of pro-labour actors in Vietnam and the EU.

Methodologically, the paper draws on official documents, recordings of parliamentary debates, voting records and commentaries to track the decision-making process in the EU, and, similarly, use legal documents, political decisions and administrative directives to map the law-making process in Vietnam. The analysis is further informed by interviews with stakeholders involved in, or having insights into, the negotiation and pre-ratification process of the EVFTA and/or the Vietnamese labor reforms, as well as in the establishment and operation of the CSMs. During fieldwork in Brussels in November 2019, we interviewed representatives of the European Commission, the European Parliament, the European External Action Service, the European Economic and Social Committee, diplomatic missions from selected member states and relevant expert groups, business associations, trade unions, NGOs and researchers. In 2020 and 2021, online interviews were conducted with national and international civil society organizations and labor experts in Vietnam, as well as with representatives of the ILO in Hanoi and Geneva. Civil society organizations were chosen based on a mapping of organizations working on labour issues that could be considered likely to join the Vietnamese DAG.

Following this introduction, section 2 gives an overview of different approaches to the trade-labor nexus and introduces our conceptual approach, linking the literature on externalization of EU governance with a strategic-relational conceptualization of the state. This is followed by an overview of the development of the EVFTA in section 3, including the content of the TSD chapter. Over the next two sections, our empirical analysis discusses, first, the pre-ratification phase and, second, the post-ratification phase, discussing processes at the EU level, the Vietnam level and regarding transnational actors and dynamics. The last section concludes on what can be learnt for other FTAs and labour governance.

## **The trade-labor nexus, state power and domestic struggles**

This section, firstly, provides an overview of different approaches to labor provisions in FTAs, focusing on the prototypes of US and EU FTAs. This more empirical overview is, secondly, linked to conceptual debates on the externalization of EU governance and the external power of the EU. The limited focus on partner country dynamics is pointed out and provides the basis for, thirdly, developing our own conceptual approach.

### ***FTAs and the trade-labor nexus***

After failed attempts to introduce labor provisions at the multilateral level of the WTO in the 1990s, labor clauses have increasingly been integrated into FTAs (ILO and ILS 2013). The US, having included social clauses in its trade regulation since 1983, is considered the pioneer. In 1994, the North American Free Trade Agreement (NAFTA) became the first FTA to regulate labor and environmental aspects, through a dedicated side agreement, and still serves as a prototype for US FTAs<sup>1</sup>. Inspired by the US, the EU included labor standards in its generalized scheme of preferences (GSP) in the mid-1990s and in its FTAs from the late-1990s, albeit with varying scope and content. The use of labor clauses by the EU has widened and deepened, especially after the Treaty of Lisbon in 2009 elevated trade policy to an exclusive EU competence and granted the European Parliament, an institution that has pushed for the inclusion of labor and human rights concerns, a greater role in trade policy-making (Van den Putte et al. 2015). From the 2011 EU-Korea FTA onwards, labor provisions (supplemented by environmental standards) have been included in so-called TSD chapters; and this approach was aligned and made mandatory with the 2015 ‘Trade for All’ strategy (Harrison et al. 2018). TSD provisions have, thus, become an integral part of a new generation of EU FTAs and were, as of June 2021, present in 12 agreements with a total of 22 countries.

The US and EU approaches are often portrayed as opposing paradigms related to their different enforcement mechanisms. The US approach is the classical example of a conditional strategy, where partner countries must meet certain labor standards *before* the agreement comes into effect (pre-ratification conditionality) and/or can be sanctioned for violations after implementation (post-ratification conditionality). As the constitutional competence over trade policy resides with Congress, which insists on the prior fulfilment of certain labor standards by partner countries in the mandates delegated

---

<sup>1</sup> The new US-Mexico-Canada Agreement, which replaced NAFTA in July 2020, may become the new prototype though.

to the President, pre-ratification conditionality is awarded high priority by US negotiators. After ratification, complaints over labor issues are covered by the same dispute settlement procedure as the commercial provisions of the FTA and can unleash penalties if violations are found (ILO and ILS 2013).

The EU approach is the classical example of a promotional strategy and is ‘at once more expansive and more limited’ (Vogt 2015, 849). It is wider in scope, as it refers to a broader set of normative instruments, including the ILO core conventions; but more limited, as the EU has – with a few partial exceptions<sup>2</sup> – refrained from imposing pre-ratification conditions on TSD obligations, nor linked compliance to economic sanctions or incentives. As Vogt (2015, 828) notes, ‘the EU has a general institutional predisposition against making demands on trade partners, seeking instead to offer technical cooperation and dialogue’. Post-ratification monitoring is assigned to a set of institutional dialogue mechanisms comprising an inter-governmental committee, and a civil society mechanism involving ‘domestic advisory groups’ within each trading partner (representing business, trade unions and NGOs) and a joint dialogue forum to facilitate transnational cooperation. TSD provisions are exempted from the general sanction-based dispute settlement mechanism, but subject to a separate procedure consisting of government consultations and, if necessary, the establishment of panels of experts, none of which can apply sanctions.

Scholars have criticized the juxtaposition of the EU and US approaches for overshadowing important similarities – the focus on core labor standards, dispute settlement involving inter-governmental dialogue and expert panels, civil society participation in monitoring and development programs to support implementation (Harrison et al 2018). Specifically, the inclusion of civil society actors in FTAs has become common in the past three decades. Since 1994, NAFTA has set the model for civil society involvement in US and Canadian FTAs, establishing CSMs for dialogue, reporting and accountability. A key element that sets US and Canadian FTAs apart from the EU’s approach is the ability of non-state actors to file complaints over non-compliance with labour provisions (ILO 2017). In the case of the US, labour provisions of all FTAs are overseen by a single, permanent advisory body, the National Advisory Committee for Labor Provisions of US Free Trade Agreements, convening once or twice per year. Two key characteristics of EU FTAs, in contrast, are that they establish agreement-specific advisory groups in both trading partners, so-called DAGs, and also contain a mechanism of transnational civil society dialogue (ILO 2017).

---

<sup>2</sup> In the Columbia-Peru FTA, the European Parliament called for a binding roadmap on Columbia’s implementation of human, environmental and labour rights. While an action plan was submitted by Columbia in 2012, neither the Parliament nor the Commission demanded any proof of compliance (Vogt 2015). For Malaysia, Garcia and Masselot (2015) argue that the EU’s insistence on core labour standards during FTA negotiations set in motion an internal legal review and procedures aimed at ratification of ILO conventions on freedom of association and discrimination. They were, however, not ratified in the end, and negotiations were put on hold in 2012.

The two approaches also share common limitations. Regarding post-ratification conditionality, research has pointed out limited effectiveness of sanction-based approaches due to excessive standards of proof (ILO and ILS 2013; Vogt 2015). Of the 47 complaints filed under five US FTAs by the end of 2020 (40 under NAFTA) (Department of Labor 2021), the Department of Labor has formally investigated seven, with only one – the case against Guatemala under CAFTA-DR – having proceeded to a dispute settlement panel; and in this case, the dispute was rejected by the panel, which opined that although Guatemala failed to enforce certain labor laws, this was neither ‘sustained or reoccurring’ nor ‘in a manner affecting trade’ (Congressional Research Service 2020). Summarizing studies on the effectiveness of the EU’s TSD chapters, Harrison et al. (2018) find no evidence of positive impacts on labor standards in neither the EU nor in partner countries and identify a series of weaknesses of practically every aspect of the dialogue-based monitoring and enforcement mechanisms. Based on a survey of 124 DAG member organizations (50 EU, 74 non-EU), Martens et al. (2020) find that the DAGs have largely failed to fulfil their monitoring role, due to both a lack of resources and a ‘accountability deficit’ in their relations with governments (5). Together, this situation ‘undermines civil society efforts to monitor adequately’ and ‘leads to a very limited policy impact’. The EU has in only one case, the EU-South Korea FTA – and only after eight years of sustained complaints by trade unions and other civil society actors – requested formal government consultations on the TSD chapter (IndustriAll 2020). The failure of these consultations led to the establishment of a panel of experts, which in January 2021 confirmed that South Korea breached its TSD obligations and recommended that labor laws and practices are adjusted to comply with the freedom of association<sup>3</sup>. In April, South Korea ratified three of the four outstanding ILO core conventions<sup>4</sup>, but the implementation process still has to be seen. This shows that even though the PoE rulings and recommendations are non-binding, they had an impact in the case of South Korea.

In the context of broad critique of the EU’s TSD chapters, and pressure from the Parliament, member states and civil society, the Commission in July 2017 published a ‘non-paper’ to open a debate on its approach (European Commission 2017). After a period of consultation, a 15-point action plan towards a ‘revamped’ TSD approach was presented in February 2018 (European Commission 2018). Although the overall tenets remained intact, the Commission promised to ‘more assertively enforce’ TSD commitments, including increased monitoring of commitments, development of action plans, and triggering of dispute settlement processes where action plans are not followed. Further, priorities should be identified for partner countries in contrast to a one size fits all approach and civil society engagement

---

<sup>3</sup> The report is accessible online: [https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc\\_159358.pdf](https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159358.pdf)

<sup>4</sup> Only the convention on forced labour has not been ratified due to complexities around the military.



in implementation should cover the whole agreement and be supported by a €3 million fund. Finally, the Commission proposed to “encourage early ratification of core international agreements”, including ILO conventions, ‘using all available tools’ (see Harrison et al. 2018 on the detailed changes proposed).

### ***EU external power and externalization of EU governance***

The literature on labor provisions in EU FTAs draws on conceptualizations of the role and power of the EU in global governance. The concept of the ‘regulatory state’ (Majone 1994) captures the ways in which the EU does not simply aim to liberalize trade and investment flows, but to pursue an externalization of its regulatory regimes, including economic and social rules and regulations, which can either liberalize or restrict market activity (Orbie and Khorana 2015; Smith 2015). FTAs, in this perspective, are prominent tools for promoting ‘behind the border’ regulations, covering trade in goods, services and investment, public procurement, protection of intellectual property rights, trade-related ‘barriers’, and labor and environmental standards, among other things.

While various concepts have been used to describe the external power of the EU, two stand out, considering what the EU *is* for understanding *how* and *why* it seeks to externalize governance: the EU as a ‘market power’ (Damro 2012) and a ‘normative power’ (Manners 2002). Damro (2012) perceives the EU as an internal market that is bound to externalize its (economic and social) market-related policies and regulatory frameworks based on material interests. In contrast, the concept of the EU as a ‘normative power’ focuses on the ethical and ideational dimensions of European foreign policy, assessing the normative distinctiveness of the EU as a global player (Manners 2002). These concepts are often interpreted as ‘norms versus interests’. This, however, neglects their interrelations, as market norms are neither ‘objective categories’ that ‘can be separated from ideas, identities and ideologies’ (Orbie and Khorana 2015, 225), nor necessarily ‘neoliberal’, but often involve market interventions and social regulations (Rosamond 2014). Rather, the EU’s externalization of rules through trade policy responds both to interest-led motivations to open and regulate markets *and* to normative aspirations arising from the EU as a distinctive social model, including the external promotion of labor standards. But there is a clear asymmetry in how the EU pursues commercial interests through a ‘hard’ approach, backed by a sanction-based dispute settlement mechanism, and labor rights through a ‘soft’, dialogue-based approach.

