

ADMINISTRATIVE SOFT LAW IN VIETNAM AND THE EU: A COMPARATIVE ANALYSIS OF IMPLICATIONS FOR TRANSPARENCY, ACCOUNTABILITY, AND PREDICTABILITY IN REGULATORY ENVIRONMENT

NORMAS ADMINISTRATIVAS NÃO VINCULATIVAS NO VIETNÃ E NA UE: UMA ANÁLISE COMPARATIVA DAS IMPLICAÇÕES PARA A TRANSPARÊNCIA, A PRESTAÇÃO DE CONTAS E A PREVISIBILIDADE NO AMBIENTE REGULATÓRIO

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Luong Quang Hien*

*Faculty of Political Theory Studies, Academy of Finance Vietnam, Hanoi, Vietnam

Orcid: <https://orcid.org/0009-0008-3307-984X>

luongquanghien@hvtc.edu.vn

Pham Thi Hong Nhung**

**Faculty of Law, University of Finance – Marketing, Ho Chi Minh city, Vietnam

Orcid: <https://orcid.org/0000-0002-0441-402X>

phamthihongnhung@ufm.edu.vn

Hoang Thanh Hanh***

***Faculty of Accounting and Business Management, ThuyLoi University, Hanoi, Vietnam

Orcid: <https://orcid.org/0000-0001-7034-0105>

hoangthanhanh@tlu.edu.vn

Vu Minh Chau****

****University of Law, Vietnam National University (VNU), Hanoi, Vietnam

Orcid: <https://orcid.org/0009-0003-9279-8311>

minhchaulegal@gmail.com

Nguyen Viet Tang*****

*****Faculty of Law, People's Security University, Hochiminh City, Vietnam

Orcid: <https://orcid.org/0009-0001-2042-368X>

nguyenviettang20@gmail.com

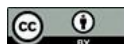
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Abstract

This paper compares administrative soft law systems in Vietnam and the European Union, examining how these non-binding yet influential instruments affect transparency, accountability, and predictability in governance. Administrative soft law—instruments lacking formal legal force but significantly shaping administrative practice—has become essential for modern regulatory systems struggling with complexity and rapid change. Vietnam primarily uses official dispatch (công văn) that exist in legal gray areas outside formal normative document hierarchies, while the EU has developed systematic approaches with explicit recognition in primary law and sophisticated judicial oversight mechanisms. The analysis reveals that

Resumo

Este artigo compara os sistemas de soft law administrativo no Vietnã e na União Europeia, examinando como esses instrumentos não vinculativos, mas influentes, afetam a transparência, a prestação de contas e a previsibilidade na governança. O soft law administrativo — instrumentos que carecem de força jurídica formal, mas que moldam significativamente a prática administrativa — tornou-se essencial para os sistemas regulatórios modernos que enfrentam a complexidade e as rápidas mudanças. O Vietnã utiliza principalmente despachos oficiais (công văn) que se situam em áreas cinzentas do direito, fora das hierarquias formais de documentos normativos, enquanto a UE desenvolveu



Vietnam's hierarchical system creates strong de facto binding effects through administrative culture and democratic centralism principles, whereas EU soft law derives influence from expertise, legitimate expectations, and what scholars term "hybridity" between hard and soft law. Key findings show Vietnam faces transparency challenges due to limited publication requirements and opaque creation processes, while the EU demonstrates stronger accountability through judicial oversight and established review mechanisms. The study proposes comprehensive reforms including centralized publication portals, stakeholder consultation procedures, and clearer legal status frameworks. These recommendations aim to enhance regulatory predictability while preserving flexibility in Vietnam's evolving economic context, particularly relevant for international integration commitments under the EU-Vietnam Free Trade Agreement.

Keywords: Administrative Soft Law, Regulatory Transparency, Vietnam Legal System, EU Governance, Accountability Mechanisms, Legal Certainty.

abordagens sistemáticas com reconhecimento explícito no direito primário e mecanismos sofisticados de supervisão judicial. A análise revela que o sistema hierárquico do Vietnã cria fortes efeitos vinculativos de fato por meio da cultura administrativa e dos princípios do centralismo democrático, enquanto o soft law da UE deriva sua influência da expertise, das expectativas legítimas e do que os estudiosos chamam de "hibridismo" entre o hard law e o soft law. As principais conclusões mostram que o Vietnã enfrenta desafios de transparência devido a requisitos de publicação limitados e processos de criação opacos, enquanto a UE demonstra maior prestação de contas por meio de supervisão judicial e mecanismos de revisão estabelecidos. O estudo propõe reformas abrangentes, incluindo portais de publicação centralizados, procedimentos de consulta às partes interessadas e estruturas de status jurídico mais claras. Essas recomendações visam aumentar a previsibilidade regulatória, preservando a flexibilidade no contexto econômico em evolução do Vietnã, particularmente relevante para os compromissos de integração internacional no âmbito do Acordo de Livre Comércio UE-Vietnã.

Palavras-chave: Direito Administrativo Não Vinculativo. Transparência Regulatória. Sistema Jurídico do Vietnã. Governança da UE. Mecanismos de Prestação de Contas. Segurança Jurídica.

1 INTRODUCTION

Contemporary governance systems increasingly rely on administrative soft law—a phenomenon that challenges traditional distinctions between binding and non-binding instruments while fundamentally reshaping how public administration operates. As di Robilant (2006) observes in her genealogical analysis, soft law represents "a new form of normativity that does not fit easily into the traditional categories of law and non-law" (p. 502). These instruments, ranging from guidelines and recommendations to interpretative notices and informal communications, lack formal legal force yet significantly influence administrative decision-making and regulatory compliance strategies (Senden, 2003).

