The EU–Viet Nam Free Trade Agreement

A catalyst of labour reform in Viet Nam?

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Introduction

Many countries of the global South, including Viet Nam, have centred their development strategies on export orientation and integration into global production networks. While this has generated many jobs, it has also contributed to poor working conditions and labour rights violations (specifically on Viet Nam, see Chan 2011; Do 2017a; Marslev, Staritz and Raj-Reichert 2022). In addition to private labour governance mechanisms, which have been criticized for being largely unsuccessful, public governance, including the integration of international labour standards into free trade agreements (FTAs), has gained importance since the 1990s. Spearheaded by the United States and Canada, the European Union (EU) has also introduced such labour clauses in its trade policy. With earlier antecedents, labour provisions became a common feature of EU FTAs in the 2000s and have, since then, expanded in scope and content (Bartels 2013; Van den Putte, De Ville and Orbie 2015; Velluti 2015). Since the EU–Republic of Korea FTA, signed in 2009 and in effect since 2011, labour provisions (and environmental standards) have been bundled into dedicated trade and sustainable development (TSD) chapters; and this approach was streamlined and made obligatory for all new EU FTAs with the “Trade for All” strategy in 2015 (Smith et al. 2020). The TSD chapters commit trading partners to respect Fundamental Principles and Rights at Work, as defined by the ILO Declaration (ILO 1998). To monitor implementation, they enact a set of institutional mechanisms, including intergovernmental committees (the Trade Committee and the Committee on Trade and Sustainable Development); and a civil society mechanism (CSM) comprising domestic advisory groups (DAGs) and a joint civil society forum for transnational dialogue. As of May 2023, TSD chapters were in force in 11 EU FTAs with 18 countries and included in another 4 agreements awaiting ratification (see Corley-Coulibaly, Grasselli and Postolachi in this volume, for a detailed treatment of labour provisions in EU FTAs).¹

The EU’s TSD approach, however, has been criticized by academics and activists alike for its limited impact (Harrison et al. 2019; Smith et al. 2020). Criticism centres on the promotional approach of the EU, which relies on dialogue and cooperation, with a separate dispute settlement mechanism that involves no possibility of sanctions; on the inadequacies of the CSMs,

¹ TSD chapters in force: Andean Community (Colombia, Ecuador, Peru), Canada, Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama), Georgia, Japan, Republic of Korea, Republic of Moldova, Singapore, Ukraine, United Kingdom and Viet Nam. Awaiting ratification: Chile, China, Mercosur (Argentina, Brazil, Paraguay, Uruguay) and Mexico. Source: EC n.d.
which suffer from lack of independence and representation, limited resources and operational support; and on the “accountability deficit” and lack of political will in CSMs’ relations with governments (Marx, Lein and Brando 2016; Orbie, Van den Putte and Martens 2017; Barbu et al. 2018; Harrison et al. 2019; Martens, Potjomkina and Orbie 2020; Drieghe et al. 2022). Considering this criticism, the EU–Viet Nam FTA (EVFTA), which entered into force in August 2020, appears as a puzzling deviation, as external pressure from the EU played a role in labour reform.

However, there have long been domestic struggles in Viet Nam related to labour reform, fluctuating with the vagaries of internal factionalism and geopolitical and geoeconomic shifts. With the launch of the Doi Moi (“renovation”) reforms in 1986, Viet Nam not only embraced a “socialist market economy” but also embarked upon reforms of its labour and industrial relations laws. Nevertheless, several rounds of revisions left a fundamental feature intact: the monopoly of the Viet Nam General Confederation of Labour (VGCL), subordinated to the Communist party of Viet Nam (CPV), as the only permitted worker representative (Schweisshelm and Do 2018). In the context of ongoing domestic labour struggles, in the run-up to the ratification of the EVFTA, the Vietnamese State took unprecedented steps: in June 2019 and July 2020, respectively, two of the three outstanding ILO core Conventions – No. 98 on the Right to Organise and Collective Bargaining and No. 105 on the Abolition of Forced Labour – were ratified, while the last one – No. 87 on Freedom of Association and Protection of the Right to Organise – was scheduled for 2023; and in November 2019 a revised Labour Code was passed, for the first time granting workers the right to establish independent workers’ representative organizations at the enterprise level. These reforms represent a remarkable break with the existing trade union structure. Furthermore, the commitment by the Vietnamese Government to set up a DAG and to allow the participation of independent civil society organizations (CSOs) is equally unseen in a one-party State with restricted civic space.

Beyond its unusual impact in the pre-ratification phase, scrutinizing the EVFTA is interesting for two further reasons. First, while Viet Nam has committed to reforms on paper, the ultimate on-the-ground effects of these crucially depend on their implementation. Second, in the context of broader changes in EU trade policy triggered by geopolitical shifts – and informed by the experiences from Viet Nam, as laid out in this chapter – the European Commission has taken recent steps towards a more conditional approach (EC 2018, 2022). After the appointment of a Chief Trade Enforcement Officer (EC 2020a), the launch of a more open complaints system (EC 2020b) and the announcement of “an open, sustainable and assertive trade policy”
(EC 2021b), in June 2022 the European Commission presented its proposal for a new TSD model, promising, among other things, to step up engagement with trading partners and to more strongly enforce TSD chapters, including through trade sanctions (EC 2022). A tougher stance is also evident in the European Commission requesting the first-ever panel of experts, which confirmed in January 2021 – after eight years of civil society pressure – that the Republic of Korea had breached its TSD obligations (EC 2021a). This strategic reorientation, which came about under continuous pressure from the European Parliament, some Member States and civil society, may alter the post-ratification dynamics compared with previous FTAs and lead to stronger EU pressure on the implementation of the TSD chapter in Viet Nam.

Against this backdrop, this chapter examines the role of the EVFTA and the EU in the Vietnamese labour reforms. The first question is whether and, if so, how the EU and the pre-ratification requirements linked to the TSD chapter became an external catalyst of labour reform in Viet Nam. The next question is how the labour provisions are being implemented, and what role the EU is playing in the post-ratification phase. These questions are analysed drawing on a conceptual framework that highlights the key role of power dynamics and State–society relations within the EU and within partner countries, as well as between States. While literature on the trade–labour nexus focuses on the politics and institutions of the EU, power dynamics and social struggles in partner countries are often sidelined. This is brought to the fore by linking FTAs and labour reforms to a strategic-relational theorization of the State and civil society, viewing them as existing in a complex, dialectical relationship. The chapter’s analysis of labour reform and implementation is restricted to the reform process at the institutional level. To assess the ultimate effects of the TSD chapter for Vietnamese workers, one would have to foreground the complex power relations in global production networks and how they interrelate with labour regimes, where labour issues materialize and are contested. Doing so would also require considering the impact of the commercial chapters of FTAs, which may deepen engagement in sectors, where hypercompetitive conditions place downward pressure on wages, working conditions and compliance with labour standards (Barbu et al. 2018; Smith et al. 2018; Anner 2020).

In terms of methodology, the chapter uses process tracing to clarify the causal processes underpinning the labour reforms in Viet Nam, and the role played by the EU and the EVFTA as well as domestic dynamics. It draws on legal and policy documents, parliamentary debates, voting records and commentaries to track the decision-making process in the EU and

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2 The Communication by the Commission is available in the Commission’s Communication and Information Resource Centre.
the law-making process in Viet Nam. In addition, the chapter is based on 54 interviews, conducted between 2019 and 2023, with actors involved in the negotiation and implementation of the TSD chapter, the EVFTA and/or the Vietnamese labour reforms. In the EU, interviews were conducted with 27 informants from the European Commission (DG Trade), the European Parliament and the EU DAG; these interviews were conducted during fieldwork in November 2019 or online thereafter. In Viet Nam, 25 interviews were conducted with domestic and international labour CSOs, the VGCL, the ILO Country Office in Hanoi, and members of the Vietnamese DAG; these were conducted in person in May 2022 or online.