Continuing with the question on what the EU *is*, van Apeldoorn (2009) argues that the EU has, since the relaunch of the integration process in the 1980s, evolved into a form of ‘embedded neoliberalism’, in which a neoliberal project, premised on internal and external market liberalization and pushed by an increasingly transnational capitalist class, has subsumed elements of two contending visions, neo-

mercantilism and social democracy. As a ‘hegemonic project’, embedded neoliberalism ‘seeks to advance neoliberalism through a strategy of incorporating [...] rival projects’ for the purpose of ensuring popular support and legitimacy (van Apeldoorn 2009, 22). Such understanding suggests that the EU’s promotional approach to the trade-labor nexus has ideological and political motivations, representing a weak compromise in favor of powerful interests against effective labor provisions in FTAs with the objective to legitimize and increase support for FTAs (Sicurelli 2015; Orbie et al. 2016).

Even if TSD chapters may serve this legitimizing role, they can still have positive impact on labor laws and practices of trading partners. Damro (2012) outlines three factors that predispose the EU’s ability to wield its ‘market power’ for material and/or normative objectives: (1) its *relative market size*, which affects the material incentives and beliefs of external actors, and, as such, is both an effective bargaining chip and a potent basis for coercion through (implicit) threats of market barriers or closures; (2) the *institutional capacities* needed to develop and implement regulations with extra-territorial effects, which not just requires regulatory expertise, coherence and sanctioning authority, but depends on the roles and positions of EU institutions and member states in decision-making; and (3) the relative influence of *competing interest groups* on EU institutions, each trying to steer regulation to their own favor.

While these points are useful for understanding the ways in which the EU acts in external relations, a weakness of the literature on EU external governance is that it tends to portray partner countries as mere recipients. The substance and mechanisms of governance externalization are derived exclusively from within the EU, while relations to, and dynamics in, partner countries are side-lined; a weakness that is equally evident for literature on the trade-labor nexus (Orbie and Khorana 2015; Barbu et al. 2018). As Harrison et al. (2019) argue, countering such ‘diffusionist’ approaches to external governance, it is important to interrogate the ways in which TSD chapters are translated into, and articulate with, contexts and struggles in partner countries.

### ***State power, social struggles and geopolitical conjunctures***

In refocusing on partner country contexts, our approach to analyzing the trade-labor nexus integrates insights from the literatures reviewed above, but embeds them in an understanding of FTAs as agreements between states, whose interests, priorities and strategies are formed through socio-political struggles within particular geopolitical and geo-economic conjunctures. Drawing on the strategic-relational approach of Poulantzas (1978) and Jessop (1990), we conceptualize the state as an *institutional ensemble* that is, at once, imbued with distinctive logics, resources and procedures *and a site of contestation* between socio-political forces, who ‘seek to deploy its various institutions and capacities for specific purposes’ (Jessop 1990, 366). Existing in a dialectical relationship with society, state power

is always *relational* and *conditional*, shaped by the ‘action, reaction and interaction of specific social forces located both within and beyond’ state institutions and the ‘diverse structural and conjunctural factors that determine their relative weight’ (Ibid. 366, 149). As crystallizations of past struggles, state institutions are inherently biased, privileging certain actors, strategies and interests and involving different forms of representation and intervention (Ibid. 117).

The capacity of social groups to influence state power is not formed merely at the national level, but in the context of transnational relations. FTAs are state-state regulations that mainly serve to integrate economic spaces for the expansion of global production networks, by setting rules and regulations determined largely by states in the Global North and, thereby, restricting policy space of states in the Global South (Smith 2015; Young 2015). In so doing, they institute a set of economic and, more recently labor, governance structures that influence, but are also shaped by, domestic struggles and reform processes. Such transnational governance structures and their institutional mechanisms can be used in domestic struggles in partner countries to influence the state and its actions (Barbu et al. 2018). We, therefore, need to analyze the interactions between external pressures around labor provisions and domestic struggles for pro-labor reform.

Within this broader conceptualization of states, FTAs and domestic policy reform, we highlight five factors that shape the impact of labor clauses – in our case the EU’s TSD chapters – on partner countries. Firstly, the approach pursued towards partner countries is influenced by the *political economy contexts and state-society relations of the EU*, in particular the relative influence of competing social forces on the key institutions involved in trade policymaking: the Commission, which *negotiates* FTAs; the Parliament, which *approves* FTAs; and member states, which, via the Council, *authorize* negotiations, *approve*, and, in the case of mixed-agreements, unanimously *ratify* FTAs (Damro 2012). These dynamics affect the *priorities* of the EU (including demands on labor reform), the *strategies* it pursues (including the question of conditionality) and its *commitment* (how far it is willing to go in terms of resources, costs and compromises). Whether the EU seeks to exploit its leverage in the pre-ratification phase and/or to make use of monitoring and enforcement mechanisms in the post-ratification phase crucially hinge on these questions, no matter which approach it formally follows.

Secondly, and correspondingly, the *political economy contexts and state-society relations of partner countries* influence the *priorities, strategies and commitments* they bring to the table. The external pressure for labor reform is more likely – or even only likely – to succeed, if it resonates with internal social struggles; if the push for pro-labor reform emanating from the FTA is picked up by domestic actors with at least *some* capacity to influence state action. For this to happen, the labor issues raised

by the FTA, and the strategies pursued by the party pushing for labor reform, must be relevant to progressive forces at the local level (see also Barbu et al. 2018). This is relevant in the pre-ratification phase, but also post-ratification as the institutional mechanisms stipulated in the FTA must be relevant to and appropriate for social struggles in partner countries. In authoritarian contexts, the existence of civil society organizations independent from the government (and business) that can, and want to, enter DAGs may be limited. Precisely in such contexts, establishing CSMs through DAGs can initiate important longer-term change in the civil society landscape and shift the terrain of state-society relations; but it can also prove difficult to align it with the current priorities and strategies of independent civil society actors and may even jeopardize their current strategies. Regarding strategy, the question is to what extent authoritarian states are responsive to pressure from civil society generally and specifically through DAGs, and whether there are other strategies that are more effective to influence the state.

A third set of factors relate to the *geopolitical and -economic context and perceived interests of states therein*. Presumably, the concessions and compromises that each party is ready to make in the field of labor reform depends on its wider interests in, and expected benefits from, the FTA – including the concrete commercial interests in gaining preferential access to foreign markets, and the more abstract role of the FTA for geopolitical and -economic positioning (Barbu et al. 2018). Presiding over the largest single market in the world is, in this regard, an effective bargaining chip for ‘market power Europe’ (Damro 2012). How states navigate in specific geopolitical and -economic conjunctures, however, is strongly influenced by their domestic political economies and, hence, linked to the first two points above.

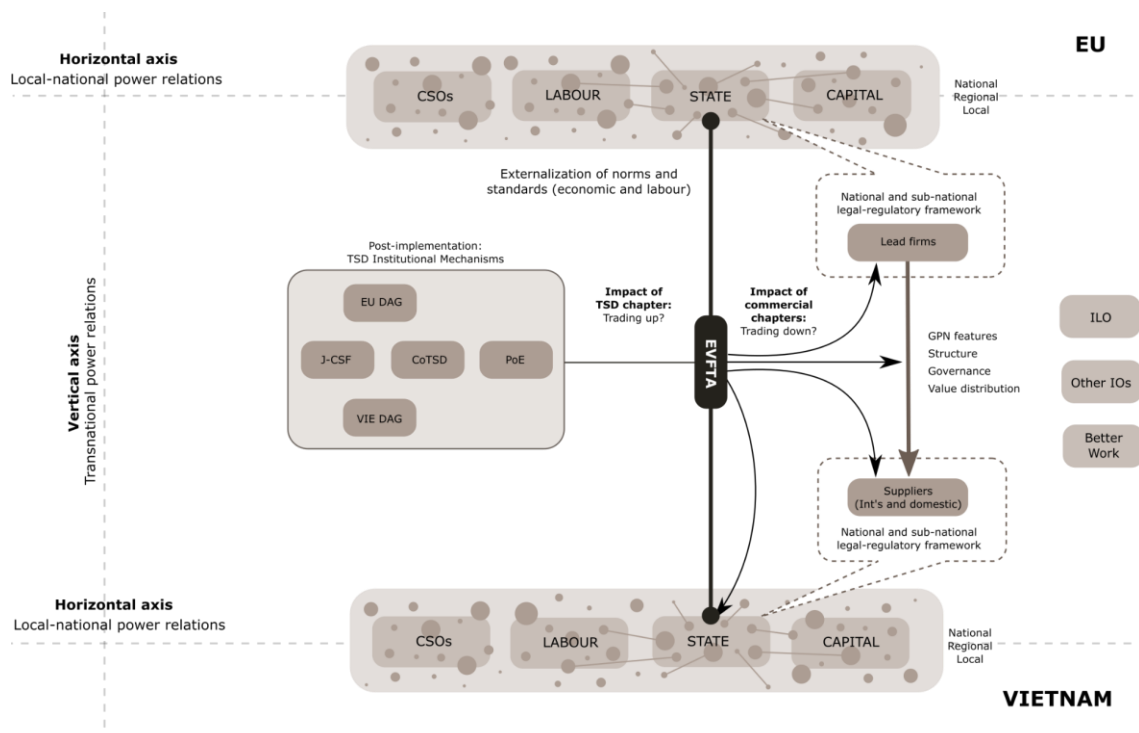
Fourthly, the *nature of transnational linkages* connecting actors within the countries in the FTA can decisively shape the outcome of labor clauses. Such transnational connections can be used to trigger a ‘boomerang effect’ (Keck and Sikkink 1998), in which reformist actors with otherwise limited voice provoke the intervention of external actors to back their demands on the state. But for such a mechanism, relationships between pro-labour actors in both countries are required. Diplomatic ties and links to international organizations, NGOs or other ‘trans-local’ actors with a ‘foot in both camps’ can facilitate such relationships as well as access to key decision-makers, help synchronize expectations and foster mutual trust and understanding. Formal institutional mechanisms such as the DAGs and the JCSF – as a new avenue for transnational civil society dialogue – can support such relationships and cooperation, particularly if they involve sufficient financial and administrative support. But they are not necessary for transnational linkages. Rather, previous linkages and their density and quality are crucial to make the CSM and their transnational components effective. But this also depends on the political will of the EU and the partner country to respond to civil society pressure. Whether

partner countries respond also depends on the broader possibilities for post-ratification sanctions and enforcement.

