

TOWARDS THE CORPORATE SOCIAL RESPONSIBILITY ON LABOUR IN THE ERA OF NEW-GENERATION FREE TRADE AGREEMENTS: THE CASE OF THE EVFTA

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Abstract: The article gives an in-depth understanding of the commitment to corporate social responsibility (CSR) on labour under the new generation of free trade agreements (FTAs) of the European Union (EU), and especially, the EU – Vietnam Free Trade Agreement (EVFTA). Following that, via the EU’s foreign and trade policies, this research clarifies the history as well as the evolution of the CSR commitments in the EU’s new generation FTAs. On that basis, this article also delves into the nature of CSR commitments related to labour in the EVFTA. Last but not least, the article reviews the current legislation of the EU and its member states as partners and suggests different policy implications that Vietnam and other developing nations might adopt to execute their CSR commitments in the context of global sustainable development.

Keywords: CSR; EVFTA; EU; labour; Vietnam

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1. INTRODUCTION

It is undeniable that the recent signing of bilateral FTAs between the EU and South Korea, Singapore, Vietnam, and the Economic Partnership Agreement with Japan, as well as ongoing negotiations with other developing countries in the ASEAN region (such as Thailand and Malaysia), has ushered in a new era of “new generation” FTAs with broader and deeper provisions compared to previous agreements. In particular, the significant development of this comprehensive new generation FTA era is the incorporation of CSR provisions into the form of sustainable development goals to promote corporate environmental, labour, and social responsibilities.¹ As the most comprehensive and expected new generation FTA signed with a developing country,² the EVFTA represents the EU’s sophisticated and complicated attempt to include CSR provisions, notably those related to CSR on labour issues, in its foreign and investment policy with Vietnam.

¹ CHEN, Y. – SHEEHY, B. Exporting Corporate Social Responsibility through Free Trade Agreements: Improving Coherence in the EU’s New-Generation Trade and Sustainable Development FTAs. *Texas International Law Journal*. 2023, Vol. 58, No. 2, pp. 176–179.

² Delegation of the European Union to Vietnam. *Guide to the EU-Vietnam Trade and Investment Agreements*. Hanoi: Delegation of the European Union to Vietnam, 2019, p. 6.

Despite this, vital content like CSR on labour under the EVFTA seems to be rather unfamiliar in Vietnam. In fact, there is a lack of an explicit legal framework in Vietnam that directly regulates CSR, resulting in a limited understanding of CSR among the government, businesses, and employees, which also makes the fulfilment of CSR commitments in the recently signed new generation of FTAs, particularly the EVFTA, almost unattainable. Meanwhile, CSR, from the EU side, is undergoing deep state intervention, with the degree of legalisation of CSR-related law codes increasing and becoming a mandatory trend in the future. The question arises: With a commitment to CSR regarding labour under the EVFTA that are legally binding responsibilities between member countries in enforcement, as well as, once the proposal CSR codes of the EU and its member states come into effect, can the absence of an explicit legal framework or legislation directly regulating CSR on labour constitute a violation of international obligations for Vietnam, even potentially hindering its future participation in the global economic market? In connection with this, in order to assist Vietnam in truthfully fulfilling its obligations under the FTA with the EU and, at the same time, participating deeply in the largest common market area while also approaching the development trends of developed countries in the world, this study primarily focuses on investigating the EU and its member countries in policies and legislation on CSR regarding labour. It, then, offers some policy implications for Vietnam and other developing countries in solving the huge challenge posed by this issue.

This is how the study, basically, analyses and elucidates the essence of CSR commitments in the labour field within the context of the EVFTA, with an emphasis on the demands that this commitment imposes on Vietnam. To begin, this study demonstrates how CSR clauses evolved in the EU's new generation FTAs, including the EVFTA. This serves as a foundation for shedding light on the nature of CSR commitments on labour in the EVFTA in the subsequent section. Before drawing some conclusions with noteworthy remarks, this study carefully examines the legal framework of CSR in the EU and its member states as a basis for making a few recommendations for Vietnam and extracting valuable insights for other developing nations down the road.

2. THE EVOLUTION OF CSR IN THE EU NEW-GENERATION FREE TRADE AGREEMENTS

International trade, which is typified by globalisation and liberalisation, not only creates enormous economic opportunities, but also involves the potential risk that multinational corporations would abuse human rights, the environment, and society due to the lack of a regulatory framework.³ In an effort to fill the legal gap and promote sustainable business practices whilst minimising the negative impacts of commercial activities, the Guidelines of Organisations and Economic Development (OECD) for Multinational Enterprises (1976) and the International Labour Organisation's (ILO)

³ WALESON, J. Corporate Social Responsibility in EU Comprehensive Free Trade Agreements: Towards Sustainable Trade and Investment. *Legal Issues of Economic Integration*. 2015, Vol. 42, No. 2, pp. 143–174.

Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977) were the first legal documents to recognise CSR.⁴ In this way, CSR, as a policy, has formed and developed with a volatile and complex history,⁵ notably being profoundly affected by the EU's trade policy.

Tracing back to that, the European Commission introduced the first official definition of CSR in the 2001 Green Paper as “*a concept whereby companies integrate social and environmental concerns in their business operations and their interactions with stakeholders on a voluntary basis*”.⁶ Later, CSR was transformed into a broader and mandatory approach,⁷ which is “*the responsibility of enterprises for their impacts on society*”.⁸ That led to the EU, with a role originating from the Lisbon Treaty,⁹ to its ambitions to become the world's leading entity in social policy,¹⁰ as well as a longstanding tradition of ethical consumerism,¹¹ besides its strong and ever-increasing commitment to CSR,¹² being at the forefront of influencing and disseminating CSR guidelines and principles¹³ in foreign policy with third countries, such as trade and investment agreements, free trade agreements, regional agreements, cooperative relations, linkages, and withdrawal agreements.¹⁴ Among them, the FTA is the primary legal tool used by the EU¹⁵ to convert businesses' voluntary goals into binding commitments for different subjects participating in an international agreement (home countries, host countries, and multinational enterprises).¹⁶ This was confirmed by European Parliament's statements in 2011 like “*with regard to the investment chapters in wider FTAs, its call for a CSR clause and effective social and environmental clauses to be included in every FTA the*

⁴ CAO, D. L. – DONG, T. H. N. Thực thi trách nhiệm xã hội của doanh nghiệp tại Việt Nam – Thách thức và một số gợi mở [Implementing corporate social responsibility in Vietnam – Challenges and recommendations]. *Hanoi Law Review*. 2022, No. 7, p. 123.

⁵ SHEEHY, B. Defining CSR: Problems and Solutions. *Journal of Business Ethics*. 2014, Vol. 131, No. 3, pp. 625–648.

⁶ Commission of the European Communities. *Green paper: Promoting a European framework for corporate social responsibility*. Brussels: Commission of the European Communities, 2001, p. 6.