The chapter proceeds as follows. Section 5.1 briefly introduces the conceptual approach. Section 5.2 sets the stage by introducing the broader context of Viet Nam and the new generation of FTAs. The next three sections contain the chapter’s empirical analysis. Section 5.3 focuses on the developments in the pre-ratification phase (that is, after the conclusion of negotiations), both within the EU and in Viet Nam. Section 5.4 examines the contested process of implementing the EVFTA’s CSM and the pre-ratification commitments undertaken by Viet Nam, as well as the role played by the EU in this process. Section 5.5 discusses the role of the ILO and other actors with translocal characteristics across the two phases. Section 5.6 concludes.

5.1 Conceptual framework: A strategic-relational approach and FTAs

Our conceptual point of departure is a critique of the literature on the trade-labour nexus for focusing too narrowly on the legal-institutional details of labour provisions and on dynamics on the EU side, while overlooking how they articulate with political contexts and social struggles in partner countries (Orbie and Khorana 2015; Harrison et al. 2019). Furthermore, although FTAs are inter-State agreements, there is little effort to conceptualize the State, and still less civil society, despite its pivotal monitoring role (Drieghe et al. 2022). To address these lacunae, this chapter draws on a strategic-relational approach (Poulantzas 1978; Jessop 1990), viewing the State both

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DG (Directorate-General) signifies a department within the European Commission responsible for a particular policy area.
as an *institutional ensemble* imbued with distinctive logics, resources and procedures, and as an *arena of contestation* between competing socio-political forces. In such a perspective, the State is understood in a dialectical relationship with society. This means, on the one hand, that state action is necessarily relational and conditional, shaped by the “action, reaction and interaction of specific social forces located both within and beyond” state institutions (Jessop 1990, 366). On the other hand, the State is perceived as inherently biased, privileging certain actors and interests; and its institutions do not necessarily act in unison, but may promote competing “state projects” (Jessop 1990).

A strategic-relational approach also has implications for how the chapter conceptualizes civil society. While liberal conceptions view civil society as an autonomous sphere for voluntary association, deliberation and action, stretching the space between individuals and the State, a strategic-relational perspective sees it as a contested terrain upon which social classes compete for hegemony (Jessop 1990). Civil society, therefore, exists not in opposition to the State, but in a dialectical unity with it (Gramsci 1971; Arnold and Hess 2017). Furthermore, civil society is far from homogenous, involving different social groups, such as employer representatives (industry associations), trade unions, various types of non-governmental organizations (NGOs) and religious movements, that have different interests, capacities and relations to the State.

The capacity of social groups to influence state power, however, is formed not merely at the national level but also at the transnational level. Two points are particularly important for the analyses conducted. First, States remain important, but they act within a multiscalar and increasingly complex spatio-institutional configuration. There has been a focus on how an emergent transnational business class is able to exercise power through transnational state apparatuses, but pro-labour forces can also – despite challenges – use the transnational scale for their projects (Keck and Sikkink 1998; Merk 2009). This is facilitated by “translocal” coalitions that can connect actors and struggles across transnational space (Brand, Görg and Wissen 2011). Second, there are considerable power asymmetries between States, linked to their positions in the global economy and within inter-State hierarchies. This is manifest in different constraints in national policymaking and unequal capacities to influence transnational state apparatuses such as international institutions and agreements (Brand, Görg and Wissen 2011).

Based on the above, FTAs are conceptualized as agreements between States, whose interests, priorities and strategies are formed through socio-political struggles at national and transnational levels, and within specific geopolitical and geoeconomic conjunctures. Determined chiefly by States and social
forces in the global North, FTAs mainly serve to integrate economic spaces for the expansion of capital and global production networks by setting rules, regulations and enforcement mechanisms at the transnational scale (Smith 2015). In so doing, however, they institute a set of economic and, more recently, labour governance structures that influence domestic struggles and reform processes and can be used by social forces to influence state actions (Barbu et al. 2018).

Within this broader conceptualization of States, civil society and FTAs, the chapter’s conceptual framework highlights four factors that shape the impact of labour provisions – in this case, the EU’s TSD chapters – in partner countries: (i) evolving State–society relations in the EU, especially the relative influence of social forces on the key institutions involved in trade policymaking, which guides the priorities and strategies of the EU in negotiating, monitoring and enforcing labour commitments; (ii) corresponding State–society relations in partner countries, which shape their commitments and strategies, set the parameters for civil society action, and decide whether external pressure has potential to tilt internal power relations towards pro-labour actors; (iii) the wider domestic, geopolitical and geoeconomic interests linked to the FTA, which may open a space for compromise by actors who would otherwise oppose labour reform in partner countries; and (iv) the nature of transnational social relations that can facilitate cooperation between actors pushing for labour reform on both sides of the FTA.4

5.2 Context: Viet Nam and the new-generation FTAs

Since the launch of the Doi Moi (“renovation”) reforms in 1986, marking the transition from central planning to a “socialist market economy”, Viet Nam has increasingly embraced a development strategy based on export orientation and global integration (Anh, Duc and Chieu 2016).5 Following the signing of bilateral trade agreements with the European Communities (now EU) in 1992 and the United States in 2001, and World Trade Organization accession in

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4 For a more detailed discussion of this framework, see Marslev and Staritz (2022).
5 See also Volume 1, Sekerler Richiardi, Ghani and Pham for an overview of the economic context in Viet Nam, and the relationship between trade and labour in small and medium-sized enterprises in the country.
2007, Viet Nam emerged as a major production hub for consumer goods such as garments, footwear and, more recently, electronics (Hollweg, Smith and Taglioni 2017). While initially dominated by State-owned enterprises, private and foreign direct investment has come to dominate many industries. More recently, Viet Nam has been the primary winner of the China Plus One Strategy, driven by rising labour costs in China and growing trade tensions between China and other countries (Hollweg, Smith and Taglioni 2017). For the Vietnamese leadership, therefore, the signing of bilateral and regional FTAs has become a cornerstone of its ambitions to attain upper-middle-income status by 2030 (Tran, Bair and Werner 2017). The country has entered numerous FTAs and is, in July 2023, a signatory to 18 active and planned bilateral and plurilateral FTAs.⁶

Viet Nam has traditionally had a restricted space for civil society activity and autonomous worker organization. Following Marxist–Leninist doctrines, the CPV officially considers its affiliated “mass organizations” (such as the VGCL, the farmer’s union and the women’s association), united in the Fatherland Front, as the only legitimate representatives of the non-State sector.⁷ Nevertheless, like other one-party States, the Vietnamese State is no monolith, but has long been an arena of negotiation and intermediation between competing interests and factions (Kerkvliet 2001; Vuving 2017). State–society relations in Viet Nam have been described as “dialogical” (Kerkvliet 2001) and “accommodating” (Koh 2006); and the State has proved to be responsive to grassroots pressure, especially if emanating from industrial or agricultural workers, the two primary constituencies of the CPV and the sources of its political legitimacy. The CPV, however, is determined to prevent the emergence of counter-hegemonic movements (Kerkvliet 2019). Despite “the emergence of new forms of social organization akin to what some people might call ‘civil society’” (London 2014, 12), civil society is regulated by a myriad of government decrees and party directives. All CSOs must be licensed by, and can be dissolved by, the Government; and once in operation, all projects and foreign funding must be approved, and activities are closely monitored by the security apparatus (London 2014). CSOs working on labour and human rights issues are under particular scrutiny. As a result, there are only a few registered labour CSOs (Do 2017b), and past attempts to establish independent trade unions have been suppressed (Kerkvliet 2019).

