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# GREEN TRANSITION AND THE ROLE OF WORKERS' REPRESENTATIVES

Prof. Dr. Olaf Deinert (editor)

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## Foreword

This book is the product of a joint venture between the Associazione Italiana di Diritto del Lavoro e della Sicurezza Sociale (AIDLaSS), the Hugo Sinzheimer Institut für Arbeits- und Sozialrecht and the Institut für Arbeitsrecht of the Georg-August-Universität Göttingen.

They provided scientific, organizational and financial support to the fortieth jubilee edition of the Pontignano Seminar, an international initiative launched by a group of Labour Lawyers from Italy (Gino Giugni), France (Antoine Lyon-Caen), Germany (Wolfgang Däubler), and the United Kingdom (Bill Wedderburn), and consolidated by Gian Guido Balandi and Silvana Sciarra (Italy). Since 2003, Lorenzo Gaeta (Università di Siena) and Edoardo Ales (Università di Napoli “Parthenope”) took the responsibility of the organization, joined in 2019 by Emanuele Menegatti (Università di Bologna) and, more recently Antonio Loffredo. Such a new direction in continuity would not have been possible without the fundamental contribution of Thomas Blanke (Universität Bremen) and Olaf Deinert (Georg-August-Universität Göttingen), who constantly supported the efforts of the organizational committee.

The Pontignano Seminar aims at comparing European countries’ Labour Law and Industrial Relations systems by involving established scholars and PhD students in presentations and group discussion. In the recent years, further to the already mentioned professors, a prominent role has been played by Filip Dorssemont (Université Catholique de Louvain), Sylvaine Laulom (Université Lumière Lyon 2) and Pascal Lokiec (Paris I Sorbonne), Diego Álvarez Alonso (Universidad de Oviedo).

As invited countries, Pontignano Seminar has counted on Netherlands, Poland and Hungary.

The fortieth jubilee edition focused on “Green Transition and the Role of Workers’ Representatives”, a topical subject of our times. This book collects contributions investigating the state of art in Belgium (Filip Dorssemont), France (Araud Casado), Germany (Rüdiger Krause), Hungary (Attila Kun), Italy (Antonio Loffredo), Netherlands (Beryl teer Haar), introduced by a reflection on the relationship between the Green Deal and the Social Partners (Ernesto Klengel), compared by the PhD students working group reports and concluded by Olaf Deinert (Göttingen) and Edoardo Ales (Napoli Parthenope). A special thanks to the tutors of the working groups Macarena Ángel Quiroga, Leonardo Battista and Amélie Sutterer-Kipping.

We do believe that this book could represent an important contribution to the ongoing debate also in the light of the new approach to the green transition that has apparently been adopted at EU and global level, partly because of the social and economic consequences that the previous one had not sufficiently taken into consideration. It has relevance in the political shifts we are experiencing. This is because the contributions refer to the fact that the right response is not to dismantle one of the two elements of the socio-ecological transition, but to mutually reinforce them.

Domenico Garofalo  
President of AIDLaSS

Ernesto Klengel  
Scientific Director of HSI

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# § 1 GREEN DEAL, COLLECTIVE BARGAINING AND THE EU

Dr. Ernesto Klengel<sup>1</sup>

## A. Introduction

In his work on labour law, Hugo Sinzheimer adopted the viewpoint of the human being in law – more precisely, the working person.<sup>2</sup> Looking at the notion of transformation in this light, it is certainly a somehow enigmatic term that describes the profound change that our economy and our society are undergoing. It leaves open what exactly is changing and, above all, who is carrying out this change and, in whose interest, this is taking place.

It is obvious that achieving climate neutrality is unavoidable in order to prevent climate change as one of humanity's potential disasters. However, the road to this goal is paved with alternatives:

- Do we emphasize regional, national or international solutions – and how do they relate to each other – and how do the different levels relate to each other?
- What significance does the concept of economic growth have?
- Do we rely on the market principle, on state intervention or incentives, or is there something third?
- Which technologies are we focussing on, which sectors are doomed?

These options show: The transformation can be shaped. This applies to the political framework, but also to concrete implementation in companies, in the plants and in the workplace. At the Pontignano XL seminar, we will explore the extent to which democratic approaches in business can contribute to greater sustainability. Because when it comes to change, those who are closest to the production process are in need – and these are the employees and their representatives who, in addition to the practical experience, also have a certain bird's eye view and bundle interests, or – if you like: collectivise them.

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<sup>1</sup> Many thanks to Athanasios Triagiannis for his support with this article.

<sup>2</sup> Sinzheimer, *Der Mensch im Arbeitsrecht*, *Neue Blätter für den Sozialismus* 1 (1930), p. 241-244; reprinted in: Kahn-Freund/Ramm (ed.), *Arbeitsrecht und Rechtssoziologie: gesammelte Aufsätze und Reden*, 1976, vol. II, p. 50-52; Sinzheimer, *Das Problem des Menschen im Recht*, inaugural lecture, 6-11-1933; reprinted in: Kahn-Freund/Ramm (ed.), *Arbeitsrecht und Rechtssoziologie: gesammelte Aufsätze und Reden*, 1976, vol. II, p. 53-69.

## **B. The EU policy on transformation**

### **I. General Analysis**

We can base our analysis on the fact that also in the green transformation employers have the power of disposal over the production and labour process. However, the conditions for doing business are shifting. The relevant markets are changing: the products and services with which companies make their money should serve sustainability. The production methods have to fulfil sustainability requirements. In the labour markets sustainability issues become important to many skilled workers, who want to serve a greater cause. Also the financial markets are affected where companies have to refinance their investments. Another example is: incentives for sustainable corporate management, such as bonuses for board members.

All of these areas are addressed by political strategies to encourage the economy to become more ecologically sustainable. There are sector-specific and regional strategies. There are national structures for the tax system, the social security system and the legal system. And the European Green Deal<sup>3</sup> interacts with all of these levels.

### **II. Components of the Green Deal**

The Green Deal is the buzzword for the EU's transformation strategy. It is a programme that – as we know it from Europe – is the product of countless sleepless nights of negotiations and compromises: Between the Commission, the Parliament, the Council, but also with the Member States and between the Member States themselves. It defines as overarching goal to reduce net greenhouse gas emissions in the European Union to zero by 2050 and thus become the first continent to be climate neutral.<sup>4</sup> By 2030, emissions are to be halved compared to level of 1990.

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<sup>3</sup> Communication from The European Commission, The European Green Deal, COM(2019) 640 final, 11.12.2019.

<sup>4</sup> European Commission, The European Green Deal, COM(2019) 640 final, 11.12.2019, p. 2.

Under the name "Fit for 55", a package of reformed and new EU directives and regulations has been issued in order to achieve the targets set out in the European Green Deal.<sup>5</sup>

This is a very laudable approach. After all, we initially feared that the European Green Deal would merely amount to non-binding recommendations and would otherwise be left to the member states. However, as part of the "Fit for 55" programme, the EU has issued a whole series of legal acts that break down the targets for reducing carbon emissions into a whole range of different policy areas.

One part of the new regulatory techniques is the so-called taxonomy: a positive list is used to create a classification system with standardised terminology that investors can use if they want to invest in projects and economic activities with a positive climate and environmental impact.<sup>6</sup> Another example: Non-financial reporting is becoming increasingly important in accounting law.<sup>7</sup>

Alongside the more regulatory "Fit for 55" programme is the Green Recovery Plan as an economic stimulus programme following the COVID pandemic. This programme describes measures and investments to support the economy during the 2020 economic crisis, taking into account the design of a structural change towards a sustainable economy. The EU Commission's Next Generation EU recovery programme contains proposals to reinforce the Green Deal.<sup>8</sup> However, the 750 billion package is not intended to change the proportion of the overall budget for climate protection. It has been supplemented by the REPowerEU programme<sup>9</sup> with regard to energy supply.

So far, the social dimension of the Green Deal has not even been mentioned. It is addressed in the Just Transition Fund.<sup>10</sup> It is a tool created on the basis of Article 175 TFEU to support fair regional structural change towards climate neutrality by 2050.<sup>11</sup> The target regions are those that are particularly dependent on the extraction or use of fossil primary energy sources or that emit high levels of

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<sup>5</sup> European Commission, 'Fit for 55': delivering the EU's 2030 Climate Target on the way to climate neutrality, COM(2021) 550 final, 14.7.2021.

<sup>6</sup> Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

<sup>7</sup> Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Directive (EU) 2022/2464 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

<sup>8</sup> European Commission, Europe's moment: Repair and Prepare for the Next Generation, COM(2020) 456 final, 27.5.2020, p. 6.

<sup>9</sup> European Commission, REPowerEU: Joint European Action for more affordable, secure and sustainable energy, COM(2022) 108 final, 8.3.2022.

<sup>10</sup> Regulation (EU) 2021/1056 establishing the Just Transition Fund.

<sup>11</sup> See Recital 4 of Regulation (EU) 2021/1056.

greenhouse gases in industrial processes (for example the coal regions in several countries).

However, there is also room for industrial policy in the Green Deal. The Commission presented a draft industrial plan for the Green Deal (also known as the Net-Zero Industry Act). The Act came into force on 29 June 2024.<sup>12</sup> Its aims at clean industries and technologies in the EU. Specifically, energy transition technologies are to be promoted and brought to market maturity, with the aim of covering at least 40% of Europe's energy needs by 2030. The Act is intended to simplify production conditions and expand funding opportunities.