⁷ SZABADOS, T. Multilevel Hardening in Progress-Transition from Soft Towards Hard Regulation of CSR in the EU. *Maastricht Journal of European and Comparative Law*. 2021, Vol. 28, No. 1, pp. 83–101.

⁸ European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011–14 for Corporate Social Responsibility*. Brussels: European Commission, 2011, p. 6.

⁹ See General principles 1 of the European Parliament resolution of 8 June 2011 on the external dimension of social policy, promoting labour and social standards and European corporate social responsibility (2010/2205(INI)).

¹⁰ *Ibid.*

¹¹ CHEN – SHEEHY, *c. d.*, p. 184.

¹² PITTS III, J. W. Corporate Social Responsibility: Current Status and Future Evolution. *Rugers J.L. & Pub. Pol'y*. 2008, Vol. 6, No. 2, pp. 382, 384.

¹³ CHEN – SHEEHY, *c. d.*, p. 184.

¹⁴ TYUSHKA, A. – PHINNEMORE, D. – WEIß, W. Joint Institutional Frameworks in EU Bilateral Agreements: Joint Bodies, Rules and Principles, and Special Procedures. *JCMS: Journal of Common Market Studies*. 2022, Vol. 60, No. 4, p. 1127.

¹⁵ HARRISON, J. et al. Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters. *JCMS: Journal of common market studies*. 2019, Vol. 57, No. 2, p. 260.

¹⁶ WALESON, *c. d.*, p. 145.

EU signs”¹⁷ or “*containing a legally binding CSR clause, in the free trade and investment agreements it negotiates with third countries*”.¹⁸

In light of this, the EU’s first attempt to include CSR clauses in an FTA was shown in the 2008 EU-Cariforum Economic Partnership Agreement.¹⁹ In 2010, the EU-Korea FTA, as the first FTA of the EU’s second new generation, for the first time, it enshrined a distinct Trade and Sustainable Development (TSD) chapter with an explicit CSR clause aimed at addressing labour and environmental issues.²⁰ Since that time, the EU has continuously introduced TSD chapters with provisions dedicated to CSR principles such as human rights, labour rights, environmental protection, sustainability, and other responsible business behaviour in its new generation FTAs.²¹ It is quite true that CSR provisions inside the TSD chapter have changed, taking on various substances and forms. However, they remain an essential element in the EU’s comprehensive new generation FTAs.²² Taking into account developing countries, it is important to highlight the EVFTA, the most comprehensive and ambitious FTA,²³ which consists of fairly explicit and extensive CSR provisions on labour.²⁴ Once again, delving into the nature of labour-related CSR commitments in the EVFTA will serve as a blueprint and valuable insight for developing countries in the future as a whole, especially ongoing negotiations for the new generation FTAs.

3. COMMITMENTS RELATED TO CSR ON LABOUR IN THE EVFTA

The EU’s labour-related CSR approach in the new generation FTAs are agreements that include a CSR clause, calling nations to sign and implement them.²⁵ In this regard, some FTAs not only require a “best efforts” commitment to promote CSR on labour but also stipulate the formation of a committee tasked with reviewing CSR-related issues arising in the FTAs.²⁶ With this approach, the EU believes that the development of CSR should be carried out by enterprises themselves, while nations

¹⁷ See Article 28 of the European Parliament resolution of 6 April 2011 on the future European international investment policy (2010/2203(INI)).

¹⁸ See General principles 40 of the European Parliament resolution of 8 June 2011 on the external dimension of social policy, promoting labour and social standards and European corporate social responsibility (2010/2205(INI)).

¹⁹ LSE. *Comparative Analysis of TSD Provisions for Identification of Best Practices to Support the TSD Review*. London: London School of Economics and Political Science, 2021, p. 18.

²⁰ See Article 13.6.2 of the Free Trade Agreement between the European Union and its Member States, of the One Part, and the Republic of Korea, of the Other Part.

²¹ LSE, *c. d.*, p. 18; TITIEVSKAIA, J. *Sustainability provisions in EU free trade agreements: Review of the European Commission action plan*. European Parliament, 2021, p. 2; and CHEN – SHEEHY, *c. d.*, p. 191.

²² *Ibid.*, p. 191.

²³ Delegation of the European Union to Vietnam, *c. d.*, p. 6.

²⁴ KETTUNEN-MATILAINEN, E. – ALVSTAM, C. G. *Free Trade Agreements and Responsible Business: Examples from the EU’s Bilateral Agreements in East and Southeast Asia*. In: ANDREOSSO-O’CALLAGHAN, B. – JAUSSAUD, J. – ZOLIN, M. B. (eds.). *Asian Nations and Multinationals: Overcoming the Limits to Growth*. Cham: Palgrave Macmillan, 2018, p. 25.

²⁵ WALESON, *c. d.*, p. 162.

²⁶ *Ibid.*, p. 162.

should only play a supporting role through a combination of measures, policies, and accountability duties.²⁷

This is reflected by the mention of CSR in two distinct clauses of Chapter 13 of the EVFTA on TSD,²⁸ as follows:

Article 13.10(2)(e) (Trade and Investment Favouring Sustainable Development): *“In accordance with their domestic laws or polices agree to promote corporate social responsibility, provided that measures related thereto are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the parties or a disguised restriction on trade; measures for the promotion corporate social responsibility include, among others, exchange of information and best practices, education and training activities and technical advice; in this regard, each Party takes into account relevant internationally agreed instruments that have been endorsed or are supported by that Party, such as the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, the United Nations Global Compact, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.”*

Article 13.14(1)(i) (Working Together on Trade and Sustainable Development): *“promoting corporate social responsibility and accountability, including with regard to internationally agreed instruments that have been endorsed or are supported by each Party”*.

In terms of position, CSR, on the one hand, is a core commitment of the EU in the EVFTA. On the other hand, it is a significant area within the scope of labour commitments.²⁹ The EU acknowledges not just global labour standards but also supplementary social commitments such as corporate governance and wider socio-economic policy coordination, which includes the promotion of CSR/RBC.³⁰ In turn, the inclusion of CSR regulations serves to rectify legal loopholes in particular policy domains, while promoting heightened supervision and compliance to fundamental labour norms.³¹

First of all, the CSR commitment in the EVFTA employs wording that is soft language, even in the form of a best-efforts clause,³² which expressly refers to the effort to “agree to promote” CSR activities. In this case, regarding the intrinsic meaning of “promote”, according to the judgement in the dispute arising between the EU and South Korea, the panel of experts from the EU and Korea determined that “promote” is *“further the development, progress, or establishment of (a thing), encourage, help forward, or support activity”*.³³ It implies a positive obligation on states to ensure that

²⁷ See paragraph 2 of the The European Commission’s strategy on Corporate Social Responsibility (CSR) 2011–2014: achievements, shortcomings and future challenges.

²⁸ OGER, A. *Environmental and social impacts embedded in EU trade policies: The case of EU trade-related autonomous measures in Vietnam*. Institute for European Environmental Policy, 2023, p. 21.

²⁹ CHEN – SHEEHY, c. d., p. 199.