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⁶ A full list of these FTAs is available on the Vietnam Briefing website.

⁷ As stipulated by the current Constitution (2013), the Fatherland Front “constitutes the political base of the people’s government” and “represents and protects legal and legitimate rights and interests of the people”.

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Nevertheless, alongside economic liberalization, reforming Viet Nam’s labour laws and industrial relations has been an ongoing project. Early attempts by a minority reformist faction to carve out a space of autonomy for the VGCL were halted by the events of 1989–90: the Tiananmen protests in China and the fall of communism in Central and Eastern Europe, not least in Poland, where the first independent union was instrumental in bringing down the regime (Schweisshelm and Do 2018). Although the trade union law (1990), the constitution (1992) and the first Labour Code (1994) did open up some room for manoeuvre for the VGCL, and the latter granted workers the right to strike (albeit only after highly burdensome procedures), conservatives gained the upper hand (Vuving 2017), and further reform was halted (Nørlund and Chan 1998; Schweisshelm and Do 2018). In the second half of the 2000s, however, an outburst of wildcat strikes in export sectors revived the reform process. Bypassing the formal union, these strikes challenged the legitimacy of both the VGCL and the CPV – and although the strike wave was driven by material conditions, it also became a catalyst for union reform (Do 2017b). In a landmark 2008 directive, the Politburo, the highest authority in the political system, called on enterprise unions to “become actual representatives to protect workers’ legitimate rights and interests” (Viet Nam, Politburo 2008). The following year, a comprehensive revision of the Labour Code – after smaller amendments in 2002 and 2006 – was initiated. The new law, however, adopted in 2012, was a compromise between reformers in the government – especially in the Ministry of Labour, Invalids and Social Affairs (MOLISA) but also in the CPV, the National Assembly and the strike-ridden provinces of the south of the country – and conservatives in the CPV and the VGCL. Because the law introduced quarterly labour–management meetings, and for this purpose (only) permitted workers to elect representatives, it is “frequently interpreted as the introduction of ‘social dialogue’ into the Vietnamese context” (Tran, Bair and Werner 2017, 407); however, the fact is that the law retained the representational monopoly of the VGCL and gave it the right to represent non-unionized enterprises in collective bargaining and dispute settlement (Schweisshelm and Do 2018).

The latest push for labour reform in Viet Nam has come under external pressure from the labour provisions contained in a new generation of FTAs (Tran, Bair and Werner 2017; Evans 2020b; Marslev and Staritz 2022). In 2010, Viet Nam joined negotiations of the Trans-Pacific Partnership (TPP), an FTA between 12 countries along the Pacific Rim, including the United States. The agreement, concluded in 2015, contained a dedicated labour chapter, requiring each party to “adopt and maintain in its statutes and regulations” the labour rights enshrined in the 1998 ILO Declaration (TPP Art. 19.3.1). In parallel with the main text, the United States negotiated a
bilateral consistency plan with Viet Nam, signed in February 2016, detailing the legal-institutional reforms that Viet Nam needed to make prior to the entry into force of the TPP, although compliance with the most controversial issue – granting Vietnamese workers the right to freely form and join unions of their own choosing – was given a grace period of five years (Tran, Bair and Werner 2017). Soon after assuming office, President Trump withdrew the United States from the deal, thus invalidating the consistency plan, but – as will be shown later – the groundwork laid by the United States was crucial for the subsequent impact of the EVFTA. After the withdrawal of the United States, negotiations continued among the remaining countries, and in March 2018 they signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which retained the labour chapter but – without the consistency plan – did not involve any specific requirements regarding labour reform in Viet Nam.

Negotiations of the EVFTA, in turn, started in June 2012 and were concluded in December 2015, after 14 rounds of talks. After being split into separate trade and investment agreements following a Court of Justice of the European Union ruling, which stated that the EU does not have a mandate to conclude agreements on certain investment-related issues on its own, the EVFTA was adopted by the European Commission in October 2018, approved by the Council of the European Union in June 2019, and signed a week later in Hanoi. After getting a green light from the European Parliament in early 2020, the EVFTA was concluded by the Council in March, ratified by the National Assembly of Viet Nam in June, and entered into force on 1 August 2020. The EVFTA has been described by the European Commission as “the most ambitious and comprehensive FTA that the EU has ever concluded with a developing country” (EC 2016, 7); it entails an almost full liberalization of merchandise trade, as well as provisions on non-trade barriers, competition policy and public procurement, among others (Grumiller et al. 2018). In the TSD chapter, the parties reaffirm their commitment to “promote and effectively implement the principles concerning the fundamental rights at work” (Art. 13.4.2); and each is required to “make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions” (Art. 13.4.3a). In terms of monitoring and enforcement, the set-up follows the EU’s usual template for TSD chapters and includes a set of intergovernmental committees and a CSM.

Unlike the United States, which employed pre-ratification conditionality in the negotiations of the TPP, the European Commission was reluctant to include labour standards in the negotiations of the EVFTA, being more

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8 United States–Viet Nam Plan for the Enhancement of Trade and Labour Relations. Similar consistency plans were also negotiated with Brunei and Malaysia.
preoccupied with the commercial provisions than with the TSD chapter (Sicurelli 2015). The strategy of the European Commission seemed to be to leave the labour question to US negotiators, who were bargaining hard with, and gaining substantial concessions from, the Vietnamese Government. But, as noted above, the withdrawal of the United States from the TPP alleviated this external pressure on Viet Nam. Nevertheless, in the run-up to the ratification of the EVFTA, the Vietnamese Government initiated a reform programme. The next section traces the processes in both the EU and Viet Nam that prompted the EU to adopt a strategy of de facto pre-ratification conditionality and led to progress of labour reforms in Viet Nam.

5.3 Pre-ratification: Explaining the unusual “success” of the EVFTA

5.3.1 The European Union: Politicization of free trade and the turn towards conditionality

While the European Commission was hesitant to emphasize labour standards in the EVFTA negotiations, this changed in the pre-ratification phase. The shift was driven both by a broader contestation and politicization of EU trade policy at the time, and by strategic action related to the EVFTA on the part of specific Members of the European Parliament (MEPs), and a few Member States, within the EU apparatus and vis-à-vis the Vietnamese Government. Importantly, moreover, the EU stepped into a vacuum left by the US withdrawal from the TPP and was also drawn into a more assertive position by pro-labour reformists in Viet Nam, who sought new external support in their long-standing struggles for labour reform, which will be discussed in the next section.