The proliferation of soft law reflects what Hérítier (2002) identifies as "new modes of governance" that enable "policy making without legislating," particularly valuable when traditional legislative processes prove too slow or rigid for addressing rapidly evolving regulatory challenges (p. 5). This trend has become particularly pronounced in contexts requiring adaptive governance mechanisms that can respond more rapidly than formal lawmaking procedures while maintaining sufficient authority to guide administrative behavior effectively.

This comparative study examines administrative soft law in Vietnam and the European Union, focusing on three fundamental governance principles that Bovens (2007) identifies as essential for democratic legitimacy: transparency, accountability, and predictability (p. 450). The comparison is particularly instructive given Vietnam's accelerating international economic integration, especially through the EU-Vietnam Free Trade Agreement (EVFTA), which establishes specific commitments regarding regulatory transparency and legal certainty that directly implicate soft law governance practices.

Vietnam's legal system, shaped by civil law tradition and socialist legal theory, creates unique challenges for soft law governance that differ markedly from the EU's approach. The widespread use of official dispatch (*công văn*) and other guidance documents that fall outside formal legal hierarchies raises important questions about what Snyder (1993) terms "the effectiveness of Community law" in ensuring consistent application and adequate protection of rights (p. 19). Meanwhile, the EU's sophisticated multi-level governance structure has necessitated innovative approaches to soft law that scholars like Trubek *et al.* (2005) characterize as "hybridity" between hard and soft law, generating substantial jurisprudence and institutional frameworks for managing non-binding instruments (p. 15).

The central research question driving this analysis is: How do different approaches to administrative soft law in Vietnam and the EU affect transparency, accountability, and predictability, and what lessons can Vietnam draw from EU practice to enhance its regulatory effectiveness while maintaining necessary administrative flexibility? This paper addresses this question through four main analytical sections: comparative examination of soft law definition and usage; investigation of underlying systemic factors

explaining differences; evaluation of Vietnam's approach against EU benchmarks; and exploration of targeted reform recommendations for Vietnam's regulatory development.

2 COMPARATIVE ANALYSIS: VIETNAM VS. EUROPEAN UNION

2.1 Vietnam's approach to administrative soft law

2.1.1 Definition and legal status

Vietnam's administrative system lacks formal recognition of "soft law" as a distinct regulatory category, creating what might be characterized as an institutional blind spot in its legal framework. Instead, various documents issued by administrative authorities occupy this conceptual space, characterized by fundamentally ambiguous legal status under Vietnam's formal hierarchy established in the Law on Promulgation of Legal Normative Documents 2025, No. 64/2025/QH15.

The most significant manifestation is official dispatch (*công văn*), routinely issued by administrative authorities to provide interpretative guidance, respond to specific inquiries, or address emerging regulatory issues not explicitly covered by existing legislation. Despite their practical importance in daily administrative operations, *công văn* typically fall outside Article 4's definition of "legal normative documents," which requires documents to contain legal norms and be issued according to prescribed authority, formats, and procedures.

This creates what Saurugger and Terpan (2013) might characterize as a form of "resistance" to formal legal categorization, where practical administrative needs push governance instruments outside established legal frameworks (p. 8). Other important forms include directives (*chỉ thị*) that provide guidance rather than establish binding norms, planning documents (*kế hoạch*) that outline implementation approaches, and internal instructions (*hướng dẫn nội bộ*) that shape administrative practice without formal legal status.

The lack of clear categorization generates several systemic problems. The boundary between binding legal requirements and non-binding guidance becomes blurred in practice, creating uncertainty for both administrators and regulated entities. Without

systematic rules governing creation, publication, and effects, soft law instruments vary widely in quality, accessibility, and authority. Most fundamentally, the absence of formal recognition makes it difficult to develop coherent policies for managing these instruments effectively, leading to ad-hoc approaches that may undermine regulatory consistency.

2.1.2 Usage and practical functions

Vietnamese administrative soft law serves several distinct purposes that reflect both the country's legal tradition and contemporary governance challenges. These functions demonstrate what Popelier *et al.* (2019) identify as characteristic challenges of "lawmaking in multi-level settings," where formal and informal instruments must work together to achieve effective governance (p. 45).

First, soft law instruments play a crucial clarification role, providing specific interpretations of broader legal provisions when formal legislation establishes general frameworks requiring detailed elaboration. This interpretative function becomes particularly important given Vietnam's rapid legislative development, which sometimes results in gaps or ambiguities requiring administrative guidance to ensure practical implementation.

Second, these instruments enable rapid administrative responses to emerging issues, demonstrating what Neyer (2004) terms "efficiency and effectiveness in decision-making" that formal legislative processes often cannot match (p. 25). Vietnam's hierarchical system allows quick issuance of guidance documents to address new challenges without waiting for formal legislative amendments—a capability particularly valuable in a rapidly developing economy where novel regulatory issues frequently emerge.

Third, soft law fills perceived gaps in formal legislation and directs administrative action throughout the hierarchical system. Instructions from superior authorities carry significant weight due to political and administrative hierarchies, making soft law a powerful tool for ensuring consistent policy implementation across different levels of government. This reflects the strong vertical coordination characteristic of Vietnam's administrative culture.

A distinctive characteristic of Vietnam's approach is its predominantly reactive and case-specific orientation. Many công văn respond to particular inquiries or address specific situations rather than establishing broad frameworks applicable across similar cases. While this provides administrative flexibility, it can result in fragmentation and potential inconsistencies when similar situations are handled differently, undermining the predictability that effective governance requires.