³⁰ CORLEY-COULIBALY, M. et al. *A Multi-faceted Typology of Labour Provisions in Trade Agreements: Overview, Methodology and Trends*. International Labour Organization, 2022, pp. 13–14.

³¹ CHEN – SHEEHY, c. d., pp. 195–196.

³² WALESON, c. d., p. 163.

³³ TRUMBLE, W. R. – BROWN, M. *Shorter Oxford English Dictionary*. 5th ed. Oxford: Oxford University Press, 2002.

they encourage and facilitate the implementation of best business practices.³⁴ It means that the nature of this commitment should be understood as demanding maximum efforts, which is more than merely doing the bare minimum of actions or doing nothing but less than requiring the application of all conceivable measures at all times.³⁵ It can be understood that the EVFTA imposes necessary obligations on member nations to implement necessary measures and specific actions on CSR. These go beyond simply ratifying the agreement and include enacting legislation to guarantee that enterprises adhere to labour standards. It is also necessary to address the interpretation of “arbitrary or unjustifiable discrimination”, which pertains to discrimination that cannot be explained by a legitimate reason and may be elucidated via the practice of dispute resolution or contextualised within a particular measure.³⁶

Another point is that strengthening CSR and accountability is identified as one of the areas of international cooperation, alongside initiatives such as information exchange and best practices, education and training, and technical consultation.³⁷ This is why, out of the three FTAs that the EU has entered into with Asian nations (Korea, Singapore, and Vietnam), the CSR provisions in the EVFTA are the longest paragraph,³⁸ clarifying the particular areas of collaboration between the parties. There is no doubt that it demonstrates the EU’s incorporation of lessons learned from the two previous negotiations.³⁹

Under other circumstances, CSR commitments on labour under the EVFTA also refer to standards that are internationally voluntarily recognized,⁴⁰ such as the OECD Guidelines for Multinational Enterprises, the United Nations Global Compact, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The truth is that both Vietnam and the EU are participants in the multilateral framework guidelines of the OECD, UN, and ILO. Given that both sides signed them as “voluntary” principles, “voluntary” here refers to the enforcement efforts of enterprises related to CSR rather than the obligations of countries.⁴¹ So, the reference to international standards would probably be explained according to Article 31(3)(c) of the 1969 Vienna Convention.⁴² It so happens that initially non-legally binding instruments incorporated into FTAs may be converted into legally binding instruments

³⁴ EU-South Korea. Panel of Experts Proceeding constituted under Article 13.15 of the EU-Korea Free Trade Agreement, Report of the Panel of Experts. 2021, p. 38.

³⁵ NGO, T. Q. Thực thi cam kết lao động trong các Hiệp định thương mại tự do thế hệ mới của Việt Nam và kinh nghiệm từ các tranh chấp quốc tế [Implementation of Labour Commitments in Vietnam’s New Generation Free Trade Agreements and Experience from International Disputes]. *VNU Journal of Science: Legal Studies*. 2022, Vol. 38, No. 3, p. 90.

³⁶ *Ibid.*, p. 86.

³⁷ KETTUNEN-MATILAINEN – ALVSTAM, *c. d.*, p. 23.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ JACUR, F. R. Corporate Social Responsibility in Recent Bilateral and Regional Free Trade Agreements: An Early Assessment. *European Foreign Affairs Review*. 2018, Vol. 23, No. 4, p. 475.

⁴¹ WALESON, *c. d.*, p. 164.

⁴² See Article 31.(3).(c) of Vienna Convention on the Law of Treaties 1969: “3. *There shall be taken into account, together with the context: (c) any relevant rules of international law applicable in the relations between the parties.*”

for the parties.⁴³ Hence, reference to the OECD, UN, and ILO guidelines in CSR provision could obligate signatories to uphold and promote CSR principles related to the environment and labour.⁴⁴ Simultaneously, CSR standards would belong to the authority of the institutional mechanism formed under the EVFTA.⁴⁵ Nevertheless, it is worth noting that the EU does not formulate new principles regarding CSR, but instead relies on established regulations from international organisations. This approach carries major implications in leveraging the influence of organisations in international trade negotiations, particularly in overseeing the enforcement of minimum standards set by the ILO.

Regarding labour content, the OECD principles on CSR for multinational enterprises, recognises labour and industrial relations consist of an introduction paragraph and eight paragraphs providing recommendations pertaining to the fundamental rights of labour that are widely acknowledged within the framework of the ILO, collective bargaining and agreements, information disclosure, compliance with labour-related standards, and, ultimately, the use of local labour.⁴⁶ Similarly, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy sets out principles in the areas of employment, training, working and living conditions, and industrial relations.⁴⁷ Besides, the UN Global Compact includes 10 general principles for business operations associated with CSR. These principles are built on widely recognised international conventions in four key areas (human rights, labour, environment, and anti-corruption). And there are four principles related to labour, namely: Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; Principle 4: the eliminating of all forms of forced or compulsory labour; Principle 5: the effective abolition of child labour; and Principle 6: the elimination of discrimination in respect of employment and occupation.⁴⁸ It can be seen that all three guidelines have a commonality in that they are all grounded in fundamental principles and rights at work, in accordance with the obligations of ILO member countries as well as the 1998 Declaration,⁴⁹ including: (i) the freedom of association and the effective recognition of the right to collective bargaining (Convention No. 87 and Convention No. 98);

⁴³ JACUR, *c. d.*, p. 475.

⁴⁴ WALESON, *c. d.*, p. 164.

⁴⁵ JACUR, *c. d.*, p. 476.

⁴⁶ NGUYEN, N. H. Bộ nguyên tắc của OECD dành cho các công ty đa quốc gia về kinh doanh có trách nhiệm và những lưu ý đối với Việt Nam [OECD Principles for Multinational Companies on Responsible Business and Notes for Vietnam]. In: *Hội thảo khoa học cấp trường Trách nhiệm xã hội của doanh nghiệp: quy định quốc tế và những vấn đề pháp lý đặt ra đối với Việt Nam* [School-level scientific conference Corporate social responsibility: international regulations and legal issues facing Vietnam]. Hanoi: Hanoi Law University, 2023, p. 47.

⁴⁷ ILO. *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. 6th ed. Geneva: ILO, 2022.

⁴⁸ United Nations Global Compact. *The UN Global Compact Operational Guide for Medium-scale Enterprises*. United Nations Global Compact Office, 2007.

⁴⁹ VU, C. G. – NGUYEN, M. T. Tổng quan quy định quốc tế về trách nhiệm xã hội của doanh nghiệp [Overview of international regulations on corporate social responsibility]. In: *Hội thảo khoa học cấp trường Trách nhiệm xã hội của doanh nghiệp: quy định quốc tế và những vấn đề pháp lý đặt ra đối với Việt Nam* [School-level scientific conference Corporate social responsibility: International regulations and legal issues facing Vietnam]. Hanoi: Hanoi Law University, 2023, p. 14.