Over the past decade, EU trade policy has become increasingly contested. This trend reached a climax soon after the conclusion of the EVFTA in December 2015, during negotiations of the Transatlantic Trade and

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9 Testifying to the Commission’s priorities, it never conducted a human rights impact assessment of the EVFTA but referred to the impact assessment of a previously negotiated (but never concluded) Association of Southeast Asian Nations (ASEAN) FTA, which only superficially touched upon human and labour rights (European Ombudsman 2015). Interviews in Brussels and online, November and December 2019.
Investment Partnership, a far-reaching but deferred FTA between the EU and the United States, and the Comprehensive Economic and Trade Agreement (CETA), a similar agreement with Canada. The contestation of trade policy was channelled through the two democratic pillars of the EU, the European Parliament and the Council. The European Parliament’s veto threat gained credibility with a weakening of the political majority behind free trade.\(^\text{10}\) Although the widening of exclusive EU competence in trade policy reduced the influence of Member States, ambiguities in the definition of competences enabled some Member States to carve out a more assertive role, as was seen in the case of CETA being (temporarily) blocked by one Member State (Belgium). In this context of growing public dissatisfaction and social mobilization, crystallized through the European Parliament and the Council, the European Commission took steps to improve the legitimacy of FTAs (Orbie, Martens and Van den Putte 2016). The decision to make TSD chapters mandatory in October 2015 and to 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 (EC 2018; Harrison et al. 2019).\(^\text{11}\)

Nevertheless, the EU’s turn to a more conditional approach after the EVFTA had been concluded can only be understood as the outcome of strategic action by specific MEPs, supported by a few Member States, in the vacuum left by the US withdrawal from the TPP (alongside the role of reformists in Viet Nam as discussed in the next section). The momentum of the TPP was halted when the Trump Administration pulled out in January 2017 (Tran, Bair and Werner 2017). As then director of the ILO in Viet Nam, Chang-Hee Lee, recalled, “when the United States withdrew from the TPP, most people in Hanoi thought the reform agenda had died, together with the incentive of US market access”\(^\text{12}\). In this situation, the European Parliament stepped in – or, rather, was invited in by pro-labour reformists in Viet Nam, as argued below – 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 European Commission into a stronger bargaining position. What enabled the European Parliament to play this expanded role was the uncertainty of majorities behind the EVFTA. This was not related just to the politicization of EU trade policy, but also to the fact that a deal with communist Viet Nam raised questions from an unusually

\(^{10}\) Interviews with NGOs and political advisers in the European Parliament, Brussels, November 2019.

\(^{11}\) Interviews with trade union representative and MEP, Brussels, November 2019.

broad mix of MEPs, including conservatives.\textsuperscript{13} Although the Subcommittee on Human Rights (DROI) was also engaged, it was the involvement of the Chairperson of the Committee on International Trade (INTA), Bernd Lange of the Progressive Alliance of Socialists and Democrats, presiding over the first bottleneck in the European Parliament’s two-step consent procedure, who most decisively drew the EU towards pre-ratification conditionality. In many letters and meetings in 2017 and 2018, Lange stressed the relevance of the ongoing Labour Code revision for the EVFTA. For instance, in September 2017, speaking to the press in Hanoi, he told reporters that human and labour rights were “really at the heart of the discussion” and “unless satisfactory solutions are found, the agreement will be in troubled water” (BBC 2017). Important actions in 2018 included a letter to the Vietnamese Prime Minister in June, in which Lange requested a roadmap for the ratification of the outstanding ILO Conventions;\textsuperscript{14} a working trip to Hanoi in July, where he reiterated that concrete movement on the labour reform was needed for him “to sell the deal” (VietnamPlus 2018); and a public hearing in INTA in October, attended by the EU trade commissioner Cecilia Malmström and the Vietnamese chief negotiator, where several MEPs from the Socialists and Democrats (and even from the centre-right European People’s Party) joined the call for pre-ratification conditions on labour standards.\textsuperscript{15} A few weeks later, the European Parliament passed a resolution that urged Viet Nam to join all relevant UN human rights treaties and ILO Conventions (EP 2018).

Furthermore, in the EU’s Council, the influence of Member States was particularly strong given the “window of leverage” that emerged when the Court of Justice of the European Union clarified, in May 2017, the status of the EVFTA as a “mixed agreement” that needed ratification by all Member States (Russell 2018).\textsuperscript{16} This window closed in June 2018, when the European Commission convinced Viet Nam to split the EVFTA so that ratification by each Member State would not be required. Some Member States – most strongly, Spain and Belgium – used this leverage to push for concessions on labour reform. While the opposition of Spain most likely reflected the influence of interest groups who were opposed to competition from Vietnamese imports in the textile and apparel industry (Sicurelli 2015), the Belgian position was

\textsuperscript{13} Interview, former MEP, February 2022.
\textsuperscript{14} Interview with a political adviser, European Parliament, Brussels, November 2019.
\textsuperscript{15} Public hearing in INTA, 20 October 2018.
\textsuperscript{16} Interviews with diplomats, Brussels, November 2019, and online, December 2019.
aimed at preventing having to block another agreement, this time on the grounds that the labour terms were not acceptable.\textsuperscript{17}

With the European Parliament “holding a gun to Malmström’s head over Vietnam”, as one journalist put it, and tensions in the Council, the European Commission responded (Vela 2018). Rather than resisting the pressure from the European Parliament, the Commission “hopped on board”, as described by an adviser in the European Parliament.\textsuperscript{18} 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 European Commission would “pay close attention to the reform of the Labour Code” (Vela 2018). The European Commission needed to show results, generally in the area of FTAs but more particularly with respect to its increasingly criticized TSD approach. Therefore, the EVFTA became a critical case in proving that a “revamped” TSD approach, as proposed in the 15-point plan (EC 2018), could deliver results, thereby pre-empting demands for a more sanction-based model.

Once Viet Nam agreed to the split, turning the EVFTA into an “EU-only” deal that could be voted through the Council by a qualified majority, the European 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 Vietnamese Minister for Industry and Trade signed the deal (Vu and Nguyen 2019). With the agreement through the first legislative stage, civil society and MEPs made a last attempt to gain further concessions. Only after Viet Nam had passed a new Labour Code (November 2019) and submitted a written roadmap (January 2020), as a reaction to the final push by the European Parliament, which included letters to the Vietnamese Government, did INTA, in January 2020, pass the EVFTA, paving the way for consent in the plenary vote the following month.\textsuperscript{19} Testifying to the lead role of the European Parliament in the EU’s turn to de facto pre-ratification conditionality, it was the INTA Chairperson Bernd Lange and the Socialists and Democrats shadow rapporteur on the EVFTA, Judith Kirton-Darling, who negotiated the content of the implementation roadmap with the Vietnamese Government.\textsuperscript{20}

\textsuperscript{17} Interviews with diplomats, Brussels, November 2019, and online, December 2019.

\textsuperscript{18} Interview with a political adviser, European Parliament, Brussels, November 2019, and online February 2021.

\textsuperscript{19} The 2019 Labour Code is available via the ILO’s NatLex database.

\textsuperscript{20} Interview with former MEP, online, February 2022.
5.3.2 Viet Nam: External pressure as an amplifier of internal momentum

While the EU's turn to a more conditional strategy was critical, the impact of the EVFTA can only be understood through its interaction with struggles over labour reform within Viet Nam, and strategic action by pro-labour reformists in the Vietnamese State apparatus. Reforms of the country's industrial relations framework, and the struggles that accompanied them, have been ongoing since the late 1980s. In the latest round of reforms, the labour provisions of FTAs were instrumental in reducing internal resistance to union reform (Tran, Bair and Werner 2017; Evans 2020b). In particular, the pre-ratification requirements under the consistency plan with the United States adopted in the context of the TPP negotiations provided leverage for reformists in Viet Nam, as it legitimised open debate on old “taboos” such as independent unions, shifted domestic discourses, and incentivised policy experimentation (Evans 2020a). In this context, the VGCL hesitantly accepted the calls for reform, shifting from a position of outright opposition to independent unions to one of more proactive engagement in the process; and in November 2014 the VGCL declared that it no longer opposed the labour reforms required by the TPP. This announcement enabled the Vietnamese negotiating team to move forward in the reform talks with the United States and accelerated the law-making process (Evans 2020a). In December 2015, two months after the conclusion of the TPP, the Prime Minister approved MOLISA's plan for ratification of ILO Conventions in the period 2016–20, instructing ministries to bring laws in line with ratified conventions (Viet Nam, Prime Minister 2015). The strongest signal, however, came in November 2016 with Resolution No. 06 by the Politburo, which set out the priorities for implementation of the new FTAs, including a reform of the VGCL and a revision of the legal framework to allow for independent grassroots unions (Viet Nam, Politburo 2016; Do 2017b). A new direction was also evident in the first draft Labour Code released by MOLISA in December 2016 (Tran, Bair and Werner 2017). The US pull-out from the TPP in January 2017, however, stalled the process: in March 2017 a much weaker second draft law was issued, and in May the Labour Code revision was removed from the law-making agenda of the National Assembly (Nhân Dân 2017). As a Vietnamese labour expert recalled, “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”.21

