



Council of the  
European Union

Brussels, 26 January 2016  
(OR. en)

5589/16

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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	26 January 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2016) 21 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement

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Delegations will find attached document SWD(2016) 21 final.

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Encl.: SWD(2016) 21 final



Brussels, 26.1.2016  
SWD(2016) 21 final

**COMMISSION STAFF WORKING DOCUMENT**

**Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement**

## COMMISSION STAFF WORKING DOCUMENT

### **Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement**

#### **1. Foreword<sup>1</sup>**

On 12 May 2015, at the occasion of the roundtable with stakeholders on human rights and sustainable development in the relationship between the European Union (EU) and Vietnam, the Commission undertook the commitment to publish a detailed paper developing the issues discussed in the workshop when the legal texts of the EU-Vietnam Free Trade Agreement (FTA) were about to be finalised. A Summary Paper outlining the discussion and the recommendations made by stakeholders at the roundtable has already been made publicly available<sup>2</sup>.

This Document has been drafted by the Commission services in consultations with the European External Action Service (EEAS). It is made publicly available in order to enhance transparency vis-à-vis stakeholders and foster public dialogue on essential values like human rights and sustainable development, as well as on ways to address possible impacts of the EU-Vietnam FTA in these areas.

This Document aims specifically at:

- presenting a comprehensive overview of policies and tools available to address human rights and sustainable development in EU-Vietnam relations with specific regard to the FTA;
- explaining how the provisions in the Partnership and Co-operation Agreement (PCA) and the FTA address these issues and how, once in force, the relevant provisions will be implemented and monitored;
- reviewing the recommendations made by stakeholders and explaining how and to what extent they ought to be addressed;
- identifying both planned and additional possible flanking measures.

#### **2. Key EU human rights- and sustainable development-related policies and instruments in relations with Vietnam**

##### **2.1. Introduction**

In all its policies and legislative initiatives, the EU is guided by the normative and political frameworks on human rights and sustainable development as defined, for instance, by: Article 21 (1) and (2) of the Treaty on the European Union; the Charter of Fundamental Rights of the EU; the EU Strategic Framework on Human Rights and Democracy; the United Nations (UN) Human Rights Conventions; the fundamental International Labour Organisation's (ILO) Conventions and the core labour standards; the UN 2030 Agenda for Sustainable Development; as well as, where appropriate, by other regional human rights conventions and customary international law.

Human rights considerations in trade policy initiatives should be seen as one component of a wider approach encompassing a broad range of policies and actions to address

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<sup>1</sup> N.B. The numbering of the Articles mentioned in this Document as referring to the legal provisions of the FTA is subject to change following the legal review of the FTA.

<sup>2</sup> : [http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153624.pdf](http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153624.pdf)

directly or indirectly human rights, that is, inter alia: political dialogues, co-operation at multilateral and bilateral levels, development aid and support. The external dimension of domestic policies in areas such as environment, employment, social affairs, health, good governance, the rule of law, education, migration, data protection, digital and audio-visual, as well as voluntary corporate social responsibility practices by the private sector, can also contribute to support human rights.

As a consequence, when considering the impact of trade policies on human rights issues and ways to address them, the EU's overall relations with the country concerned should be taken into account. This includes the existence of a political framework agreement (in the case of Vietnam, the PCA) and its human rights provisions, as well as the dialogues and policies carried out to address human rights-related considerations in the context of the bilateral relationship more generally.

## **2.2. The Partnership and Co-operation Agreement**

### **2.2.1. Context**

PCAs aim to bring together, under a single framework, a holistic and coherent vision of relations with a given partner and to identify the policies and instruments that will be used to advance bilateral relations. Indeed, increasing economic integration and transnational challenges call for new, enhanced and inter-linked forms of cooperation beyond the "trade and aid" agenda which used to characterise former EU cooperation agreements.

In addition, PCAs are a manifestation of the EU's commitment to building a predictable, rule-based international order. PCAs set out values, norms and standards to which both sides adhere. They aim to promote respect for, compliance with and co-operation on a number of key international principles and rules. In that respect, they constitute a significant instrument of EU soft/normative power.

Consequently, in 2003 the EU decided to propose comprehensive and broad-ranging bilateral PCAs to South East Asian countries. In the case of countries like Vietnam, it was considered that the existing contractual framework (the old-generation EC Cooperation Agreements) was insufficient to reflect the full breadth of the fast-developing bilateral relations.

Negotiations for a PCA with Vietnam were launched in 2007. Five years later, in June 2012, High Representative / Vice President Catherine Ashton and Vietnam's Foreign Minister Pham Binh Minh signed the EU-Vietnam PCA in Brussels. The new PCA demonstrates the commitment of the EU to forge a modern, broad-based and mutually-beneficial partnership with Vietnam, based on shared interests and principles such as equality, mutual respect, the rule of law, and respect for human rights as laid down in the Charter of the United Nations, in the UN General Assembly Universal Declaration of Human Rights, and in other relevant international human rights instruments to which both parties have committed themselves.

The PCA is currently in the final stages of the ratification process. In the meantime, the EU and Vietnam have agreed to fast-track the implementation of some key aspects of the PCA. These include human rights, in which respect the EU and Vietnam have decided to upgrade the level of chairing of the regular Dialogue on human rights. Furthermore, both sides have initiated regular political consultations at vice-ministerial level and launched new regular consultations on security and crisis management.

### **2.2.2. Presentation of relevant PCA provisions**

The respect for human rights and democratic principles constituted already an essential element of the 1995 EC-Vietnam Cooperation Agreement. This remains the case also

under the PCA, although with a much broader and comprehensive wording. In addition, the rule of law was included among the principles covered by this clause.

In the preamble to the PCA, both the EU and Vietnam reaffirm their commitment to the general principles of international law and to the purposes and principles of the Charter of the United Nations, as well as to the respect for democratic principles and human rights, and good governance.

Under **Article 1** of the EU-Vietnam PCA both sides commit to respect 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.

The inclusion of this "**human rights, democracy and rule of law clause**" (in brief the "human rights clause", which is an essential element of the agreement) in the EU-Vietnam PCA, as in other EU agreements with third countries, is intended to promote the values and political principles on which the European Union is founded (Art. 2 of the Treaty on the European Union) and constitutes the basis for the EU's external policies, as stated in Article 21 of the Treaty on the European Union. This clause represents the core values that the EU shares. It is defined as an essential element of the agreement.

The "human rights clause" ensures that human rights are a subject of common interest and part of the dialogue between the parties, and serves as a basis for the implementation of positive measures. The EU sees one of the principal values of this clause to have a legally binding expression of their shared commitment to the promotion and protection of human rights. It gives the EU a clear legal basis for raising human rights issues and it makes it impossible for both parties to claim that human rights are a purely internal matter.

In the same Article 1 of the PCA, the EU and Vietnam furthermore commit to promoting sustainable development in all its dimensions. Human rights and sustainable development are consequently part of the aims of cooperation (**Article 2**), more specifically in trade and investment related areas ("in order to facilitate sustainable trade and investment flows"), development cooperation ("working towards promoting sustainable development") and other areas of mutual interest (including human rights).