### **III. Socio-political evaluation**

If you take a step back and look at the policy concepts, you will notice that they follow a certain logic. Since the founding of the EU, the main drivers of European Communities have been economic integration through the EU single market, the monetary union and its consequences and the harmonisation of legislation in the EU's policy areas. Although the social pillar has been expanded somewhat over time, it still leads a rather marginal existence today (which we labour law experts sometimes overlook because dealing with EU labour law has become so important for the labour law discourse).<sup>13</sup>

The Green Deal shifts the logic of the EU a little from an economically liberal constitution towards a more state interventionist character with Keynesian economic policy elements.<sup>14</sup> The challenges of climate change are just one facet: the war in Russia, the pandemic, etc. have also promoted an active role for the state and therefore also for the EU.

However, this analysis only concerns the form. To put it in a nutshell: State interventionist action can also follow an economic liberal logic. Just think of the constitution of CO<sub>2</sub> certificate trading.

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<sup>12</sup> Article 49, Regulation (EU) 2024/1735 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724.

<sup>13</sup> For more on the social dimension, see e.g. Deinert, Die soziale Dimension des Unionsrechts in Verfahren vor dem EuGH, ZESAR 2025, 13 et seq., on the European pillar of social rights Hofmann/Bazzani, Die Europäische Säule sozialer Rechte, ZESAR 2023, 461.

<sup>14</sup> Schmit, Europas soziale Marktwirtschaft im Wandel, Sozialrecht Aktuell 2022, 210.

#### IV. In particular: Worker's Voice

So: Do collective actors and interest groups have a voice in shaping the Green Deal?

We believe that the shift towards the primacy of the political is only marginally flanked by a higher priority for social dialog or even the social dimension of the EU. The social partners, and in particular the trade unions – as the supporters of Workers Voice – are open to the Green Deal at European level and have a constructive attitude. In view of the threatening changes in the climate the goal is widely shared and accepted.

However, the social partners have not played a decisive role in shaping the political instruments with which the reduction target can be achieved. It is complex for both: the trade unions and the employers' side, to work out a common position even within their organisation, because the sectoral interests of the economy are different and even opposing.

In the end the Green Deal is based on an agenda that was drawn up by the Commission and negotiated with the Member States and Parliament. Although the dimension of the just Green Deal is taken into account, the social dimension has not of the same priority.<sup>15</sup> While the measures to achieve the emission targets are implemented with binding legislation,<sup>16</sup> much of the social dimension remains in the form of recommendations and non-binding legislation.<sup>17</sup>

The fact that the practice of collective representation of interests at EU level is inadequate has long been noted and criticised by European labour law scholars. The social partners at European level are – at least – consulted. After all, something is being done to remedy this deficit and to give new impetus to social dialogue after the recent setbacks (just think of the negotiations on the framework agreement on teleworking).<sup>18</sup> The Commission has set up forums for dialogue, such as the Tripartite\_Social Summits. There are plans to draw up a pact for

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<sup>15</sup> Busch, Dörte, Soziale Dimensionen des European Green Deal, ZESAR 2024, 143.

<sup>16</sup> Notable examples include: Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality; Regulation (EU) 2019/631 setting CO2 emission performance standards for new passenger cars and for new light commercial vehicles or the comprehensive set of legal acts adopted under the the "Fit for 55" package.

<sup>17</sup> Such as: Council Recommendation on ensuring a fair transition towards climate neutrality (2022/C 243/04), OJ C 243, 27.06.2022, p. 35–51.

<sup>18</sup> See for the Trade Union perspective EPSU, Euroean employers pull the plug on telework negotiations, feeding the narratie of the far-right, <https://www.epsu.org/newsletter/european-employers-pull-plug-telework-negotiations-feeding-narrative-far-right>.

European social dialogue in 2025.<sup>19</sup> The planned strengthening of European works councils is also a step in the right direction.<sup>20</sup>

## **V. The substantive contribution of social dialogue**

At the last tripartite summit in March 2024, both employers and trade unions expressed some common positions: for example, they called for an active industrial policy with more effective instruments to prevent the deindustrialisation of Europe, promote private investment and secure high-quality jobs. In that view, the EU fiscal rules remain a significant barrier to transition. While the employers' side points in particular to the shortage of skilled labour, the trade unions are concerned with social conditionality: public funds must not be used for social dumping, but must be used to create high-quality jobs. There is also a lack of an EU directive for just transition that ensures a sufficient level of information and participation in the fundamental transformation and obliges companies to develop transformation plans and ensure the fair and equitable retraining of workers.

This partial agreement between the social partners may seem surprising at first glance. It is probably also due to the fact that social partnership is rooted in the fossilised parts of the economy. Here, we have a strong tradition of social partnership with the result that the level of worker's voice is rather high and working conditions are relatively good. The ecological transformation has the potential to replace structures that have stood for comparatively good work with unregulated labour. This would have disastrous consequences for the standard of working and of living in the EU, but also for the stability of the political system. On the other hand, collective bargaining structures can contribute to a sustainable and just transition of existing production.<sup>21</sup>

In sectors that are emerging in the wake of ecological change, good working conditions and participation rights must be established, which also means that they must be fought for anew. Labour law must not only make these labour struggles possible, but even promote them. This challenge must be solved via the Green

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<sup>19</sup> See von der Leyen, Political guidelines for the next European Commission 2024-2029, p. 18: „Together with European trade unions and employers, we will deliver a new Pact for European Social Dialogue in early 2025“, retrieved from: [https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648\\_en?filename=Political%20Guidelines%202024-2029\\_EN.pdf](https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf).

<sup>20</sup> Proposal for a Directive amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights (COM/2024/14 final), 24.01.2024.

<sup>21</sup> Prosdociimi, Collective Bargaining in the Energy-Oil and Chemical-Pharmaceutical Sectors in the Context of Ecological Transition, Italian Labour Law Journal 2024, 1; Laabbas-El-Guennouni, La negociación colectiva y los agentes sociales como nuevos aliados en la protección ambiental: especial referencia al sector químico, Revista andaluza de trabajo y bienestar social 2023, 129; see for the rights of works councils and trade unions Däubler, Klimaschutz und Arbeitsrecht 2023.

Deal if the transition to a sustainable economy is to be successful. I think it is fair to say that the current instruments of the Green Deal do not meet this challenge.

## **VI. Social dimension of some instruments**

However, the shortcoming of a rather low level of worker's voice in the genesis of the Green Deal could be equalised by the content of the political instruments. So let's take a look at that.

One crucial question is whether the state aid or state incentives that accompanies the interventions to achieve climate goals must or at least can be tied to commitments by the recipients to comply with social and collective standards. The legal question has not been clarified. In our view, this is a key shortcoming.

Moreover, the instruments of the social dimension of the Green Deal are still fragmented. The Just Transition Mechanism<sup>22</sup> and the Social Climate Fund<sup>23</sup> certainly point in the right direction: Not only regarding labour market policy regulations such as retraining, but also when workers are addressed as consumers. There are important means to combat energy poverty, maintain mobility and provide access to CO<sub>2</sub>-neutral technologies, especially for low-income households.

However, the scope of the programs is limited. The Council's recommendations to ensure a fair transition to climate neutrality<sup>24</sup> do not provide the comprehensive policy platform that the EU needs to deal with the impact of the fundamental transition on affected workers, regions and vulnerable people.

The Green Deal assigns the task to support the changes from bottom up so that social hardship is avoided and employees are taken along. In this way, politics at EU level is replicating a distinction that we are very familiar with, at least in Germany: The prevailing conservative and liberal views of collective autonomy declare the entrepreneurial decision to be sacrosanct, but allow social dialogue to shape and accompany the decisions socially. The same applies to the approach of the Green Deal: Collective organisations should merely address the social consequences.

But there is light and shadow already at this level.

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<sup>22</sup> Regulation (EU) 2021/1056 establishing the Just Transition Fund.

<sup>23</sup> Regulation (EU) 2023/955 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060.

<sup>24</sup> Council Recommendation on ensuring a fair transition towards climate neutrality 2022/C 243/04).



First of all, the entire world of work is undergoing a fundamental change, "comparable to the invention of the steam engine", as labour market researchers point out.

Think of massive job losses for example in the coal industry, which is particularly strong in Eastern Europe. Or in car manufacturing and the supplier industry. Other sectors are undergoing existential changes, such as the energy industry, steel production, mechanical engineering and the circular economy. The regional characteristics of these processes urgently need to be analysed. Occupations are becoming deskilled, while elsewhere there is an increased demand for highly qualified jobs; the shortage of skilled labour is on everyone's lips and is not missing from any summit declaration.

So, everyone knows that education and training on the job require new concepts tailored to specific sectors and an active labour market policy. Therefore, the programmes require a sufficient financial volume. Many experts say that this is not the case.