(ii) the elimination of all forms of forced or compulsory labour (Convention No. 29 and Convention No. 105); (iii) the effective abolition of child labour (Convention No. 138 and Convention No. 182); (iv) the elimination of discrimination in respect of employment and occupation (Convention No. 100 and Convention No. 111). In other words, international guidelines are aimed at dealing issues that the EVFTA requires parties to commit to respecting, promoting, and effectively implementing labour commitments outlined in Chapter 13.

Stemming from the principles of the International Treaties Law, parties are obliged to fulfil any commitments via good faith in execution and compliance.⁵⁰ With the recognition of CSR on labour as demonstrated, the EVFTA, therefore, creates a horizontal obligation for signatories to promote a set of comprehensive related-CSR norms on labour without any direct vertical impact on businesses.⁵¹ Typically, this clause imposes an obligation on signatories to encourage companies to apply voluntary CSR principles at work through domestic law, accountability, and in accordance with their corresponding international obligations.⁵² And these are binding commitments, meaning that nations seem to be liable for whether or not measures are performed, and the other side, in fact, can determine what is appropriate and reasonable in this issue.⁵³

To conclude, by analysing the key nature of CSR provisions attached to labour, it might be claimed that CSR stipulated in the TSD Chapter has the nature of promoting compliance with labour commitments and core labour standards, however, placing obligations on member states and highlighting the importance of accountability responsibilities. Nations bear direct responsibility for fulfilling their international duties by establishing domestic legal frameworks equipped with suitable mechanisms to ensure enterprises are held liable for their conduct.⁵⁴ Broadly speaking, its objective is to foster collaboration between the EU and Vietnam in order to advance CSR legislative processes or due diligence in the domestic context in alignment with their respective international obligations (particularly the ILO's core conventions).⁵⁵

Anyway, it is time to mention CSR clauses in the upcoming EU's new generation FTAs with new partners, these negotiated CSR terms are becoming more and more complete. By doing so, the forthcoming EU-Malaysia FTA is likely to feature dedicated provisions, drawing on the EU-Singapore, EVFTA, and other FTAs recently signed by the EU as benchmarks. This FTA could contain recognition of the need to promote CSR and RBC while providing a framework for industry cooperation.⁵⁶ Beyond that, the CSR commitment is delineated as a separate chapter titled Trade and Responsible Business Conduct in the EU-Thailand FTA. This FTA has major modifications, such

⁵⁰ PEEL, R. et al. *Corporate Social Responsibility (CSR) in International Trade and Investment Agreements: Implications for states, businesses and workers*. Geneva: International Labour Office, 2016, p. 20.

⁵¹ WALESON, c. d., p. 164.

⁵² Ibid.

⁵³ PEEL, c. d., p. 20.

⁵⁴ ZANDVLIET, R. *Trade, investment and labour: interactions in international law*. Leiden Studies on the Frontiers of International Law, Vol. 9. Leiden: Brill, 2022, p. 192.

⁵⁵ OGER, c. d., p. 21.

⁵⁶ European Commission. *Sustainability Impact Assessment (SIA) in support of Free Trade Agreement (FTA) negotiations between the European Union and Malaysia (Final Report)*. 2019, p. 107.

as: (i) promoting both CSR and RBC, including responsible value chain management; (ii) adherence, implementation, follow-up, and dissemination of international instruments; and (iii) performing due diligence according to the OECD.⁵⁷ Notwithstanding, being the EU's third FTA in Asia, the EVFTA has demonstrated progress in achieving the EU's targets to include provisions on sustainable development, leveraging towards incorporating CSR commitments in its comprehensive bilateral FTAs.⁵⁸

4. RECENT DEVELOPMENTS OF CSR ON LABOUR: LESSONS FROM THE EUROPEAN UNION AND SOME MEMBERS

The regulations pertaining to CSR in labour would be generally expressed in the form of the Law on Labour, Law on Enterprise, and Law on Consumer Protection.⁵⁹ It is obvious to say that implicit CSR legislation is present in almost all jurisdictions worldwide.⁶⁰ Explicit CSR as well as CSR on labour, on the contrary, have emerged relatively recently, during the last several decades, under many labels: “business ethics”, “corporate citizenship”, “sustainability”, “ESG” (Environment, social, governance), “the triple bottom line”, “business and human rights”, and “responsible business conduct”.⁶¹ It is becoming more and more a reality that CSR is understood as a management process⁶² and a governance instrument.⁶³ For that, the government creates a transparent environment and strengthens information disclosure mechanisms.⁶⁴ For that reason, the majority of scholarly and policy attention regarding the legal framework around CSR and labour-related CSR primarily centres on mandatory information disclosure. Apart from that, several countries are advocating for additional dimensions of their CSR legal frameworks that go beyond the realm of information disclosure.⁶⁵ During this paper, we will analyse the legislative framework surrounding CSR on labour of the EU and other countries in three main aspects: (i) Mandatory due diligence legislation; (ii) Gender pay equity act; and (iii) Responsible value chain management.

⁵⁷ EU-Thailand Free Trade Agreement: Documents: Trade and Sustainable Development. In: *European Commission: Trade* [online]. 2023 [cit. 2023-12-06]. Available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/thailand/eu-thailand-agreement/documents_en.

⁵⁸ KETTUNEN-MATILAINEN – ALVSTAM, *c. d.*

⁵⁹ LIN, L. W. Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and National Experiences. *University of Pennsylvania Journal of Business*. 2020, Vol. 23, No. 2, p. 431.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, p. 432.

⁶² *Ibid.*, p. 434.

⁶³ STEURER, R. – MARTINUZZI, A. – MARGULA, S. Public policies on CSR in Europe: Themes, instruments, and regional differences. *Corporate Social Responsibility and Environmental Management*. 2012, Vol. 19, No. 4, p. 3.

⁶⁴ STEURER, R. The role of governments in corporate social responsibility: Characterising public policies on CSR in Europe. *Policy sciences*. 2010, Vol. 43, No. 1, pp. 49–72.

⁶⁵ LIN, *c. d.*, p. 433.