Finally, when it comes to *implementation* of labor reform, a fifth factor is important: the multi-scalar labor regimes, in which actual work takes place. Concrete worker outcomes are shaped in a complex interplay of historically constituted workplace relations, political economies and regulatory frameworks at local, regional and national levels, as well as of power dynamics in global production networks (Smith et al. 2018; Barbu et al. 2018). Ultimately, the impact of labor clauses in FTAs depends on their encounter and articulation with these multi-scalar labor regimes, which often entail counter-productive pressures. Important to consider in this regard are the broader implications of FTAs, including trade liberalization, for the context of work, working conditions and labor rights. Hence, the legal stipulations of the FTA, their implementation and the institutional mechanisms have to be able to address labour issues and power dynamics in global production networks and their labor regimes. Otherwise, the FTA, and particularly the CSM, may still have longer term impacts on social change, but fail in their *raison d'être*. This is particularly important, as the groups represented in DAGs – labour/social, environmental and business actors – represent interests in production and at the workplace, and the DAG needs to provide new avenues for negotiation and contestation.

Summing up, we argue that the impact of labor clauses in FTAs depends on the extent to which (1) the EU has the political will and institutional capacity to effectively impose pre- and post-ratification conditions upon the partner country; (2) the external pressure resonates with, supplements and amplifies internal labor struggles; (3) the FTA is, for whatever domestic, geo-political and geo-economic reasons, awarded high priority, opening a space for compromise by actors who would otherwise oppose labor reform; (4) transnational linkages facilitate cooperation between pro-labor forces through and beyond institutional mechanisms set up in the context of the FTA; and (5) labor regimes and power dynamics in GPNs are addressed and changed through pre- and post-ratification conditions and processes. The manifestation of these factors is linked to political economy contexts and state-society relations on both sides, and to the geopolitical and -economic conjunctures, in which FTAs are negotiated and implemented. Figure 1 schematically shows our framework highlighting local-national power relations at the EU and Vietnam level (horizontal axis) and transnational power relations at the vertical level.

Figure 1: Conceptual framework



## History and content of the EVFTA

Bilateral relations between the EU and Vietnam are governed by the EU-Vietnam Partnership and Co-operation Agreement (PCA), signed in June 2012. The day before the signing, negotiations of a preferential trade agreement (PTA) were launched to flesh out the trade pillar of the PCA. Both agreements were preceded by failed attempts by the EU to reach a joint trade deal with the ASEAN bloc, launched in 2007 and broken down in 2009. In December 2015, after 14 rounds of talks, negotiations of the EVFTA were formally concluded. While the original timeline aimed towards ratification in 2018, the process was delayed (table 1), not least due to a verdict by the European Court of Justice (ECJ) on the EU-Singapore FTA in 2017, ruling that the EU does not have the mandate to conclude agreements on certain investment-related issues on its own. After being split into separate trade and investment agreements, the EVFTA was adopted by the Commission in October 2018, approved by the Council in June 2019 and, a week later, signed in Hanoi. After a green light from the Parliament in early 2020 – from the Committee on International Trade (INTA) in January and the Plenary in February – the EVFTA was concluded by the Council in March, ratified by the National Assembly of Vietnam in June and entered into force on 1 August 2020.

Table 1: EVFTA timeline

Date	Event	Date	Event
Oct 2010	EU and VNM agree to negotiate FTA	Jun 2018	VNM agrees to split agreements
Jun 2012	Negotiations officially begin	Oct 2018	Commission adopts EVFTA
Aug 2015	Agreement on broad lines of EVFTA	Jun 2019	Council approves signing
Dec 2015	Negotiations conclude, legal review starts	Jun 2019	EVFTA officially signed in Hanoi
Feb 2016	Final draft made public	Jan 2020	INTA gives its consent
May 2017	ECJ ruling on EU-Singapore; implications for the EVFTA	Feb 2020	Parliament gives its consent
Sep 2017	EU requests VNM to split agreement	Mar 2020	EVFTA concluded by Council
		Jun 2020	Ratified by National Assembly, VNM
		Aug 2020	Enters into force

Source: Authors; Russell (2018).

In terms of content, the EVFTA entails an almost full and reciprocal liberalization of merchandise trade, eliminating 99% of tariffs, as well as provisions on non-trade barriers, international standards, competition policy and public procurement, among others (Grumiller et al. 2018). As such, it is considered ‘the most ambitious and comprehensive FTA that the EU has ever concluded with a developing country’ (European Commission 2016, 7). With regard to the TSD chapter, as in other EU FTAs, the parties reaffirm their commitments to and obligations under the ILO 1998 Declaration, including ‘the freedom of association and the effective recognition of the right to collective bargaining’ (Art. 13.4.2d). The agreement, however, is notably vague on the ILO core conventions, requiring each party to ‘make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions’ (13.4.3a) and to ‘effectively implement in its domestic laws and regulations and practice’ the content of those conventions (13.4.4).

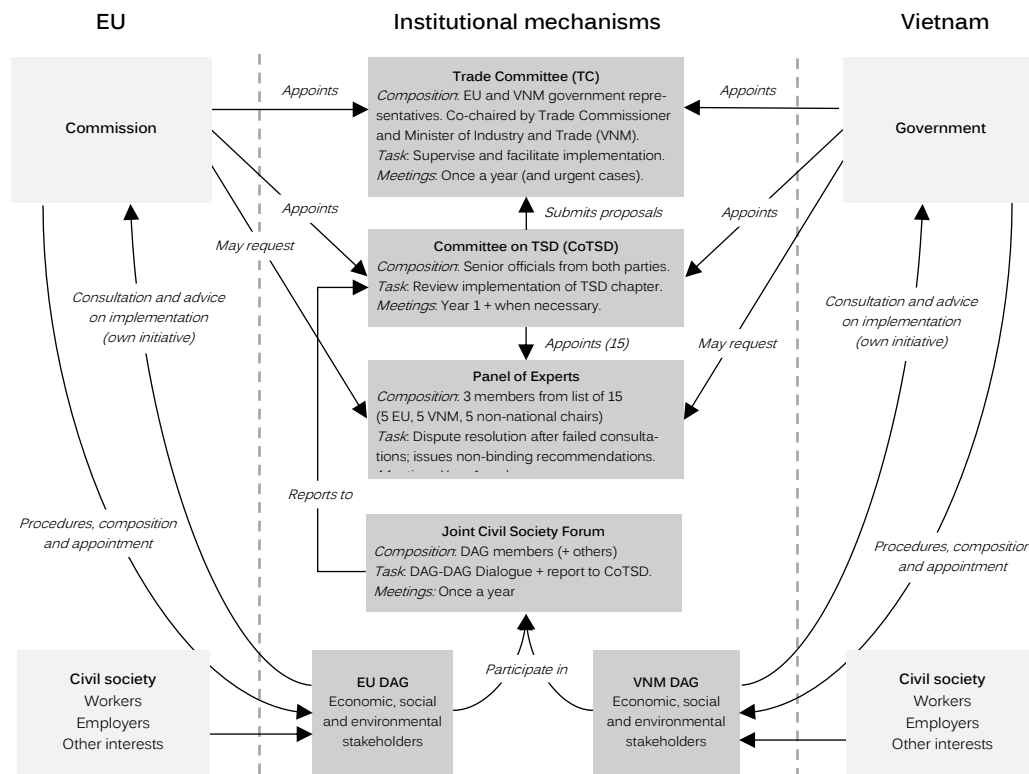
The institutional mechanisms designed to monitor the implementation of the TSD chapter consists of the common tripartite format including four elements as shown in Figure 2: (1) An inter-governmental Committee on Trade and Sustainable Development (CoTSD), composed of representatives from the EC and the government of Vietnam to oversee the implementation of the TSD chapter; (2) Domestic Advisory Groups (DAGs) in the EU and Vietnam, made up of representatives of civil society, including business, trade unions and NGOs and occasionally academia that advise the CoTSD; (3) a joint civil society forum (JCSF) where the DAGs from both sites meet annually; and (4) a panel of experts (PoE) that investigates complaints made by the parties and makes recommendations. The DAGs can advise on the implementation and conduct dialogue on sustainable development in the CSF and jointly present updates to the TSD Committee. The DAGs can submit, on their own initiative, views or (non-binding) recommendation to the Commission and the Vietnamese government. In the dispute settlement process, the DAGs have a marginal role; they cannot initiate the process and can only provide (non-binding) advice if requested by the TSD Committee. If a PoE is requested, the DAGs only

participate at the end of the process, getting informed about the concerned Party's final decision, and may submit observations to the TSD Committee's follow-up.

The text on the formation and procedures of the DAGs are generally very vague in EU FTAs, which is also the case for the EVFTA. The Commission and the partner country government have the sovereign responsibility on the procedure for establishing the DAG and appointing the DAG members. It is only stated that the DAG should “comprise independent representative organizations” and ensure “a balanced representation of economic, social and environmental stakeholders, including, among others, employers' and workers' organisations, business groups, and environmental organisations” (Art. 13.15.4). There are no further criteria how the DAG should be set up other than that the composition and consultation with civil society should be in accordance with domestic law. As Martens et al. (2018, 47) note, such a provision “gives a considerable amount of leeway to the governments to organize the mechanism according to their own preferences”; the EU cannot legally interfere in this process. The only stipulation is that the parties must agree on the operation of the JCSF “no later than one year after the date of entry into force of the agreement” (Art. 13.6), meaning that the first meeting must take place within the first year of the FTA. In the EVFTA it is also stated that “new or existing DAGs” shall be consulted, which means that Vietnam could potentially also use the existing structure of party-affiliated mass organisations as civil society bodies despite their clear link to the party (Thu and Schweisshelm 2020). Different to other FTAs, the term ‘civil society’ is not used in the EVFTA – rather, as in the EU-Singapore FTA, the word ‘stakeholders’ is used. Unlike other FTAs, the EVFTA specifies that the transnational mechanisms involve both the DAGs on both sides and other civil society actors, which makes it potentially more inclusive than in other FTAs (Martens et al., 2018).



Figure 2: EVFTA institutional mechanism



The negotiations of the EVFTA took place in parallel to talks over the TPP, an FTA between 12 countries along the Pacific Rim, including the US. TPP negotiations began in 2008, were joined by Vietnam in 2010 and concluded in October 2015; and the agreement was signed in February 2016. While the TPP was scrapped with the decision of President Trump, soon after assuming office in January 2017, to withdraw from the agreement, the groundwork of US negotiators is key to understanding the impact of the EVFTA on labor reform in Vietnam. As the EVFTA, the TPP contained a labor chapter, requiring each party to ‘adopt and maintain in its statutes and regulations’ the labor rights enshrined in the 1998 ILO Declaration. In parallel to the main agreement, the US negotiated a bilateral ‘Consistency Plan’, signed in February 2016, detailing the legal-institutional reforms that Vietnam needed to make *prior* to the entry into force of the TPP. Unlike the EVFTA, hence, the side-agreement with the US imposed *pre-ratification conditions*. Compliance with the most controversial issue, granting Vietnamese workers the right to freely form and join unions of their own choosing, was, nonetheless, given a grace period of five years (Tran et al. 2017). After the US exit, negotiations continued and in March 2018, Vietnam and ten other countries signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which retained the labor chapter, but – without the Consistency Plan – placed significantly weaker demands on Vietnam.