2.1.3 Perception and de facto bindingness

Perhaps the most distinctive aspect of Vietnam's administrative soft law is the significant gap between formal non-binding status and de facto binding effects in practice. This phenomenon demonstrates what Trubek *et al.* (2005) describe as "hybridity" in governance, where instruments that are formally non-binding nevertheless "exercise significant regulatory effects" (p. 8).

Despite lacking formal legal force, soft law instruments—especially those issued by higher authorities—often function as effectively mandatory for lower-level administrative bodies and regulated entities. This de facto bindingness stems primarily from Vietnam's strongly hierarchical administrative structure rooted in the principle of democratic centralism, where lower-level officials typically treat guidance from superior authorities as mandatory regardless of formal legal status.

External stakeholders, including businesses and citizens, also perceive administrative guidance as effectively mandatory requirements. This perception develops from practical experience where failing to comply with formally non-binding guidance can result in delayed approvals, increased regulatory scrutiny, or other administrative obstacles that impede smooth business operations.

This situation creates what Bovens (2007) would identify as significant "accountability deficits," where the gap between formal status and practical effect undermines traditional mechanisms for ensuring responsible governance (p. 455). Regulated entities must navigate not only formally binding legal requirements but also a complex landscape of effectively binding administrative guidance that may not be systematically published or easily accessible.

2.2 EU's approach to administrative soft law

2.2.1 Formal recognition and sophisticated legal framework

The EU's approach to administrative soft law contrasts markedly with Vietnam's through explicit recognition and systematic categorization that reflects decades of institutional development and judicial elaboration. Article 288 of the Treaty on the Functioning of the European Union formally acknowledges recommendations and opinions as non-binding instruments, stating these "shall have no binding force"—providing clear recognition within primary European law that Vietnam's system lacks.

Beyond treaty-defined instruments, the EU employs extensive other soft law forms including Commission guidelines, communications, notices, frameworks, codes of conduct, and European Supervisory Authority guidelines. While not explicitly mentioned in the treaties, these instruments have become integral to EU governance and are recognized through well-developed Court of Justice of the European Union (CJEU) jurisprudence that Stefan (2013) comprehensively analyzes in her seminal work on soft law in court (p. 78).

The legal status of EU soft law demonstrates sophisticated doctrinal development rather than the ambiguity characteristic of Vietnam's system. In the landmark Grimaldi case (C-322/88), the Court established that national courts "are bound to take recommendations into consideration in order to decide disputes submitted to them, in particular where they cast light on the interpretation of national measures adopted in order to implement them." This creates what Hofmann (2017) describes as a "nuanced understanding" that transcends simple binding/non-binding distinctions through recognition of soft law's legitimate role in the legal order (p. 196).

EU soft law instruments may not create direct legal obligations, but they produce significant legal effects through established principles such as legitimate expectations, the duty of sincere cooperation, and the obligation to consider relevant factors in administrative decision-making. As Eliantonio *et al.* (2021) demonstrate in their empirical analysis, this sophisticated doctrinal framework provides substantially greater clarity about soft law's role and effects compared to less developed systems (p. 23).

2.2.2 Strategic usage in multi-level governance

EU soft law serves purposes that reflect the unique challenges of multi-level governance and the need to integrate diverse national legal systems, demonstrating what Sabel and Zeitlin (2008) characterize as "experimentalist governance" that combines central coordination with local adaptation (p. 285). While some functions overlap with those in Vietnam, the EU's usage exhibits distinctive characteristics shaped by its supranational nature and integration objectives.

Harmonizing EU law application across Member States represents perhaps the most important function, addressing what Popelier *et al.* (2019) identify as fundamental challenges of ensuring consistency in "multi-level settings" (p. 12). In a Union of 27 Member States with diverse legal traditions, ensuring consistent interpretation and application of EU legislation presents significant challenges that traditional binding legislation alone cannot adequately address.

Soft law instruments—particularly Commission guidelines and agency guidelines—provide detailed guidance on how EU law should be interpreted and applied, promoting uniformity without requiring additional binding legislation that might be difficult to negotiate politically. This reflects what Héritier (2002) identifies as the appeal of "governance without legislating" in complex political environments (p. 18).

Providing interpretative guidance constitutes another crucial function, addressing implementation gaps that formal legislation inevitably contains. EU legislation often establishes broad principles or frameworks, leaving significant implementation details to be elaborated through subsequent measures. Soft law instruments help fill these gaps by providing authoritative interpretations from EU institutions, reducing uncertainty for national authorities and private parties while maintaining necessary flexibility for diverse national contexts.

Setting technical standards and promoting best practices represents a third important function, particularly relevant in highly technical areas such as financial regulation, environmental protection, or product safety. Stefan (2020a) notes how soft law instruments often establish detailed standards or methodologies that promote consistent approaches across Member States while ensuring single market functionality (p. 335).

2.2.3 *Legal effects and judicial oversight*

EU soft law demonstrates complex practical effects that differ significantly from Vietnam's hierarchical compliance model, reflecting sophisticated mechanisms of influence that Stefan (2013) extensively analyzes in her examination of soft law's role in European courts (p. 145). While formally non-binding, EU instruments can create legitimate expectations that authorities will follow published approaches, creating what might be termed "soft bindingness" through legal principles rather than formal obligation.

National courts in EU Member States must consider soft law when interpreting national law implementing EU law and when interpreting EU law itself. This obligation, established in *Grimaldi* (C-322/88) and reinforced in subsequent cases like *Belgium v Commission* (C-16/16 P), ensures that soft law instruments influence judicial interpretation and cannot be simply ignored, even when they lack formal binding force.

