

## **The EU-VN FTA TSD chapter and the role of civil society**

### **Work program**

**The TSD Chapter, civil society participation and respect for human rights are part of the FTA and reflect the EU's obligation to integrate human rights, labour rights and environment into its trade policy**

As ruled by the European Court of Justice, Article 207 of the TFEU obliges the EU to integrate the considerations of Article 21 of the TEU – namely human rights, labour rights and environment - in its trade policy<sup>i</sup>.

The TSD Chapters<sup>ii</sup>, civil society participation, and the respect for human rights (as essential elements of the VN-EU relations which allow a Party to take appropriate measures with respect to the FTA when the other Party has violated them)<sup>iii</sup> are the three interlinked and interdependent components that are ruled by that obligation.

For the Court of Justice “the objective of sustainable development henceforth forms an integral part of the common commercial policy”; “Chapter 13 plays an essential role in the envisaged agreement” and “by the provisions of Chapter 13 [... the Parties to the FTA] undertake, essentially, to ensure that trade between them takes place in compliance with the obligations that stem from the international agreements concerning social protection of workers and environmental protection to which they are party”<sup>iv</sup>

The TSD Chapter and civil society participation lay the foundations for the realisation of sustainable development. Civil society is diverse, from NGOs, private sector, trade unions, etc. The human rights clause offers complementary leverages when parties do not comply to the human rights dimension of sustainable development. Without necessarily leading to the suspension of any trade concession or discipline of the treaty, it allows appropriate and proportionate measures, for example dedicated and enhanced dialogue, the setting of dedicated solving-problem mechanism etc.

**Institutional structures are specifically set up in the context of FTAs in order to ensure civic space and the participation of civil society in the full implementation and overseeing of the TSD chapter**

As stated by the European Commission in its document called “Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement”, the DAGs and the joint forum have been foreseen to “ensure the involvement of civil society from both sides”. In addition, the Chapter explicitly insists on “independent civil society representatives” in DAGs to provide “inputs on any matter concerning the

implementation of the Chapter”. The Joint Forum, to which DAGs are an integral part, allows “regular exchanges among the EU and Vietnam's civil society on all sustainable development aspects of trade relations among the EU and Vietnam”. The Commission specifies that “there is no limitation on inputs which can be provided to the Parties by DAGs and by the joint forum, either in terms of which provisions of the Chapter they can refer to, or concerning their nature”. Among other things it could refer to cooperation on any matter of mutual interest related to the present Agreement including “awareness-raising of FTA provisions in order to address impacts of the FTA on human rights and sustainable development.”<sup>v</sup>.

**The role of civil society to achieve sustainable development is actually shaped in international law and the various convention programmes and action plans, including the ones that are recalled in the TSD chapter.**

Recalling various engagements taken internationally in its article 13.1<sup>vi</sup>, the parties to the EU-VN FTA affirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development. Together, all these instruments recall the central role of civil society, including independent NGOs, trade unions and the private sector, as well as the role of human rights and the rule of law.

Indeed, the Sustainable Development Goals, « in particular, Goal 16 seeks to promote peaceful and inclusive societies by, inter alia, developing effective, accountable and transparent institutions at all levels; ensuring responsive, inclusive, participatory and representative decision-making; and ensuring public access to information and protecting fundamental freedoms. Goal 16 is also an enabler of all other SDGs »<sup>vii</sup>.

Agenda 21, for example, expressly points out the vital role of NGOs, trade unions and industry to sustainable development”, attaching much attention to NGOs. It argues that independent NGOs “possess well-established and diverse experience, expertise and capacity in fields which will be of particular importance to the implementation and review of environmentally sound and socially responsible sustainable development”<sup>viii</sup>

The Outcome Document of the United Nations Conference on Sustainable Development of 2012, entitled “The future we want”, reaffirms the importance of the « respect for all human rights » and « the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law ». It is reaffirmed that « that opportunities for people to [...] participate in decision-making and voice their concerns are fundamental for sustainable development »<sup>ix</sup>

**Participation of civil society, being recognised as vital for sustainable development, requires actions.**

Among them, the UN Guidance Note on Protection and Promotion of Civic Space states that

« Civic space relies on formal and informal channels [...] mechanisms that allow effective access to information, dialogue and the expression of dissenting and unpopular views”<sup>x</sup>.

The Agenda 21 commits the State and high representatives

- To provide support to independent NGOs and their participation as an essential element of achieving sustainable development goals, and insists on the fact that “independence is a major attribute of non-governmental organizations and is the precondition of real participation.”.
- To « take into account the findings of non-governmental monitoring and review mechanisms »
- To « make available and accessible to non-governmental organizations the data and information necessary for their effective contribution to research and to the design, implementation and evaluation of programmes
- To « promulgate or strengthen, subject to country-specific conditions, any legislative measures necessary to enable the establishment by non-governmental organizations of consultative groups, and to ensure the right of non-governmental organizations to protect the public interest through legal action »<sup>xi</sup>

From the Outcome Document of the United Nations Conference on Sustainable Development of 2012 entitled “The future we want”, we read that “sustainable development requires the meaningful involvement and active participation of [...] non-governmental organizations, [...] workers and trade unions, business and industry, [...] ». In the document, the Heads of State and Government and high-level representatives,