4.1 MANDATORY DUE DILIGENCE LEGISLATION

As previously remarked, mandated due diligence is the most prevalent legal framework with regard to CSR, or labour-related CSR, in which companies are required to provide comprehensive information about their labour, social, and environmental practices in their strategies, initiatives, or performance results. Such a disclosure is often referred to as CSR reporting, sustainability reporting, non-financial reporting, triple bottom line reporting, or ESG disclosure.⁶⁶ Furthermore, sustainability reporting itself is now considered part of CSR,⁶⁷ and mandatory due diligence, from the EU's perspective, is quite similar to CSR or RBC.⁶⁸

It is possible to interpret the mandatory due diligence report as requiring businesses to identify social and environmental risks associated with their operations as well as to develop and carry out reasonable plans to lessen the harm these risks cause.⁶⁹ At the EU level, the European Commission has introduced a proposal titled the 2022 Corporate Sustainability Due Diligence Directive (CSDDD), with the goal of “*fostering sustainable and responsible corporate behaviour throughout global value chains*”.⁷⁰ And this mandatory due diligence directive at the EU level is a significant topic on the agenda of the European Parliament.⁷¹ The EU CSDDD prioritises the promotion of sustainable corporate governance⁷² via the company's legal obligations and directors' duty of care and supervisory directors. This obligation requires directors to consider the long-term, medium-term, and short-term effects of their actions on sustainability and employment concerns.⁷³ At this time, stringent civil liability is also implemented. A company may also be held accountable for damages if it fails to avoid, reduce, and/or eliminate the possible negative impacts of its actions on society.⁷⁴ Finally, the directive stipulates that each EU Member State appoint at least one body that supervises compliance with the obligations stemming from the directive.⁷⁵ Once enacted, this directive could have a great influence on the whole EU since it requires member states to incorporate it into national legislation within a two-year timeframe after it goes into effect. The bigger picture of the directive is that it expands the jurisdiction of members and allows them to impose obligations that go beyond those required by the directive. Combined with open standards, the EU is developing a strategy that harmonises regulations throughout

⁶⁶ Ibid., p. 432.

⁶⁷ Ibid.

⁶⁸ OGER, *c. d.*, p. 22.

⁶⁹ LIN, *c. d.*, p. 435.

⁷⁰ European Commission. Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence. COM/2022/71 final. In: *EUR-Lex: Access to European Union* [online]. 2022 [cit. 2023-12-06]. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52022PC0071>.

⁷¹ NOTI, K. et al. *Corporate social responsibility (CSR) and its implementation into EU Company law*. European Parliament, 2020, p. 12.

⁷² Ibid.

⁷³ See Article 25 of the Proposal for a Directive of the European Parliament and of the council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.

⁷⁴ See Article 22, *ibid.*

⁷⁵ See Article 17, *ibid.*

the EU while remaining flexible with member states, as well as ensuring that the aim of raising legal liability is effectively achieved.

In the wave of responsible supply chains, the French Duty of Vigilance Law enacted in 2017 is the pioneering law for this approach.⁷⁶ This law requires large companies to develop due diligence plans to identify and map risks or prevent serious violations, as well as alerting and reporting mechanisms in their business operations as well as their supply chains.⁷⁷ However, the French approach to supervision is relatively straightforward, in the sense that no specific supervisory body is appointed.⁷⁸ Instead, companies may be held accountable by courts for any harm resulting from their improper execution of a sufficient risk mitigation strategy.⁷⁹ It should be noted that the present EU proposal calls for the establishment of supervisory authorities in every member state. In other words, given the existing divergent stance, France must initiate legal action related to the CSDDD supervisory body as soon as possible.

The new German Supply Chain Due Diligence Act (LkSG) stands as the most detailed due diligence legislation currently in force in Europe.⁸⁰ In contrast to France, which provides just a generic reference to “human rights risks”, the LkSG explicitly enumerates 12 particular hazards tied to human rights, out of which 8/12 labour risks correspond to eight ILO core labour conventions. Specific risks include: (1) minimum age for work; (2) worst forms of child labour; (3) forced labour; (4) all forms of slavery; (5) work-place safety at production facility, especially (Production facility or production means are obviously unsafe; lack of appropriate protection from chemical, physical, or biological materials; no prevention of excessive physical and mental fatigue; training and instructions of employees is unsatisfactory); (6) freedom of association (forming, joining, and acting in labour unions); (7) equality in employment, independent of descent, origin, health status, disability, sexual orientation, age, sex, political opinions, religion, or world view, including equal pay; (8) fair wage (possibly more than the minimum wage at the production location).⁸¹ Moreover, a significant distinction between the LkSG, the French Law on the Duty of Vigilance, and the CSDDD is that the LkSG does not impose civil responsibility but enforces administrative penalties (such as monetary fines, for instance, 2% of average annual revenue).⁸² A unique feature is that the German supervisory authorities and government departments take the duty of aiding enterprises in providing guidance very seriously, information, assistance, and

⁷⁶ NOTI, *c. d.*, p. 12.

⁷⁷ MICHAEL, R. L. – KELLEY, R. C. An Overview of French Corporate Social Responsibility Legislation for U.S.-Based Multinationals. In: *Ropes & Gray* [online]. 14. 1. 2021 [cit. 2023-12-06]. Available at: <https://www.ropesgray.com/en/insights/alerts/2021/01/an-overview-of-french-corporate-social-responsibility-legislation-for-us-based-multinationals>.

⁷⁸ DE KLUIVER, H. J. Towards a Framework for Effective Regulatory Supervision of Sustainability Governance in Accordance with the EU CSDD Directive: A Comparative Study. *European Company and Financial Law Review*. 2023, Vol. 20, No. 1, p. 226.

⁷⁹ MICHAEL, R. L. – KELLEY, R. C. *c. d.*

⁸⁰ DE KLUIVER, *c. d.*, p. 229.

⁸¹ GRABOSCH, R. *The Supply Chain Due Diligence Act: Germany sets new standards to protect human rights*. Bonn: Friedrich Ebert Stiftung, 2021, p. 3.

⁸² DE KLUIVER, *c. d.*, p. 230.

recommendations to enable enterprises to behave in compliance with the law.⁸³ Even so, the CSDDD enforces far more extensive due diligence responsibilities compared to LkSG, such as the scope of the enterprises or the entire value chain, instead of direct and indirect. Due to stricter due diligence requirements, the CSDDD would likely result in a tightening of the LkSG.⁸⁴

In terms of international cooperation, aspects of detailed due diligence have been begun to take into account in the EVFTA cooperation mechanism, especially the Domestic Advisory Group (DAG). On the second meeting on 18 October 2022, the DAGs of the EU and Vietnam decided to establish a “*common working group to deepen joint discussions on EU-Vietnam supply chains in the context of due diligence*”.⁸⁵ It is therefore no coincidence that the EU not only regards sustainability due diligence as a CSR policy instrument that needs to be standardised inside the union, but also strives to reach out to third-country markets, including Vietnam.

4.2 GENDER PAY EQUITY ACT

Equal pay for equal work is one of the founding principles of the EU and is enshrined in Article 157 of the Treaty on the Functioning of the EU.⁸⁶ Currently, this principle has evolved into a governance policy about CSR in the labour sector of the EU⁸⁷ and its constituent states. Regarding this aspect, the Pay Transparency Directive, which came into effect on 6 June 2023, has the potential to enhance transparency and the enforcement of the principle of equal pay between men and women, while also facilitating access to justice for victims of wage discrimination.⁸⁸ Whereby, transparency is reflected in several notable aspects, for example, pay transparency prior to employment,⁸⁹ as well as transparency of pay setting and pay progression policy.⁹⁰ At the same time, companies are bound to ensure employees’ rights to information⁹¹ and accessibility of information and report on the wage gap between male and female employees.⁹² With more details, France’s Professional Future Act utilises a measuring methodology that relies on five criteria: (1) the salary gap (basic salary, bonuses, and

⁸³ Ibid.