Furthermore, the labour law aspect: The Green Deal does not focus on adapting and strengthening the rights of employees in the event of restructuring, site relocations, mass redundancies, insolvencies or even job training or adaptation. While the EU is certainly addressing digitalisation with new legal acts (such as the Platform Work Directive),<sup>25</sup> green transformation is currently being negotiated at a technical and not so much at a social level.<sup>26</sup>

The question of what role the social partners should be given in the Green Deal is not just a question of political values, which can be answered either way depending on one's own convictions. It is about the success of the transformation to a climate-neutral society as such. The current distortions, the rise of the radical right, definitely have various causes. One of it, however, is probably the feeling of a lack of self-efficacy, the view that one cannot influence the changes that are important for the own life. All studies on this topic show that worker's voice at the own workplace, is the best mean of promoting democratic attitudes and intercultural openness among employees.<sup>27</sup>

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<sup>25</sup> Directive (EU) 2024/2831 on improving working conditions in platform work.

<sup>26</sup> Arabadjieva/Barrio, Rethinking social protection in the green transition, 2024.

<sup>27</sup> See a large-scale study that was based on a survey of 15,000 people across Europe: Hövermann/Kohlrausch/Langer/Meulemann: How work shapes democracy, 2025; Jirjahn, Uwe/Le, Thi Xuan Thu: Political Spillovers of Workplace Democracy in Germany, *Annals of Public and Cooperative Economics*, 2024, 95(1), 5-31; Decker/Kiess/Heller/Brähler, Vereint im Ressentiment, *Leipziger Autoritarismus-Studie* 2024.

The employment policy dimension of the Green Deal therefore needs to be courageously expanded in order to successfully manage the transformation.

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## § 2 GREEN TRANSITION AS A CHALLENGE FOR THE SYSTEM OF INDUSTRIAL RELATIONS IN BELGIUM. A LEGAL PERSPECTIVE

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### A. An artistic Prelude<sup>28</sup>

On a very fundamental level, one might ask how labour and the environment relate to each other. The answer might be reflected in the only Monument to Labour projected in the 19<sup>th</sup> century which has ever been effectively realized. All the elements of this architectural monuments had been crafted by the Belgian sculptor Constantin Meunier (1831-1905) when he passed away, but it took another quarter of century to have it inaugurated in public space. It took the genius of an architect to invent the syntax of the monument and an investment of the Belgian State to get there. The first centenary of the Belgian State (1930) created a momentum to establish an identitarian monument *sui generis* allowing the working class to identify with a Nation which had deprived them of a genuine (male) suffrage for the biggest part of that centenary.

This Monument which tends to glorify Labour conveys an anthropological message about Labour. The combination of a Maternity Group superseded by the Statue of the Sower clarifies that woman's labour as a result of a process of procreation allows for the survival of humankind as a *species*. At a more individual level, it pays witness to the idea that the survival of the individual human beings depends on the performance of labour. That kind of labour presupposes a relationship with Nature. Thus, all the representations of workers in action are situated in four reliefs which according to the titles suggested by Meunier refer to the four elements of Empedocles, hence to Nature. Water is represented by the dockers of the Port of Antwerp, Fire by the craftsmen in a Glass factory, Air by the agricultural workers and Earth by the coalmine workers.

A logical source of inspiration for this anthropological insight might have been the following fragment of the encyclical *Rerum Novarum* (1891), which predates the *Incipit* of the entire project.

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<sup>28</sup> Levine, Monumental Transformations. The changing status of Constantin Meunier's Monument to Labour. See also Dorssemont, Soziales Recht 2023.

*“For God has granted the earth to mankind in general, not in the sense that all without distinction can deal with it as they like, but rather that no part of it was assigned to any one in particular, and that the limits of private possession have been left to be fixed by man's own industry, and by the laws of individual races. Moreover, the earth, even though apportioned among private owners, ceases not thereby to minister to the needs of all, inasmuch as there is not one who does not sustain life from what the land produces. Those who do not possess the soil contribute their labor; hence, it may truly be said that all human subsistence is derived either from labor on one's own land, or from some toil, some calling, which is paid for either in the produce of the land itself, or in that which is exchanged for what the land brings forth”.*

## **B. Introduction**

In this contribution, we will seek to analyse the challenges the green transition constitutes for the Belgian system of industrial relations. This analysis will be conducted from a legal perspective. The unique research question is whether the prerogatives which are bestowed upon the representative organisations and the workers' representatives allow these actors to deal with the green transition insofar as it affects their interests.

The notion of Green Transition is not a legal notion which as such has entered into the normative instruments of Belgian labour law. For the sake of this contribution, the notion of Green transition will be distilled from the *Guidelines for a just transition towards environmentally sustainable economies and societies for all*, developed by a Tripartite Group of experts of the ILO (2015) and from the subsequent Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) n° 401/2009 and (EU) 2018/1999, known as the “European Climate Law”.

The expert group of the ILO insisted on the promotion of “institutionalized workplace cooperation by fostering a culture of dialogue, knowledge sharing and mutual advice aimed at improving resource and energy, efficiency, reducing waste, and applying safe and clean technologies and working methods that promote productive employment and decent work” and on the promotion of “the adoption by enterprises of long-term environmentally sustainable policies included, but not limited to, low-carbon policies, and engage workers and their representatives and

governments, where appropriate, on the means to achieve that goal while creating and protecting employment”.

There is clear focus on the workplace, whereas other levels of industrial operations are not mentioned. The language is very blurry on the precise tools enabling some kind of worker’s involvement in the design or the implementation of the environmentally sustainable policies. The overall approach to industrial relations is bipartite.

The approach of the European Climate law is much more tripartite. It deals under the heading “public participation” with an obligation bestowed upon the European Commission to “engage with all parts of society to enable and empower them to take action towards a just and socially fair transition to a climate-neutral and climate-resilient society”.

It further states that “shall use all appropriate instruments, including the European Climate Pact, to engage citizens, social partners and stakeholders, and foster dialogue and the diffusion of science-based information about climate change and its social and gender equality aspects”.

Contrary to the Guidelines of the ILO expert group, the approach is much more on a tripartite dialogue between the authorities and parts of societies. No privileged status is given to the social partners in respect of any other stake holders. The instrument is more precise on what might be understood as green transition for the sake of this contribution by referring in a much more precise way to a “just and socially fair transition to a climate-neutral and climate-resilient society”.

## C. Actors of the Social Dialogue

To understand the place of ecology in the landscape of collective relations in Belgium, we first need to analyse the positions of the social partners on this subject in order to establish their openness to discussion. Belgium has a large number of social dialogue players. On the employers' side, there is one national organisation, the *Fédération des Entreprises de Belgique* (FEB) (Federations of the Enterprises of Belgium), and three regional organisations,<sup>29</sup> not to mention numerous other more specific organisations.<sup>30</sup> On the workers' side, three organisations are

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<sup>29</sup> In Flanders, it is the *Vlaams Netwerk van Ondernemingen* (VOKA) (Flemish Network of Enterprises), in Wallonia, it is AKT For Wallonia (AKT), and in Brussels, it is the Brussels Enterprises Commerce and Industry (BECI).

<sup>30</sup> There are dozens of sectoral federations of employers, several agricultural federations (the biggest are in Flanders the *BoerenBond* and in Wallonia the *Fédération wallonne de l'agriculture* (FWA) (Walloon Federation

considered to be representative of workers: the *Confédération des syndicats chrétiens* (CSC) (Confederation of the Christian Trade Unions), the *Fédération générale du travail de Belgique* (FGTB) (General Labour Federation of Belgium) and the *Centrale générale des syndicats libéraux de Belgique* (CGSLB) (of Liberal Trade Unions of Belgium General and Central Organisation), all three of which are national. Given the limitations of this chapter, we have chosen to focus on the three main players: the FEB as the national employers' association and the CSC and FGTB as the two largest unions in terms of membership.

Firstly, as far as the FEB is concerned, its political positions are not easy to explain. Unlike the trade unions, there are no long documents such as congress proceedings setting out a vision of the ideal society. In the absence of any response to our requests, we had to cope with the documents available on their website.<sup>31</sup> The organisation's "mission statement"<sup>32</sup> states that 'sustainable growth', which has not been defined, is the sixth of the FEB's six objectives, but it is being mentioned without further detail. The organisation has also adopted a political memorandum<sup>33</sup> on the eve of the legislative elections on 9 June 2024 containing ten priorities, four of which relate at least in part to the environment. Essentially, the FEB is asking the government to invest in new, greener infrastructure, to facilitate building work and to promote the circular economy. Social consultation is only mentioned to organise wage cuts. It is therefore not envisaged to address environmental issues. Furthermore, far from calling into question the economic development model and its ecological footprint as suggested by the IPCC, the FEB confines environmental issues to a technical problem that can be solved by public investment and engineering.

Secondly, the positions of the CSC are quite numerous and more explicit and detailed. In essence, the CSC supports an ecological transition towards a climate-neutral society and economy. On how to achieve this, it defends the participation of workers and their representatives in drawing up fair transition plans at all levels of negotiation. Its vision of ecology also involves questioning the economic system as it operates today. This programme is reflected in both theoretical position papers and concrete actions. On the theoretical level, several documents should be mentioned. *Primo*, these positions can be found in "L'ABC de la CSC",<sup>34</sup> a

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of Agriculture)), but also two federations for small and medium enterprises and self-employed workers (for the Dutch-speaking it is the *Unie van Zelfstandige Ondernemers* (UNIZO) (Union of Self-Employed Entrepreneurs) and for the French-speaking it is the *Union des Classes moyennes* (UCM) (Union of Middle-Class)).