## Pre-ratification phase

### *The EU: Politicization and parliamentary activism*

While the EU's position on TSD provisions in the EVFTA did not substantially differ from other FTAs during negotiations, the *pre-ratification* phase saw it adopt a stronger, more conditional, strategy towards Vietnam. Sicurelli (2015, 238) emphasizes the reluctance of the Commission to include labor standards in the negotiations of the EVFTA, pushing an approach where 'human rights would be mainly discussed in the context of the PCA negotiations, while trade and investment matters would lead the negotiations for a PTA'. In a leaked declaration in 2010, then Trade Commissioner De Gucht made clear that the negotiations of the EVFTA would solely focus on trade and investment. The Parliament, however, pushed for binding labor standards. In April 2014, the Parliament adopted a resolution on the EVFTA, declaring that it 'expects the FTA to include a binding and enforceable sustainable development chapter', recalling that its 'consent to the FTA is mandatory' (European Parliament 2014). Notwithstanding these efforts, the overall strategy of DG Trade echoed previous trade negotiations, downplaying the TSD chapter during negotiations while being preoccupied with the commercial aspects. The sentiment, according to fieldwork informants, was to leave the labor question to US negotiators, who pursued it strongly in the context of TPP negotiations. Some informants observed that the lack of political will was also reflected in the composition of the EU negotiation team, which included trade economists and lawyers, but no specialists on neither labor rights, specifically, or sustainability more generally.

Over the past decade, however, EU trade policy has become increasingly contested (LeBlond and Viju-Miljusevic 2020). This trend reached a climax soon after the conclusion of the EVFTA, during negotiations of the Transatlantic Trade and Investment Partnership (TTIP), a far-reaching but now deferred FTA between the EU and the US, and the Comprehensive Economic and Trade Agreement (CETA), a similar agreement with Canada. The contestation of trade policy was channeled through the two democratic pillars of the EU, the Parliament and the Council. The Parliament has, since becoming a co-legislator on trade policy with the Treaty of Lisbon, demonstrated a willingness to use the threat of a veto, as evident from the burial of the Anti-Counterfeiting Trade Agreement in 2012 (Van den Putte et al. 2015) to the successful push for transparency and an amended position on investor protection in TTIP and CETA in 2015/16 (Roederer-Rynning 2017a). This threat gained credibility with a weakening of the political majority behind free trade. Regarding the Council, ambiguities in the definition of competences enabled some member states to carve out a more assertive role. This became acute when Belgium (temporarily) derailed the CETA deal due to opposition from the parliament of Wallonia (Roederer-Rynning and Kallestrup 2017). The ECJ stated in May 2017 that while the EU *does* have exclusive competence in several areas, others – notably portfolio investment and

investor-state dispute settlement – fall under *shared competences* with member states (European Commission 2017).

In this context of growing public dissatisfaction and social mobilization, crystallized through the Parliament and the Council, the Commission took steps to improve the legitimacy of FTAs (Orbie et al 2016). The decision to make TSD chapters mandatory in October 2015 and initiate a public debate on the approach in July 2017, which led to the 15-point action plan towards a more ‘assertive’ TSD chapter, should be seen in this light. A shift in rhetoric is also corroborated by a content analysis of 79 speeches by trade commissioners from 2013 to 2017, showing that, since late 2016, the Commission has invoked a discourse on ‘managed globalization’, subordinating trade policy to objectives such as social justice and sustainable development (Garcia-Duran et al. 2020).

While the EU’s turn to a conditional strategy *after* the EVFTA had been concluded was informed by these broader developments, it can only be understood as the outcome of strategic action by specific members of the Parliament, supported by a few member states, in the vacuum left by the US withdrawal from the TPP. While high US pressure during TPP negotiations was leveraged by reformists in Vietnam, the momentum was halted when Trump pulled out in January 2017 (Tran et al. 2017). As director of the ILO in Vietnam, Chang-hee Lee, recalled, ‘when the US withdrew from TPP in early 2017, most people in Hanoi thought the reform agenda had died, together with the incentive of US market access’<sup>5</sup>. In this situation, the European Parliament stepped in, pushing the boundaries of its institutional mandate by leveraging the threat of non-consent to engage in direct negotiations with Vietnamese decision-makers and pull the Commission into a stronger bargaining position.

Although the sub-committee on human rights (DROI) was also engaged<sup>6</sup>, it was the involvement of the chairman of INTA, Bernd Lange (S&D), presiding over the first bottleneck in the Parliament’s two-step consent procedure, that most decisively drew the EU towards pre-ratification conditionality. In September 2017, he headed a mission to Vietnam. In meetings with the Prime Minister, the Ministry of Labor, Invalids and Social Affairs (MOLISA), the National Assembly and VGCL, among others, Lange stressed that Vietnam’s ratification of the outstanding ILO core conventions was a precondition for getting the EVFTA through the Parliament. Speaking to the press in Hanoi, he told reporters that human and labor rights are ‘really at the heart of the discussion’ and ‘unless satisfactory solutions are found, the agreement will be in troubled water’ (BBC 18 Sep 2017). From then on, this was the

---

<sup>5</sup> Public hearing in INTA, 2 Dec 2019. Video available on: [https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting\\_20191202-1500-COMMITTEE-INTA\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting_20191202-1500-COMMITTEE-INTA_vd).

<sup>6</sup> In February 2017, a delegation from DROI visited Vietnam, making clear that the passing of the EVFTA by the Parliament would need tangible improvements in the human and labour rights situation.

message that Lange consistently communicated to Vietnamese decision-makers, making the autumn 2017 a critical moment in the EU's shift to a conditional approach. The parliamentary pressure on Vietnam and the Commission continued throughout 2018. The risk of a parliamentary veto was exposed at a public hearing in INTA in October, attended by Malmström and the Vietnamese chief negotiator, where several MEPs from S&D (and even the center-right EPP) joined the call for pre-ratification conditions on labor standards<sup>7</sup>. A few weeks later, the Parliament passed a resolution that, with direct reference to the prospective ratification of the EVFTA, urged Vietnam to join all relevant UN human rights treaties and ILO conventions (European Parliament 2018).

Also the second veto mechanism in EU trade policymaking was activated. In the Council, the influence of member states was particularly strong in the pre-ratification phase of the EVFTA, linked to the 'window of leverage' that emerged when the ECJ in May 2017 delivered its opinion, clarifying that the EVFTA was a 'mixed agreement' that needed *unanimous* ratification by all, and *could be blocked by any of*, the member states (Russell 2018). This window closed in June 2018, when the Commission convinced Vietnam to split the EVFTA (European Commission 2017b). Some member states – most strongly Spain and Belgium – used this leverage to pose questions over Vietnam's human rights record and push for concessions on labor reform.

With the Parliament 'holding a gun to Malmström's head over Vietnam', as a journalist put it, and tensions in the Council, the Commission responded. In January 2018, Malmström sent a letter to Hanoi, requesting 'concrete progress' on 'freedom of association and the right to collective bargaining' and warning that the Commission would 'pay close attention to the reform of the labor code' (Politico 21 Jan 2018). Rather than resisting the pull, the Commission 'simply hopped on board', as described by an informant. The Commission needed to show results, generally in the area of FTAs but particularly regarding its increasingly criticized TSD approach. Particularly for staff in the TSD unit of DG Trade, hence, the EVFTA became a critical case for proving that a 'revamped' TSD approach, as proposed in the 15-point plan, could deliver results, thereby pre-empting demands for a more sanction-based model by the Parliament.

Once Vietnam agreed to the split, turning the EVFTA into an 'EU-only' deal that could be voted through the Council by a qualified majority, the Commission in October 2018 submitted the text to the Council. In June 2019, the Council endorsed the EVFTA; and five days later, Malmström and the

---

<sup>7</sup> Meeting in INTA, 20 October 2018. Video available on: [https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting\\_20181010-1500-COMMITTEE-INTA\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting_20181010-1500-COMMITTEE-INTA_vd).

Vietnamese Minister for Industry and Trade signed the deal (Reuters 30 Jun 2019). With the agreement through the first veto mechanism, MEPs made a last attempt to gain further concessions from Vietnam. In mid-December 2019, Lange and other INTA members sent a letter to the Vietnamese Prime Minister, asking for further commitments, including a roadmap for the implementation of the TSD commitments (S&D 2019). After Vietnam had ratified Convention 98 (June 2019), passed a new labor code (November 2019) and submitted a written and binding roadmap (January 2020) did INTA, in January 2020, pass the EVFTA, paving the way for the Plenary vote the following month, where the Parliament finally gave its consent.

***Vietnam: External pressure as an amplifier of internal struggles***

The EU's shift to a more conditional strategy in the pre-ratification phase of the EVFTA is, however, less than half the story. In Vietnam, the pressure from the EVFTA linked up with internal reform processes that had been ongoing since the 1980s and was used by a minority faction of reformists to drive forward their agenda within the party-state. Since Vietnam embarked on the *doi moi* ('renovation') reforms and the transition to a 'socialist market economy' in the 1980s, labor reforms have been ongoing, fluctuating with the vicissitudes of internal factionalism, domestic struggles and geopolitical shifts. In the second half of the 2000s, a wildcat strike wave, sweeping through Vietnam's export sectors, reenergized the reform process. Bypassing the formal union, the surge in labor activism challenged the legitimacy of both the VGCL (as a worker representative) and the VCP (as 'vanguard of the working class'); and although strikes were mainly concerned with material conditions and forced the government to raise minimum wages, they also became a catalyst for union reform (Chi and van den Broek 2013). In 2009, a comprehensive revision of the labor code – after smaller amendments in 2002 and 2006 – was initiated. Although the resulting labor code, passed by the National Assembly in 2012 and in force in 2013, is 'frequently interpreted as the introduction of "social dialogue" into the Vietnamese context' (Tran et al. 2017, 407), it maintained the subordination of the VGCL to the VCP and did little to change its monopoly.

In the latest round of reforms, labor clauses of the TPP and the EVFTA were instrumental in breaking internal resistance on union reform (Tran et al. 2017; Evans 2018). Especially the pre-ratification pressure linked to TPP provided crucial leverage for reformists. In this context, the VGCL hesitantly embraced the calls for reform, shifting from being an outright opponent of independent unions to more proactively engaging in the process and preparing itself for future competition. In 2012, the VGCL announced that it no longer opposed the TPP. As Evans (2018) highlights, this switch was motivated by the VGCL wanting to make union reform an internally-driven process rather than externally imposed. Two developments further helped reformists convince conservatives that independent unions were a necessary evil. First, Vietnam had since 2008 found itself in an economic

slowdown, with GDP growth falling below 6% in 2008-09 and 2012-14 (World Bank 2021). Reviving the economy was critical, not least due to waning loyalty to socialist ideas and the shift to ‘performance legitimacy’, based on continuous improvements in living standards, as the key source of legitimacy for the VCP (Hiep 2012). Second, the growing assertiveness of China, including aggressions in the South China Sea, which culminated in mid-2014 in a six-week naval standoff and anti-Chinese protests across Vietnam (Thayer 2017), revealed the need to diversify foreign relations. This episode convinced many conservatives that the rewards of joining the new FTAs – in commercial and geopolitical terms – outweighed the costs, paving the way for a new reform consensus (Evans 2020).