In this situation, different actors in the VGCL and MOLISA were actively seeking new external support to boost their reform efforts, and from early

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21 Interview, CSO representative, online, December 2020.
2017 onwards they turned their attention to the EU. A political adviser to INTA recalled how, during a trip in January 2017, a Vietnamese official proposed the idea that the EU could take up the role of “outside catalyst of change”. An official from DG Trade described how, later that year, the EU was asked by some government officials to help garner domestic support, while 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”. The converging interests of stakeholders in the EU and responsible officials on the Vietnamese side led to new momentum and progress. The chronology of events and the interviews conducted suggest that the EU’s newfound assertiveness was crucial in reinvigorating the labour reforms. The turning point was the September 2017 visit by Bernd Lange. Two weeks previously, MOLISA had delivered an official report to the National Assembly, outlining its plan for the Labour 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 2019, 10). In December 2017 MOLISA formally reopened the rewriting of the Labour Code with the observation that the existing law was incompatible with ILO Conventions (Viet Nam, MOLISA 2017), and the following summer, the law revision was put back on the law-making agenda of the National Assembly (Nhân Dân 2018). As the then ILO director in Viet Nam, Chang-Hee Lee, later explained at a hearing in the European Parliament, 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 labour market functioning in Viet Nam. The EVFTA enabled them to gain influence inside the system and make the progress we witnessed this year, in 2019”. This conclusion is supported by informants in Viet Nam, who explained that the labour reforms resumed once the EU – led by the INTA Chairperson and encouraged by reformist actors in Viet Nam – took the stage, using the risk of non-consent to negotiate with the Vietnamese Government.

While the prior groundwork carried out by the United States was critical to the impact of the EVFTA on the labour reform process, as were the strategic efforts made by reformists in Viet Nam to “invite” the EU to take up the torch

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23 Interview, DG Trade, Brussels, November 2019.
24 Interview, former diplomat, phone, December 2019.
26 Interview with ILO staff, online, December 2020 and May 2023; interviews with Vietnamese labour expert and NGO representative, online, December 2020.
after the United States had turned its back on the TPP, three additional factors were important, as they helped to bring more conservative actors into the reform coalition. First, at the time, a top priority of the Vietnamese political leadership was to revive the economy, which had been in an economic slump since 2008. This objective gained particular importance because of the 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 CPV (Hiep 2012). In this context, a growing consensus emerged around a state project built on deepening export orientation and integration into global production networks – a development strategy in which FTAs are critical elements. 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 Viet Nam (Thayer 2017), exposed the need to diversify foreign relations. The new FTAs, in this respect, are critical to the CPV’s plans to reduce trade dependence on China, to achieve a more balanced position between strategic partners, and to avoid being drawn into geopolitical and geoeconomic rivalries in the context of growing multipolarity (Hoang and García 2022). Third, employers, who were frustrated with the 2012 Labour Code, increasingly threw their weight behind union reform.27 The worker representation provisions of the previous law referred non-unionized enterprises to negotiate with upper-level branches of the VGCL – which was perceived as a heavy administrative burden – and had proved incapable of containing strikes. According to the interviews conducted, employers were among the most enthusiastic supporters of reform; and the idea of independent unions was warmly welcomed by the Viet Nam Chamber of Commerce and Industry as a way of circumventing the state-backed union.

These factors paved the way for “a new reform consensus”, convincing many conservatives that the rewards of joining the new FTAs – in commercial, geopolitical, geoeconomic and regime-stability terms – outweighed the costs (Evans 2020a). The momentum for a new Labour Code also sprang from other sources, including long-standing financial problems of the pension system.28 In addition to the new workers’ representative organizations, the 2019 Labour Code extended legal protections to workers in the informal economy, provided better protection against forced labour, and raised retirement ages, among other things.29 Without depreciating these domestic drivers, however, the chapter argues that union reform would not have happened when it did, and the way it did, without external pressure from the EU.

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27 Interview, legal consultant, Hanoi, May 2022.
28 Interview with ILO staff, online, December 2020.
29 ILO in Viet Nam: New Industrial Relations Framework.
fundamentally changing the internal dynamics, the EU’s stepping up of pre-ratification conditions tilted the balance in favour of the reformist faction – and the EVFTA should, therefore, be seen more as a catalyst of change than as a root cause, as has also been argued of the TPP (Do 2017b; Chan 2020).

5.4 Post-ratification: Implementation challenges under sustained EU pressure

5.4.1 Viet Nam: Contested implementation

In Viet Nam the implementation of both the DAG and the pre-ratification commitments has been a delayed and contested process. According to the Government, the delays relate to the COVID-19 pandemic. But the entry into force of the EVFTA also coincided with preparations for the 13th Congress of the Communist Party of Viet Nam in January 2021 – the highest political event in the country, which takes place every five years – and was followed by elections for the National Assembly in May 2021, both of which stalled controversial initiatives in the Government. In this context, the analysis shows that the labour reforms have, in the post-ratification phase, been contested by conservative forces in the Party State, who are cautious of potential political spillovers.

That the CPV considers civil society as an ideological battlefield was evident in the establishment of the DAG, which was assigned to the Ministry of Industry and Trade (MoIT). In October 2020 MoIT issued a call for expression of interest, and a few days later the International Cooperation Department of MOLISA, the EVFTA focal point for labour, held an information-sharing meeting with local and international CSOs. But few CSOs proved to be interested. By June 2021 only seven organizations had applied for the DAG, three of which were international CSOs and thus ineligible for membership. When the DAG was finally set up in August 2021, it counted just three

30 Interview, former MEP, online, February 2022.
31 Interview, Vietnamese labour expert, Hanoi, May 2022.
32 Prime Minister Decision No. 2091/QD-BCT.
members: the Vietnam Chamber of Commerce and Industry and the Institute for Workers and Trade Unions (a think-tank under the VGCL), both subordinated to the CPV, and the Centre for Sustainable Rural Development, the only independent Vietnamese CSO. In January 2022 MoIT announced that three additional members had joined the DAG, including two CSOs in the fisheries sector and an environmental CSO (VietnamPlus 2022); and two months later, a seventh member – the Vietnam Elevator Association – was added. Despite this subsequent enlargement, however, the Vietnamese DAG remains far from an independent monitoring body: two of the organizations, including the one chairing the DAG, are closely linked to the CPV, and labour is strongly under-represented with just a single member (the VGCL). Furthermore, the DAG Secretariat, tasked with preparing meetings, has been assigned to MoIT; this is unusual, as it is generally assigned to CSOs, and in effect makes it a “government-run DAG”, as one informant described it.33