<sup>31</sup> The absence of a response may indicate the FEB's lack of interest in this issue.

<sup>32</sup> FEB, Mission statement.

<sup>33</sup> FEB, Horizon BE2030.

<sup>34</sup> CSC, L'ABC de la CSC, Syndicaliste.

presentation of the union available on the CSC website. a presentation of the union available on their website where ecology and just transition are the fifth of the six priorities of the CSC. *Secundo*, it appears in the association's contribution to the National Just Transition Conference.<sup>35</sup> *Tertio*, it appears in the text of the 2024 Congress,<sup>36</sup> where ecological action can be found in the third of the three action blocks. *Quarto*, these priorities were also taken up in 2024 in the memorandum for the legislative elections.<sup>37</sup> On the practical level, the CSC is acting in at least three ways. *Primo*, it has a guide<sup>38</sup> for workers' representatives, in the form of a toolbox, to support them in the transition of their company and jobs towards an ecologically sustainable activity. *Secundo*, in collaboration with the FGTB, the CSC has set up regional expertise units to help workers' representatives implement ecological measures in their companies.<sup>39</sup> *Tertio*, the CSC participates with the FGTB in the Climate Coalition. The latter is a group of civil society organisations that promotes ecology and organises national demonstrations in which members and leaders of the two unions take part.<sup>40</sup>

Thirdly, the positions of the FGTB are less accessible and less highlighted on their website, but they do exist. Like the CSC, the FGTB promotes an ecological transition that must include worker participation in decision-making and a recast of the economic development model. This programme is reflected in both theoretical positions and concrete actions. On the theoretical front, a number of texts should be mentioned. *Primo*, the organisation's website explains its general objectives and states its commitment to the environment, but it doesn't go on further detail.<sup>41</sup> *Secundo*, there are ecological commitments and the issue of worker participation in the contribution to the National Conference on Just Transition.<sup>42</sup> *Tertio*, the 2022 Congress contains proposals on the environment, and these take up the first section of the first of the five resolutions.<sup>43</sup> *Quarto*, in the run-up to the 2024 legislative elections, the FGTB has also drawn up a memorandum containing ten points, the seventh of which concerns our subject.<sup>44</sup> On a practical level, FGTB does not have any specific tools to support its representatives on environmental

<sup>35</sup> CSC, Qu'attendons-nous de la Conférence nationale de la transition juste ?. The document runs to fifty-six pages, demonstrating the organisation's commitment to this theme.

<sup>36</sup> CSC, Le travail à retravailler – Werk, daar is werk aan.

<sup>37</sup> CSC, Mémoire CSC. Élections fédérales, européennes et régionales 2024.

<sup>38</sup> CSC, page « Brochures – Environnement » on the website acv-csc.be.

<sup>39</sup> In Flanders, coexist the « Intersyndicaal Milieu-Initiatief » and the « Arbeid&Milieu » (integrated in the civic platform Reset.Vlaanderen with other ecological organisations), in Wallonia, it is the « Réseau intersyndical de sensibilisation à l'environnement (RISE) », and in Brussels, the « Réseau intersyndical bruxellois de sensibilisation à l'environnement (BRISE) ».

<sup>40</sup> SEPULCHRE, Chronique internationale de l'IRES 2023.

<sup>41</sup> FGTB, page « Qui sommes-nous ? » on the website fgtb.be.

<sup>42</sup> FGTB, Réponses ABVV-FGTB et centrales aux questions soumises à consultation. The six-page document is much less detailed than the CSC document.

<sup>43</sup> FGTB, Résolutions. Plus de solidarité et d'égalité après la crise de corona.

<sup>44</sup> FGTB, Élections 2024. Mémoire.



issues, but it has co-created regional expertise cells with the CSC, and it also participates in the Climate Coalition.

Belgium's social partners therefore have mixed views on the question of employee involvement in transforming the economy towards climate neutrality. While the trade unions are showing signs of support – the CSC a little more than the FGTB – the FEB, on the other hand, has no intention of doing so, and may even be totally opposed.

## **D. On the distinction between bipartite and tripartite Social Dialogue**

Prior to that, it is important from a semantic point of view to distinguish bipartite and tripartite social dialogue. The notion of social dialogue is used in a comprehensive or generic way. It has never been used in ILO Conventions neither in ILO Recommendations. However, some recent instruments adopted by the International Labour Conference refer to the notion.<sup>45</sup> In the Compilation of decisions of the Freedom of Association Committee, social dialogue tends to be used in a narrower sense, as referring to tripartite social dialogue, which is being distinguished from collective bargaining. The most powerful instruments dealing with tripartite social dialogue have a very restrictive scope. ILO Convention nr. 144 concerns a process of consultation by the Member States of the ILO with regard to the implementation of international labour standards of the ILO. The ILO Recommendation nr. 152 deals with tripartite consultation concerning the activities of the ILO. The ILO Recommendation nr. 113 has a much broader scope. § 4 of the ILO Recommendation nr. 113 states: “Such consultation and co-operation should have the general objective of promoting mutual understanding and good relations between public authorities and employers' and workers' organisations, as well as between these organisations, with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living”.

The language of the instruments dealing with tripartite social dialogue are fleshed out in a language which is less dialectical or conflictual, whereas the contractual nature of the outcome of collective bargaining presupposes that signatory parties

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<sup>45</sup> ILO, Declaration on Social Justice for a Fair Globalization.

ILO, Resolution ILC concerning the second recurrent discussion on social dialogue and tripartism: “*Social dialogue plays an important role in shaping the Future of Work, taking into account particular trends of globalization, technology, demography and climate change.*”

ILO, Centenary Declaration: “*recognizes that Social Dialogue is crucial for a well-functioning and productive economy.*”

have conflicting interests. Thus, the ILO Recommendation nr. 113 refers to “matters of mutual concern” to employers’ and workers’ organisations. The *tripartite* nature of the social dialogue needs to be interpreted in a broad manner. Contrary to the ILO Constitution, it does not suggest that it takes places *in se et per se* in instituted bodies where representatives of the State, the workers and employers are represented. It can also cover procedures involving these actors, such as procedures allowing organizations of workers and employers to produce opinions addressed to State actors, on their own initiative or at the request of governmental institutions. The outcome of the social dialogue can range from documents where information is being exchanged, to joined opinions or to agreements. The legal nature and binding of these agreements can be divergent.

## **E. Structures and outcomes of the Bipartite Social Dialogue**

For a proper understanding of the way in which the system of industrial relations allows representative workers’ organisations to get hold of the labour and employment issues, it is relevant to explain the legal framework of the bipartite social dialogue at enterprise, sectoral and intersectoral level and which prerogatives and outcomes it attributes and generate.

For a proper understanding of the Belgian system of industrial relations *in liminis*, it is important to link the *genesis* of the Belgian system of industrial relations to post World War II «Fordism». Fordism is usually explained in function of the eponymous manufacturing system designed to produce standardized, low-cost goods and afford its workers decent enough wages to buy them.

Belgian scholars refer to Fordism in order to grasp the spirit of the emergence of an institutionalised system of industrial relations, based upon an historic post WAR II economic need to enhance productivity and to ensure a fair share between capital and labour of the benefits produced.<sup>46</sup> Fordism in Belgium is based upon a compromise. The essence of the system is a mutual recognition of trade unions and employers or employers’ organizations. Whereas employers recognized the right to organize, the trade unions recognized the necessity of managerial authority. The idea was that free collective bargaining would be sufficient to ensure a just return on labour through a decent remuneration so that that mass production and consumption can go hand in hand. The common concern to raise productivity (*rendement*) was considered to be the means to satisfy both the wish of purchasing

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<sup>46</sup> See in this respect: *Meynen* in: Luyten/Vantheemsche (eds.), *Het Sociaal Pact van 1944*.

power and some kind of competitiveness in an era which both preceded globalisation and the economic and monetary union. This pact between management and labour was enshrined solemnly in nearly identical terms in 1944,<sup>47</sup> 1947<sup>48</sup> and 1975.<sup>49</sup> It covers the entire period of what in France is called *Les trente glorieuses*.

The Belgian system is based upon a set of institutionalised bodies fit for «dialogue» between workers' representatives or representative workers organisations and the employer or employers' organisations at three levels: the Plant level (erroneously qualified as *entreprise*), where the *Conseil d'entreprise* (works council), the *Comité pour la prévention et la protection au travail* have been instituted; the branch level at the level of a sector (*Commissions paritaires*) and the *Conseil national du travail*. The *Conseil central de l'Économie* is not a body where genuine bipartite collective bargaining takes place but could be described as a body of tripartite social dialogue in the meaning highlighted *supra*. The *Conseil National du Travail* is both a forum for bipartite and tripartite social dialogue. Neither one of these institutions is anchored in the Constitution. The Constitution lacks a *Sozial Staat* principle, although the respect of economic, social and cultural rights has been enshrined in Article 27 of the Constitution. On the contrary, there is a place for the well-being and the protection of animals in Article 7*bis* of the Constitution, which more importantly urges the federal State as well as its constituent communities and Regions to pursue the objectives of sustainable development, in their social, economic and ecological dimensions, taking into account the solidarity between generations. The justiciability of such a horizontal clause is still unclear. The provision dates back to two reforms of 2021 and 2024.<sup>50</sup>

In Belgium no bodies for social dialogue at the level of the genuine undertaking as opposed to the establishment or group of undertaking have been established, unless the group might qualify for the institution of a European Works Council.