The importance of the TPP in pushing ahead union reform is indicated by the decision of the Prime Minister in December 2015 to approve MOLISA’s plan for accession to ILO conventions in the period 2016-20, instructing Ministries to bring laws in line with ratified conventions and study the possibilities for joining additional ones, including ILO conventions 87, 98 and 105 (Prime Minister 2015). The strongest signal of change, however, came in November 2016 with Resolution 06 by the Politburo, setting out the priorities for the implementation of the new-generation FTAs, including a reform of the VGCL and a revision of the legal framework to allow for (and manage) independent grassroots unions (Politburo 2016; Chi 2017). This new direction was expressed in the first draft labor code released by MOLISA in December 2016. The US withdrawal from TPP, however, obstructed the reform process, as evident in the ‘erosion of the right to form independent trade unions’ in the second draft issued in March 2017 (Tran et al. 2017, 410); and in May 2017, the Standing Committee of the National Assembly entirely removed the labor code revision from the law-making agenda (Nhan Dan 2017). As a Vietnamese labor expert remembered, ‘everyone here was so depressed – there was nothing going on, after two years where we had been working like crazy, pushing and hoping and everything’.

In this situation, reformists – particularly from VGCL and MOLISA – were actively seeking new external drivers to boost their internal influence, and, from early 2017 onwards, turned their attention to the EU. A high-ranking EU diplomat remembered how ‘we were now left alone with a lot of requests from all sides and felt we had a bigger responsibility than before’. A political advisor to INTA recalled how, during a fieldtrip in January 2017, a VGCL official proposed the idea that the EU could take up the role as ‘outside catalyst of change’; and a bureaucrat from DG Trade described how, later that year, a ‘lonely warrior’ in MOLISA was asking the EU to help garner domestic support. In the EU – and especially in the INTA committee – they found a group of allies with converging interests. The chronology of events, and our interviews, support the argument that the EU’s newfound assertiveness was instrumental in reinvigorating the labor reforms. But, also, the heightened domestic and

geopolitical/-economic importance of the EVFTA in the wake of the loss of TPP and an escalating trade war between the US and China boosted leverage on the Vietnamese party-state.

The turning point that tilted the balance in favor of the reformist faction was the September 2017 visit by Bernd Lange. Two weeks ahead, MOLISA delivered an official report to the Social Affairs Committee of the National Assembly, outlining its plan for the labor code revision and a new roadmap for ratification of the three outstanding ILO conventions; a document that, according to an independent evaluation for the ILO, ‘restart[ed] the process with renewed and stronger commitment’ (ILO 2019a, 10). In December, MOLISA formally reopened the rewriting of the labor code with the observation that the existing law was incompatible with ILO conventions and, therefore, Vietnam’s commitments under the new FTAs (Government of Vietnam 2017); and the following summer, the labor code revision returned on the law-making agenda (Nhan Dan 2018). As the ILO director in Vietnam later stressed at a hearing in the European Parliament, the pressure from the EU ‘boosted the voice of champions of reform in the system, who have always recognized the freedom of association and collective bargaining for effective labor market functioning in Vietnam. The EVFTA enabled them to gain influence inside the system and make the progress we witnessed this year, in 2019’<sup>8</sup>.

#### ***‘Translocal’ facilitators: the EU delegation, FES and ILO***

The EU’s stepping into the TPP vacuum was facilitated by ‘trans-local’ actors with on-the-ground operations in Vietnam. Watching the reform process stagnate after the removal of US leverage, these actors activated their contacts in the EU and facilitated interaction with key decision-makers in Vietnam. One informant described their role as facilitators, ‘translating expectations and interpreting realities’, while another saw their function as enabling the parties to ‘resonate and echo rather than infringe upon each other’, which they did through close coordination and contact on a weekly – and, in certain periods, daily – basis.

First, members of the EU’s own diplomatic delegation in Vietnam, hosted by the EEAS, early on anticipated the risk that the EVFTA could be blocked by the Parliament or the Council and had, for some time, advocated a more assertive strategy. Diplomats interested in progress on labor reforms were also worried that ratification would mean an end to the EU’s leverage, and that DG Trade and its negotiators, a relatively small team, would shift focus elsewhere and lose sight of implementation. For these reasons, members of the EU delegation, especially the Ambassador, were instrumental in bring-

---

<sup>8</sup> Public hearing in INTA, 2 Dec 2019. Video available on: [https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting\\_20191202-1500-COMMITTEE-INTA\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-international-trade-ordinary-meeting_20191202-1500-COMMITTEE-INTA_vd).

ing parliamentary delegations to Vietnam, seeking, as described by one informant, to ‘turn the Parliament into some sort of Congress’, actively using the risk of a veto as a bargaining instrument. An EU diplomat explained how the delegation ‘was using the European Parliament as *the* main argument against the Vietnamese government, to get leverage and make the Vietnamese move forward on a lot of things. We consistently pointed to the Canadian example, saying that “you shouldn’t take anything for granted”’.

Second, the Friedrich-Ebert-Stiftung (FES), associated with the German labor movement and one of the first international non-profit organizations to open in Vietnam in 1990, had for years been supporting the VGCL in redefining its role in the context of the transition to a market economy (Chan 2019). According to our interviews, FES played a critical role in inviting INTA into the vacuum, putting staff from Lange’s office in touch with high-ranking VGCL officials at a conference in Hanoi in January 2017 (FES 2017).

Third, the ILO, in Vietnam since 2003, had been deeply involved in reforms of labor laws and industrial relations, providing technical assistance to Vietnamese authorities on building a legal-institutional framework in line with international labor standards, with a focus on the ILO conventions 87 and 98. When the US pulled out, our interviews suggest, the ILO in Vietnam was also looking for actors who could replace the US as external driver and shifted focus to the EVFTA. Facilitating access to top decision-makers, the ILO co-organized the high-level meeting in September 2017, where Lange met with leaders from the National Assembly, MOLISA and VGCL, among others (ILO 2019a). In addition, throughout the pre-ratification phase, the ILO assisted MOLISA in drafting the legal documents needed to satisfy the requirements of the Parliament and later the Commission. More generally, the ILO played an important role through its status as international organization. Evans (2018) argues that Vietnamese leaders would not have accepted demands coming too directly and prescriptively from the EU – or the US – and that reference to the ILO core labor standards was critical.

## **Post-ratification process**

### ***Challenges in implementing the DAG in Vietnam***

During and after the negotiation of the EVFTA, little to no consultation with the trade union and civil society was carried out by the Vietnamese government. Thu and Schweisshelm (2020) report that, according to a staff member of the VGCL’s legal department, VGCL representatives were involved in many discussions on Vietnam’s labour commitments under the TPP, including meetings with US politicians, but equivalent attention was not paid to the EVFTA. None of the trade union officials or rep-



representatives of civil society organisations interviewed by Thu and Schweisshelm (2020) has experienced any information session on the TSD chapter until March 2019 by the Vietnamese government nor the EU Delegation in Vietnam. Initiatives were only carried out among civil society organised by FES (as early as 2013) and later through an EU funded project starting in 2017 (Thu and Schweisshelm 2020, 18). Only in May 2019, the Commission publicly informing about the CSM in a briefing and had a roundtable discussion with potential DAG members in Vietnam. Also, financial support by the EU for preparing a CSM in Vietnam was minimal. Funding was only provided with a EU call for proposals in January 2019 with projects starting in 2020. The overall budget was minimal compared to support for Vietnamese businesses to prepare for the EVFTA which started already in 2012 under a large umbrella project managed by the EU Delegation in Vietnam and the MoIT, called EU-MUTRAP.

After ratification, the DAG was quickly set up on the EU side and is already functioning. The Commission issued a call for expression of interest in participating in the DAG for the EVFTA in September 2020<sup>9</sup>, with a three-week deadline, and the process was finalized in December. The EU DAG consists of 21 member organizations<sup>10</sup> – eight representing business, six representing labour and seven representing environmental and other NGOs – and is chaired by former MEP Jude Kirton-Darling (S&D), who was also closely engaged in the pre-ratification parliamentary scrutiny of the EVFTA in the pre-ratification phase. It has so far held two meetings, in March and May 2021<sup>11</sup>.

In Vietnam, however, the formation of the DAG has been subject to some delays, partly due to COVID-19 but more importantly to the CPV Congress in January 2021. In August 2020, a few days after the EVFTA entered into effect, the Prime Minister of Vietnam approved an action plan for the implementation of the agreement, assigning the coordinating role to the MoIT and setting out a long list of tasks and assignments for different ministries, agencies and organizations (Decision No. 1201/QD-TTg). With regard to the TSD chapter, specifically, MoIT was given responsibility for setting up the DAG in the fourth quarter of 2020 (Decision No.2091/QD-BCT). In early October, MoIT issued the call for expression of interest<sup>12</sup>, stating that the DAG – as required by the EVFTA – should

---

<sup>9</sup> [https://trade.ec.europa.eu/doclib/docs/2020/september/tradoc\\_158954.pdf](https://trade.ec.europa.eu/doclib/docs/2020/september/tradoc_158954.pdf)

<sup>10</sup> Business: Amfori, SMEunited, BusinessEurope, European Services Forum, EUCOFEL, Eurochambres, Eurocommerce and IDH Sustainable Trade initiative; trade unions: Christian National Trade Union Federation, Italian General Confederation of Labour, Swedish Trade Union Confederation, French trade union Force Ouvrière, Danish Trade Union Confederation and IndustriAll labor NGOs: Friedrich-Ebert-Stiftung and FIDH; and three environmental NGOs: Humane Society Int'l Europe and Eurogroup for Animals and FERN.

<sup>11</sup> <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-vietnam-domestic-advisory-group>

<sup>12</sup> [http://evfta.moit.gov.vn/default.aspx?page=news&do=detail&category\\_id=13caec66-a1f8-4b9c-9066-b25657f4d36d&id=a115e85f-1579-4a6e-a1b4-f9e21c1e4012](http://evfta.moit.gov.vn/default.aspx?page=news&do=detail&category_id=13caec66-a1f8-4b9c-9066-b25657f4d36d&id=a115e85f-1579-4a6e-a1b4-f9e21c1e4012)

consist of “independent representative organizations, ensuring a balanced representation across economic, social and environmental subgroups including employers' representative organizations, workers' representative organizations, enterprises and environmental organizations”. Four eligibility criteria were listed, requiring potential DAG members to (1) be non-profit NGOs established according to the law and registered with the Ministry of Home Affairs; (2) represent legitimate interests in Vietnam related to trade and sustainable development; (3) be independent from state agencies; and (4) have the capacity to synthesize opinions of stakeholders and present recommendations. While these criteria were promising, the call, however, lacked a deadline; and – for reasons that will be further discussed below – only a limited number of NGOs expressed their interest and willingness to participate. By June 2021, only seven organizations had applied for the DAG, counting just two ‘real’ Vietnamese NGOs in addition to the Institute for Workers and Trade Unions (the research-arm of the VGCL), the Vietnamese Chamber of Commerce and Industry (VCCI) and three international NGOs that are not eligible for membership<sup>13</sup>.