The CJEU scrutinizes soft law instruments when they produce legal effects, allowing for judicial review in certain circumstances that provide important accountability mechanisms absent in Vietnam's system. In *Belgium v Commission* (T-721/14), the Court demonstrated willingness to review soft law instruments that produce binding legal effects, ensuring that even formally non-binding instruments remain subject to judicial oversight when they significantly affect rights and obligations.

As Andone and Greco (2018) observe in their analysis of Commission recommendations, EU soft law derives persuasive authority from institutional expertise and the benefits of uniform application rather than hierarchical pressure, creating differentiated compliance patterns that vary across policy areas and Member States (p. 85). This contrasts markedly with Vietnam's more uniform hierarchical compliance pattern driven by administrative hierarchy rather than persuasion or expertise.

2.3 **Key similarities and fundamental differences**

Both systems employ soft law to provide regulatory flexibility where hard law might prove too rigid and to clarify broader legal frameworks through detailed guidance. Both also demonstrate that soft law can have significant practical impacts on regulated entities and administrative agencies despite formal non-binding status, confirming di

Robilant's (2006) observation about soft law's capacity to "exercise normative force" outside traditional legal categories (p. 515).

However, the differences prove profound and revealing of deeper systemic variations. The EU features explicit recognition and substantially greater clarity on intended status through Treaty provisions and developed jurisprudence, while Vietnam lacks formal recognition in its legal hierarchy. EU soft law generally involves systematic publication and consultation processes that Eliantonio *et al.* (2021) identify as enhancing legitimacy, whereas Vietnam's creation remains often internal with inconsistent publication practices (p. 67).

The nature of practical "bindingness" differs fundamentally—Vietnam's stems from administrative hierarchy and political structure consistent with democratic centralism, while EU influence derives from what Snyder (1993) identifies as "persuasive authority, legitimate expectations, and judicial interpretation" rather than command (p. 35). Primary drivers also differ significantly: EU soft law addresses supranational harmonization needs identified by Trubek *et al.* (2005) as characteristic of "hybrid" governance systems, while Vietnam's serves domestic administrative control within unitary state structure (p. 28).

Finally, judicial scrutiny represents a crucial difference with important implications for accountability. The CJEU and national courts have developed sophisticated doctrines for considering soft law that Stefan (2013) documents comprehensively, while Vietnamese judicial review of soft law-based actions remains less developed, affecting accountability mechanisms and overall system balance (p. 234).

3 ANALYZING UNDERLYING SYSTEMIC DIFFERENCES

3.1 Legal tradition and constitutional framework

Vietnam's civil law tradition with socialist legal influences emphasizes formalistic approaches to legal categorization that create conceptual challenges for soft law existing outside formal hierarchies. The Vietnamese system traditionally draws sharp distinctions between legally binding and non-binding instruments, reflecting what di Robilant (2006)

identifies as classical legal formalism's difficulty accommodating instruments that "operate in the gray area between law and non-law" (p. 508).

Socialist legal theory's historical emphasis on state power unity rather than separation of powers means that distinctions between binding law and policy guidance are less sharply drawn than in Western liberal traditions. This creates what Saurugger and Terpan (2013) might characterize as systematic "resistance" to formal legal categorization, where practical administrative needs push governance instruments outside established frameworks (p. 12).

The EU's *sui generis* legal system, drawing from diverse Member State traditions including both civil and common law systems, has fostered more pragmatic approaches to achieving integration objectives. This hybrid nature has accommodated multi-level governance complexities through innovative legal solutions that Hofmann (2017) describes as reflecting "constitutional pluralism" rather than rigid hierarchical formalism (p. 188).

3.2 Political systems and governance architecture

Vietnam's single-party centralized system with democratic centralism principles creates strong vertical accountability where superior guidance carries significant weight regardless of formal legal status. The Communist Party's leading role in all governance aspects means that Party policies provide direction for state administration, reinforcing the practical bindingness of guidance from higher authorities through what might be characterized as political rather than legal authority.

The EU's multi-level governance system with shared sovereignty and complex institutional relationships creates fundamentally different incentives for soft law development and implementation. Rather than flowing primarily from hierarchical authority, EU soft law derives influence from coordination needs, expertise benefits, and what Sabel and Zeitlin (2008) identify as "experimentalist" requirements of consistent single market operation (p. 295).

These structural differences fundamentally shape how soft law operates in each system. Vietnam's unitary structure facilitates rapid implementation of central guidance through hierarchical channels, while the EU's complex institutional balance encourages

what Hérítier (2002) characterizes as "consensus-building and expertise-based approaches" to developing non-binding instruments (p. 22).

3.3 Economic development and administrative capacity

Vietnam's status as a rapidly developing economy undergoing significant legal and administrative reforms creates distinctive contexts for soft law usage that differ markedly from the EU's mature regulatory environment. Since Đổi Mới economic reforms began in 1986, Vietnam has been transitioning toward a market-oriented economy, requiring extensive regulatory adaptation that often outpaces formal legislative capacity.

International economic integration through agreements like the EVFTA creates additional pressures and opportunities related to soft law governance, particularly regarding commitments on regulatory transparency, good administrative practices, and legal certainty that directly implicate how Vietnam manages its soft law instruments.

The EU's mature regulatory systems and higher development levels allow for more sophisticated approaches, including resource-intensive consultation processes and impact assessments that Eliantonio *et al.* (2021) identify as enhancing both quality and legitimacy but may be challenging to implement fully in Vietnam's capacity-constrained context (p. 89).