A separate provision (**Article 35**) is dedicated to cooperation in the promotion and protection of human rights, including with regard to the implementation of international human rights instruments to which they are parties and by strengthening the existing human rights dialogue. A further provision (**Article 33**) addresses cooperation in strengthening gender-related policies and programmes. The recently adopted EU Gender Action Plan 2016-2020 (EU Foreign Affairs Council's Conclusions of 26/10/2015) will constitute the operational basis for the implementation of the EU external relations with partner countries, including with regard to this provision with Vietnam.

Cooperation and dialogue to promote sustainable development is addressed in several sectoral articles of the PCA. Title II on Development cooperation lists sustainable development as part of the general principles and as one of the aims of cooperation. In **Article 30** on "Environment and natural resources" both parties agree to cooperate in order to conserve and manage in a sustainable manner natural resources and biological diversity "*in pursuit of sustainable development*". The development of sustainable agriculture and environmentally-friendly agriculture; sustainable and responsible long-term marine and fisheries policy; promotion of efforts to prevent and combat illegal, unreported and unregulated fishing practices; and illegal logging and trade in forestry products (with explicit reference to Forest Law Enforcement Governance and Trade/Voluntary Partnership Agreement), as well as support in the promotion of

sustainable forest management, are addressed in **Article 32** ("Agriculture, Forestry, Livestock, Fisheries and Rural Development").

The PCA also contains provisions regarding Corporate Social Responsibility (CSR) (in **Article 44** "Industrial Policy and SME cooperation") and labour standards (**Article 50** "Labour, Employment and Social Affairs"), including notably the commitment by both parties to respect, promote, and realise internationally recognised labour standards as laid down in ILO conventions.

If a party fails to fulfil its obligations under the PCA the other party is empowered to take "appropriate measures" (Article 57 "Fulfilment of Obligations"). Unless there is a material breach of the agreement the case must first be examined by the Joint Committee. In case of a material breach, defined in the **Joint Declaration on Article 57** as a violation of an essential element of the Agreement, the other party can take measures with immediate effect. That can include the introduction of an expedited dialogue.

As the commitments to human rights constitute an essential element under the PCA, in the event of violations in this regard by one party, Article 57 enables the other party to take "appropriate measures" against the offending party, including as a last resort the suspension of the agreement or parts thereof.

### **2.2.3. Implementation of the PCA**

The jointly agreed advance implementation of the PCA led to the upgrading of the former local human rights dialogue (established in 2003) to what is now an annual capitals-based human rights dialogue at senior representatives' level held in alternate years in Brussels and in Hanoi, based on Article 35 of the PCA.

This enhanced human rights Dialogue, first held in January 2012, involving human rights experts from both parties, is a valuable instrument for raising and addressing human rights issues, including concerns, in a direct and frank manner between the representatives of the two sides. It keeps human rights issues high on the bilateral agenda as an essential part of reforms towards a developed, prosperous, and knowledge-based society. It is a constant reminder of the need for Vietnam to move towards a more open society, based on the international standards of rule of law and respect for human rights. Four further sessions of the dialogue have been held in the meantime, most recently on 14-15 December 2015 in Hanoi.

The agendas of the dialogues are agreed jointly and EU considerations on the main human rights developments in Vietnam are well represented. Consequently, freedom of expression and the media, including internet regulation, freedom of religion or belief, right to due process and redress, legal and judicial reforms, abolition of the death penalty, fighting torture, conditions in detention and the situation of "persons of concern" / human rights defenders, rights of vulnerable groups (including individuals belonging to ethnic minorities), engagement with international human rights mechanisms, cooperation in international fora, and ratification of the Rome statute of the International Criminal Court, have been discussed at the different sessions. Social and economic rights have also been raised (in particular land rights and economic, social and cultural rights related to individuals belonging to minorities). They have also been addressed in the Joint Commission (see more in the following point) and political consultations. Moreover, economic, social and cultural rights have been a major focus of EU development cooperation with Vietnam under the overarching objective of poverty reduction, with a specific focus on refugee re-integration, education and health. Vietnam has made significant socio-economic progress over the last two decades, notably regarding poverty reduction. Its track record regarding the Millennium Development Goals is further evidence of the socio-economic achievements (according to the September 2015

Millennium Development Goals country report objectives such as those on poverty, education and gender equality have been met by Vietnam ahead of time).

Furthermore, the EU consistently raises human rights in its contacts with the authorities, at all levels; be it in Vietnam during high-level visits and through the EU Delegation in Hanoi, or in Brussels.

The EU also holds consultations with civil society before EU-Vietnam human rights dialogues, and conducts debriefings thereafter. This is a systematic practice with civil society organisations in Brussels and elsewhere whenever possible.

#### **2.2.4. Other fora for political dialogue**

Pending the entry into force of the PCA, the **Joint Commission** established under the 1995 Framework Cooperation Agreement has been the main institutional forum for a comprehensive political dialogue. Last held in March 2014, it provides the occasion to address all aspects of the relationship, including human rights. The Joint Commission brings together also the conclusions and recommendations stemming from the established subgroups, such as the Trade and Investment Working Group or the Subgroup on Governance, Institutional Reform, Rule of Law and human rights.

The Joint Commission therefore does have the competence to address trade-related issues that could have an impact on human rights or sustainable development.

With the establishment of the annual high-level political consultations in 2012 as part of the advance-implementation of the PCA, **a new forum for political discussions has been created at vice-ministerial level**. Four rounds have been held in the meantime where human rights feature prominently in the discussions.

Within the EU, the **European Parliament** is an important dialogue partner on human rights and sustainable development policies with Vietnam. High-level delegations from Vietnam met with representatives of the European Parliament (EP) (e.g. Prime Minister Dung and EP President Schulz in October 2014) and frequent missions by the EP take place such as by the INTA Committee or the EP's ASEAN delegation. The Inter-parliamentary Union is a further forum where the EP meets counterparts from Vietnam's National Assembly (e.g. 132<sup>nd</sup> Inter-parliamentary Union's Assembly in Hanoi 28 March - 1 April 2015).

In addition, the European Parliament participated actively in the 12 May 2015 roundtable referred to in the foreword (MEPs Mr Lange and Mrs Lochbihler made a presentation and attended the debate). And on 23 November 2015, Commissioner Malmström replied to an oral question of the European Parliament<sup>3</sup> on the link between trade and human rights both in the EU-Vietnam FTA as well as in the broader context of the EU trade policy. The reply and the following debate<sup>4</sup> underlined the interest and engagement of the Parliament in the issues at stake as well as the commitment of the Commission to address these issues in the context of the EU-Vietnam FTA negotiations, with the aim of embedding respect for human rights in the agreement, and also with a view to enhancing possible positive impacts and minimising the risk of adverse impacts.

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<sup>3</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bOQ%2bO-2015-000116%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

<sup>4</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bCRE%2b20151123%2bITEM-012%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

## 2.3. The Free Trade Agreement<sup>5</sup>

### 2.3.1. Context

After the agreement in principle reached in August 2015, on 2 December 2015 the President of the European Commission and the Prime Minister of Vietnam finalised talks for an FTA, marking the end of the negotiating process. The next step consists in the legal review of the FTA and its translation into the EU's official languages and Vietnamese. The Commission will then present a proposal to the Council of Ministers for approval of the agreement and ratification by the European Parliament.