⁸⁴ Ibid, p. 237.

⁸⁵ 2nd meeting of the EU DAG and the Viet Nam DAG under the EU-Viet Nam FTA. In: *European Economic and Social Committee* [online]. 2022 [cit. 2023-12-06]. Available at: <https://www.eesc.europa.eu/en/documents/joint-report-eu-dag-and-vietnam-dag-under-eu-vietnam-fta>.

⁸⁶ EU action for equal pay. In: *European Commission* [online]. 2020 [cit. 2023-12-06]. Available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/equal-pay/eu-action-equal-pay_en.

⁸⁷ Governance policies on corporate social responsibility. In: *European Commission* [online]. [cit. 2023-12-06]. Available at: https://single-market-economy.ec.europa.eu/industry/sustainability/corporate-sustainability-and-responsibility/governance_en.

⁸⁸ Ibid.

⁸⁹ See Article 5 of the Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

⁹⁰ See Article 6, *ibid*.

⁹¹ See Article 7, *ibid*.

⁹² See Article 8, *ibid*.

personal incentives; (2) the individual wage growth gap; (3) the promotion gap; (4) the proportion of employees receiving a salary increase in the year following their return from maternity leave; and (5) the number of women and men in the top 10 highest remunerations. In parallel, companies must publish information on their websites and take the necessary actions to rectify any failure to fulfil the specified standards.⁹³ As is the case in France, other EU countries have also legislated this principle into national law, including Sweden’s 2009 Discrimination Act, The Norwegian Equality and Discrimination Act, The Danish Equal Pay Act, Ireland’s Gender Pay Gap Information Act 2021, Germany’s Promoting Transparency of Pay Structures Act, and the Italian Equal Opportunity Code.⁹⁴

4.3 RESPONSIBLE VALUE CHAIN MANAGEMENT

It is a reality that risks arising from the infringement of labour standards and labour rights in global supply chains appear to have cross-border impacts, spreading to EU Member States and/or non-EU countries.⁹⁵ Against the backdrop of this, as the Commission acknowledges, that “*when necessary and appropriate, adopting legislation represents another option*”.⁹⁶ As a result, through legislative instruments aimed at avoiding distortions in the operation of the internal market, defending public interests, and guaranteeing a fair playing field for both EU and non-EU enterprises, the Commission has adopted a very positive approach to CSR at the EU-wide level.⁹⁷ This is why socially responsible public procurement is one of the most valuable tools for the EU to achieve these goals.⁹⁸ According to the EU public procurement principle, contracting authorities can take social aspects into account throughout the procurement cycle, such as requiring potential suppliers to have sustainable, ethical supply chains, being transparent, treating their workers fairly, or recruiting those who have difficulty entering the labour market.⁹⁹ Another very important issue is that this code requires EU Member States to take appropriate measures to ensure enterprises adhere to their own legal obligations, including national labour laws, the EU’s labour laws, and collective agreements when implementing public procurement contracts.¹⁰⁰

⁹³ MICHAEL – KELLEY, *c. d.*

⁹⁴ Guide 2022: Equal pay legislations in Europe. In: *pihr* [online]. 7. 6. 2022 [cit. 2023-12-06]. Available at: <https://pihr.com/pay-equity/guide-equal-pay-legislations-in-europe/>.

⁹⁵ European Parliament. *Proposal for a Regulation of the European Parliament and of the Council on Prohibiting Products Made with Forced Labour on the Union Market*. Brussels: European Commission, 2022, p. 4.

⁹⁶ NOTI, *c. d.*, p. 20.

⁹⁷ European Parliament, *c. d.*, p. 4.

⁹⁸ European Commission. *Commission Notice “Buying Social – a guide to taking account of social considerations in public procurement (2nd edition)”*. Brussels: European Commission, 2021, p. 14

⁹⁹ 15 Frequently Asked Questions on Socially Responsible Public Procurement. In: *European Commission* [online]. 2021 [cit. 2023-12-06]. Available at: https://commission.europa.eu/funding-tenders/tools-public-buyers/social-procurement_en.

¹⁰⁰ See Article 18(2) of the Directive 2014/24/EU; Article 36(2) of the Directive 2014/25/EU and Article 30(3) of the Directive 2014/23/EU.

On the other side, based on international standards together with supplementing the EU legislative environment¹⁰¹ with existing horizontal and sectoral initiatives,¹⁰² a regulation prohibiting products made with forced labour in the Union market was put up. The objective of this proposal is to efficiently restrict the supply and distribution of locally manufactured and imported items in the EU market, as well as their export from the EU.¹⁰³ This proposal also complements the EU strategy on children’s rights,¹⁰⁴ which emphasises the EU’s commitment to taking a zero-tolerance stance on child labour and ensuring that EU companies supply chains are devoid of such practices.¹⁰⁵ Similarly, the Netherlands enacted the Child Labour Due Diligence Act, requiring companies to detect, prevent, and get rid of child labour in their supply chain as necessary. More specifically, such an act introduces a “duty of care”, which states that a company must “*first determine whether there is a reasonable suspicion that a product, or service, involves child labour*” (Article 5(1)). And if there is such reasonable “suspicion”, the company must “*to develop and implement an action plan*”. Of course, companies falling under the Act’s scope include those that sell or supply goods or services to end users in the Netherlands, irrespective of their registration status outside of the Netherlands (Article 4(1)).¹⁰⁶

Thus, it is important to reiterate that the CSR commitment in the new generation FTAs of the EU, including the EVFTA, emphasises the accountability of each business – the unit/entity employing the most workers in the labour market. And it, at the same time, ensures that these responsibilities are directly linked to the utilisation of labour in commercial business activities. Subsequently, the joint development of a legal framework on CSR by Vietnam and other countries could shape and build a common standard and serve as a legal basis for fair trade and sustainable development for different nations when participating in FTAs with the EU.

5. VIETNAMESE LABOUR LEGISLATION ON CSR AND WAYS FORWARD FOR VIETNAM POSITIONING ITS CSR TO ANSWER THE EVFTA REQUIREMENT

5.1 VIETNAMESE LABOUR LEGISLATION ON CSR

As of now, Vietnam lacks a formal explicit CSR regulation regarding labour, an implicit labour-related CSR, on the other hand, these have gradually emerged in the Vietnamese legal system. First of all, it is regarded as one of the mandatory responsibilities of enterprises as outlined in the Law on Enterprises, namely: “*Protect lawful*

¹⁰¹ European Parliament, *c. d.*, p. 3.

¹⁰² *Ibid.*, p. 1.

¹⁰³ *Ibid.*

¹⁰⁴ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions EU strategy on the rights of the child, COM(2021) 142 final, 24. 3. 2021.

¹⁰⁵ European Parliament, *c. d.*, p. 3.