4 EVALUATING VIETNAM'S APPROACH: STRENGTHS AND CRITICAL WEAKNESSES

4.1 Transparency deficits and information asymmetries

Vietnam faces significant transparency challenges compared to EU standards that create substantial obstacles for businesses and citizens seeking to understand regulatory requirements. The most fundamental problem is the absence of systematic publication requirements for many soft law instruments, creating what Bovens (2007) would characterize as serious "information asymmetries" that undermine democratic accountability (p. 458).

While the Law on Promulgation of Legal Normative Documents 2025 establishes clear publication requirements for formal legal normative documents, no equivalent requirements exist for documents like *công văn* that fall outside this category. Many important guiding documents circulate only within administrative systems or to directly affected parties rather than being systematically published for public access, creating privileged access for well-connected entities.

Even when soft law instruments are published, they are often scattered across numerous ministerial websites, official gazettes, or other sources, making comprehensive access challenging. Unlike the EU's centralized publication systems such as the Official Journal and EUR-Lex database that Stefan (2020b) notes ensure equal access, Vietnam lacks unified, comprehensive repositories for administrative guidance documents (p. 668).

The creation process for soft law instruments in Vietnam remains often opaque, with limited opportunities for stakeholder input or public scrutiny before issuance. Many *công văn* and other guidance documents are developed internally within administrative agencies with minimal external consultation, contrasting sharply with the EU's increasingly consultative approach that Eliantonio *et al.* (2021) identify as enhancing legitimacy and quality (p. 78).

4.2 Accountability mechanisms and democratic oversight

Vietnam's system offers limited avenues for challenging the content or application of soft law instruments, creating what Bovens (2007) identifies as fundamental "accountability deficits" that can undermine rule of law principles (p. 462). Because many guiding documents fall outside the category of legal normative documents, they may not be subject to the same review mechanisms applicable to formal regulations.

The hierarchical nature of Vietnam's administrative system can make it difficult to hold agencies accountable for decisions based on unpublished or vaguely worded soft law. When administrative actions are justified by reference to internal guidance or unpublished *công văn*, affected parties may lack the information necessary to effectively challenge these actions, creating what Stefan (2013) identifies as "procedural disadvantages" for regulated entities (p. 167).

Vietnamese soft law instruments often lack clear explanations of their legal basis, relationship to formal legislation, or intended effects. This opacity makes it difficult to assess whether administrative authorities are acting within their proper authority when issuing or applying soft law guidance, undermining fundamental accountability principles.

The EU system demonstrates several accountability strengths through well-developed legal principles that Stefan (2013) comprehensively analyzes. The principle of legitimate expectations provides mechanisms for holding authorities accountable when they depart from published guidance without adequate justification (p. 189). The CJEU's willingness to review soft law instruments that produce legal effects ensures that even formally non-binding instruments remain subject to judicial oversight when they significantly affect rights and obligations.

4.3 Predictability and legal certainty challenges

The frequent and sometimes ad-hoc issuance of guidance documents in Vietnam can create regulatory instability that undermines business planning and compliance efforts. When interpretations or applications of rules change through new guidance documents without systematic announcement, regulated entities face uncertainty about current requirements that Snyder (1993) identifies as fundamentally problematic for effective law implementation (p. 48).

Vietnam's case-by-case approach to administrative guidance, while providing flexibility, can reduce predictability by creating uncertainty about how similar situations will be handled in the future. When guidance is provided through specific *công văn* addressing particular inquiries rather than through general guidelines applicable across similar situations, regulated entities may struggle to extract general principles for future conduct.

The ambiguous legal status of soft law instruments creates uncertainty about their relationship to formal legislation and their weight in administrative and judicial decision-making. When regulated entities cannot clearly determine how guidance documents relate to formal legal requirements or how they will be considered in potential disputes, legal certainty is undermined in ways that can discourage investment and economic activity.

4.4 Flexibility advantages within constraints

Despite these challenges, Vietnam's system demonstrates important strengths in flexibility and responsiveness that should be preserved in any reform efforts. The system allows for rapid administrative responses to emerging issues through quick guidance issuance without formal legislative amendments, demonstrating what Neyer (2004) identifies as valuable "efficiency and effectiveness in decision-making" (p. 28).

The case-specific nature of many Vietnamese soft law instruments allows for tailored approaches to particular situations rather than one-size-fits-all solutions. This granularity can be beneficial when addressing complex or unique circumstances that may not fit neatly within general rules, reflecting sensitivity to local contexts and specific circumstances.

The hierarchical administrative structure facilitates rapid dissemination of guidance throughout the system, allowing for quick adjustments to implementation approaches when priorities change or new challenges emerge. This demonstrates coordination capacity that can be valuable in rapidly changing environments.

However, these flexibility strengths come with important qualifications that Hérítier (2002) notes are characteristic of informal governance approaches (p. 19). Rapid issuance without systematic consultation or impact assessment may lead to poorly considered directives that create unintended consequences. The case-specific approach, while allowing for tailored solutions, can create inconsistencies across similar situations if not guided by clear principles.

5 COMPREHENSIVE REFORM RECOMMENDATIONS FOR VIETNAM

5.1 Enhancing transparency through systematic publication

Vietnam should develop a centralized, publicly accessible online portal for all significant guiding documents, including key công văn with external effects. This portal would function similarly to the EU's EUR-Lex database that Stefan (2020a) identifies as crucial for ensuring equal access to regulatory information, providing a single access point for administrative guidance across ministries and agencies (p. 342).

Such a system would dramatically reduce the information asymmetries that Bovens (2007) identifies as fundamentally problematic for democratic accountability, ensuring that all stakeholders have equal access to relevant guidance regardless of their size, connections, or resources (p. 458). Implementation could be phased, beginning with ministries most involved in business regulation or international economic integration.