The FTA negotiations started in October 2012. The Agreement is the most ambitious and comprehensive FTA that the EU has ever concluded with a developing country, also with regard to sustainable development objectives and provisions. The FTA lives up to the commitments the Commission has taken in the new Communication on trade and investment strategy<sup>6</sup>, according to which trade liberalisation, social justice, respect for human rights, and high labour and environmental levels of protection must go hand-in-hand. While trade policy has as a primary objective to deliver growth, jobs and innovation, it should also promote European and international values.

### 2.3.2. FTA provisions related to human rights and sustainable development

#### 2.3.2.1. Human rights-related provisions

In line with Article 21 of the Treaty on the European Union and Article 207 of the Treaty on the Functioning of the European Union, the EU pursues an integrated approach to the protection of human rights in the context of its trade policy, including FTAs. The EU's objective is to ensure that any EU engagement on a preferential trade relationship with a third country is based on a certain level of commitment to human rights.

As set out above, Article 1 of the PCA contains the standard "human rights clause", which is an essential element of the agreement, and can, in case of a material breach, trigger appropriate measures, including as a last resort the suspension of the PCA or parts thereof without delay. These provisions thereby put the commitment to respect human rights at the core of the bilateral relationship between the EU and Vietnam.

The FTA makes an institutional and legally binding linkage to the PCA.

In the **Preamble**, both the EU and Vietnam recognise, *inter alia*, a partnership based on common principles and values as reflected in the PCA. They reaffirm their commitment to the UN Charter and the principles contained in the UN Universal Declaration of Human Rights of 1948. They also recognise the importance of transparency to the benefit of all stakeholders.

According to **Article X.21 of the Chapter on Institutional, General and Final Provisions (CIGF)**, the FTA is part of the overall bilateral relationship as provided for in the PCA. This article further stipulates that the FTA forms part of the common institutional framework as set out by the PCA. Thus, the FTA does not stand in isolation but is integrated with the PCA. This ensures a continuous link between political and economic aspects in the relationship between the EU and Vietnam.

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<sup>5</sup> The numbering of Articles included in the EU-Vietnam FTA mentioned in this as well as in the following sections might change following the legal scrubbing of the agreement.

<sup>6</sup> "Trade for All: towards an effective and responsible trade and investment policy", Communication from the Commission to the European Parliament, the Council, and European Economic and Social Committee of the Regions - <http://ec.europa.eu/trade/policy/in-focus/new-trade-strategy/>



This link is further strengthened by **Article X.17** of the same Chapter, whereby 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”). Thus, the EU maintains its full discretion to take appropriate measures also concerning the FTA in case it considers that Vietnam violates its commitment to respect basic human rights obligations.

Human rights related provisions are also included in the Articles on general exceptions. The Trade in Goods Chapter cross-refers to Article XX of the GATT 1994 whereas the services and investment chapter includes a list of exceptions. These exceptions are also relevant for human rights (see for instance the exceptions regarding the protection of public morals and the protection of human life and health). By virtue of these provisions a party may justify trade restrictive measures under the FTA and thereby contribute to the respect of the relevant human-rights related aspects.

### **2.3.2.2. Chapter on Trade and Sustainable Development**

The FTA includes a robust, comprehensive and binding Chapter on Trade and Sustainable Development, dealing in an integrated manner with labour and environmental matters of relevance in the context of trade relations between the EU and Vietnam. Building on the recognition of sustainable development as an overall objective of the FTA, the chapter sets specific provisions in this area with the two-fold aim of (1) promoting mutual supportiveness between trade and investment, labour, and environmental policies, and (2) ensuring that increased trade and investment do not come at the expenses of workers’ and environmental protection – but rather support it.

The main instruments adopted by the international community on sustainable development, including the recent UN "Agenda 2030", set the overall framework for the Chapter and ensure coherence with key international developments in this area<sup>7</sup>.

Against this background, the Chapter includes obligations from both the EU and Vietnam with regard to a core set of multilateral standards and agreements on labour and environment, ensuring the respect by both Parties of fundamental workers' rights as well as furthering environmental governance. Notably, on labour<sup>8</sup>, specific commitments address the effective implementation of each of the 4 ILO core labour standards (i.e. freedom of association and right to collective bargaining; forced or compulsory labour; child labour; non-discrimination in respect of employment and occupation) and of all the ratified ILO Conventions (not only the fundamental ones), as well as progress towards ratification of non-ratified fundamental ILO Conventions. On environment<sup>9</sup>, the chapter includes commitments to the effective implementation by each Party of all the ratified Multilateral Environmental Agreements (MEAs), including, among others, the UN Convention on Biological Diversity (CBD), the UN Convention on International Trade in Endangered Species (CITES) and the UN Framework Convention on Climate Change (UNFCCC). With regard to the latter, a dedicated article on climate change<sup>10</sup> further underlines the common engagement of the EU and Vietnam to achieve climate change objectives.

Furthermore, the Chapter provides for specific actions to advance the conservation and sustainable management of natural resources. Notably, it sets commitments on biodiversity, including with regard to strengthening cooperation under CITES and

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<sup>7</sup> Article 1 of the T&SD Chapter.

<sup>8</sup> *Ibidem* Article 3.

<sup>9</sup> *Ibidem* Article 4.

<sup>10</sup> *Ibidem* Article 5.

addressing illegal trade in wildlife<sup>11</sup>; forestry, including with regard to combatting against illegal logging<sup>12</sup>; and fisheries, including with regard to fostering cooperation with Regional Fisheries Management Organisations, fighting against Illegal, Unreported and Unregulated fishing (IUU), and promoting sustainable aquaculture<sup>13</sup>.

Specific attention is paid to trade and investment practices of specific relevance for fostering sustainable development, including fair and ethical trade and other voluntary sustainable assurance schemes, as well as CSR, where specific reference is made to international principles and guidelines on responsible business conduct<sup>14</sup>.

The chapter also establishes specific disciplines to avoid a "race to the bottom" in the labour and environmental areas. In this regard, it binds each Party not to derogate from, and not to fail to effectively enforce, any of its domestic labour and environmental laws in order to attract trade or investment<sup>15</sup>. At the same time, it recognises the right of each Party to regulate in the labour and environmental area, and to establish the levels of protection it deems appropriate beyond - but not below - the commitments to ILO standards and Conventions and to MEAs<sup>16</sup>.

Finally, the chapter sets requirements in terms of good administrative practices contributing to an enabling environment for sustainable development, such as specific commitments to transparency in the design and implementation of labour and environmental measures<sup>17</sup> and to the review of the impacts of the FTA on sustainable development<sup>18</sup>.

Dedicated institutional structures are established to ensure the full implementation of the chapter and its overseeing, through both a governmental body and channels for the involvement of independent civil society, including social partners, in the EU and in Vietnam, both domestically and jointly<sup>19</sup> (these mechanisms are presented in detail in section 2.3.2.5 of this Document). The chapter also provides for a tailored mechanism for the resolution of disputes on its implementation, including governmental consultations, an independent panel of experts whose reports are public and require follow-up, and transparency and accountability measures (e.g. publication of the outcome of governmental consultations, involvement of the civil society mechanisms)<sup>20</sup>.

### **2.3.2.3. Chapter on Transparency**

The FTA devotes a dedicated Chapter to transparency, with a view to ensuring public scrutiny and accountability. This Chapter imposes obligations that benefit interested persons who are affected by decisions taken either by the government or by judicial authorities in the implementation of the FTA.