- « agree to work more closely with the major groups and other stakeholders, and encourage their active participation, as appropriate, in processes that contribute to decision-making, planning and implementation of policies and programmes for sustainable development at all levels
- « recognize that improved participation of civil society depends upon, inter alia, strengthening access to information and building civil society capacity and an enabling environment ».
- « recognize [...] it is essential to work towards improved access to information and communications technology »<sup>xiii</sup>

The UN guiding principles on business and human rights and the guidance provided by the Working group in its report on human rights defenders and civic space also point out some priorities<sup>xiii</sup>. The report highlights that

- « States should address risks to human rights defenders in their trade policies and support for business and economic diplomacy » and States should « consider how trade and investment agreements can include clauses that include shared commitments to respect for the rights of human rights defenders and trade union members by the private sector and by State parties to the agreements. » They should “undertake assessments of the impact of existing and future trade and investment agreements on human rights defenders », « promoting coherence when pursuing business-related policy objectives » and « ensure that existing and future

trade and investment agreements include adequate safeguards to protect the environment, human rights and labour rights, including the rights of human rights defenders, and that they contain an obligation on investors to respect human rights defenders »<sup>xiv</sup>.

- Considering business' responsibility, the report stressed that « States have acknowledged that responsible business is a critical part of implementing the 17 Sustainable Development Goals by 2030, and that human rights defenders have an important role in supporting States to realise the 2030 Agenda for Sustainable Development»<sup>xv</sup>. In consequence, « human rights defenders should be consulted in the process of identifying and assessing the real and potential impacts of a business' proposed activities, as an essential component of human rights due diligence ». Furthermore, « business enterprises that operate in, or have business relationships in, contexts where risks to defenders are significant, should consider having an explicit commitment to prevent and address impacts on defenders in connection with their business – either as part of their overall policy commitment to respect human rights or as a stand-alone policy. »

All in all, to ensure its effectiveness, the DAGs should support the above elements as essential to realise sustainable development and to ensure that trade and investment contribute effectively to the realisation of the TSD chapter. Supporting the role of civil society and promoting the support to an enabling environment in the different elements described above should be part of its priority and will be part of the EU DAG programme of work.

## Footnotes and references

<sup>i</sup>CJEU, Opinion 2/15, 16 May 2017, §143

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=190727&doclang=EN>

<sup>ii</sup> For the Court of Justice “the objective of sustainable development henceforth forms an integral part of the common commercial policy”; “Chapter 13 plays an essential role in the envisaged agreement” and “by the provisions of Chapter 13 [... the Parties to the FTA] undertake, essentially, to ensure that trade between them takes place in compliance with the obligations that stem from the international agreements concerning social protection of workers and environmental protection to which they are party” CJEU Opinion 2/15 § 147, 162, 152. TSD Chapter negotiated with Singapore ; developement made being applicable mutatis mutandi for EU-VN FTA - Trade for All 2015

[https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf) stating that The aim of TSD chapters is” to engage with partner countries in a cooperative process **fostering transparency and civil society involvement**”

<sup>iii</sup> Regarding the Human rights clause the European Commission confirmed that by the combination of article 17.18 and 17.22 of the FTA and 1 and 57 of the PCA ((namely essential element clause and non execution clauses as stated in the partnership agreement art 1 & 57 and the passerelle clauses in the FTA art 17.18 and 17.22) the “FTA is part of the overall bilateral relationship as provided for in the PCA”[ Partnership and Co-operation Agreement] and “a Party may unilaterally take appropriate measures with respect to the FTA when it considers that the other Party has committed a material breach of the PCA (such as violating the essential element constituted by the “human rights clause”)” see COMMISSION STAFF WORKING DOCUMENT Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement, Brussels, 26.1.2016 SWD(2016) 21 final,

[https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc\\_154236.pdf](https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154236.pdf)

see FTA <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:186:FULL&from=EN#page=132>

EU-VN FTA, Art 17.22

This Agreement shall be part of the overall relations between the Union and its Member States, of the one part, and Viet Nam, of the other part, as provided for in the Partnership and Cooperation Agreement and shall form part of the common institutional framework Art 17.18 Fulfilment of Obligations1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall ensure that the objectives set out in this Agreement are attained. 2. If a Party considers that the other Party has committed a material breach of the Partnership and Cooperation Agreement, it may take appropriate measures with respect to this Agreement in accordance with Article 57 of the Partnership and Cooperation Agreement

PCA <https://eeas.europa.eu/sites/default/files/pca.pdf> ; Art 1 he Parties confirm their commitment

to ... the respect for democratic principles and human rights, as laid down in the UN General Assembly Universal Declaration of Human Rights and other relevant international human rights instruments to which the Parties are Contracting Parties, which underpin the internal and international policies of both Parties and which constitute **an essential element of this Agreement**

<sup>iv</sup> CJEU Opinion 2/15 § 147, 162, 152. TSD Chapter negotiated with Singapore ; developement made being applicable mutatis mutandi for EU-VN FTA - Trade for All 2015