The portal could initially focus on forward-looking publication of new documents while gradually incorporating historically significant guidance. Technical assistance through international cooperation, potentially including EU expertise sharing under EVFTA capacity building programs, could support development of appropriate classification systems and search functionalities that reflect international best practices.

Vietnam should establish clearer rules determining which types of documents require public publication, drawing inspiration from the systematic approaches that Eliantonio *et al.* (2021) document in their empirical analysis of EU practice (p. 45). While not all internal administrative communications need publication, any document that guides interpretation or application of legal requirements affecting external parties should be systematically published.

Explanatory notes accompanying significant soft law instruments would enhance transparency by explaining the legal basis for guidance, its relationship to formal legislation, and its intended effects. Following EU practice that Stefan (2013) identifies as enhancing legitimacy, these notes would help regulated entities understand how guidance fits within the broader regulatory framework (p. 201).

5.2 Improving creation processes through stakeholder engagement

Vietnam should introduce procedures for targeted stakeholder consultation for significant soft law instruments with broad impact, reflecting the consultative approaches that Eliantonio *et al.* (2021) demonstrate enhance both quality and legitimacy in the EU context (p. 67). While comprehensive public consultation might not be immediately feasible for all guidance documents, seeking input from relevant business associations, legal experts, and affected stakeholders before finalizing important guidance would improve both quality and democratic legitimacy.

Implementation could be selective and proportionate, focusing on guidance documents with significant economic impact or broad application rather than routine administrative clarifications. The consultation process could be streamlined compared to formal legislative procedures while still providing meaningful opportunities for stakeholder input through digital platforms and structured feedback mechanisms.

More structured processes for assessing the need for and potential impact of significant soft law instruments before issuance would help reduce unnecessary or duplicative guidance while improving the quality of necessary instruments. Administrative authorities could be required to consider whether new guidance is necessary, how it relates to existing rules, and what effects it might have on regulated entities, reflecting the impact assessment approaches that Stefan (2020b) notes have enhanced EU regulatory quality (p. 669).

Clearer internal coordination mechanisms would ensure consistency across guidance issued by different authorities on related topics. Drawing inspiration from the EU's inter-service consultation practices that Hofmann (2017) describes as essential for maintaining coherence, similar coordination mechanisms in Vietnam would help reduce contradictory or inconsistent guidance that creates compliance challenges (p. 204).

5.3 Clarifying legal status through doctrinal development

Vietnam should develop clearer legal doctrine regarding the status of various administrative guiding documents and the extent to which they can be relied upon by citizens and businesses. This could involve amendments to the Law on Promulgation of Legal Normative Documents 2025 to explicitly recognize and categorize different types of administrative guidance, their relationship to formal legal normative documents, and their appropriate uses.

Such clarification would help reduce current ambiguity where many influential documents exist in legal gray areas that di Robilant (2006) identifies as problematic for legal certainty (p. 518). Drawing inspiration from EU jurisprudence on legitimate expectations that Stefan (2013) comprehensively analyzes, reforms could establish that while guidance documents do not create new legal obligations, administrative authorities

should generally follow their own published guidance unless they have valid reasons for departure and provide adequate notice of changes (p. 156).

Clearer principles regarding appropriate scope and limits of soft law instruments would help maintain proper boundaries between soft law and formal lawmaking, addressing what Trubek *et al.* (2005) identify as fundamental questions about "hybridity" in governance systems (p. 18). These principles would clarify that guidance documents should interpret existing legal requirements rather than create entirely new obligations, remain consistent with higher-level legal normative documents, and avoid contradicting formal legislation.

More explicit recognition of soft law's role in administrative and judicial decision-making would provide guidance for administrative authorities on how to appropriately reference and apply soft law instruments in their decisions, and guidance for courts on how to consider administrative guidance when reviewing administrative actions or interpreting legislation, reflecting the sophisticated doctrinal development that Hofmann (2017) documents in the EU context (p. 198).

5.4 Strengthening accountability through review mechanisms

Enhanced administrative court capacity to review soft law-based actions would involve clarifying through legislation or judicial interpretation that courts have authority to assess whether guidance-based actions remain consistent with formal legislation, follow proper procedures, and respect legitimate expectations of affected parties. This reflects the judicial oversight mechanisms that Stefan (2013) identifies as crucial for ensuring accountability in soft law systems (p. 223).

Implementation would require both legal clarification and capacity building for judges who may not be accustomed to scrutinizing administrative actions in this sophisticated way. International cooperation, potentially including judicial exchanges or training programs with EU member states, could support development of appropriate judicial approaches to reviewing soft law-based administrative actions.

Administrative review mechanisms for challenging guidance documents that appear to exceed proper authority or create practical implementation problems could involve designated units within ministries with responsibility for reviewing complaints

about guidance documents, or inter-ministerial bodies with authority to recommend revisions to problematic guidance. Such mechanisms would provide more accessible alternatives to judicial review while maintaining accountability standards.

Periodic review requirements for significant guidance documents would assess their continued relevance, effectiveness, and consistency with evolving legislation. Drawing inspiration from the EU's regulatory fitness programs that Stefan (2020a) notes have improved regulatory quality, this would help ensure that guidance documents remain current and appropriate rather than accumulating over time without systematic evaluation (p. 346).