The Article concerning publication<sup>21</sup> foresees that interested persons are provided reasonable opportunities to comment on, and to have the opportunity to become acquainted with all measures of general application, including those that implement the FTA (for instance, national legislation liberalising a specific sector).

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<sup>11</sup> *Ibidem* Article 6.

<sup>12</sup> *Ibidem* Article 7.

<sup>13</sup> *Ibidem* Article 8.

<sup>14</sup> *Ibidem* Article 9.

<sup>15</sup> *Ibidem* Article 9.

<sup>16</sup> *Ibidem* Article 2.

<sup>17</sup> *Ibidem* Article 12.

<sup>18</sup> *Ibidem* Article 13.

<sup>19</sup> *Ibidem* Article 15.

<sup>20</sup> *Ibidem* Articles 16 and 17.

<sup>21</sup> Article 3 of the Chapter on Transparency

The provision on enquiries and contact points<sup>22</sup> establishes that each Party to the FTA shall create mechanisms to deal with enquiries from any interested person seeking solutions to problems arising in the implementation of measures of general application. Each Party shall also provide explanations as to the objective and rationale of such measures.

The provision concerning the review and the appeal<sup>23</sup> reaffirms the need for administrative or judicial tribunals and procedures to be impartial and independent, to provide the parties in the proceeding with the right to support or defend their positions, and to have a decision based on the evidence and submissions of record.

#### **2.3.2.4. Institutional structures enabling to address human rights and sustainable development under the FTA**

Since the basic human rights commitments are established under the PCA, this agreement also sets up the institutions and structures, including the human rights Dialogue, which are the primary platform for discussions on human rights issues between the EU and Vietnam, also with regard to relevant human rights developments in Vietnam.

The implementation of the commitments undertaken in the FTA will be followed up by the institutions and procedures established in the FTA as set out in the **CIGF** and in **other specific Chapters**, notably that on **Trade and Sustainable Development (T&SD)**.

On the EU side, as a matter of principle, all stakeholders, including social partners, Non-Governmental Organisations, and other civil society organisations, can channel issues of their interest to the EU representatives participating in any FTA body, including proposing to raise such issues in their meetings, through the regular Civil Society Dialogue and/or through direct contacts.

The **Trade Committee**<sup>24</sup> plays the key role. The Trade Committee has multiple tasks. It supervises and facilitates the implementation of the FTA, it seeks to solve problems which might arise in areas covered by the FTA or to resolve disputes regarding the interpretation or application of the FTA, and in adopting binding interpretations of the FTA.

In addition to a specialised T&SD Committee where representatives of the EU and Vietnam review its implementation, the **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<sup>25</sup>. The Chapter explicitly establishes that both the EU and Vietnam's DAGs shall comprise independent civil society representatives; ensure a balanced representation of economic, social, and environmental interests, following the three-pillar concept of sustainable development; and include employers' and workers' organisations, business groups, and environmental organisations.

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. Members of each side's DAGs are an integral part thereof, ensuring that information flows on a continuous basis between

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<sup>22</sup> *Ibidem* Article 4.

<sup>23</sup> *Ibidem* Article 6.

<sup>24</sup> Article 1 of the CIGF.

<sup>25</sup> Article 15 of the T&SD Chapter.

the work done by civil society at domestic level and the joint discussions, including in contacts with the Parties. In this regard, the Chapter foresees various communication channels, such as the transmission of the reports of the joint forum to the representatives of the EU and Vietnam participating in the T&SD Committee, as well as meetings between the Committee and the joint forum.

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.

With regard to the DAGs, for instance, each DAG can advise its Party on any issue related to the implementation of the development and Sustainable Development provisions: for example, it could be a suggestion for organising cooperation activities; a request for an item to be put on the agenda of the T&SD Committee overseeing the chapter; a submission on possible violations of obligations concerning labour rights or environmental protection in the partner country; a call for action by its own government to boost the benefits of the agreement for domestic social partners; information on issues on which a dispute resolution procedure is ongoing; etc.

Complaints on issues of concern regarding the implementation of the Chapter are therefore very much part of what a DAG may raise with its Party, and a variety of channels are available to that end – e.g. formal transmission of views, request for a meeting, etc. But the DAGs' remit is not limited to raising a potential complaint: importantly, DAGs can also make suggestions for the solution of an issue.

### **2.3.2.5. Chapter on Co-operation and Capacity-building**

In this Chapter both parties affirm the importance of co-operation and capacity building in contributing to the efficient implementation of all aspects of the FTA. The Chapter acknowledges that co-operation shall be carried out within the existing legal and institutional framework and according to the rules and procedures governing relations between the Parties. Particular importance is given to sustainable development in all its dimensions, including sustainable growth and reduction of poverty. 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.

## **2.4. EU-Vietnam development cooperation**

### **2.4.1. Context**

The EU and its Member States are among the top donors in Vietnam and the largest grant donor. In the period 2007-2014, all together they have committed EUR 5.8 billion in grants and concessional loans, with commitments in 2014 amounting to EUR 542 million. Vietnam is also the European Investment Bank's leading per capita beneficiary in Asia: more than 600 million EUR in concessional loans has been agreed in the last 10 years for projects as diverse as climate change infrastructure and energy efficient transport systems.

The Commission alone has been assisting Vietnam since the establishing of bilateral relations in 1990 and has since then provided more than EUR 600 million in grants. Additional EUR 400 million in grants will be provided in the period 2014-2020, thus bringing the Commission's support to over EUR 1 billion. This support has through the years shifted from the humanitarian assistance of the early '90s to more mature and broader development cooperation in areas ranging from trade-related assistance,

education, tourism and health, to governance, the rule of law and the protection and promotion of human rights.

## **2.4.2. Key activities**

### **2.4.2.1. Bilateral level**

For the period 2014-2020 the Commission – in due consultations with all stakeholders, has decided to focus on two sectors: (1) sustainable energy and (2) governance and the rule of law. This choice is in line with Vietnam’s Socio-Economic Development Strategy and its ambition of becoming industrialised by 2020.

The overall objective of the sustainable energy sector (maximum allocation: EUR 346 million) is to contribute to a more sustainable energy sector by promoting efficient, clean and renewable energy available to all citizens. The overall objective of the governance and rule of law sector (maximum allocation: EUR 50 million) is to promote democracy, strengthen governance and rule of law; and to enable the business environment by building accountable and transparent institutions that are responsive to citizens’ rights, and that promote access to justice, participation and a conducive business environment.

In addition to the above, a number of important initiatives, stemming from the Country Strategy Paper 2007-2013, are still on-going. Among the flagship interventions are the support being provided in the health and trade sectors.

### **2.4.2.2. Regional level**

The regional multi-annual indicative programme 2014-2020 focusses on a number of sectors. The most relevant for EU-Vietnam cooperation with regard to trade and sustainable development issues are the (i) support to regional integration in South-East Asia, and (ii) promotion of a green economy, under which the **SWITCH-Asia programme** is funded.