According to the interviews conducted, several CSOs were hesitant to apply for DAG membership, worrying that it could jeopardize their work by subjecting them to bureaucratic obstacles. These concerns initially kept a leading labour CSO from seeking DAG membership; and although it did ultimately apply, it was not selected, without further explanation. In other cases, authorities intervened more explicitly. In July 2021, on charges of tax evasion, security police in Hanoi arrested two prominent activists and board members of the Network of Vietnamese NGOs on EVFTA (VNGO-EVFTA), a group of seven environmental and development CSOs that had, reportedly, all applied for DAG membership but received no reply (FIDH 2021).34 The interviews conducted suggest that the composition of the DAG was subject to intense debates at interministerial meetings, and that the Ministry of Public Security, in particular – and to a lesser extent, the VGCL – played a leading role in weeding out more critical CSOs, while MOLISA, MoIT and the Ministry of Natural Resources and Energy pulled in the other direction. Ultimately – under pressure from the EU, as discussed below – the various state agencies compromised with the inclusion of some independent but mainly apolitical CSOs in the DAG.35

Concerning the independent workers’ representative organizations in the new Labour Code, implementation has been similarly contested. In late 2020 MOLISA promulgated implementing decrees for most elements of the new law; but the decree laying out the administrative procedures for the

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33 Interview, former MEP, February 2022, online.
34 In January 2022 the two activists were sentenced to four and five years in prison (HRW 2022).
creation, registration, authorization and financial management of workers’ representative organizations was delayed and remains unpublished as of May 2023. While MOLISA presented a draft decree that was already ready in September 2019 (Ha 2022), objections from the Ministry of Public Security delayed its publication, on the grounds that workers’ representative organizations would be used for political objectives by “hostile” forces seeking to destabilize the social order.36 As at mid-2023, a draft decree has been submitted by MOLISA but is awaiting approval.37 Another contentious issue is the drafting of a new trade union law, for which the VGCL is the responsible agency. In the first two drafts, the VGCL proposed that the revised law should continue to cover only unions under its umbrella, while the new workers’ representative organizations would be regulated by the Labour Code.38 If this approach is maintained, they would be restricted from federating beyond enterprises, engaging in collective bargaining at higher levels, and participating in national policy debates. Moreover, the workers’ representative organizations will have to rely on voluntary membership fees, with the 2 per cent union tax on employers being pocketed by the VGCL.39 Although the 2019 Labour Code states that both types of unions “have equal rights and obligations” (Art. 170.3), it seems unlikely that the independent workers’ representative organizations, if implemented, will compete on an equal footing with the VGCL, at least for the foreseeable future.

These challenges show that the way labour clauses are implemented and play out in practice – just as in their negotiation and ratification – rests on evolving State–society relations. In seeking to understand the potentials and limitations of DAGs and workers’ representative organizations in the Vietnamese context, therefore, it is important to appreciate that they are being implemented in a climate characterized by the shrinking of an already tightly regulated civic space. With the conservative leadership emerging from the 12th Congress of the CPV in 2016 (and no major reshuffling taking place at the 13th 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; Thayer 2022). Efforts to control the composition of the DAG, impede the implementation of the workers’ representative organizations, and keep their room for manoeuvre within strict boundaries demonstrate that containing the emergence of political counter-movements is a top

36 Interview, Vietnamese labour expert, Hanoi, May 2022.
37 Interview, ILO staff, online, June 2023.
38 Interview, Vietnamese labour expert, Hanoi, May 2022.
priority for conservatives in the Party State. This context underlines how important external pressure was for reformist forces in Viet Nam in pushing ahead the reform process. But it also suggests that in the post-ratification phase, where the EU no longer holds a veto on the EVFTA, the Vietnamese leadership is re-evaluating the situation, seeking formal compliance at the cost of minimal conditions. This does not mean that the freedom of association reforms will not be implemented, but it suggests that progress will be slow and incremental, and that implementation of the TSD provisions will critically depend on the EU, and whether local reformists can activate EU pressure in the post-ratification phase.

5.4.2 EU: Sustained pressure, reduced leverage

In the post-ratification phase, the EU has continued along the path towards a more conditional approach, but its teeth are blunted now that the ratification leverage is gone. Although implementation of the EVFTA draws less attention from the European Parliament than in the pre-ratification phase, discussions have taken place in a monitoring group established under INTA, and a group of particularly left-leaning MEPs remains highly active, frequently sending letters to both the European Commission and Vietnamese authorities, calling for a suspension of the EVFTA. The office of INTA Chairperson Bernd Lange has also remained involved and has on several occasions posed questions to the Vietnamese Government. Another unprecedented avenue through which the European Parliament monitors implementation is a joint parliamentary monitoring group established in cooperation with the National Assembly of Viet Nam, in which Viet Nam is engaged “at very high levels”. Since the ratification of the EVFTA, the European Parliament has adopted resolutions calling on Viet Nam to “recognise independent labour unions” and “refrain from any undue interference in the composition and functioning” of the DAG (EP 2020, 2021).

Likewise, the EU DAG has made several interventions with respect to both the European Commission and the Vietnamese Government. The EU DAG was launched in January 2021, with 21 member organizations, and had, as of May 2023, met six times. Chaired by former MEP Judith Kirton-Darling,

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40 For instance, in September 2020, a group of 64 MEPs wrote a letter to EU High Representative for Foreign Affairs Josep Borell and Trade Commissioner Valdis Dombrovskis on the deteriorating human rights situation in Viet Nam. In July 2021 the monitoring group sent a letter to the speaker of the National Assembly of Viet Nam.
41 Interview, political adviser, European Parliament, February 2022.
42 Interview, representative of DG Trade, online, February 2022.
43 EU–Vietnam DAG: related events.
who was deeply involved in negotiating the roadmap ahead of ratification, the EU DAG has set four key priorities, including implementation of the Labour Code, civil society space, due diligence in global supply chains and sustainable food systems.\textsuperscript{44} The EU DAG issued statements urging the “Vietnamese authorities to swiftly establish a counterpart for the EU DAG”\textsuperscript{45} and challenging the limited number of participants in the Vietnamese DAG and its lack of independence.\textsuperscript{46} These messages were reiterated in “quite diplomatic but quite direct” terms at the first DAG-to-DAG meeting, held in November 2021 in Hanoi in the context of the meeting of the Committee on Trade and Sustainable Development, and at the second meeting in October 2022.\textsuperscript{47}

The European Commission engages the Vietnamese Government through multiple channels, described by an informant as a “complex and very intense system of exchanges”.\textsuperscript{48} In addition to regular technical-level meetings with MoIT, the European Commission exerts pressure via the intergovernmental dialogue mechanisms (Trade Committee and Committee on Trade and Sustainable Development). Moreover, the EU Delegation in Hanoi is in frequent and more informal contact with MOLISA and other ministries, as well as with the ILO office in Viet Nam.\textsuperscript{49} At the first Trade Committee meeting in July 2021, EU Commissioner for Trade Valdis Dombrovskis “regretted” the failure of Viet Nam to establish the DAG and urged that the process “be sped up and be concluded before the end of July”, warning that “otherwise it would need to be addressed at a higher level”.\textsuperscript{50} Similarly, at both the first and second meetings of the Committee on Trade and Sustainable Development, the European Commission asked for enactment of the missing decree on workers’ representative organizations.\textsuperscript{51} This level of involvement by the European Commission in the implementation of a TSD chapter is unprecedented. “What has changed from other agreements”, a political adviser in the European Parliament observed, “is that TSD is now a part of every discussion they [European Commission representatives] have with the