¹⁰⁶ NOTI, *c. d.*, p. 27.

rights and interests of employees as prescribed by law; do not discriminate against or insult employees; do not mistreat or force employees to work; do not employ minors against the law; enable employees to improve their vocational skills through training; buy social insurance, unemployment insurance, health insurance and other insurance for employees as prescribed by law.”¹⁰⁷

And implicit labour-related CSR, moreover, is further integrated into specific content about the right to work; freedom to choose jobs, workplaces, occupation, vocational training, non-discrimination, forced labour, sexual harassment in the workplace, workers paid in accordance with qualifications and professional skills on the basis of agreements with employers; labour protection, working in conditions guaranteed of safety and hygiene, leave under the regime; and enjoying collective benefits in the Law on Occupational Safety and Health, Law on Social Insurance, and Law on Employment, especially the newly amended Labour Code in 2019.¹⁰⁸

Indeed, to ensure compliance with Vietnam’s international commitments in bilateral and multilateral economic cooperation frameworks, primarily the EVFTA,¹⁰⁹ Vietnam launched its first national action plan related to CSR on 14 July 2023, known as “National action programme to improve policies and laws to promote responsible business practices in Vietnam for the period 2023–2027”. As it can be seen, Vietnam uses the “responsible business practices” (RBP) term instead of CSR, with the explanation that CSR has an encouraging meaning and RBP, conversely, has a mandatory meaning.¹¹⁰ Accordingly, the tasks set forth in the field of labour are: to evaluate, propose modifications, supplements, and the enactment of new legislation and regulations pertaining to the promotion and protection of labour rights, the welfare of workers in labour relations, employment, and facilitating compliance with international labour standards that Vietnam has ratified. That means Vietnam is currently recognising CSR on labour as a mandatory legal framework but prioritising addressing the fragmented and inconsistent regulations found in various legal documents instead of considering the explicit labour-related CSR into a legal institution or an individual legal document for businesses. In the future, the inconsistency between the institutions of two regions, such as the EU and Vietnam, in the context of bilateral trade relations could lead to confusion about the provisions of the agreements as well as hinder effective cooperation between the parties.

¹⁰⁷ See Article 8.5 of the Law on Enterprises 2020.

¹⁰⁸ Ministry of Justice – Government of Sweden – United Nations Development Programme (UNDP). *Báo cáo đánh giá cơ sở quốc gia về thực hành kinh doanh có trách nhiệm của doanh nghiệp tại Việt Nam* [National baseline assessment report in responsible business practices of businesses in Vietnam]. 2022, p. 49.

¹⁰⁹ See Decision 843/QĐ-TTg on 14 July 2023 promulgating the National Action Program to improve policies and laws to promote responsible business practices in Vietnam in the period 2023–2027.

¹¹⁰ Consultation on National Action Plan on Responsible Business Practices. In: *UNDP: Viet Nam* [online]. 13. 12. 2022 [cit. 2023-12-06]. Available at: <https://www.undp.org/vietnam/press-releases/consultation-national-action-plan-responsible-business-practices>.

5.2 WAYS FORWARD FOR VIETNAM POSITIONING ITS CSR TO ANSWER THE EVFTA REQUIREMENT

One point to be mentioned in this situation is that Vietnam, similar to other emerging nations in Asia, is it lags behind in certain elements of CSR on labour. Definitely, it is imperative and necessary to acquire knowledge and incorporate EU and some member countries practices. Hence, considering the legislative framework of labour-related CSR in EU and a number of nations, Vietnam must undertake the following:

MANDATORY DUE DILIGENCE LEGISLATION

In Vietnam, due diligence is mostly understood as a part of the financial process in the acquisition and merger of enterprises. An acquiring company engages in this activity to thoroughly assess the target company's business operations, assets, capabilities, and financial performance. It, however, has no (or very little) consideration of social or environmental aspects. Meanwhile, mandatory due diligence, from the EU's viewpoint, closely resembles CSR or RBC.¹¹¹ Certainly, this raises the challenge of unifying common phrases between the parties in the context of working together to discuss the EU-Vietnam supply chain with due diligence.¹¹²

This also indicates that Vietnam currently lacks a legal framework regulating not only business sustainability due diligence but also CSR on labour. In relation to this matter, Vietnamese legislation concentrates solely on the requirement of information disclosure by companies that are listed on the stock market.¹¹³ For more details, the information disclosure of labour policies only comprises three categories: (1) the number of employees and the average salary for employees; (2) labour policies to ensure the health, safety, and welfare of employees; and (3) employee training activities (average number of training hours per year; skills development; and continuous learning programmes to support employees in securing employment and career development).¹¹⁴ Vietnam's labour-related CSR information disclosure is now in its nascent stage,¹¹⁵ with ambiguous information and a lack of core content that aligns with international standards such as those in the EU. Furthermore, this restriction is only applicable to certain categories of enterprises. Thus, it is crucial to establish and refine the legal basis for mandatory due diligence and social responsibility reporting in Vietnam in the near future. This should be done by drawing on the expertise of the EU and its countries as follows: (i) expanding the scope of companies beyond those listed on the stock market;

¹¹¹ OGER, *c. d.*, p. 22.

¹¹² 2nd meeting of the EU DAG and the Viet Nam DAG under the EU-Viet Nam FTA.

¹¹³ See Circular No. 96/2020/TT-BTC dated 26 November 2020 and Circular No. 155/2015/TT-BTC dated 6 October 2015 issued by the Ministry of Finance guiding the disclosure of information on the securities market.

¹¹⁴ See Appendix 4 of the Circular No. 155/2015/TT-BTC dated 6 October 2015 issued by the Ministry of Finance guiding the disclosure of information on the securities market.

¹¹⁵ NGUYEN, T. K. T. et al. *Khuôn khổ pháp lý về việc công bố thông tin trách nhiệm xã hội của các doanh nghiệp niêm yết* [Legal framework for disclosing responsibility information of listed enterprises]. *Vietnam Accounting and Auditing Journal*. 2021, No. 14, p. 89.

(ii) supplementing labour-related policy information by means of identifying risks related to core labour standards in business operations in addition to developing and implementing plans to mitigate these risks; and (iii) clarifying management’s obligations in due diligence activities.

GENDER PAY EQUITY ACT

Regarding the principle of equal pay, Vietnam has directly adopted the clauses of Convention No. 100 concerning equal remuneration for men and women workers for work of equal value into national legislation,¹¹⁶ besides ratifying the Convention. It is reasonable that equal remuneration is recognised as one of the most important wage principles in the Vietnamese Labour Code: “Employers must ensure equal pay for work of equal value without discrimination based on sex”.¹¹⁷ The most important of this is Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recently made numerous requests to elucidate the definition and evaluation methodology for “work of equal value”¹¹⁸ under this principle. Therefore, in order to satisfy the CEACR requirements and align with the partner parties’ institutions in the bilateral agreement, Vietnam is obligated to draft a legal document containing explicit instructions: (i) delineating the criteria employed to determine pay scales, ensuring equitable remuneration for both genders performing work of equivalent value; and (ii) outlining the methodology employed to assess work of equal value.¹¹⁹ Through accomplishing these two goals, Vietnamese law may address the issue of non-discriminatory salaries¹²⁰ and bring it into line with the ILO Convention. In order to keep pace with global trends, however, Vietnam requires more tangible and pragmatic approaches, such as mandatory disclosure of the gender wage gap within enterprises, evaluation of wages by competent government bodies to identify, address, and eliminate wage disparities within businesses, and stringent measures enforced by state authorities, which are comparable to legislation from member states and the EU.