### **2.4.2.3. Thematic instruments**

Through the **European Instrument for Democracy and Human Rights (EIDHR)** and the **Civil Society Organizations and Local Authorities (CSO-LA)** programme, the EU has been supporting civil society in Vietnam to promote and protect human rights and fundamental freedoms as well as reinforcing its capacity to be an actor of development. Support from the EIDHR instrument (total Country-Based Support Scheme allocation to Vietnam for the period 2014-2017: EUR 3.5 million) and for CSO-LA (CSO allocation to Vietnam for the period 2015-2017: EUR 3.35 million; LA allocation to Vietnam for the same period: EUR 0.650 million) will continue up until at least 2020.

Other relevant instruments addressed also to Vietnam and particularly in the environmental area, are the **Global Public Goods and Challenges Programme 2014-2020 (GPGC)**, the **EU Technical Assistance Facility for Sustainable Energy**, and the **Electrification Financing Initiative (ElectriFI)**.

Last but not least, Vietnam is included in the Partnership Instrument-funded intervention on death penalty in the South-East Asia region. The project complements the EU bilateral engagement with Vietnam on human rights as well as the EU human rights dialogue with the ASEAN Inter-Governmental Commission on Human Rights.

## **2.5. Other relevant EU-Vietnam policies and co-operation**

Complementing the legal frameworks and opportunities for co-operation provided by the PCA and the FTA with Vietnam, as well as the development co-operation programmes mentioned in the previous chapter, in its relations with Vietnam the EU is particularly

active through its other policies in both the environmental and the labour dimensions of sustainable development.

### **2.5.1. Environmental issues in general**

Environmental protection appeared very early in EU-Vietnam's thematic dialogue. The EU-Vietnam Co-operation Agreement of 1995 already included 'environmental protection and the sustainable management of natural resources' as an objective. The PCA significantly extended the scope, and included new cooperation areas such as renewable energies, energy efficiency, sustainable agriculture, sustainable tourism, waste management, the promotion of environment-friendly technologies, and climate change.

Various initiatives have been taken by Vietnam in this area, in particular the National Green Growth Strategy for the period 2011-2020 with a vision to 2050 (approved by the Government of Vietnam on 25 September 2012)<sup>26</sup>. In addition, the EU has expressed its interest and readiness in further co-operating with Vietnam, including in the context of MEAs and other international fora.

### **2.5.2. Forest Law Enforcement Governance and Trade**

The EU and Vietnam have started negotiations on a Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreement in 2010, with the aim to address the issue of illegal logging and related trade and to promote improved forest governance and law enforcement in the forestry sector. The agreement, not yet concluded, is intended to include commitments and actions from both parties to halt trade in illegal timber, notably by establishing a licensing system to verify that timber and timber products exported from Vietnam to the EU have been legally harvested and produced. The negotiations for a Voluntary Partnership Agreement have promoted an inclusive approach involving civil society and the private sector both in the EU and in Vietnam, and have contributed to opening the political space for dialogue between the government and civil society on forest governance.

### **2.5.3. Wildlife**

Vietnam is facing important challenges with regard to illegal trade in wildlife products, in particular rhino horns and ivory. In order to address this issue, Vietnam has taken a number of initiatives. The most important one was the adoption on 20 February 2014 by the Prime Minister of a directive recognising the seriousness of the issue and requesting all the relevant ministries to adopt a series of measures against wildlife trafficking. Vietnam also decided to implement the "Forest and Wildlife Crime Toolkit" established by the International Consortium for Combating Wildlife Crime (ICWC), which lays out in a comprehensive and structured manner what needs to be done to eradicate wildlife trafficking. The EU stands ready to support these important initiatives, the success of which depends on their effective implementation.

### **2.5.4. Environmental goods and services**

Vietnam is projected to be one of the fastest-growing economies within ASEAN in 2014-2019. Economic development and higher income levels will likely be accompanied by a progressively more stringent environmental legislation and a rise in citizen's

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<sup>26</sup> The strategy aims at reducing GHG emissions by 20% by 2020, removing subsidies for and ending dependence on fossil fuels, reducing energy consumption in industry, transport and commerce, while increasing the use of renewables, promoting environmentally-friendly products (via appropriate labelling), reducing waste generation and improving collection and recycling, increasing investment in recycling and re-use, improving water supply infrastructures for industrial, agricultural and urban areas with a special focus on areas experiencing water scarcity, and improving the dyke and flood control system, green technology, environmental services, changing lifestyle and consumption patterns, etc.

environmental awareness, which suggests that there is scope for substantial market growth in the coming years in the environmental goods and services (EGS) sector.

The EU is contributing to this goal in its bilateral relations with Vietnam, through the framework established in the FTA under the so-called '**Green-tech Annex**' (Chapter on Non-Tariff Barriers to Trade and Investment in Renewable Energy Generation), where the Parties share the objective of promoting, developing and increasing the generation of energy from renewable and sustainable sources, particularly through facilitating trade and investment. To achieve this, both the EU and Vietnam have agreed to co-operate towards removing or reducing non-tariff barriers and fostering co-operation.

#### **2.5.5. Sustainable management of marine resources**

The international legal framework establishes that all States have a duty to adopt appropriate measures and to cooperate so as to ensure the sustainable management of marine resources. The EU's IUU Regulation (Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing) introduces tools and implements a methodology to ensure that all EU partner countries fulfil these obligations with regards to IUU fishing and fisheries management. Through flag state notifications, catch certificates and the identification of non-cooperating third countries, the EU has an effective toolkit to strengthen the fight against IUU fishing in cooperation with third countries globally.

The EU is using its policy to prevent, deter and eliminate IUU fishing as an instrument to help third countries to address fisheries management problems. By means of dialogue, cooperation and technical and development aid, it aims to help third countries (including developing countries) to reinforce their policies and tools, sanction those who infringe the rules, improve the conservation and sustainable use of marine resources, and offer better opportunities to fishing communities and honest operators. During the past few years the Commission was able to help several third countries to achieve fundamental changes in their fisheries policies through, for example, changes in their legislation, capacity building, or improved monitoring, control and surveillance. These countries have taken ownership of reforms and have brought their fisheries governance to current standards under international law.

In the framework of the EU IUU Regulation, the European Commission undertook evaluation missions also in Vietnam and also engaged in a dialogue mission in 2012. The overall assessment of Vietnam's commitment and cooperation was positive and the dialogue is still continuing.

#### **2.5.6. Labour rights**

Co-operation takes place primarily through the ILO, where the EU is very active in supporting the ILO's activities, e.g. on the ratification and implementation of Conventions, notably the fundamental ones, and the implementation of the Decent Work Country Programmes. In addition, co-operation under the regional framework of Asia-Europe Meeting (ASEM), where Vietnam is an active partner (Hanoi hosted the 2012 Labour and Employment Ministerial Meeting and Vietnam participated in several follow-up seminars) has been fruitful. At the latest ASEM Employment and Labour Ministerial Meeting in December 2015 in Sofia, Bulgaria, the Ministerial Declaration addressed among other things decent work in global supply chains. These aspects are particularly relevant for Vietnam, who is an important player in global supply chains.

### 3. The way forward

#### 3.1. A reinforced engagement

The institutional framework and procedures under the PCA and FTA will provide the EU with an enhanced basis for actively promoting respect for human rights and sustainable development in its relations with Vietnam. In public statements and diplomatic contacts, bilateral discussions and multilateral meetings, in its development assistance programmes and through the institutions and mechanisms created by the PCA and the FTA, the EU will continue to mainstream and prioritise human rights and sustainable development.