\begin{itemize}
\item \textsuperscript{44} Interview, former MEP, online, February 2022.
\item \textsuperscript{45} Statement from the EU DAG, 1 June 2021.
\item \textsuperscript{46} Letter from the EU DAG, 15 September 2021.
\item \textsuperscript{47} Interview, former MEP, online, February 2022.
\item \textsuperscript{48} Interview, representative of DG Trade, online, February 2022.
\item \textsuperscript{49} In addition, there are parallel political exchanges at diplomatic level.
\item \textsuperscript{50} Minutes of the first Trade Committee meeting, 19 July 2021.
\item \textsuperscript{51} Minutes of the first and second meetings of the Committee on Trade and Sustainable Development, November 2021 and October 2022.
\end{itemize}
Another novelty is the degree of internal coordination in the EU. One informant in the EU described how the different institutions “work in concert, which enables all of them to have a greater impact than otherwise”. In the context of the ascendance of conservative forces in the Vietnamese Party State and the shrinking civic space, the prospects of stronger enforcement by the EU can be critical leverage points in internal debates for reformists in MOLISA and the VGCL. According to one informant, reformists actively use the EU’s dispute with the Republic of Korea as a warning to push ahead with implementation. In terms of concrete impacts, the interviews conducted suggest that external pressure from the EU had an impact on setting up and enlarging the Vietnamese DAG. On the missing decree on workers’ representative organizations, however, EU pressure has been less effective, as it has on the remaining ILO core Convention, No. 87 on Freedom of Association and Protection of the Right to Organise. The loss of pre-ratification leverage puts the European Parliament and Member States in a less advantageous bargaining position vis-à-vis both the European Commission and the Vietnamese State. One informant in the European Parliament argued that “in the implementation phase, we have no power anymore – it is vanished altogether”, while another noted that “we no longer have a big stick that we can wave around”.

There are also limits to how far the European Commission is willing to go. First, the strategic importance of Viet Nam in the current geopolitical conjuncture and in EU firms’ China Plus One strategies may engender fears of pushing Viet Nam towards China. That the commercial provisions of the EVFTA have priority for the European Commission is also indicated by the financial support provided by the EU under the EVFTA. While the European Commission granted €588,000 to enhance the capacity of labour-related CSOs in the period 2017–21, businesses have received long-term support through a large umbrella project managed by the EU Delegation in Viet Nam and MoIT, called EU-MUTRAP (EU Multilateral Trade Assistance Project), which has run in four phases since 1998, including Phase III 2008–12 (€10 million) and Phase IV 2013–17 (€16 million). Second, the European Commission is preoccupied with other burning issues in the region, including the military coup in Myanmar and the partial withdrawal of Cambodia’s trade

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52 Interview, political adviser, European Parliament, February 2022.
53 Interview, former MEP, online, February 2022.
54 Interview, Vietnamese labour expert, Hanoi, May 2022.
55 Interviews with political advisers, European Parliament, online, February and March 2022.
56 Under the title “Empowering Civil Society and Workers” (ECOW).
preferences under the Everything but Arms (EBA) scheme as a result of the deteriorating human rights situation. Third, and perhaps most critically, the European Commission is facing pressure pulling in different directions: while important segments of the European Parliament, Member States and civil society call for a tougher stance on the trade–labour nexus, the European business community tends to oppose the use of trade policy for non-trade objectives. This was evident in the public consultation on the review of the TSD approach, between July and November 2021, where most contributors from the business community favoured a cooperation-based approach, “warn[ing] against the use of trade policy as a means of enforcing sustainability objectives in partner countries” (LSE Consulting 2021, 5).

5.5 The role of the ILO and translocal actors

In the pre-ratification phase of the EVFTA, interaction between the EU and the Vietnamese Government was facilitated by actors with translocal characteristics, having on-the-ground operations in Viet Nam and enjoying trusted relations on both sides. Watching the reform process stall following the US withdrawal from the TPP, these actors were instrumental in encouraging the EU to fill the vacuum, activating their contacts in Brussels and expediting access to key decision-makers in Viet Nam. These actors coordinated their efforts and were in contact on a weekly – and, in the most intensive phases, daily – basis. Having “a foot in both camps”, they were described in the interviews as “brokers”, making the parties “echo and resonate” and “translating expectations and interpreting realities”.57

Two such actors were the Friedrich Ebert Foundation (FES) and the EU Delegation in Hanoi. As one of the first international NGOs to enter Viet Nam in 1990, the FES has a long-standing relationship with the VGCL. As part of its work with a range of partners in Viet Nam, the FES has run various programmes with the VGCL, including training courses in labour law and legal services, and has been involved in setting up labour service centres across Viet Nam (Chan 2020). The FES has also organized study trips to the Republic of Korea and the EU for MOLISA, the VGCL and Vietnamese CSOs.

57 Interviews with CSO representative, online, June 2021; diplomat, online, December 2019; ILO staff, online, December 2019 and June 2023.
(Thu and Schweisshelm 2020). According to the interviews conducted, the FES played a leading role by putting staff from INTA Chairperson Bernd Lange’s office in touch with officials from the VGCL and MOLISA at a conference in Hanoi in January 2017.58 In the EU Delegation, similarly, some diplomats early on anticipated the risk that the EVFTA could be vetoed by the European Parliament or the Council. They also worried that ratification would put an end to the EU’s leverage and that the European Commission would lose sight of implementation. For these reasons, some EU diplomats advocated a more assertive strategy and organized parliamentary visits to Viet Nam, seeking to “turn the [European] Parliament into some sort of Congress” by actively using the veto risk as a bargaining instrument.59

Another critical actor was the ILO. With an office in Viet Nam since 2003, the ILO had been deeply involved in labour reforms and provided technical assistance to the Vietnamese authorities and social partners on building a legal-institutional framework in line with international labour standards, recently with a focus on the Fundamental Principles and Rights at Work, which include Conventions 87 and 98.60 The ILO had also been collaborating with the VGCL, supporting collective bargaining training sessions, establishing contacts with global union federations, and organizing conferences and seminars (Chan 2020). When the United States pulled out of the TPP, the interviews suggest that the ILO office in Hanoi was, behind the scenes, looking for a substitute external driver and shifted attention to the EU and the EVFTA, which was perceived as a “golden opportunity” in this context.61

To support these efforts, the ILO office opened regular communication channels with the EU Delegation, especially the Ambassador, whom they met regularly to understand the EU’s requirements and discuss how important issues could be resolved. Facilitating access to top decision-makers, the ILO co-organized the high-level meeting in September 2017 where Bernd Lange met leaders from the National Assembly, MOLISA, the Viet Nam Chamber of Commerce and Industry, and the VGCL (ILO 2019). Similarly, the ILO helped the Vietnamese Government, policymakers and social partners to understand the requirements of the TSD chapter.62 Meanwhile, ILO legal specialists worked closely with MOLISA in devising a plan for the reform process and aligning it with the ratification process of the EVFTA, and they provided substantial assistance to MOLISA’s legal department in drafting

58 Interview with political adviser, European Parliament, online, December 2020.
60 ILO in Viet Nam: New Industrial Relations Framework.
61 Interviews with NGO representative, Brussels, November 2019; ILO staff, online, December 2020; and ILO staff online, May 2023.
62 Interview with ILO staff, online, May 2023.
and revising legal documents, including the dossiers for the new Labour Code and the ratification of Conventions 98 and 105 (ILO 2019). In addition, the ILO worked with the social partners, organizing tripartite consultations and an open dialogue forum for all engaged parties to discuss the labour provisions of the EVFTA.