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<sup>47</sup> Un projet d'accord de solidarité sociale (1944): "Having confronted their respective views, employers' and workers' representatives recognize that the smooth running of business, to which the general prosperity of the country is linked, requires their loyal collaboration. They wish to base relations between employers and workers on mutual respect and on reciprocal recognition of their rights and duties. Workers respect the legitimate authority of company managers, and take pride in conscientiously carrying out their work. Employers respect the dignity of workers, and take pride in treating them fairly. In this spirit, the representatives of the two parties agreed to ask the Government to take, as soon as the country regains its independence, a series of emergency measures, to repair the misery suffered during the occupation by the great mass of wage-earners, and to open the way to a renewed current of social progress arising both from the economic expansion of a pacified world and from an equitable distribution of the income from growing production." (translation).

<sup>48</sup> Accord national relatif aux principes généraux du statut de la délégation syndicale (1947).

<sup>49</sup> Article 2, CCT nr. 5 of 24 May 1971.

<sup>50</sup> Belgian Constitution, art. 7*bis*: « Dans l'exercice de leurs compétences respectives, l'Etat fédéral, les communautés et les régions poursuivent les objectifs d'un développement durable, dans ses dimensions sociale, économique et environnementale, en tenant compte de la solidarité entre les générations. Dans l'exercice de leurs compétences respectives, l'État fédéral, les communautés et les régions veillent à la protection et au bien-être des animaux en tant qu'êtres sensibles. ».

The competences attributed to these bodies are based upon a very artificial distinction between economic issues, social issues and health and safety issues. The qualification of issues is decisive both for the attribution of the competences and for the degree of worker involvement as well as for the extent of the restrictions. Hence, it is essential to relate any ecological issue to an economic or a social one.

The Belgian system of industrial relations is considered as *dual channel* at the plant level due to the juxtaposition of so-called union delegates and elected workers representatives which are represented in the *Conseil d'entreprise* and the *Comité pour la prévention et la protection au travail*.<sup>51</sup> The union delegates are either designated by the representative trade unions or elected by the members of the trade union at company level whereas the workers' representatives are elected by all the workers at plant level. Hence, as a general rule, the union delegates do not represent the trade union, but solely the affiliated members at the company level, whereas elected workers representatives represent affiliated and non-affiliated workers.

In general, the system of industrial relations at the level of the plant or the workplace is restricted to soft prerogatives, only rarely extending to codetermination. Hence, the focus is on information and consultation. Codetermination or veto rights are close to non-existent.<sup>52</sup> The *Conseil d'entreprise* and the *Comité pour la prévention et la protection au travail* lack corporate personality. Furthermore, information and consultation on economic issues as opposed to social issues may be made subject to confidentiality or might be denied on the basis of the qualification of data as "secret". It is extremely hazardous to assume that the worker involvement in the realm of economic and social issues might extend to the business strategy as such. One might argue that the approach to information and consultation in the *Comité pour la prévention et la protection au travail* is fleshed out in more pro-active manner. Workers' representatives can make proposals with regard to health and safety policies, rather than awaiting a moment where they need to be informed and consulted.

At sectoral level, it is even more difficult to identify competences which extend the purely social issues of the relations between employers and workers at sectoral level. The Law on collective agreements and joined committees (1968) has restricted the competence to issues of collective bargaining and mediation and

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<sup>51</sup> Dorssemont in: C. La Macchia, Representing Employee Interests: Trade Union Systems Within the EU.

<sup>52</sup> Dorssemont/Lamine, *Revue de droit comparé du travail et de la sécurité sociale* 2019.

conciliation of industrial disputes. The mere fact that the law provides that the joined committees can exercise any mission defined by or on the basis of statutory legislation is not a lever to any competence in the economic sphere neither is the fact that they can give opinions to the government on issues within their competence a lever to allow these committees to deal with economic issues.<sup>53</sup>

Another feature of the Belgian system of industrial relations is that it combines features of institutionalization, subsidiarity as well of anarchism. The Belgian State has provided for a statutory framework for institutions of social dialogue, for a legal framework which ensures a high coverage and justiciability of collective agreements, without impeding on the choice of the so-called representative worker's organisations to opt freely for their legal status. Thus, the representative workers' organisations have opted for the status of so-called *associations de fait*. They cannot be held liable in tort, since they are not corporate persons. The representative status is based on objective and pre-established criteria.

The green transition raises important challenges to *employment relations*. There is a risk for job losses in industrial branches affected by the green transition. Furthermore, there is a mismatch between skills, competences at the labour market and the skills required for new green jobs. The lack of a just transition might generate health and safety problems inside the company. It goes without saying that some of these issues can be dealt with on the basis of existing prerogatives. However, insofar as companies will engage in an overall strategic plan to deal with green transition, no specific provision seems to exist ensuring that workers' representatives will be involved in the overall design and implementation of such a policy. There is no worker involvement on the adoption and the elaboration of strategies of enterprises. Neither are there provisions dealing with worker involvement in the field of ecological policies. Neither is there any kind of participation of employees in the governance at company level.

A recent statutory law of 2 December 2024 has finally implemented the obligations under Directive (EU) 2022/2464.<sup>54</sup> Thus, the competence of the works council has been extended to be informed about the information on sustainability which companies under this directive need to communicate to the public at large. This constitutes a right to meta-information. In line with the directive, the information is not just communicated, but also "discussed" with the representatives of the workers and the report of this meeting is communicated to the general assembly.

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<sup>53</sup> Article 38, Loi sur les conventions collectives et les commissions paritaires of 5 December 1968.

<sup>54</sup> Loi relative à la publication, par certaines sociétés et groupes, d'informations en matière de durabilité et à l'assurance de l'information en matière de durabilité et portant dispositions diverses of 2 December 2024.

In absence of a works council, the *Comité* will exercise this prerogative and in absence of such a *Comité*, the union delegations will exercise it.

Collective bargaining in Belgium is restricted to “relations between bargaining partners and rights and obligations between employers and employees”.<sup>55</sup> Hence it is unclear how to use collective bargaining to tackle the issue of green transition and at which level it should best be tackled. A very soft mechanism might be that signatory parties at sectoral or intersectoral level would recommend their members to be vigilant on issues of green transition or a statement that they would use their authority towards their members to endeavour a just transition.

In the field of intersectoral collective agreements, mention can be made of the Collective Labour Convention nr. 98. This collective agreement builds on a statutory incentive for employers and employees to pay or be paid in *écocheques* which are exempt from taxes, and social security contributions which are fleshed out on the basis of sectoral or enterprise collective agreements. These cheques can only be awarded for services and products labelled as ecologically sound in a list enacted by the social partners in an annex of the CLC nr. 98.

This measure should not be seen as a panacea. The cheques are limited to 250 euros. The limited amount saves this instrument from the non-conformity with ILO Convention nr. 95 which recognizes the freedom of the worker to dispose of his wages. The principle is not absolute and allows for allowances in kind provided that such allowances are appropriate for the personal use and benefit of the worker and his family; and that the value attributed to such allowances is fair and reasonable.

Another example of a national and interprofessional collective agreement concluded within the National Labour Council which might be a lever for green transition might be CLC nr. 19 of 23 April 2019 with regard to the financial intervention of the employer in the financial cost of the public transport paid by workers.

Another more problematic example of how labour law can be relevant for the issue of the green transition is the way in which the Belgian legal order has intervened in the way social partners can regulate the automatic indexation of wages defined in collective agreements. Ever since at least 1996, free and autonomous collective bargaining has been severely restricted in order to safeguard the competitiveness

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<sup>55</sup> Article 5, Loi sur les conventions collectives et les commissions paritaires of 5 December 1968.

of the Belgian economy.<sup>56</sup> Albeit the indexation of wages provided for by collective agreements has not been affected, the social partners are not free anymore to determine the indexation mechanism. Some products are indeed barred from the products which are monitored.<sup>57</sup> Thus, the prices of diesel and petrol cannot be taken into consideration. Hence there is a nudging to buy products which are less detrimental to climate change.

The discourse on green transition is also focused on the creation of green jobs. The question might arise whether there is scope to recognize the branches where these jobs are situated as essential services and the green jobs as essential “services”. In our view, some caution is required. Essential services are only essential insofar as their non-performance might generate a clear and imminent threat to the life, personal safety or health of the whole or part of the population.<sup>58</sup> In my view, it is unlikely that all these green jobs can qualify as essential services. Some of them are situated in manufacturing and construction, which have never been considered as essential services. In a similar way, the Belgian *Loi du 19 août 1948 relative aux prestations d'intérêt public en temps de paix* allows social partners to provide a minimum service in order to safeguard vital needs, as defined by the social partners. There is no mention of ecological needs.