The key guiding references for a reinforced overall engagement of the EU in these areas (domestically as well as in relations with all its partners, including Vietnam) are three: the "EU Strategic Framework and Action Plan on Human Rights and Democracy"; the new Communication from the Commission "Trade for All: towards an effective and responsible trade and investment policy", adopted on 14 October 2015; and the "Better Regulation Agenda" adopted by the Commission on 19 May 2015.

The Strategic Framework on Human Rights and Democracy, accompanied by a first Action Plan, were endorsed by the Council of the European Union in 2012<sup>27</sup> and aimed to improve the effectiveness and consistency of the EU's human rights policy and to place human rights and democracy at the core of EU foreign policy and external action. The **Action Plan on Human Rights and Democracy 2015-2019**, also endorsed by the Council in June 2015<sup>28</sup>, includes dedicated actions and priorities in this respect. It aims at continuing to implement the 2012 EU Strategic Framework with sufficient flexibility so as to respond to new challenges as they arise. It builds upon the existing body of EU human rights and democracy support policies in external action, notably EU guidelines, toolkits and other agreed positions as well as the various external financing instruments, in particular the European Instrument for Democracy and Human Rights.

The **2015 trade and investment policy strategy** "Trade for All" outlines the Commission trade and investment policy priorities for the coming years, by stating clearly, *inter alia*, that trade must, in conjunction with all other EU policies, support EU foreign policy coherence on all objectives, including human rights and sustainable development, for instance through engagement with regard to responsible management of supply chains or the promotion of fair and ethical trade schemes.

The **Better Regulation Agenda** ensures that any EU policy is prepared, implemented and reviewed in an open and transparent manner, informed by the best available evidence and backed up by consultation of stakeholders. To ensure that the EU action is effective, the Commission assesses the expected and actual impacts of policies, legislation and other important measures.

In the framework of the Better Regulation Agenda, and in line with the commitment made in the 2012 Action Plan on Human Rights and Democracy, the Commission has developed **Guidelines on the analysis of human rights impacts in impact assessments for trade-related initiatives**<sup>29</sup> in both the EU and the partner countries. In the case of the FTA with Vietnam, these document will guide the *ex post evaluation* that will be carried out during the implementation of the Agreement.

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<sup>27</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

<sup>28</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/>

<sup>29</sup> [http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153591.pdf](http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf)



## **3.2. EU position vis-à-vis stakeholders' key recommendations**

### **3.2.1. A new model "human rights clause" in the PCA**

Civil society called for the "human rights clause" to be re-formulated and detailed, in line with proposals made in an expert study of 2014<sup>30</sup>.

A human rights clause is included in all political framework agreements (e.g. Association Agreements and Partnership and Co-operation Agreements) concluded by the EU with third countries since 1995, covering over one-hundred and thirty countries. Such clause is defined as an essential element of the agreements.

The human rights clause included in the most recent agreements is based on the Council Conclusions on the common approach on the use of political clauses endorsed by COREPER in May 2009.

Hence, the Commission considers that this recommendation cannot be addressed in the specific context of the EU-Vietnam PCA alone (and even less of the EU-Vietnam FTA), but would require a broader political debate from a wider perspective encompassing all EU policies, to assess whether a new political decision guiding the formulation of the human rights clause is necessary. In the meantime, the EU-Vietnam PCA and FTA follow strictly the approach that the EU has been pursuing for a number of years, in accordance with Council and European Parliament recommendations.

### **3.2.2. Explicit reference in the FTA to specific human rights international standards**

Civil society argued that the FTA should make explicit reference to international human rights standards and instruments.

As indicated above under point 2.3, the FTA makes clear reference to specific human rights-related international norms. In particular, the **Preamble** explicitly mentions the 1948 UN Universal Declaration of Human Rights and **Article X.17 of the CIGF**, by creating a link between the FTA and the PCA, brings into the picture all human rights instruments referred to in Article 1 of the PCA.

### **3.2.3. Carry out a human rights impact assessment on the EU-Vietnam FTA**

Civil society claimed that a human rights impact assessment of the EU-Vietnam FTA should be undertaken.

A Sustainability Impact Assessment for all ASEAN countries, including Vietnam, was conducted in 2009. The next comprehensive assessment for Vietnam, including regarding human rights, will be conducted during the *ex post* evaluation of the EU-Vietnam FTA. This is in line with the 2012 Action Plan on Human Rights and Democracy, in which the Council of the European Union does not require the Commission to carry out specific human rights impact assessment of the EUs' FTAs but to "insert human rights in impact assessment, as and when it is carried out".

In the meantime, the Commission continues to follow closely the situation in Vietnam and has made improvement of the respect for human rights central to its engagement and dialogue with Vietnam by using all the mechanisms and instruments explained in this Document.

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<sup>30</sup> "A model human rights clause for the EU's international trade agreements, Lorand Bartels, February 2014.

### **3.2.4. Set up a human rights committee, a human rights civil society monitoring mechanism and a complaint mechanism for individuals and communities specifically affected by the FTA**

Civil society indicated that, in addition to the mechanisms included in the FTA, a human rights committee, monitoring and complaint mechanism should be envisaged in order to specifically address human rights issues having a direct link to trade agreements. A specific budget should be allocated for this purpose.

The Commission considers that this recommendation cannot be addressed in the specific context of the EU-Vietnam FTA, but would have to be looked at from a broader perspective encompassing all EU policies.

Nevertheless, the Commission considers that the FTA with Vietnam – as explained under point 2.3 above – includes a number of mechanisms and safeguards that enable affected interested persons to address their concerns and to participate in disputes in cases where they have a direct interest at stake.

For instance, as presented under point 2.3.2.2, the T&SD Chapter establishes mechanisms for channelling stakeholders' involvement both in its implementation<sup>31</sup> and in the proceedings of its dedicated dispute settlement mechanism<sup>32</sup>, which is based on government consultations, a panel of independent experts whose reports are public and require follow-up, and involvement of civil society.

### **3.2.5. Set up a concrete human rights roadmap, with clear benchmarks, indicators and time-bound commitments**

Civil society requested to set up a concrete human rights roadmap, with clear benchmarks, indicators and time-bound commitments.

The Commission is of the opinion that there are already a number of roadmaps in this area and that it would be better to mainstream activities and resources into the existing ones.

For human rights in general, the Human Rights Council's **Universal Periodic Review (UPR)** is the key process enabling a review of the human rights records of Vietnam against specific recommendations. A roadmap for implementation of recommendations accepted by Vietnam in the 2014 UPR and possible EU support is also discussed in the framework of the human rights Dialogue under the auspices of the PCA.

More specifically in the area of labour rights, the ILO calls on its members to mainstream their efforts into the roadmaps for the implementation of the core conventions that ILO is discussing with Vietnam directly.

### **3.2.6. Regular involvement and dialogue between public authorities and non-state actors at all levels and throughout implementation of the FTA**

This was a common request raised by several civil society organisations.

The Commission already engages with civil society on human rights and sustainable development through a variety of fora in order to ensure transparency and dialogue in policy making, consistent with the overall objective of transparency in European policy making. This also includes the 'Civil Society Dialogue' on trade issues managed specifically by the Directorate General for Trade<sup>33</sup>. This specific structured dialogue

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<sup>31</sup> Article 15 of the T&SD Chapter.