These critical functions of the ILO were supported by strong financial and human resources at the time. Under a large umbrella programme called “Developing a New Industrial Relations Framework in respect of the ILO Declaration on Fundamental Principles and Rights at Work” (NIRF), four different donors funded ILO-administered projects providing technical assistance on labour reform, namely the United States (US$5.1 million, 2016–20), Japan ($2.2 million, 2016–20), the EU ($424,000, 2016–18) and Canada (US$297,000, 2016–20). Combined with a large office network, availability of technical resources, and proximity to the ILO’s Decent Work Team and the Regional Office in Bangkok, these resources enabled the ILO in Hanoi to “go in with full force”, becoming a crucial facilitator. More broadly, the involvement of the ILO had an important legitimating function. As Evans (2020b) argues, Vietnamese leaders would have been more hesitant to accept demands coming too directly from the EU (or the United States); and reference to the ILO fundamental Conventions as preconditions for deeper global integration through FTAs was critical to “selling” the reforms internally.

In the post-ratification phase, all three actors have remained active, albeit to different degrees. Like many other CSOs in Viet Nam, the FES has seen its room for manoeuvre shrink and is, in the present situation, cautious not to take positions that may be perceived as too political. The EU Delegation, being a key element in the European Commission’s communication with the Vietnamese Government, is still engaged and in frequent contact with MOLISA and other ministries. And the ILO remains heavily involved with technical assistance to MOLISA and the social partners through several donor-funded projects. In 2019 the EU launched a large ILO project, “Trade for Decent Work”, which covers 11 countries, including US$1.8 million (2019–23) to support the effective implementation of the TSD chapter in Viet Nam; and the United States extended its part of the NIRF programme with an additional $6.5 million for 2021–26. In 2021, furthermore, the ILO signed

63 Interview with ILO staff, online, May 2023.
64 Data obtained from the ILO Development Cooperation Dashboard, 15 June 2023.
65 Interview with NGO representative, online, June 2023.
67 ILO Development Cooperation Dashboard.
a memorandum of understanding with MOLISA to support ratification and implementation of international labour standards in the period 2021–30, including Convention 87.68

5.6 Conclusions

This chapter has assessed the impact of the TSD chapter of the EVFTA on labour reform in Viet Nam, examining both how the EU came to play the role of external catalyst for labour reform in the pre-ratification phase and how implementation has proceeded in Viet Nam. The analysis of the pre-ratification phase shows that the EVFTA did indeed play a crucial role as an external reform catalyst. In the vacuum left by the US exit from the TPP, specific MEPs, and some Member States, used their veto powers to negotiate with Vietnamese decision-makers and to pull the European Commission into an exceptionally assertive position. The unusual pre-ratification impact, however, can only be understood by considering the ways in which the EVFTA interacted with long-standing struggles over labour reform within Viet Nam, where external pressure from the EU was leveraged by pro-labour reformists who used it strategically to move forward a reform process that had been under way for years. In this process, a key role was played by the ILO and other actors with translocal characteristics, such as the EU’s diplomatic delegation and the FES, which connected reformists on the two sides, brokered access to decision-makers and helped to build mutual trust. In this chapter’s assessment, therefore, the “success” of the EVFTA pre-ratification was facilitated by several enabling factors: (i) the prior groundwork of US negotiators, who reduced internal resistance to labour reform; (ii) politicization of free trade in the EU, which weakened majorities behind FTAs, making a veto of the EVFTA a credible risk and thus boosting the bargaining power and strategic role of the European Parliament and individual Member States; (iii) the existence of allies in Viet Nam that not only promoted reforms internally but encouraged the EU to take up the role of external catalyst; (iv) the perceived importance of the EVFTA by conservatives in the Vietnamese leadership, in terms of the domestic economy and geopolitical balancing, which convinced conservative forces to accept labour reforms as a necessary cost for unleashing greater economic benefits; and (v) the existence of translocal actors, embedded in Viet Nam and with links to

EU institutions, that allowed and facilitated interaction between pro-labour reformers in Viet Nam and the EU.

In the post-ratification phase, however, the implementation of the TSD commitments has been challenging. The most controversial aspects – the DAG and the independent workers’ representative organizations – have been delayed and contested by conservative forces in the Party State, despite continued pressure from the EU, not least from the European Commission, which has been more engaged than in previous FTAs concluded by the EU. Given the ascendance of conservative forces and a shrinking civic space in Viet Nam, more assertive enforcement by the EU could be a critical leverage point for pro-labour reformists in internal debates in the country. But the EU’s teeth have been blunted, as their pre-ratification leverage has dissipated with respect to both the EU vis-à-vis the Vietnamese State, and to the European Parliament internally in the EU apparatus. Nevertheless, the TSD chapter has still had some (potentially) positive impacts post-ratification: EU pressure was instrumental in the formation and successive enlargements of the DAG, which is significant in the context of Viet Nam’s State–society relations, while the most important indirect impact may be the pressure on the VGCL to reform, which has led to initiatives to increase membership and become more representative of workers.

Thus, in the post-ratification phase, implementation of the TSD chapter has been seen to be lagging, as a consequence both of the loss of pre-ratification leverage by the EU and of the more restrictive political climate following the 13th Congress of the CPV. Nevertheless, although the CPV’s commitment to freedom of association is reluctant and ambivalent, these developments do not mean that the reforms will be abandoned; the decree on the workers’ representative organizations is under preparation, and the dossier for the ratification of ILO Convention No. 87 is expected to be presented to the National Assembly, probably in 2024.69 What is beyond doubt, however, is that the CPV is determined to control the process, and that any progress will be incremental and cautious. For the Vietnamese leadership, preventing the emergence of counter-hegemonic movements continues to be an overriding priority; and in this context, it is an open question how much room for manoeuvre independent unions and CSOs will be allowed to have, even if the Vietnamese Government ensures formal compliance with the TSD chapter of the EVFTA.

The above analysis shows that the impact of the EVFTA was conditional upon specific conjunctures, in both Viet Nam and the EU. As such, it does not easily lend itself to replication. Nevertheless, this case study does offer

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69 Interview, ILO staff, online, June 2023.
more general lessons on the effectiveness of labour provisions, highlighting the need to make strategic use of pre-ratification leverage, the importance of coordination among the EU institutions, the need to ally with internal pro-labour reformists in partner countries, and the importance of translocal actors to broker interaction, which shows the potential of complementing labour provisions with long-term support for capacity-building of trade unions and CSOs and technical assistance via the ILO. But equally important, the case of the EVFTA reveals that stronger instruments may be needed for the EU to ensure that partner countries stay on the reform path in the post-ratification phase. The experiences from Viet Nam have, according to the interviews conducted, informed the ongoing revision of the TSD approach. The new TSD model proposed by the European Commission in June 2022 centres on six priorities, including stepping up engagement with trade partners, identifying tailored implementation priorities, developing a comprehensive approach that pulls together various EU agencies, reinforcing civil society inclusion, and – crucially – having more assertive monitoring and enforcement, including through trade sanctions as a last resort.70 These revisions, now under negotiation in the European Parliament, are a step in the direction of a more assertive approach. But it remains to be seen how far the European Commission is willing to go on labour provisions in future FTAs. Another critical question is whether the European Parliament is ready to consolidate its expanded role by placing demands on partner countries as a condition of its consent to FTAs. Even in that case, however, this analysis shows that conditions in Viet Nam were particularly conducive to EU intervention. The complementarities found in this case between TSD provisions, the priorities and strategies of EU actors, and domestic labour struggles may be a rare occurrence.

70 The Communication by the Commission is available in the Commission’s CIRCABC resource centre.
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