The hesitancy of the Vietnamese government in setting up the DAG has several – likely overlapping – explanations. For one thing, as mentioned above, the VCP has been heavily preoccupied with its 13<sup>th</sup> Congress in 2021, the highest political event in Vietnam, which takes place every five years. This not only stalled controversial government initiatives but also led to an intensified government crackdown against critical voices, making the few independent civil society organisations cautious to engage with the government. Moreover, with the EU institutions no longer holding a veto over the FTA, and limited prospects for sanctions or other forms of hard enforcement, the external pressure on the party-state has loosened up considerably. In this context, the Vietnamese leadership seems to be re-evaluating the situation, in terms of how deep concessions and sacrifices it is willing to make. For the government, this will be a balancing act, trying to comply with the formal obligations and commitments under the EVFTA while making minimal concessions. The lack of progress is at odds with the promises made to the EU in the written implementation roadmap in December 2019. A similar situation exists regarding the implementation of the 2019 labour code: of four implementing decrees, MOLISA has issued three, while the fourth – implementing the new WROs – is not yet made public. Hence, a year and a half after the passing of the new law, and six months after it entered into effect, it remains impossible for Vietnamese workers to organize in independent unions.

With no functioning DAG on the Vietnamese side, it was clear that the first JCSF, planned to take place in conjunction with the first meeting in the inter-governmental Committee on Trade and Sus-

---

<sup>13</sup> Being registered with the Ministry of Foreign Affairs rather than the Ministry of Home Affairs.

tainable Development (CoTSD) in early June 2021, had to be postponed. While the Vietnamese government had hoped that the CoTSD could be carried through, the Commission decided that without a functioning CSM, there could be no inter-governmental meeting. After the cancellation of both events, the EU DAG for the EVFTA issued a statement, expressing “deep regret and concern”, recalling that “civil society engagement and scrutiny of the EVFTA is not an optional element of the agreement, but should be ensured and applied as a matter of urgency”, and urging the “Vietnamese authorities to swiftly establish a counterpart for the EU DAG”<sup>14</sup>. To avoid losing face by having to violate the provision of the EVFTA that the first CoTSD meeting has to take place within the first year after entry into force, and that the JCSF should meet once a year unless otherwise is agreed, the Vietnamese government is expected to announce the formation and composition of the DAG within the coming weeks, allowing for a last-minute inter-governmental meeting and civil society forum in late July 2021. However, given the current problematic situation regarding Covid-19 in Vietnam, this could be potentially used as a basis to postpone the meeting.

### ***Is the CSM compatible with state-society relations in Vietnam?***

These challenges in establishing the DAG in Vietnam point towards the broader concern that the configuration of state-society relations and the current state of ‘civil society’ in Vietnam might, simply, be incompatible with the CSMs required by the EVFTA. Vietnam is a one-party state with strict limitations on civil and political rights and a highly restricted, and tightly regulated, space for independent civil society organisations. In accordance with Marxist-Leninist principles, the CPV traditionally considers its affiliated ‘mass organizations’ – such as the VGCL, the farmer’s union the women’s association – as the legitimate representatives of the non-state sector. Under the umbrella Fatherland Front, these socio-political organizations “constitutes the political base of the people’s government” and “represents and protects legal and legitimate rights and interests of the people”, as specified in the Constitution. In practice they function as two-way transmission belts between the CPV and society, “helping to generate support for the state and to channel citizens’ concerns and criticisms in a non-threatening manner” (Kerkvliet 2001, 246). Since the launch of the reform process in the late 1980s, however, scholars have observed “the emergence of new forms of social organization akin to what some people might call ‘civil society’” (London 2014, 12), with the number of registered NGOs rising from less than 200 in the late 1990s to almost 2,000 today (Thayer 2009; Wells-Dang 2014). The rise of the internet contributed to these developments (Bui 2013, 80), as did Vietnam’s international integration and the arrival of a growing number of international NGOs (Nørlund 2007; Gräf 2021). To

---

<sup>14</sup> <https://www.eesc.europa.eu/en/news-media/news/statement-european-union-domestic-advisory-group-eu-vietnam-free-trade-agreement>

some extent, the party-state has tolerated, endorsed or even supported these developments (Bui 2013), and civil society has been found to exercise considerable political influence (Wells-Dang 2014).

Nevertheless, the space for civic action remains restricted, as the party-state keeps strict control on the registration and operation of NGOs, and their activities are closely monitored by the security apparatus (London 2014). The regulatory framework for CSOs is not only constraining, but also complex. For example, the registration procedure can be lengthy and burdensome (Taylor 2012), and, once in operation, CSOs must submit all projects and foreign funding to a supervising authority for approval (Wischermann 2012). CSOs working on labour and human rights issues are under particular scrutiny, and there are, as a result, only a few registered labour CSOs (Abuza 2015; Do 2016; see also Gräf 2021). A couple of these NGOs have been working together since 2018 to form a network called “Friends of DAG” to ensure that whoever will be presented in the DAG is backed by the others (Thu and Schweissshelm 2020). With the lack of an autonomous civil society, there is a great risk that the Vietnamese DAG will be subjected to strong interference and control from authorities. This is already hinted at by the fact that the secretariat for the DAG, tasked with coordinating and preparing meetings, has been assigned to MoIT, in effect making it a “government-run DAG”, as described by one informant. Provoking similar concerns is the fact that two of the four eligible applicants to the Vietnamese DAG – the VGCL and the VCCI – are part of the Fatherland Front and, ultimately, subservient to the VCP. Also, as the new, independent WROs established under the 2019 labour code cannot form organizations beyond the workplace-level, there is little scope for their participation in the DAG and the CSM.

To make matters worse, the CPV has in recent years further tightened its grip over society. With the hardline leadership emerging from the 12<sup>th</sup> VCP Congress in 2016 (and no path-breaking reshuffling at the 13<sup>th</sup> Congress in January 2021), the party-state has moved to more decisively “manage, discipline, and punish forms of association and public expression deemed threatening to or diverging from the Party” (London 2019, 145). Increasingly, Vietnamese authorities have used security laws – including a Law on Cyber Security, passed in 2018 and in effect from 2019 – to harass, intimate and arrest bloggers, journalists and activists who express views that are deemed too critical of the regime (Human Rights Watch 2020). The global trend of shrinking civic spaces and greater state control with, and monitoring of, civil society (CIVICUS 2020), hence, is equally evident in the case of Vietnam. This can be readily observed from international indices on civic freedoms and civil society engagement. For instance, according to the V-Dem project, which is based 3,200 expert assessments, Vietnam’s score on whether the government attempts to repress civil society organizations (CSOs)

dropped from 1.64 in 2015 to 1.48 in 2020 (where 2 is ‘moderately’ and 1 is ‘substantially’<sup>15</sup>); the score on the likelihood of arrests for political content in online posts fell from 1.0 in 2015 to 0.37 in 2020 (where 1 is ‘likely’ and 0 is ‘extremely likely’); the score on self-censorship among journalists declined from 1.2 in 2015 to 0.61 in 2020 (where 1 describes that ‘self-censorship is common but incomplete’ and 0 describes that it is ‘complete and thorough’); and the score on extent of public deliberations over important policy changes fell from 2.1 in 2015 to 1.26 in 2020 (where 2 means that ‘public deliberation is not repressed but nevertheless infrequent and non-elite actors are typically controlled and/or constrained by the elites’, and 1 means that ‘some limited public deliberations are allowed but the public below the elite levels is almost always either unaware of major policy debates or unable to take part in them’). For all these variables, the last years have seen the lowest scores for the past two decades as shown in Figure 2.

Figure 3: V-Dem scores for Vietnam



Important for understanding the potentials and limitations of the DAGs in the Vietnamese context, therefore, is the fact that they are being implemented in an environment characterized by a limited and even shrinking civic space<sup>16</sup>. The CSOs interviewed for this paper explained that they fear – given the intensified scrutiny by the state – that participating in the DAG could risk jeopardizing their wider

<sup>15</sup> See this website for data and details on the response categories: <https://www.v-dem.net/en/analysis/CountryGraph/>

<sup>16</sup> <https://civicus.org/documents/JointCIVICUSUPRSubmissionVietnam.pdf>

work. The limited number of applications for the DAG undoubtedly reflects these concerns. However, it has most likely been aggravated by the fact that the application process coincided with the run-up to the 13<sup>th</sup> VCP Congress in January 2021, which – according to our interviews – turned up state repression several notches and made civil society actors unusually cautious (CIVICUS 2021). In this context, labour NGOs in Vietnam were hesitant to apply for the DAG, and the one NGO that applied did only so after a long decision-making process. Relatedly, there seems to be a possible mismatch between the high visibility entailed in participation in the DAG and the below-the-radar mode of operations of Vietnamese labour CSOs, necessitated by the highly restrictive environment described above. The intensified scrutiny of the party-state has, moreover, made other actors in the system – including MOLISA and the VGCL – more hesitant to collaborate with civil society.

### ***Reaction of EU institutions***

Since the entering into force of the EVFTA in August 2020, the institutions in the EU have, more or less closely, followed its implementation. The general situation, however, is that the EU in the post-ratification phase has much less leverage vis-à-vis the Vietnamese government than it did prior to the ratification of the agreement. The Commission seems to still take the implementation of TSD chapters more seriously, in general and specifically for the EVFTA. The van der Leyen Commission, hence, has taken steps towards a stronger position on the trade-labor nexus, including the appointment of a Chief Trade Enforcement Officer in July 2020, tasked with strengthening the enforcement of TSD commitments on labor rights, among other things (European Commission 2020), and the announcement of *An Open, Sustainable and Assertive Trade Policy* in February 2021 (European Commission 2021). Without its former pre-ratification leverage, however, the Commission is in a much less advantageous bargaining position. According to our interviews, nevertheless, pressure from the Commission did play a role in MoIT’s publication of the call for expression of interests in October 2020. The Commission’s decision to cancel the planned CoTSD meeting due to Vietnam’s failure to set up its DAG can also be seen as an attempt to add pressure on the Vietnamese government.

The European Parliament, in turn, has continued to push for progress in the implementation of the EVFTA, although it can no longer use the threat of a veto to bargain concessions. In January 2021, the Parliament passed a resolution<sup>17</sup>, with reference to the EVFTA, on the human rights situation in Vietnam, in particular the intensified harassment and intimidation of human rights defenders, journalists, bloggers, civil society activists and trade unionists. In the resolution, the Parliament regretted “that the Domestic Advisory Groups on the EVFTA are not yet operational”, reiterating its “call for a

---

<sup>17</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0029\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0029_EN.html)

broad and balanced representation of independent, free and diverse civil society organisations”. Moreover, the Parliament urged “the Vietnamese authorities to refrain from any undue interference in the composition and functioning of the body as well as threats or retaliation against its selected members”. Another novel step by the Parliament has been the establishment of a Joint Parliamentary Monitoring Group comprised of representatives of the European Parliament and the National Assembly of Vietnam, with the purpose of overseeing the implementation of the EVFTA. Set up on initiative of Bernd Lange, chair of the INTA committee, this interparliamentary group held its first meeting in December 2020.