<sup>32</sup> *Ibidem*, Articles 16 and 17.

<sup>33</sup> <http://trade.ec.europa.eu/civilsoc/index.cfm>

between the Commission and stakeholders was established fifteen years ago with the purpose of strengthening communication and mutual understanding. For organisations to be part of the Civil Society Dialogue database, they have to comply with three criteria, i.e. to be not-for-profit, EU based and registered in the European Union's Transparency Register. The latest meeting devoted to the EU-Vietnam FTA took place in Brussels on 6 October 2015<sup>34</sup>.

In addition, as explained above under point 2.3.2.5, the FTA creates a comprehensive set of institutions and mechanisms to ensure dialogue on its implementation, both between governments (Trade Committee and specialised Committees) and, with specific regard to T&SD matters, with civil society organisations both domestically (consultation of "domestic advisory groups" ) and jointly (meetings of a "joint forum"). In addition, Article 15 of the T&SD Chapter includes the basic principles to be respected by both the EU and Vietnam with regard to participation in these civil society mechanisms – including the notion of independence. While each side will be responsible for creating its own advisory groups, both Parties will need to ensure that this happens within the framework established by the agreement. Moreover, the FTA includes other provisions creating the right environment for empowering non-state actors – whether it is the freedom to create trade unions or the possibility for interested persons to comment on any proposal to adopt or amend any measure of general application.

Nevertheless, the Commission agrees that flanking measures are necessary in order to enhance the realisation of the above objective and further action is proposed under point 3.3 below.

### **3.2.7. Not include Investor to State Dispute Settlement in the FTA or ensure it is adapted to include specific concerns with regard to human rights**

Civil society argued that the Investor to State Dispute Settlement would hamper the ability of governments to act for their people in response to the concerns of human development. Civil society highlights that States should retain adequate policy and regulatory ability to protect human rights.

The Commission believes that human rights should guide the actions of governments. The EU-Vietnam FTA does not contain provisions impinging on the sovereign right of States to protect human rights.

### **3.2.8. The FTA should include binding mechanisms by which EU investors can be held legally accountable for violations of human rights obligations in Vietnam**

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 Chapter<sup>35</sup>, 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, which provide an implementation and grievance mechanism: the network of national contact points (NCP). Most of the EU

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<sup>34</sup> [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153837.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153837.pdf)

<sup>35</sup> Article 9 of the T&SD Chapter.

Member States (including some of those who are not OECD members) have adhered to the OECD Guidelines and established a NCP.

NCPs handle enquiries and contribute to the resolution of issues that arise relating to the implementation of the Guidelines in “specific instances” (proceedings following a complaint), in effect providing a governmental non-judicial grievance mechanism to mediate between companies and their aggrieved stakeholders.

### **3.2.9. Avoid that FTA enhances the risk of 'commoditization' of public goods**

Civil society raised this issue with particular reference to water and timber, in the fear that the FTA could trigger a privatisation process that would be detrimental to local people in terms of access and pricing.

Under the market access commitments for establishment of investments, and specifically in the schedules annexed to the FTA, Vietnam has made reservations (that is, no commitments – 'unbound' - in terms of market access for foreign companies) in several areas including: public utilities ("economic activities considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators"); land and real estate ("unbound for land ownership, acquisition of land use rights, land lease, usage of land, land planning, term of land use, rights and obligations of land users. Natural resources found in land belong to the State of Vietnam [...]"); forestry ("unbound").

Furthermore, the EU-Vietnam FTA does neither contain any clause regulating pricing (hence, Vietnam is free to regulate pricing according to its own priorities) nor commitment taken by Vietnam to liberalise services in sensitive sectors like water.

### **3.2.10. Better alignment of development co-operation and needs arising from the FTA**

Several stakeholders stressed this need in order to enhance the possibility to achieve better results in the different areas relevant for human rights and sustainable development.

Notwithstanding the fact that different Directorates General of the Commission are already co-ordinating their action at the programming phase of development co-operation in order to define the focal areas of intervention and decide the financial allocations, as well as when designing specific projects and programmes, the Commission is committed to continuous improvement where necessary, and it intends to pursue this goal through the frameworks established under the development co-operation programmes described under point 2.4 above and in line with the needs identified below under 3.3.3.

### **3.2.11. Establish a number of labour attachés in key third countries where respect for labour rights is particularly worrisome**

The Commission/EEAS is already stepping up efforts to train staff in EU Delegations on human and labour rights, including through dedicated training courses with the ILO. The Commission is currently in the process of examining different ways to further strengthen the coverage and knowledge of labour issues in EU Delegations in key countries concerned. The Commission and EEAS would consider focal points for labour issues, taking into account resource constraints, in a context where the Commission is undergoing resources reductions, as agreed with the Council and European Parliament.

### **3.2.12. Foster opportunities for green goods**

Several stakeholders stressed the need to support cultural change in Vietnam so that demand is driven by sustainable development considerations, particularly in terms of

energy efficient products. In addition, they called for action to further unlock economic opportunities that green goods, services and technologies offer to both European and Vietnamese stakeholders.

As explained under point 2.5.4, the EU-Vietnam FTA directly contributes to this goal, including through the so-called 'green-tech annex'. In addition, all projects indicated under point 3.3.4 are also relevant in this respect.

### **3.3. Planned and/or need for new flanking measures**

In the context of this Document, flanking measures are meant to include any programme/project/exchange/technical assistance provided to public authorities and/or stakeholders in Vietnam in order to maximise possible positive impacts of the FTA and minimise potential negative impacts on them.

On the basis of the negotiated provisions of the FTA with Vietnam and in the light of the different recommendations made by stakeholders, the following six clusters of needs have been identified as deserving particular attention. Most of these needs can be captured in the framework of the programmes and projects described above under point 2.4.

#### **3.3.1. Further support to civil society organisations in Vietnam**

The Commission intends to enhance support to civil society organisations, including social partners, in Vietnam.

For instance, with regard to the CSO-LA programme, activities in Vietnam should strengthen the capacities of local organisations to participate in decision-making processes, and should improve transparency and governance on the ground.

With regard to the EIDHR instrument, specific country allocations will be earmarked for Vietnam in the years to come for activities that could address e.g. issues linked to the promotion and protection of social and economic rights and with a stronger focus on vulnerable groups (e.g. ethnic minorities, women, LGBTI, etc.).

The Commission also intends to promote awareness-raising of civil society organisations in Vietnam on the EU-Vietnam FTA, on the opportunities it provides and on the possible impacts it can produce from a human rights and sustainable development perspective. This need can be captured by dedicating specific activities in the framework of existing programmes to these themes.

#### **3.3.2. Support the participation of civil society in the implementation of the EU-Vietnam FTA**

The Commission financially supports the participation of civil society representatives, including social partners, in the framework of the DAGs. In line with its recently adopted new trade communication "Trade for All", the Commission will put further emphasis on the involvement of civil society in the implementation of its trade agreements. In order to further improve the functioning of the DAGs and other mechanisms of civil society participation, the Commission is currently engaged in the design of a global project to provide technical and logistical support to these mechanisms. The EU-Vietnam FTA will be included in actions undertaken in this respect. This will support participation of European and Vietnamese civil society and their input of meaningful recommendations to the implementation of the agreement, thus increasing its transparency and accountability.