5.5 Promoting consolidation and systematization

Vietnam should encourage ministries and agencies to consolidate numerous ad-hoc công văn into more comprehensive, periodically updated guidelines on key regulatory areas. Rather than issuing separate guidance documents for each specific inquiry, administrative authorities could develop and maintain general guidelines that address common questions and scenarios within their areas of competence, reflecting the systematic approaches that Eliantonio *et al.* (2021) document as enhancing clarity and accessibility (p. 89).

Implementation could be prioritized in areas with significant economic impact or international engagement, such as taxation, customs, investment, and environmental compliance. Technical assistance through international cooperation could support development of effective consolidation methodologies and document structures that reflect international best practices.

Clearer hierarchies among different types of guidance documents would reduce confusion about which should take precedence when multiple documents address similar issues. This could involve designating certain types of comprehensive guidelines as primary reference documents, with more specific guidance serving to supplement rather than replace these general frameworks, ensuring the systematic coherence that Snyder (1993) identifies as essential for effective law implementation (p. 42).

Standardized formats and terminology for different types of guidance documents would enhance clarity and consistency, making it easier for users to quickly identify the

nature, authority, and intended effect of different documents. Such standardization would include clear identification of issuing authority, legal basis, relationship to formal legislation, and intended audience, reflecting the systematic approaches that the EU has developed over decades of experience.

5.6 Building institutional capacity for effective governance

Investment in training for officials on drafting clear, legally sound, and consistent soft law instruments would focus on key skills such as precise language use, appropriate scope determination, consistency with higher-level legislation, and consideration of implementation challenges. This training would help address common problems such as vague guidance, guidance that appears to exceed legal authority, or guidance creating unintended implementation difficulties.

Better knowledge management systems within and across administrative bodies would capture and share experience with guidance development and implementation, helping prevent repetition of past mistakes while promoting learning from successful approaches. These systems would facilitate consistency across different units addressing similar issues and help preserve institutional knowledge despite personnel changes, reflecting the institutional learning approaches that Sabel and Zeitlin (2008) identify as characteristic of effective governance (p. 305).

Specialized units or designated officials within key ministries with specific responsibility for ensuring guidance quality and consistency would review draft guidance before issuance, provide technical support to subject matter experts, and monitor the overall guidance ecosystem to identify improvement opportunities. Drawing inspiration from the EU's better regulation units that Stefan (2020a) identifies as enhancing regulatory quality, these specialized resources would help institutionalize good practices in guidance development (p. 338).

6 CONCLUSION

This comparative analysis reveals both significant differences and valuable learning opportunities between Vietnam's and the EU's approaches to administrative soft

law, confirming di Robilant's (2006) observation that soft law systems vary considerably in their sophistication and effectiveness (p. 522). While both systems employ these instruments for regulatory flexibility and guidance elaboration, they operate with markedly different implications for transparency, accountability, and predictability that reflect deeper systemic differences in legal tradition, political structure, and administrative culture.

The EU generally demonstrates superior transparency through systematic publication practices, stronger accountability through judicial oversight and legitimate expectations doctrine, and enhanced predictability through comprehensive guidelines and clearer legal status frameworks. These strengths reflect what Trubek *et al.* (2005) identify as the "hybrid" nature of EU governance, which has evolved sophisticated mechanisms for managing the relationship between hard and soft law (p. 35). The EU's multi-level governance needs, supranational harmonization requirements, and evolution toward what Héritier (2002) characterizes as participatory, expertise-driven regulatory approaches have produced institutional innovations that Vietnam might adapt to its own context (p. 23).

Vietnam's system, shaped by civil law tradition with socialist influences, centralized political structure, development stage, and hierarchical administrative culture, demonstrates important flexibility and responsiveness strengths but faces transparency, accountability, and predictability challenges that can undermine legal certainty and create compliance difficulties. The gap between formal non-binding status and *de facto* bindingness creates what Bovens (2007) would identify as systematic accountability deficits that require careful attention in any reform effort (p. 465).

The comprehensive reform proposals outlined in this paper offer approaches that acknowledge Vietnam's distinct context while addressing key weaknesses identified through comparative analysis with EU practice. These reforms would preserve important administrative flexibility that Neyer (2004) identifies as valuable for effective governance while enhancing transparency, accountability, and predictability in ways that support both good governance principles and economic development objectives (p. 32).

Implementing these reforms would yield significant benefits for Vietnam's administrative law system, business environment, and international integration efforts. Enhanced transparency and predictability would reduce compliance costs, particularly for

small and medium enterprises lacking resources to navigate opaque regulatory systems. Clearer legal status and stronger review mechanisms would strengthen rule of law by ensuring administrative guidance remains within appropriate boundaries and subject to meaningful oversight that Stefan (2013) identifies as essential for democratic legitimacy (p. 245).

These improvements would be particularly valuable for Vietnam's international economic integration, including EVFTA implementation and other international agreements that require high standards of regulatory transparency and predictability. By aligning administrative practices more closely with international transparency, accountability, and predictability standards, Vietnam would not only fulfill formal commitments but also create more attractive environments for trade and investment.

The path forward requires what Sabel and Zeitlin (2008) characterize as "experimentalist" approaches—thoughtful adaptation rather than wholesale transplantation, learning from international best practices while adapting them to Vietnam's specific circumstances and constraints (p. 315). By enhancing transparency, accountability, and predictability without sacrificing necessary flexibility, such reforms would strengthen Vietnam's administrative governance systems, improve business environments, and support continued international integration through targeted improvements informed by comparative experience.

Future research should examine specific implementation strategies for these reforms, assess their effectiveness over time, and explore how Vietnam's experience might inform soft law governance in other developing countries facing similar challenges of balancing administrative flexibility with legal certainty in rapidly evolving economic contexts. As Eliantonio *et al.* (2021) suggest, empirical analysis of soft law implementation across different contexts can provide valuable insights for improving governance systems worldwide (p. 234).