## Conclusions

In this article, we assessed the role of the EVFTA in the ground-breaking labor reforms initiated by Vietnam in the run-up to ratification and the potential for post-ratification impact, particularly through the CSM and the DAGs. We argue that the EVFTA *did* play a crucial role as an external reform catalyst pre-ratification and that this impact was the outcome of social struggles within and around state institutions in the EU and Vietnam, as well as their mediation across transnational space. It was shown how the EU, after the conclusion of negotiations, adopted a more assertive approach to the TSD chapter. This shift played out against the backdrop of a wider politicization of EU trade policy but was driven by specific MEPs and member states in the vacuum left by the US exit from TPP. While this turn to *de facto* pre-ratification conditionality is key, however, the impact of the EVFTA can only be understood in its interaction with longstanding struggles over labor reform *within* Vietnam. These struggles, in conjunction with prior external pressure through the TPP, prepared the ground for union reform, and the EU effectively ‘entered an open door’ or, more accurately, was drawn into it by reformists seeking new external leverage. Rather than fundamentally changing the internal dynamics, the EU’s stepping-up on pre-ratification conditions tilted the balance in favor of the reformist faction in the party-state. The impact of the EVFTA should, therefore, be seen more as a ‘catalyst’ of change than a root cause, as has also been argued for the TPP (Chi 2017; Chan 2019).

Our analysis suggests that the impact of the EVFTA was contingent upon the historical conjunctures, in which it occurred. These conjunctures play out in concrete political economy contexts and state-society relations and are formed by the geo-political and -economic interests linked to FTAs and the nature of transnational linkages. In stressing the importance of multi-scalar and interrelated conjunctures in explaining the effect of labor clauses in FTAs, we transcend the distinction between promotional and conditional approaches. Our point is not that the formal design of labor clauses is irrelevant, but that how they play out and impact is formed in the context of struggles and power dynamics within and between the signatory parties. Extending Vogt’s (2015, 859) observation that ‘agreements

will only be as useful as the politicians desire them to be', we would add – in the tradition of strategic-relational state theory – that such desires are related to evolving social struggles and state-society relations.

Regarding post-ratification impact, we argue that the political economy dynamics in the EU in terms of needing to show results in the Commission's trade-and-labor approach, and using Vietnam as a testing balloon, remained important. Hence, the EU seems to continue trying to put pressure on Vietnam, which is still most strongly coming from the Parliament. The establishment of a Joint Parliamentary Monitoring Group between the European Parliament and the National Assembly of Vietnam to ensure a role in monitoring of the TSD chapter is unique and could become a role model for other FTAs. However, the leverage of EU actors is much smaller post-ratification, which corresponds with a more difficult context after the Party Congress in January 2021. Decrees needed for the implementation of the new labor code and the operationalization of the WROs are still outstanding and the DAG implementation process has been stalled for months. The few independent labour NGOs are skeptical to apply for the DAG, and in the end, only one of these labour NGOs applied. The installation of the DAG and the CSM could potentially be pathbreaking in the authoritarian context of Vietnam, initiating longer-term change in the civil society landscape and closer cooperation and understanding between the few independent civil society organizations and the trade union, but this depends on how they are implemented in terms of which members are selected and which way of operation is set. But these institutional structures may also interfere with, or even jeopardize, established strategies of the few labour NGOs and may prove ineffective in addressing key labour issues and changing power dynamics in global production networks. Worst, the DAG may use quite a lot of resources from these NGOs but at the end be ineffective in their monitoring role and additionally negatively impact the other activities of these NGOs through the more limited resources but also through state harassment given their prominent role in the DAG. The success of the CSM will be contingent on EU involvement and pressure, but options are more limited than before without any sanctions enshrined in the FTA and strong interests behind the commercial chapters.

Our approach emphasizes that the pre-ratification 'success' and potential post-ratification 'failure' of the EVFTA, context-dependent as it is, does not easily lend itself to replication. Although the van der Leyen Commission has taken steps towards a stronger position on the trade-labor nexus, it is doubtful whether the EU has the political will to prioritize pre- and post-ratification conditionality on labor standards in future FTAs. Ongoing negotiations of an FTA with Indonesia, for instance, seem to indicate that this is not the case. Under influence of export-oriented and import-dependent factions of European capital, DG Trade is unlikely to allow TSD provisions to obstruct market-opening instruments.



The critical question is whether the Parliament is ready to consolidate its expanded role by placing demands on partner countries as a condition for its consent to FTAs. Even in that case, however, our analysis shows that conditions in Vietnam were particularly conducive to EU intervention. In other countries, a similar complementarity between TSD provisions, EU strategy and domestic labor struggles may not be there. Indeed, as Harrison and colleagues (2019, 273) sum up previous research, while the EU has hitherto not ‘sought to ‘aggressively’ export labor standards through its trade agreements’, ‘neither have state officials in trading partners readily imported them’.

### **Acknowledgements:**

We wish to thank all interview partners in the EU and in Vietnam who took time to discuss with us developments around the EU-Vietnam Free Trade Agreement. Without their time and insights, this work would not have been possible. Financial support from the DFG-FWF Joint Project I 3511-G16 is gratefully acknowledged. We also thank Clara Hanfland, Helena Gräf and Miriam Frauenlob for their great support in researching for and writing the paper, as well as Erwin Schweisshelm, Jan Orbie and the other members of the project advisory board for very useful comments on an earlier version of the article.

### **References**

- Abuza, Z. (2015) ‘Stifling The Public Sphere: Media and Civil Society In Vietnam’, National Endowment for Democracy, pp. 26–36. <http://www.ned.org/wpcontent/uploads/2015/10/Stifling-the-Public-Sphere-Media-Civil-Society-Egypt-Russia-Vietnam-Full-Report-Forum-NED.pdf#page=26>.
- Apeldoorn, B. van. (2009). The contradictions of ‘embedded neoliberalism’ and Europe’s multi-level legitimacy crisis: The European project and its limits. In B. van Apeldoorn, J. Drahokoupil, & L. Horn (Eds.), *Contradictions and limits of neoliberal European governance: from Lisbon to Lisbon*. Palgrave Macmillan.
- Barbu, M., Campling, L., Smith, A., Harrison, J., & Richardson, B. (2018). The Trade-Labour Nexus: Global Value Chains and Labour Provisions in European Union Free Trade Agreements. *Global Labour Journal*, 9(3).
- BBC (18 Sep 2017). EU-VN: Thương mại, nhân quyền và Trịnh Xuân Thanh. <https://www.bbc.com/vietnamese/vietnam-41307519>
- Bui, T. H. (2013) ‘The development of civil society and dynamics of governance in Vietnam’s one party rule’, *Global Change, Peace and Security*. Routledge, 25(1), pp. 77–93. doi: 10.1080/14781158.2013.758100.
- Chan, A. (2019). Vietnam’s and China’s Diverging Industrial Relations Systems: Cases of Path Dependency. *Journal of Contemporary Asia*, 00(00), 1–20.

- Chi, D. Q. (2017). The Regional Coordination of Strikes and the Challenge for Union Reform in Vietnam. *Development and Change*, 48(5), 1052–1068.
- Chi, D. Q., & van den Broek, D. (2013). Wildcat strikes: A catalyst for union reform in Vietnam? *Journal of Industrial Relations*, 55(5), 783–799.
- CIVICUS (2020) CIVICUS - Tracking conditions for citizen action. <https://monitor.civicus.org/country/vietnam/>
- CIVICUS (2021). Activists face repression around and following the Vietnam Communist Party congress. <https://monitor.civicus.org/updates/2021/03/29/activists-face-repression-around-and-following-vietnam-communist-party-congress/> [retrieved on 24 Jun 2021]
- Congressional Research Service (2020). Labor Enforcement Issues in U.S. FTAs. <https://fas.org/sgp/crs/row/IF10972.pdf> [retrieved on 21 Jan 2021].
- Damro, C. (2012) ‘Market power Europe’, *Journal of European Public Policy*, 19:5, 682–699.
- Department of Labor (2021). Submissions under the Labor Provisions of Free Trade Agreements. <https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions> [retrieved on 21 Jan 2021].
- Dixon, C. (2004). State, party and political change in Vietnam. In D. McCargo (Ed.), *Rethinking Vietnam* (pp. 15–26). Routledge.
- Do, Q. C. (2016) Vietnam country study Labour Standards in the Garment Supply Chain. Utrecht.
- European Commission (2016). Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement. [http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc\\_154189.pdf](http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154189.pdf)
- European Commission (2017a). Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements (FTAs). [http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf).
- European Commission (2017b). The Opinion of the European Court of Justice on the EU-Singapore Trade Agreement and the Division of Competences in Trade Policy. [https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc\\_156035.pdf](https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156035.pdf)
- European Commission (2018). Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements. [https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)
- European Commission (2020). European Commission appoints its first Chief Trade Enforcement Officer. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1409](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1409).
- European Commission (2021). Trade Policy Review – An Open, Sustainable and Assertive Trade Policy. [https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\\_159438.pdf2528/QD-TTG](https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf2528/QD-TTG)
- European Ombudsman (2015). Draft recommendation of the European Ombudsman in the inquiry into complaint 1409/2014/JN against the European Commission. <https://www.ombudsman.europa.eu/en/recommendation/en/59398>