## **F. Structures and results of the Tripartite Social Dialogue**

“Tripartite social dialogue” in Belgium is embodied in a number of institutions. At federal level, there are two joint bodies: the *Conseil national du travail* (CNT) (National Labour Council) and the *Conseil central de l'économie* (CCE) (Central Economic Council). Both have a consultative role vis-à-vis the Belgian government on social and economic matters. In ecological matters, two other federal consultative bodies are of interest: the *Conseil fédéral du développement durable* (CFDD) (Federal Council for Sustainable Development) and the *États généraux de la transition juste* (EGTJ) (General Assembly for Just Transition). It should be noted that within the federated entities, the communities and the regions, there are also consultative bodies for the executives. They are all composed of equal representation, with the exception of the Walloon council, which also includes representation from environmental organisations. In addition, the social partners

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<sup>56</sup> See the Loi relative à la promotion de l'emploi et à la sauvegarde préventive de la compétitivité of the 26 July 1996.

<sup>57</sup> See in this respect *Dorssemont*, European labour law journal.

<sup>58</sup> See in this respect: *ILO*, Freedom of Association. Compilation of Decisions of the freedom of association committee.



are present in a large number of smaller public bodies at many levels of government. In view of the limits imposed by this chapter, we limit ourselves to the CNT, the CCE, the CFDD and the EG TJ.

Firstly, as explained above, the National Labour Council (CNT) has two distinct roles: as the supreme body for ‘bipartite social dialogue’ and as the government’s advisory body on social matters. The latter role mainly concerns issues relating to working conditions and pay, so the CNT has very little involvement in matters relating to the environment. However, a few opinions do exist, often drawn up in collaboration with another federal advisory body. We are only including those opinions relating to public policy on ecological matters. Opinions concerning aspects of employment law as developed above (eco-vouchers, information on sustainability, commuting allowances) will not be taken into account. Three points are worth mentioning. *Primo*, in 2021 the CNT, together with the special advisory committee on consumption,<sup>59</sup> issued an opinion on the preliminary draft of the Federal Sustainable Development Plan 2021-2025.<sup>60</sup> While generally supporting the proposals in the ambitious plan drawn up by the Federal Minister for Climate, the CNT nonetheless points out that the social partners are not sufficiently involved in the construction and monitoring of this sustainable development plan. This is a step in the direction of greater employee involvement in environmental matters. *Secundo*, the CNT, together with the CCE, issued various opinions on Belgium’s monitoring of the sustainable development goals.<sup>61</sup> Similarly, in the preamble to a fairly long and detailed document, the CNT reiterated its intention to become more involved in this process. *Tertio*, the CNT, together with the CCE and the European Economic and Social Committee, organised a seminar on the role of social and civil dialogue in the digital, green and just transitions and in a competitive Europe.<sup>62</sup> Here again, we can see that the ecological theme is alive and well in this body, even if it is treated as a ‘small’ economic challenge on a par with technological development or improving competitiveness.

Secondly, the Central Economic Council (CCE) also deals with ecology in its work. Without going back over some of the work done in collaboration with the CNT, it has to be said that the CCE deals with a wide range of issues relating to ecology. Approaching the subject from the angle of mobility, the environment, energy, housing, productivity, etc., the CCE expresses its views on a wide range of issues,

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<sup>59</sup> The special advisory committee on consumption is a sub-body of the CCE but is made up solely of representatives of consumers and of employers of the distribution sector.

<sup>60</sup> CNT, Avis sur l’avant-projet de plan fédéral de développement durable 2021-2025 (with the CCS Consommation).

<sup>61</sup> See the website [cnt-nar.be](http://cnt-nar.be).

<sup>62</sup> See the website [eesc.europa.eu](http://eesc.europa.eu).



from the most general (rail policy for 2040,<sup>63</sup> for example) to the most specific (authorisation of the use of certain chemicals,<sup>64</sup> for example). The opinions are numerous and enable the social partners to recommend policy directions to the government – even if the government does not take much account of them. In addition, the CCE has special committees dedicated to certain major economic sectors (food, chemicals, construction, distribution, paper, textiles, diamonds). These committees also have equal representation of the social partners. These committees carry out studies and forecasts, and two of them – construction and distribution – have already issued opinions on ecological measures to be taken in their sector.

Thirdly, the Federal Sustainable Development Council (CFDD) is made up not only of the social partners, but also of environmental and development cooperation organisations, consumers' organisations, youth organisations and scientists. The social partners are therefore not in the majority within the institution, but sit on it along with a number of other interest groups. The CFDD issues opinions on a wide range of subjects, all relating to sustainable development. These opinions are often drawn up jointly with the CCE because they concern both the environment and the Belgian economic system. As with the CCE, the opinions may concern very broad subjects (promoting the circular economy,<sup>65</sup> for example) or very specific ones (the authorisation and use of biocides,<sup>66</sup> for example). The potential of this body is therefore considerable, even if it does not have the ear of political decision-makers.

Fourthly, the General Assembly for Just Transition (EGTJ) is a temporary assembly convened by the Federal Minister for Climate in 2022 and which delivered its conclusions in 2023. It was structured around four groups, each of which was required to deliver provisional conclusions. These groups were made up of academic experts, civil society (including the social partners, the CNT, the CCE and the CFDD), citizens chosen by lot and federal administrations. A joint conference brought the four groups together. Two scientists then produced a summary of the reports from the four groups.<sup>67</sup> A series of priorities emerged, including procedural justice. This insists that, in addition to distributive justice, just transition must include a procedural dimension, so as to involve the public and intermediary bodies in decision-making and monitoring. Specifically, the report calls for the involvement of representatives of "industry, trade unions, communities,

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<sup>63</sup> CCE, page « Concrétiser la Vision Rail 2040 » on the website [ccecrb.fgov.be](https://ccecrb.fgov.be).

<sup>64</sup> CCE, page « La mise sur le marché des substances manufacturées à l'état nanoparticulaire » on the website [ccecrb.fgov.be](https://ccecrb.fgov.be).

<sup>65</sup> CFDD, Mise sur le marché et utilisation des biocides (with the CCE).

<sup>66</sup> CFDD, Accélérer la transition vers une économie circulaire (with the CCE and the CCS Consommation).

<sup>67</sup> BACHUS/DUNNE, JustTransition. 4 Principles and 2 Policy packages for a Just Transition in Belgium.

poverty organisations, civil society and interest groups”.<sup>68</sup> The only downside is that this statement only concerns the political authorities and not enterprises. But in the final analysis, these temporary Estates General have also contributed to the place of workers in the ecological transition.

We can see that the tripartite social dialogue is also helping to build bridges between environmental protection and labour law. The fundamental problem here lies in the fact that the federal government takes little account of the many reports produced by these various bodies. The real power of the social partners, including the workers, is therefore limited.

## **G. Assessment and Perspectives**

Some of the problems generated by the challenges of the green transition are dealt with already in a spasmodic and fragmentary way. What is missing in the Belgian legal order is worker’s involvement in the design of the green transition policy which a number of enterprises will surely develop. This is not a problem specific to green transition. In general, beside the issue of health and safety policies, the system of industrial relations does not really allow for involvement in the design of business policies or strategies. The trade unions might want more power in this area, but it remains to be seen whether the employers would be happy with such an evolution.

More hope can be bestowed upon the tripartite social dialogue. It will enable social partners at sectorial and intersectoral level to express opinions at the request of authorities or on their own volition. These bodies enable the social partners to take up ecological issues and anchor them in Belgian economic realities. This results in opinions that may be criticised for lacking ambition, but which always attempt to bring together the economic, ecological and social dimensions, the three pillars of ‘sustainable development’, which remain relevant for a just transition. The great tragedy of tripartism in Belgium is that there have to be three actors, and the social partners are making progress, but the public authorities often don’t follow suit. The Belgian government has a great deal of room for development in this area, and has everything to gain from it, since the involvement of intermediary bodies promotes the acceptance of public policies by society.

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<sup>68</sup> *BACHUS/DUNNE*, JustTransition. 4 Principles and 2 Policy packages for a Just Transition in Belgium, 7.

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## § 3 GREEN TRANSITION AND THE ROLE OF THE WORKERS' REPRESENTATIVES. PERSPECTIVES FROM THE FRENCH LEGAL SYSTEM

Prof. Dr. Arnaud Casado<sup>69</sup>

### A. Introduction

« The stone has no hope of being anything other than a stone.<sup>70</sup> However, by collaborating, it joins others and becomes a temple ». <sup>71, 72</sup> The environmental transformation of our societies is everyone's responsibility.<sup>73</sup> There is no Planet B. Today, our habitat and survival depend on respecting planetary boundaries.<sup>74</sup> It is irresponsible to further degrade ecological systems.<sup>75</sup> The evidence is indisputable: « Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020 ». <sup>76</sup> In 2023, this increase has reached +1.43°C.<sup>77</sup>

To limit global warming, it is essential to reduce greenhouse gas (GHG) emissions and achieve a net-zero economy transition.<sup>78</sup> The near-linear relationship between cumulative anthropogenic CO<sub>2</sub> emissions and the global warming they cause is now well established.<sup>79</sup> Since companies are key contributors to GHG emissions,<sup>80</sup>

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<sup>70</sup> Casado Arnaud, *Le droit social à vocation environnementale, vecteur de durabilité de l'entreprise*, Lexisnexis 2024, 433 p. The phrase "droit social à vocation environnementale" could be translated as environmentally-oriented social law.