RESPONSIBLE VALUE CHAIN MANAGEMENT

It has been found that the majority of Vietnamese companies still have a limited link to the supply chain.¹²¹ On the one hand, Vietnam has not yet built

¹¹⁶ NGUYEN, T. D – NGUYEN, H. Vietnam in the European Union – Vietnam free trade agreement’s labour commitments: Requirements for labour law reforms. *Curentul Juridic*. 2023, Vol. 94, No. 3, p. 41.

¹¹⁷ See Article 90.3 of the Labour Code 2019.

¹¹⁸ Direct Request (CEACR) – adopted 2021, published 110th ILC session (2022) – Equal Remuneration Convention, 1951 (No. 100) – Vietnam (Ratification: 1997). In: *International Labour Organization* [online]. 2022 [cit. 2023-12-06]. Available at: https://webapps.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C100.

¹¹⁹ *Ibid*.

¹²⁰ *Ibid*.

¹²¹ DO, T. M. T. Giải pháp phát triển liên kết các DNNVV để tăng cường khả năng tham gia chuỗi giá trị toàn cầu [Solutions to develop links between SMEs to enhance their ability to participate in the global value chain]. *Tap chí Kinh tế và Dự báo* [Economy and Forecast Review]. 2023, No. 7, p. 57.

large-scale domestic supply chains for businesses to participate in.¹²² On the other hand, only a relatively small proportion of small and medium-sized enterprises in Vietnam participate in linking with foreign supply chains.¹²³ So, it is very challenging to demand deep government intervention in labour-related CSR inside Vietnam's supply chain management, even in the interactions between Vietnamese enterprises and the global value chain. Despite this, Vietnam is actively undertaking constructive measures, extending beyond legal boundaries, to assist enterprises, business associations, and suppliers in combating and eradicating child labour and forced labour in the supply chain at a national, regional, and global level. Specifically, Vietnam was chosen as one of the 15 pathfinder countries of the Global Alliance to Ending Forced Labour, Modern Slavery Human Trafficking, and Child Labour¹²⁴ due to its support of subregional, regional, and global initiatives to eliminate child labour, forced labour, and human trafficking.¹²⁵ At the same time, Vietnam has strong commitments, exemplified by initiatives such as the forum "Responsible Business Conduct for Vietnam's Thriving Next Generation"¹²⁶ and proposals like the "Viet Nam Award towards Child Labour Free Business" or certification aimed at businesses striving to eradicate child labour from their supply chains.¹²⁷ Nevertheless, in light of the growing demands for responsible value chain management, particularly the practice of eliminating products derived from forced labour and child labour from the supply chain via procurement and import and export operations, the government's involvement in the supply chain from a legal perspective is necessary. This can be achieved through various measures, including: (i) amending certain provisions of the Law on Bidding to ensure transparency of information related to enterprises' labour policies in bidding activities; (ii) encouraging the development and dissemination of codes of CSR on labour, with a particular focus on eradicating forced labour and child labour in industry supply chains, by business associations, industry associations, and professional associations; and (iii) implementing comprehensive sanctions to address violations related to CSR on labour as stipulated in legal regulations.

In sum, in comparison to the legal systems of the EU and its member states, Vietnam has a significant legislative vacuum in terms of regulating CSR on labour due to the absence of explicit legal instruments and restrictions in existing legislation. Not only that,

¹²² SMEs face hurdles when seeking to join global supply chain. In: *The Ministry of Finance of the Socialist Republic of Viet Nam* [online]. 2019 [cit. 2024-09-02]. Available at: https://mof.gov.vn/webcenter/porta1/btcen/pages_home.

¹²³ Chỉ có 21% DNNVV tham gia vào chuỗi cung ứng toàn cầu [Only 21% of SMEs participate in the global supply chain]. In: *Tạp chí Kinh tế và Dự báo* [Economy and Forecast Review] [online]. 22. 8. 2018 [cit. 2024-09-02]. Available at: <https://kinhhtevadubao.vn/chi-co-21-dnnvv-tham-gia-vao-chuoi-cung-ung-toan-cau-6157.html>.

¹²⁴ Hội thảo hoạch định chiến lược quốc gia nhằm xây dựng lộ trình đạt được Mục tiêu 8.7 [National strategic planning workshop to develop a roadmap to achieve Target 8.7]. In: *ILO* [online]. 2019 [cit. 2023-23-06]. Available at: <https://www.ilo.org/vi/meetings-and-events/hoi-thao-hoach-dinh-chien-luoc-quoc-gia-nham-xay-dung-lo-trinh-dat-duoc-muc>.

¹²⁵ Alliance 8.7. Vietnam Annual Pathfinder Progress Report May 2020-April 2021. 2021, p. 22.

¹²⁶ Kinh doanh có trách nhiệm vì thế hệ trẻ sẽ tạo ra tương lai bền vững [Responsible businesses for Vietnam's thriving next generation]. In: *Báo Điện tử Chính phủ* [Government News] [online]. 2023 [cit. 2023-12-06]. Available at: <https://en.baohinhphu.vn/>.

¹²⁷ Alliance 8.7, c. d., pp. 15–16.

in the context of the EU gradually imposing stricter demands on CSR duties, particularly regarding labour, in FTAs with developing countries such as Thailand and Malaysia, Vietnam is erecting barriers to fulfilling its obligations in international commitments.

6. CONCLUSION

During this study, we have tried to investigate the nature of labour-related CSR commitments in the era of new-generation FTAs between Vietnam, a developing country, and the EU. For the most part, the study develops and proves the fact that CSR legislation as well as CSR on labour are becoming a trend in new generation FTAs but also in legislative trends around the world. Based on shared norms derived from minimum social and human rights standards and EU law, EU Member States have established diverse rules regarding CSR. Nevertheless, the trend of legislating CSR on labour into laws, namely mandatory due diligence legislation, the Gender Pay Equity Act, and responsible value chain management, constitutes a fundamental aspect of the legal policies of the EU and other member states. Contrarily, there is an existing legal gap between EU and member countries legislation and Vietnam's labour-related CSR legislation in the context of CSR provisions on labour that have been committed to implementation in the EVFTA. So, in response to the pressure of economic integration, Vietnam's study of the approach and formulation of the legal framework to regulate CSR on labour is a necessary step in order to avoid future exclusion from the international trade system and achieve sustainable growth. In the near future, specific steps (alongside improving policies and laws) of the Vietnamese government in the National Action Programme's CSR-related initiatives are also factors that need to be promoted. Vietnam, as a participant in a new generation FTA, may also refer to recent trends in EU trade negotiations relating to CSR commitments to guide its future actions.

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