<sup>v</sup>COMMISSION STAFF WORKING DOCUMENT Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement, Brussels, 26.1.2016 SWD(2016) 21 final,

[https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc\\_154236.pdf](https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154236.pdf)

T&SD Chapter foresees **dedicated structures for the involvement of civil society** from both sides. At domestic level, the Chapter foresees Domestic Advisory Groups (**DAGs**) as a mechanism for each Party to **request and receive inputs** from representatives of its civil society on any matter concerning the implementation of the Chapter. The Chapter explicitly establishes that both the EU and Vietnam's DAGs shall comprise independent civil society representatives;

**The Chapter also establishes a dedicated platform for joint dialogue** with a balanced representation of economic, social, and environmental interests, to allow for regular exchanges among

---

the EU and Vietnam's civil society **on all sustainable development aspects of trade relations** among the EU and Vietnam.

**There is no limitation on inputs which can be provided to the Parties by DAGs and by the joint forum**, either in terms of which provisions of the Chapter they can refer to, or concerning their nature. DAGs' remit is not limited to raising a potential complaint: importantly, DAGs can also make suggestions for the solution of an issue. Co-operation on human rights related issues is not explicitly mentioned. However, it can fall under the scope of this Chapter, which has an open formulation foreseeing cooperation in "other areas of mutual interest related to the present Agreement" e.g. in terms of awareness raising of FTA provisions in order to address impacts of the FTA on human rights and sustainable development

<sup>vi</sup> the Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002, the Ministerial Declaration of the United Nations Economic and Social Council on Full Employment and Decent Work of 2006, the International Labour Organization (hereinafter referred to as "ILO") Decent Work Agenda, the Outcome Document of the United Nations Conference on Sustainable Development of 2012, entitled *The future we want*, and the Outcome Document of the United Nations Summit on Sustainable Development of 2015, entitled *Transforming Our World: the 2030 Agenda for Sustainable Development*,

<sup>vii</sup> UN Guidance Note on Protection and Promotion of Civic Space, September 2020

[https://www.ohchr.org/Documents/Issues/CivicSpace/UN\\_Guidance\\_Note.pdf](https://www.ohchr.org/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf)

<sup>viii</sup> the Agenda 21 on Environment and Development of 1992, § 27.1

<https://sustainabledevelopment.un.org/outcomedocuments/agenda21>

<sup>ix</sup> In the The Outcome Document of the United Nations Conference on Sustainable Development of 2012, entitled *The future we want*, §§ 8,9, 10, 13

[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/66/288&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E)

<sup>x</sup> UN Guidance Note on Protection and Promotion of Civic Space, September 2020

[https://www.ohchr.org/Documents/Issues/CivicSpace/UN\\_Guidance\\_Note.pdf](https://www.ohchr.org/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf)

<sup>xi</sup> the Agenda 21 on Environment and Development of 1992 § 27.6 à 26.13

<sup>xii</sup> In the The Outcome Document of the United Nations Conference on Sustainable Development of 2012, entitled *The future we want*, §§ 43, 44

<sup>xiii</sup> UNGPs are part of agreement through the human clause and disposals related to CSR. In its SWD(2016) 21 final the commission states « The Commission actively promotes the uptake of CSR and Responsible Business Conduct practices both within the EU and by its partner countries, notably with regard to internationally recognised guidelines and principles. This approach is reflected in the T&SD Chapter35, which refers to all relevant internationally accepted and agreed instruments that have been endorsed or are supported by each Party, including the UN Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The OECD Guidelines incorporate the UN Guiding Principles on Business and Human Rights (UNGPs) endorsed unanimously by the UN in 2011”, p. 18

<sup>xiv</sup> [The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders – on the issue of human rights and transnational corporations and other business enterprises](#), June 2021, <https://undocs.org/A/HRC/47/39/Add.2> CESR general Comment 24 and UN guideline on impacts assessments adding « **The impacts on human rights of the implementation of the agreements should be regularly assessed, to allow for the adoption any corrective measures that may be required** ». « The methodology of human rights impact assessments of trade and investment agreements..., should be guided by a human rights-based approach, and its credibility and effectiveness depend on the fulfilment of the following minimum conditions” including “4.5 Inclusive participation. The human rights impact assessment should consider the views of the communities directly affected by the trade or investment agreement by ensuring participation in the conduct of the assessment. For this participation to be meaningful, those consulted should be provided with all the

---

available information on the potential impacts, and the assessment should refer explicitly to their concerns and how these concerns could be addressed »

<sup>xv</sup> [The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders – on the issue of human rights and transnational corporations and other business enterprises](#), June 2021, § 31 the full quote is « States have acknowledged that responsible business is a critical part of implementing the 17 Sustainable Development Goals by 2030, and that human rights defenders have an important role in supporting States to realise the 2030 Agenda for Sustainable Development. Protection of civic freedoms and human rights defenders are critical elements for implementing SDG 16 (promotion of peaceful and inclusive societies), and SDG 17, which recognises the power of partnership »<sup>xv</sup>. <https://undocs.org/A/HRC/47/39/Add.2>