<sup>71</sup> Our most sincere thanks go to our colleagues from the Pontignano Comparative Labor Law Seminar for their invitation to join them in the ambitious endeavor of building a cathedral of knowledge on the relatively novel theme of the role of Workers' Representatives in the green transition.

<sup>72</sup> Antoine de Saint-Exupéry.

<sup>73</sup> And thus also for workers and their representatives.

<sup>74</sup> [www.notre-environnement.gouv.fr/rapport-sur-l-etat-de-l-environnement/themes-ree/defis-environnementaux/limites-planetaires/concept/article/presentation-du-concept-des-limites-planetaires](http://www.notre-environnement.gouv.fr/rapport-sur-l-etat-de-l-environnement/themes-ree/defis-environnementaux/limites-planetaires/concept/article/presentation-du-concept-des-limites-planetaires); Maljean-Dubois Sandrine (dir.), *La définition des « limites planétaires »*. *Quelles implications pour le droit et la gouvernance internationale ?*, A. Pedone, 2023.

<sup>75</sup> In 2009, only three planetary boundaries had been reached; by 2023, six of the nine boundaries are considered exceeded.

<sup>76</sup> *Synthesis report of the ipcc sixth assessment report (AR6)*, Summary for Policymakers, 20 mars 2023, A.1.

<sup>77</sup> Haut conseil pour le Climat, « Tenir le cap de la décarbonation, protéger la population », sept. 2024, p 2. For a detailed presentation on the evolution of the climate in France, see, *Soubeyrou Jean-Michel et alii.*, « À quel Climat s'adapter en France selon la TRACC ? », 2024.

<sup>78</sup> *Synthesis report of the ipcc sixth assessment report (AR6)*, Summary for Policymakers, 20 mars 2023, B.5.

<sup>79</sup> IPCC, 2021: Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis*. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, D.1.1.

<sup>80</sup> CDP, *New report shows just 100 companies are source of over 70 % of emissions*, july 2017 ([www.cdp.net/en/articles/media/new-report-shows-just-100-companies-are-source-of-over-70-of-emissions](http://www.cdp.net/en/articles/media/new-report-shows-just-100-companies-are-source-of-over-70-of-emissions)).

decarbonization efforts must primarily focus on them.<sup>81</sup> While national,<sup>82</sup> regional,<sup>83</sup> and international<sup>84</sup> legal frameworks have begun to evolve to better address the consequences of climate change, it is clear that « on a global scale, current national commitments are insufficient to meet the goals of the Paris Agreement, namely to limit warming to well below 2°C and as close as possible to 1.5°C ».<sup>85</sup> Therefore, one must ask whether the ecological transition could be effectively advanced through the engagement of workers and their representatives.<sup>86</sup>

The desire to reconcile social and environmental concerns is not a recent phenomenon.<sup>87</sup> Professor Despax already observed that (...) labour law and environmental law, of course, do not coincide (...), but their domains and objectives overlap, and their interferences are more numerous than ever ».<sup>88</sup> However, two distinct yet complementary movements towards the convergence of these fields can be identified: the first involves the integration of environmental objectives or criteria into labour law rules;<sup>89</sup> the second entails a purposive use of labour law rules to achieve environmental effects.<sup>90</sup> Predominantly, French law has chosen the path of environmentalization of labour law,<sup>91</sup> with the latter being explicitly tasked, on occasion, with «ensuring the safeguarding and contributing to the protection of the environment».<sup>92</sup> This is particularly evident in the context of industrial pollution (French Labour Code, article R. 4222-19) or the new environmental responsibilities of the Social and Economic Committee (CSE – the

<sup>81</sup> *Casado Arnaud and Safi Farah* (dir.), *L'entreprise face aux défis environnementaux*, IRJS, 2022. Reducing greenhouse gas (GHG) emissions is not the only companies face. They must also contend with risks related to pollution, resource depletion, biodiversity loss, and more.

<sup>82</sup> Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises, JORF n°0119 du 23 mai 2019.

<sup>83</sup> 2022/02464/UE Directive, Corporate Sustainability Reporting Directive (CSRD) ; Directive 2024/1760/UE Directive, Corporate Sustainability Due Diligence Directive (CS3D).

<sup>84</sup> Accord de Paris, Paris, 12 déc. 2015, C.N.63.2016.TREATIES-XXVII.7.d, 16 févr. 2016.

<sup>85</sup> HCC, *préc. cit.* p. 14.

<sup>86</sup> For the purposes of this contribution, the term "workers' representatives" will be understood in the sense of the ILO R143 Workers' Representatives Recommendation of 1971, which defines workers' representatives as including both trade union representatives and elected staff representatives.

<sup>87</sup> A recent example can be found in the *PACTE Act* of May 22, 2019, on the growth and transformation of companies. This legislation amends Article 1833, paragraph 2 of the French Civil Code to require that companies be managed in their corporate interest "while taking into account the social and environmental challenges of [their] activities."

<sup>88</sup> *Despax Michel*, Rapport introductif « droit du travail et droit de l'environnement », in *Droit du travail et droit de l'environnement*, Colloque de la Société pour le droit de l'environnement, Toulouse, 30 sept. et 1er oct. 1993, p. 13.

<sup>89</sup> French law predominantly favors this approach to achieving the "green transition." It is worth noting that the legislature does not use the term "green transition" but instead refers to "ecological transition" or "environmental transition."

<sup>90</sup> *Casado Arnaud*, *Rec. Dalloz* 2019, 2425.

<sup>91</sup> Labour law encompasses the legal rules governing relationships between private employers and employees in the context of work. Its primary purpose is to structure the relationship between employers and employees. Traditionally, it does not address environmental matters.

<sup>92</sup> In accordance with article L. 110-2 environmental code.

new works council)<sup>93</sup> introduced by the Climate and Resilience Act.<sup>94</sup> However, despite these developments, the study of interactions between labour law and environmental protection remains far from being a cornerstone of legal studies.<sup>95</sup> Actually, Corporate Social Responsibility (CSR) only partially addresses this issue.<sup>96</sup>

In other words, while it would be incorrect to claim that French law is silent on the rights of workers' representatives in the ecological (or green) transition, it must be acknowledged that it remains deficient both in its scope and in the powers it confers to these representatives. For example, although the Climate and Resilience Act explicitly granted elected staff representatives responsibilities to support companies' ecological transition, it did not allocate sufficient means to ensure the effective implementation of these new mandates.<sup>97</sup> More generally, while French law increasingly assigns environmental responsibilities to workers' representatives, this expansion of their attributions is somewhat illusory, as they are granted only limited means to carry out their new tasks. Furthermore, recent legislative developments appear confined to specific themes within labour law.<sup>98</sup> Additionally, the powers of staff representatives are scattered across a multitude of legislative texts. This contribution aims to provide an overview of these developments before proposing a forward-looking perspective on the subject.

Currently, workers' representatives can utilize social dialogue mechanisms to address environmental issues. However, these mechanisms differ depending on whether they are used by elected staff representatives sitting on the Social and Economic Committee (CSE) or by designated representatives, such as trade unions representatives within the company.

For clarity and pedagogical purposes, this distinction will guide the presentation of the subject. Accordingly, after outlining how elected staff representatives can

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<sup>93</sup> The Social and Economic Committee (CSE) is the new form of the works council as amended by the French law in 2017. The Social and Economic Committee is tasked with ensuring collective expression of employees, allowing for the continuous consideration of their interests in decisions concerning the management and economic and financial development of the company, work organization, professional training, and production techniques.

<sup>94</sup> Loi n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, JORF n° 0196, 24 août 2021.

<sup>95</sup> Thus, with few exceptions, the indexes of major textbooks intended for labour law students do not include entries for "climate," "ecology," "environment," or "ecological transition" (*Teyssié Bernard*, Introduction au droit du travail, LexisNexis 2024 ; *Auzero Gilles, Baugard Dirk and Dockès Emmanuel*, Droit du travail, Dalloz, 37<sup>e</sup> éd., 2024/2025 ; *Antonmattei Paul-Henri*, Droit du travail, Précis Domat droit privé, LGDJ, 3<sup>e</sup> éd., 2023 ; *Ray Jean-Emmanuel*, Droit du travail, droit vivant, 2024, Liaisons sociales, 32<sup>e</sup> éd. ; *Fabre Alexandre, Rosa Fabrice, Icard Julien*, Cours de droit social, 2023, Éditions IEJ de la Sorbonne, coll. « CRFPA »). *Contra*, for the sole entry « environnement » *Teyssié Bernard*, Droit du travail. Relations collectives, LexisNexis, 13<sup>e</sup> éd., 2023 ; *Lokiec Pascal*, Droit du travail, Thémis droit PUF, 2<sup>e</sup> éd., 2022.

<sup>96</sup> *Trebulle François-Guy* (dir.), La responsabilité sociale des entreprises, Economica, 2000 ; *Blin-Franchomme Marie-Pierre, Desbarats Isabelle* (dir.), Droit du travail et droit de l'environnement: regards croisés sur le développement durable, Lamy, 2010, Axe Droit.

<sup>97</sup> *Casado Arnaud*, BJT sept. 2021, n° 200m3, p. 5.