### 3.3.3. Access to justice

The Commission is considering activities addressed to individuals and communities in Vietnam actually or likely to be affected by procedures, measures and decisions (both administrative and judicial) taken in the framework of the implementation of the FTA so that they can become aware of their rights and of the judicial remedies available.

Under the focal sector 2 of the EU-Vietnam Multi-annual Indicative Programme 2014-2020, a first project of EUR 14 million to promote access to justice for the most vulnerable sections of the population (women, children and ethnic minorities) has been approved and should start activities in 2016. Among its activities, capacity building will be provided to the Ministry of Justice in order to carry out its reform of the justice sector; and grants will be awarded to civil society organisations to promote access to justice on the ground.

### 3.3.4. Access to secure, efficient, affordable, clean and sustainable energy

The implementation of the ongoing sustainable energy projects enables communities to make their own energy choices, attract investments and open up job and enterprise opportunities to support their choices.

Under sector (ii) of the **regional programme** (maximum allocation for the region: EUR 440.5 million), Vietnam can benefit from activities promoting sustainable production and consumption patterns as well as leveraging loans from the International Financing Institution to build “green” infrastructures. In this respect, eight different projects underway in Vietnam through the SWITCH-Asia programme, with two more to follow in 2016, are of particular relevance. These projects are financed by grants from the EU, with Regional Policy Support for the Programme being delivered by the United Nations Environment Programme (UNEP), who are implementing a range of coordinated Sustainable Consumption and Production (SCP) activities in Vietnam. As the SWITCH-Asia programme moves into its second phase, future grant projects in Vietnam will be selected with two priorities in mind. These are 1) supporting the switch to sustainable consumption patterns and behaviour amongst consumer groups, civil society and the public sector, and 2) providing support for SCP uptake and access to finance amongst SMEs and MSMEs. Additionally, having comprehensively assessed policy needs in the country, four areas have been identified for additional capacity building and policy support activities in Vietnam for 2015 and 2016: Investment and Finance; Partnerships between Government, Research and Industry; Education and Training; and, Regulations and Laws on SCP.

In addition, Vietnam can also benefit from the **Global Public Goods and Challenges Programme 2014-2020**, which enhances the efforts to further integrate key thematic areas, such as environment, climate change and sustainable energy in development cooperation, and to harness the opportunities offered by globally integrated markets and international trade. It also seeks to support the establishment of innovative partnerships in order to leverage private sector engagement and funding and to stimulate innovative, new business models that can create decent jobs and help reduce poverty, enhance resource efficiency including by valuing and investing in natural capital.

Another instrument put in place by the EU that can help Vietnam scale-up investments in energy access and sustainable energy is the **EU Technical Assistance Facility for Sustainable Energy** under which high-level technical assistance through targeted expert missions according to the partner country’s needs is available.

Moreover, a support scheme that bridges the gaps in structuring and financing sustainable energy access projects to stimulate the private sector and mobilise financiers, has been developed by the European Commission together with the industry and development financiers. This new support scheme - **Electrification Financing Initiative (ElectriFI)** - aims at increasing the feasibility, the sustainability and the leverage of the EU support to access to sustainable energy for the poor.

### **3.3.5. Support for the ratification and implementation of ILO Conventions**

The Commission is reflecting on ways to further promote core labour standards, including trade union rights and collective bargaining; moreover, living wages, working conditions and occupational health and safety, labour inspection, social dialogue, and social protection deserve particular attention.

The Commission has already reinforced its co-operation with the ILO through projects dedicated to building capacity in selected trading partners with regard to the implementation of the fundamental ILO Conventions (e.g. under the EIDHR and the Aid for Trade budget lines). Priority can be given to consider similar initiatives in Vietnam.

The governance and rule of law sector in EU-Vietnam development cooperation could be used for that purpose.

### **3.3.6. Assessing the impacts of the implementation of the EU-Vietnam FTA on human rights and sustainable development**

The ex-post evaluations of the agreement will serve this purpose. They will aim to examine the performance of the FTA, in an integrated approach which combines under a single framework an assessment of its economic, social, human rights and environmental impacts. The ex post evaluations will look at whether the FTA has achieved its objectives in these areas, while taking into account unintended or unexpected effects, and inform policy makers of the type of response which is warranted by the findings. An extensive stakeholder consultation, including particular efforts to reach and involve vulnerable or disadvantaged persons or groups, forms an integral part of the Commission's approach to ex post evaluations. The first *ex post* evaluation is carried out after sufficient time has passed since the entry into force of the FTA to gather a sufficiently robust body of data and evidence.

## **4. Conclusions**

In this Document, the Commission has reviewed the key policies and provisions framing EU-Vietnam relations which are directly or indirectly relevant from a human rights and a sustainable development perspective, with specific regard to the EU-Vietnam FTA. It has also elaborated on how relevant provisions in the FTA would be implemented and monitored in the light of the experience gained with other FTAs, the lessons learned from them and the different interests and concerns raised in those contexts by stakeholders. Furthermore, the main recommendations made by stakeholders during and after the 12 May 2015 roundtable have been addressed. Eventually, flanking measures in the pipeline have been listed and new priority flanking measures have been identified in the light of the needs that have been identified.

The Commission is committed to further strengthening the way it addresses human rights in its engagement and dialogue with Vietnam, including in the framework of the FTA. In this respect, the Commission remains convinced that the FTA constitutes – in addition to the PCA and the numerous other policies and initiatives listed in this Document – a solid platform to further promote these values in its relations with Vietnam.

For this reason, it is now crucial to ensure a proper implementation of the FTA and put in place as soon as feasible the needed flanking measures that have been identified. The Commission appreciates the important contribution that non-state actors play in this process and counts on continuing a constructive collaboration with all stakeholders concerned.



**List of acronyms used throughout this Document (in alphabetical order):**

<b>CIGF:</b>	FTA Chapter on Institutional, General and Final Provisions
<b>CITES:</b>	Convention on International Trade in Endangered Species
<b>Commission:</b>	European Commission
<b>CSO-LA:</b>	Civil Society Organizations and Local Authorities (EU-funded thematic programme)
<b>CSR:</b>	Corporate Social Responsibility
<b>DAGs:</b>	Domestic Advisory Groups
<b>EEAS:</b>	European External Action Service
<b>EIDHR:</b>	European Instrument for Democracy and Human Rights (EU-funded thematic programme)
<b>EP:</b>	European Parliament
<b>EU:</b>	European Union
<b>FLEGT:</b>	Forest Law Enforcement, Governance and Trade
<b>FTA:</b>	Free Trade Agreement
<b>ILO:</b>	International Labour Organisation
<b>IUU:</b>	Illegal, Unreported, and Unregulated fishing
<b>MEAs:</b>	Multilateral Environmental Agreements
<b>PCA:</b>	EU-Vietnam Comprehensive Partnership and Co-operation Agreement
<b>T&amp;SD:</b>	FTA Chapter on Trade and Sustainable Development
<b>UN:</b>	United Nations
<b>UNGPs:</b>	United Nation's Guiding Principles on Business and Human Rights
<b>UPR:</b>	Universal Periodic Review