- European Parliament (2014). *Resolution of 17 April 2014 on the state of play of the EU-Vietnam Free Trade Agreement (2013/2989(RSP))*. [https://www.europarl.europa.eu/doceo/document/TA-7-2014-0458\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-7-2014-0458_EN.html)
- European Parliament (2018). *Resolution of 15 November 2018 on Vietnam, notably the situation of political prisoners*. [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0459\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0459_EN.html)
- Evans, A. (2018). The politics of pro-worker reforms. *Socio-Economic Review*, 0(0), 1–23.
- Evans, A. (2020). Export incentives, domestic mobilization, & labor reforms. *Review of International Political Economy*, 1–30.
- FES (2017). Trade doesn't work for all. <https://asia.fes.de/news/trade-doesnt-work-for-all/>
- Garcia, M., & Masselot, A. (2015). EU-Asia Free Trade Agreements as tools for social norm/legislation transfer. *Asia Europe Journal*, 13(3), 241–252.
- Garcia-Duran, P., Eliasson, L. J., & Costa, O. (2020). Managed Globalization 2.0: The European Commission's Response to Trade Politicization. *Politics and Governance*, 8(1), 290–300.
- Government of Vietnam (2017). Hồ sơ đề nghị xây dựng dự án Bộ luật Lao động (sửa đổi). [http://www.chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVan-Ban?piref135\\_27935\\_135\\_27927\\_27927.mode=re-ply&piref135\\_27935\\_135\\_27927\\_27927.id=2071](http://www.chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVan-Ban?piref135_27935_135_27927_27927.mode=re-ply&piref135_27935_135_27927_27927.id=2071).
- Gräf, H. (2021). The role of Domestic Advisory Groups in the Trade and Sustainable Development chapter of the EU-Vietnam Free Trade Agreement in realizing sustainable trade – Opportunities and Limitations? Unpublished Master thesis, Hochschule für Wirtschaft und Recht Berlin.
- Grumiller, J., Raza, W., Staritz, C., Tröster, B., von Arnim, R. & Grohs, H. (2018). The economic and social effects of the EU Free Trade Agreement with Vietnam. ÖFSE Research Report 8/2018. Vienna.
- Harrison, J., Barbu, M., Campling, L., Ebert, F. C., Martens, D., Marx, A., Orbie, J., Richardson, B., & Smith, A. (2018). Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda. *World Trade Review*, August, 1–23.
- Harrison, J., Barbu, M., Campling, L., Richardson, B., & Smith, A. (2019). Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters. *Journal of Common Market Studies*, 57(2), 260–277.
- Hiep, L. H. (2012). Performance-based Legitimacy: The Case of the Communist Party of Vietnam and Doi Moi. *Contemporary Southeast Asia*, 34(2), 145.
- Human Rights Watch (2020). *World Report 2020: Vietnam*. <https://www.hrw.org/world-report/2020/country-chapters/vietnam> [retrieved on 26 Jun 2021]

- ILO (2019a). NIRF EU project – final project evaluation. [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/projectdocumentation/wcms\\_673540.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/projectdocumentation/wcms_673540.pdf)
- ILO (2019b). Revised Vietnamese Labour Code to help everyone gain fair shares of economic growth. [https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS\\_729339/lang--en/index.htm](https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_729339/lang--en/index.htm)
- ILO and ILS 2013. *Social Dimensions of Free Trade Agreements*. Studies on Growth with Equity. Geneva.
- IndustriAll (2020). Nationwide demonstrations against regressive labour law in Korea. <http://www.industriall-union.org/nationwide-demonstrations-against-regressive-labour-law-in-korea>.
- Jessop, B. (1990). *State theory: Putting the capitalist state in its place*. Polity Press.
- Keck, M. E., & Sikkink, K. (1998). Transnational advocacy networks in the movement society. *The Social Movement Society: Contentious Politics for a New Century*, 217–238.
- Kerkvliet, B. J. T. (2001). An Approach for Analysing State-Society Relations in Vietnam. *SO-JOURN*, 16(2), 238–278.
- Kerkvliet, B. J. T. (2010). Governance, development, and the responsive-repressive state in Vietnam. *Forum for Development Studies*, 37(1), 33–59.
- Leblond, P., & Viju-Miljusevic, C. (2019). EU trade policy in the twenty-first century: change, continuity and challenges. *Journal of European Public Policy*, 26(12), 1836–1846.
- London, J. D. (2014). Politics in Contemporary Vietnam. In London, J. D. (ed.) *Politics in Contemporary Vietnam: Party, State, and Authority Relations*. Houndmills and Palgrave/MacMillan.
- London, J. D. (2019). Vietnam in 2018: Leninism, Consolidating Market. *Asian Survey*, 59(1), 140–146.
- Majone, G. (1994) ‘The rise of the regulatory state in Europe’, *West European Politics*, 17:3, 77–101.
- Manners, I. (2002) ‘Normative power Europe: A contradiction in terms?’, *Journal of Common Market Studies*, 40:2, 235–258.
- Nhan Dan (2017). Third session of 14th National Assembly to open on May 22. <https://en.nhandan.com.vn/politics/domestic/item/5152302-third-session-of-14th-national-assembly-to-open-on-may-22.html>
- Nhan Dan (2018). NA adopts law-building programme for 2019, adjustments for 2018 plan. <https://en.nhandan.com.vn/politics/domestic/item/6253102-na-adopts-law-building-programme-for-2019-adjustments-for-2018-plan.html>.
- Norlund, I. (2007) ‘Civil Society in Vietnam. Social Organisations and Approaches to New Concepts’, *ASIEN*, 105, pp. 68–90. [www.civicus.org](http://www.civicus.org)
- Orbie, J., & Khorana, S. (2015). Normative versus market power Europe? The EU-India trade agreement. *Asia Europe Journal*, 13(3), 253–264.

- Orbie, J., Martens, D., Oehri, M., & Van den Putte, L. (2016). Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements. *Third World The-matics: A TWQ Journal*, 1(4), 526–546.
- Politburo (2008). Directive 22-CT/TW of the Central Committee on the development of harmonious, stable, and progressive labour relations within enterprises. English translation: <https://www.amchamvietnam.com/directive-22-ct-tw-of-the-central-committee-of-the-party/>
- Politburo (2016). Resolution No. 06-NQ/TW on effective implementation of the international eco-nomic integration process and firm maintenance of socio-political stability as Viet Nam joins new-generation free trade agreements. English translation: <http://news.chinhphu.vn/Home/CPVCC-issues-Resolution-on-international-economic-integra-tion/201611/28982.vgp>
- Politico (21 Jan 2018). Asian sweatshop fears threaten EU’s trade momentum. <https://www.polit-ico.eu/article/asian-sweatshop-fears-threaten-to-sap-eu-trade-cecilia-malmstrom-momentum/>.
- Poulantzas, N. (1978). *State, power, socialism*. Verso.
- Prime Minister (2015). Decision 2528/QĐ-TTg. <https://thuvienphapluat.vn/van-ban/Lao-dong-Tien-luong/Quyết-dinh-2528-QĐ-TTg-ke-hoach-de-xuat-gia-nhap-cong-uoc-Lien-hop-quoc-to-chuc-lao-dong-quoc-te-300109.aspx>
- Reuters (30 Jun 2019). Vietnam, EU sign landmark free trade deal. <https://www.reuters.com/arti-cle/us-eu-vietnam-trade/vietnam-eu-sign-landmark-free-trade-deal-idUSKCN1TV0CJ>
- Roederer-Rynning, C. (2017). Parliamentary assertion and deep integration: the European parliament in the CETA and TTIP negotiations<sup>1</sup>. *Cambridge Review of International Affairs*, 30(5–6), 507–526.
- Roederer-Rynning, C., & Kallestrup, M. (2017). National parliaments and the new contentiousness of trade. *Journal of European Integration*, 39(7), 811–825.
- Rosamond, B. (2014). Three ways of speaking Europe to the World: Markets, peace, cosmopolitan duty and the EU’s normative power. *British Journal of Politics and International Relations*, 16(1), 133–148.
- Russell (2018). Briefing: EU-Vietnam free trade agreement. European Parliamentary Research Ser-vice. [https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2018/628248/EPRS\\_BRI\(2018\)628248\\_EN.pdf](https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2018/628248/EPRS_BRI(2018)628248_EN.pdf)
- S&D (2019). Press: S&Ds demand further labour and human rights guarantees from Vietnam before they can accept the trade deal. <https://www.socialistsanddemocrats.eu/newsroom/sds-de-mand-further-labour-and-human-rights-guarantees-vietnam-they-can-accept-trade-deal> (S&D online).

- Schweisshelm, E., & Chi, D. Q. (2018). From Harmony to Conflict - Vietnamese Trade Unions on the Threshold of Reform. In R. Traub-Merz & T. Pringle (Eds.), *Trade Unions in Transition* (pp. 109–148). Friedrich Ebert Stiftung.
- Sicurelli, D. (2015). The EU as a promoter of human rights in bilateral trade agreements: The case of the negotiations with Vietnam. *Journal of Contemporary European Research*, 11(2), 230–245.
- Smith, A., Barbu, M., Campling, L., Harrison, J., & Richardson, B. (2018). Labor Regimes, Global Production Networks, and European Union Trade Policy: Labor Standards and Export Production in the Moldovan Clothing Industry. *Economic Geography*, 94(5), 550–574.
- Smith, A. (2015) The state, institutional frameworks and the dynamics of capital in global production networks. *Progress in Human Geography*, 39: 290–315.
- Taylor, W. et al. (2012) Civil Society in Vietnam: A Comparative Study of Civil Society Organizations in Hanoi and Ho Chi Minh City. Hanoi. [www.duthaoonline.quochoi.vn](http://www.duthaoonline.quochoi.vn)
- Thayer, C. A. (2009) ‘Vietnam and the Challenge of Political Civil Society’, *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 31(1), pp. 1–27. doi: 10.1355/cs31-1a.
- Thayer, C. A. (2017). Vietnam’s foreign policy in an era of rising Sino-US competition and increasing domestic political influence. *Asian Security*, 13(3), 183–199.
- Thu, Mai Ha and Schweißhelm, Erwin, (2020), Labour rights and civil society empowerment in the EU-Vietnam Free Trade Agreement, No 135/2020, IPE Working Papers, Berlin School of Economics and Law, Institute for International Political Economy (IPE).
- Tran, A. N., Bair, J., & Werner, M. (2017). Forcing change from the outside? the role of trade-labour linkages in transforming Vietnam’s labour regime. *Competition and Change*, 21(5), 397–416.
- Van den Putte, L., De Ville, F., & Orbie, J. (2015). The European Parliament as an international actor in trade. In S. Stavridis & D. Irrera (Eds.), *The European parliament and its international relations*. Routledge.
- VietnamPlus (20 Jan 2017). Wallonia parliament holds third hearing on EU-Vietnam Free Trade Agreement. <https://en.vietnamplus.vn/wallonia-parliament-holds-third-hearing-on-euvietnam-free-trade-agreement/106212.vnp>
- VietnamPlus (27 Jul 2018). EVFTA expected to be signed late 2018. <https://en.vietnamplus.vn/evfta-expected-to-be-signed-late-2018/135458.vnp>
- Vogt, J. S. (2015). The Evolution of Labor Rights and Trade - A Transatlantic Comparison and Lessons for the Transatlantic Trade and Investment Partnership. *Journal of International Economic Law*, 18(4), 827–860.
- Vuving. (2017). the 2016 Leadership Change in Vietnam and Its Long-Term Implications. *Southeast Asian Affairs*, 121–435.

- Wells-Dang, A. (2014). The Political Influence of Civil Society in Vietnam. In London, J. D. (ed.) *Politics in Contemporary Vietnam: Party, State, and Authority Relations*. Houndmills and Palgrave/MacMillan.
- Wischermann, J. (2012) Zivilgesellschaften als Stütze autoritärer Regime. Das Fallbeispiel Vietnam. doi: 10.5771/9783845244655-329.
- World Bank (2021). DataBank. <https://databank.worldbank.org/>
- Young, A. (2015) 'Liberalizing Trade, Not Exporting Rules: The Limits to Regulatory Co-ordination in the EU's "New Generation" Preferential Trade Agreements'. *Journal of European Public Policy*, Vol. 22, No. 9, pp. 1253–75.