REFERENCES

- Andone, C., & Greco, S. (2018). Evading the Burden of Proof in European Union Soft Law Instruments: the Case of Commission Recommendations. *International Journal for the Semiotics of Law*, 31(1), 79-99. <https://doi.org/10.1007/s11196-017-9527-8>
- Bovens, M. (2007). Analysing and Assessing Accountability: A Conceptual Framework. *European Law Journal*, 13(4), 447-468. <https://doi.org/10.1111/j.1468-0386.2007.00378.x>
- Bui, T.H., & Nguyen, V.P. (2023). The Impact of Artificial Intelligence and Digital Economy on Vietnam's Legal System. *International Journal for the Semiotics of Law*, 36(2), 969-989. <https://doi.org/10.1007/s11196-022-09927-0>
- Case Law: Case C-322/88, Grimaldi v. Fonds des Maladies Professionnelles [1989] ECR 4407, EU:C:1989:646. Case C-16/16 P, Belgium v. Commission, ECLI:EU:C:2018:79. Case T-721/14, Belgium v. Commission, EU:T:2015:829.
- Chu, H.V. (2023). Mortgaging a Residential Construction Investment Project: Comparison of Vietnamese and Chinese Law. *Journal of Law and Sustainable Development*, 11(4), e875. <https://doi.org/10.55908/sdgs.v11i9>
- di Robilant, A. (2006). Genealogies of soft law. *The American Journal of Comparative Law*, 54(3), 499-554. <https://doi.org/10.1093/ajcl/54.3.499>
- Eliantonio, M., Korkea-aho, E., & Stefan, O. (Eds.). (2021). *EU Soft Law in the Member States: Theoretical Findings and Empirical Evidence*. Hart Publishing.
- Government of Vietnam. (2023). Decree 13/2023/ND-CP on Personal Data Protection. *Official Gazette*.
- Héritier, A. (2002). New modes of governance in Europe. Policy making without legislating? *IHS Political Science Series*, 81, 1-24. <https://doi.org/10.1093/019925740X.003.0005>
- Hofmann, H.C.H. (2017). General principles of EU law and EU administrative law. In C. Barnards & S. Peers (Eds.), *European Union Law* (2nd ed., pp. 185-210). Oxford University Press. <https://doi.org/10.1093/he/9780192863836.003.0008>
- Korkea-aho, E. (2024). EU Soft Law in Domestic Legal Systems: Flexibility and Diversity Guaranteed? *Maastricht Journal of European and Comparative Law*, 25(1), 57-80. <https://doi.org/10.1177/1023263X0901600302>
- Law on Promulgation of Legal Normative Documents 2025, No. 64/2025/QH15.
- Neyer, J. (2004). Explaining the unexpected: efficiency and effectiveness in European decision-making. *Journal of European Public Policy*, 11(1), 19-38. <https://doi.org/10.1080/1350176042000164280>
- Nguyen, T.A., Le, M.H., & Pham, D.K. (2024). Everyone Is Safe Now: Constructing the Meaning of Data Privacy Regulation in Vietnam. *Asian Journal of Law and Society*, 11(4), 485-512. <https://www.cambridge.org/core/journals/asian-journal-of-law-and-society>

society/article/everyone-is-safe-now-constructing-the-meaning-of-data-privacy-regulation-in-vietnam/85B4BA2CEDF2D4046CE076C11674E44C

- Popelier, P., Xantaki, H., Robinson, W., Silveira, J.T., & Uhlmann, F. (Eds.). (2019). *Lawmaking in Multi-level Settings*. Hart-Nomos Publishing.
- Sabel, C.F., & Zeitlin, J. (2008). Learning from difference: the new architecture of experimentalist governance in the EU. *European Law Journal*, 14(3), 271-327 scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2527&context=faculty_scholarship
- Saurugger, S., & Terpan, F. (2013). Resisting EU Norms. A Framework for Analysis. *Sciences Po Grenoble Working Paper*, 2, 1-25. <https://shs.hal.science/halshs-00911340v1>
- Senden, L. (2003). *Soft Law in European Community Law*. Hart Publishing.
- Snyder, F. (1993). The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques. *The Modern Law Review*, 56(1), 19-54. <https://www.jstor.org/stable/1096573>
- Stefan, O. (2013). *Soft Law in Court. Competition Law, State Aid and the Court of Justice of the European Union*. Wolters Kluwer. <https://doi.org/10.1111/lest.12045>
- Stefan, O. (2020a). The future of European Union soft law: A research and policy agenda for the aftermath of COVID-19. *Journal of International and Comparative Law*, 7(2), 329-349. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3702534
- Stefan, O. (2020b). COVID-19 soft law: voluminous, effective, legitimate? A research agenda. *European Papers*, 5(1), 663-670. https://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2020_I_027_Oana_Stefan_00364.pdf
- Trubek, D., Cottrell, P., & Nance, M. (2005). 'Soft Law', 'Hard Law', and the EU Integration: Toward a Theory of Hybridity. *Jean Monnet Working Paper*, 05, 1-42. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=855447
- USA Bureau of Economic and Business Affairs, (2023). *Investment Climate Statement: Vietnam*. Retrieved from <https://www.state.gov/reports/2023-investment-climate-statements/vietnam/>
- Vietnamese Government. (2024). Some legal aspects of personal data protection in the world—experience for Vietnam. *Cogent Social Sciences*, 10(1), 2414872. <https://doi.org/10.1080/23311886.2024.2414872>

Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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