<sup>98</sup> In addition to the *Climate and Resilience Act*, the *Mobility Orientation Act* (2019) can also be mentioned.



contribute to the green transition (B), we will examine the greening of social dialogue (C).

## **B. The Prerogatives of Elected Staff Representatives**

Historically, environmental responsibilities were not part of the mandates assigned to elected workers' representatives. The law did not explicitly grant the works council any authority in this area. This is no longer the case with CSEs. Today, workers' representatives can address issues related to environmental matters. This explicit evolution of their traditional prerogatives (I) represents a first step towards recognizing their role as stakeholders in environmental issues (II).

### **I. The Explicit Evolution of Workers' Representatives' Traditional Prerogatives**

The *Climate and Resilience Act* explicitly recognized environmental prerogatives for elected workers' representatives. While this text provides improvements regarding the responsibilities of Social and Economic Committees (CSE) in companies with at least fifty employees (1), it must be acknowledged that the means at their disposal are currently inadequate to effectively address the environmental challenges faced by businesses (2).

#### **1. Prerogatives arising from the Climate and Resilience Act**

While the Climate and Resilience Act has strengthened the environmental prerogatives of certain Social and Economic Committees (CSEs), not all workers' representatives have been granted such prerogatives.<sup>99</sup> This calls for improvement, as all companies should contribute to thwarting climate change. More generally, the new responsibilities assigned to the committee appear less extensive than what might have been suggested by its new mission.

The Social and Economic Committee is tasked with ensuring collective expression of employees, allowing for the continuous consideration of their interests in decisions concerning the management and economic and financial development of the company, work organization, professional training, and production techniques. The Climate and Resilience Act amended the wording of Article L.

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<sup>99</sup> While the establishment of a Social and Economic Committee (CSE) is mandatory in companies with 11 or more employees, it should be noted that the *Climate and Resilience Act* does not grant environmental prerogatives to workers' representatives in companies with fewer than 50 employees.



2312-8 I of the French Labour Code to explicitly include environmental concerns within the CSE's scope of action. However, this development does not transform the CSE into an environmental committee. Indeed, the CSE must reconcile the social, economic, and environmental interests of employees, which may occasionally conflict.<sup>100</sup>

With regard to environmental responsibilities, it should be noted that while the provisions of the Climate and Resilience Act represent progress, their scope varies depending on the specific legal information requirements of the committee.<sup>101</sup> First of all, workers' representatives must be informed and consulted<sup>102</sup> on environmental issues affecting the «general operation of the company» (French Labour Code, article L. 2312-8 II et III). These matters notably<sup>103</sup> include: «measures likely to affect the volume or structure of the workforce; modifications to the economic or legal organization [of the company]; conditions of employment and work, particularly working hours and professional training; the introduction of new technologies;<sup>104</sup> as well as measures taken to facilitate the integration, reintegration, or retention of certain categories of workers».

Second, representatives are only required to be informed about environmental issues as part of the company's «strategic orientations» (French Labour Code, Article L. 2312-17). In other words, the committee is not required to provide its opinion on environmental issues during these consultations. Ordinance n°2023-1142 of December 6, 2023, on the publication and certification of sustainability information and the environmental, social, and governance obligations of commercial companies,<sup>105</sup> which transposes the Directive on Corporate Sustainability Reporting (CSRD),<sup>106</sup> amends article L. 2312-17 of the French Labour Code as of January 1, 2025. From that date, the committee<sup>107</sup> must be consulted during recurring consultations on sustainability information for certain companies.

Finally, in the absence of provisions in the Climate and Resilience Act, it appears that workers' representatives are not required to be informed or consulted on ad

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<sup>100</sup> Notably regarding employment in highly polluting or carbon-intensive industries.

<sup>101</sup> *Casado Arnaud* (dir.), *La mise en œuvre des attributions environnementales du CSE*: BJT févr. 2022, n° 2, p. 33. ; *Kerbourec'h Jean-Yves*, JCP S 2021, n° 50, 14 déc. 2021.

<sup>102</sup> Unlike the information process, where the committee is simply informed by the employer, during a consultation the employer must seek the committee's opinion. However, this opinion is not binding.

<sup>103</sup> The list referenced in Article L. 2312-8 II of the French Labour Code is not exhaustive.

<sup>104</sup> And any significant changes affecting health and safety conditions or working conditions.

<sup>105</sup> JORF n°0283, 7 déc. 2023.

<sup>106</sup> 2022/02464/UE Directive.

<sup>107</sup> Subject to the condition that the company is subject to the obligation provided under Article L. 232-6-3 I or Article L. 233-28-4 of the French Commercial Code, or, conversely, that it is exempt from this obligation pursuant to the second paragraph of V of these same articles.

hoc issues such as dismissals for economic reasons or company mergers.<sup>108</sup> In other words, although the legislature has expressly recognized environmental prerogatives for workers' representatives, these remain incomplete. Some projects with significant ecological consequences might therefore not be submitted to workers' representatives for consideration.

To conclude on the prerogatives established by the Climate and Resilience Act, it is important to highlight that the text does not specify the scope of environmental information to be provided to the committee during the new information procedures. As a result, there is uncertainty regarding the environmental information that employers are legally required to disclose to workers' representatives. While the law does not define the term «environmental consequences, »a national interprofessional agreement (ANI) dated April 11, 2023, concerning ecological transition and social dialogue,<sup>109</sup> which was extended in February 2024,<sup>110</sup> offers guidance for identifying such information. According to this agreement«, to determine the information that may be communicated to the CSE as part of these consultations in order to identify the environmental consequences of a project submitted for its opinion, the following elements may serve as a basis for reflection:

- the Environmental Analysis (EA) described in Standard 14001;
- the presentation of the impact assessment study provided by article L. 122-1, III of the Environmental Code;
- the proportionality rule set out in Articles R. 122-5 of the Environmental Code, which stipulates that the content of the environmental impact assessment must be proportional to the scale of the project and its potential effects on the environment. Consequently, a project with little or no environmental impact could be subject to a brief disclosure to the CSE, whereas a project likely to have a significant environmental impact would

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<sup>108</sup> Doctrine is divided on this issue. Some, adopting a teleological interpretation of the *Climate and Resilience Act*, assert that the committee must be informed and consulted (*De Oliveira and Doutriaux*, SSL 26 avr. 2021, n° 1951-1952). Others, relying on a literal interpretation, argue that information is not required in these areas (*Légras François*, CLCSE 1er févr. 2022, n° 222). Finally, some believe that information and consultation should occur at the project stage but are no longer necessary at the implementation stage (*Casado Arnaud*, le droit social à vocation environnementale, *op. cit.*).

<sup>109</sup> *Casado Arnaud*, JCP S 30 mai 2023, n° 21, act. 171. ; Dialogue social et écologie : l'ANI du 11 avril 2023 décrypté par J.-E. Ray: Liaisons sociales quotidien 13 juin 2023, n° 18814, p. 1 et 2.

<sup>110</sup> Arrêté du 22 janvier 2024 JORF 2 février 2024. *Casado Arnaud*, JCP S., 13 fév. 2024, n°6, p. 3.

require more detailed and comprehensive information». <sup>111</sup> Actually, case law has provided little additional clarification on these points. <sup>112</sup>

With these prerogatives outlined, it is essential to consider the resources made available to workers' representatives to enable them to implement these responsibilities effectively.

## **2. Means arising from the Climate and Resilience Act**

Several means have been established by the Climate and Resilience Act to support the implementation of the committee's new environmental responsibilities. However, these measures appear incomplete and underdeveloped. <sup>113</sup> While the new law undeniably offers progress, analysis leads to conclude that the legal framework available to elected staff representatives is insufficiently robust. As a result, there is a risk that the committee will be relegated to a purely formal and consultative role. <sup>114</sup> For example, the Climate and Resilience Act did not provide any additional delegation hours to facilitate the implementation of the committee's new environmental responsibilities. Similarly, the legislation did not establish dedicated environmental commissions to address these new prerogatives. <sup>115</sup> Most importantly, even unfavorable opinions from the committee cannot block projects that are polluting or environmentally hazardous.

The Climate and Resilience Act introduced three key rights for workers' representatives.

Firstly, under article L. 2315-63 of the French Labour Code, the mandatory economic training for newly appointed members of the Social and Economic Committee (CSE) in companies with more than fifty employees may include a component on the environmental impacts of the company's activities. However, the new law is imperfect. <sup>116</sup> To address its shortcomings, the Economic, Social,

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<sup>111</sup> With regard to relevant information for recurring information and consultations, the ANI recommends "utilizing: the energy audit (DPE); the greenhouse gas emissions report; the non-financial performance statement; the vigilance plan; and the business continuity plan."

<sup>112</sup> *Casado Arnaud*, JCP S., 18 avr. 2023, n°15, p. 32-35. In a judgment by the Judicial Court of Nantes dated December 22, 2022, it was held that a study meeting "the requirements of ISO 14064-1 standards" concerning greenhouse gases and specifying "the carbon cost in relation to the organizational/operational scopes of the positions and [detailing] indirect emissions related to electricity consumption and indirect emissions related to individual transportation methods" was sufficient.

<sup>113</sup> *Casado Arnaud*, Loi portant lutte contre le dérèglement climatique : l'incomplétude législative, *préc. cit.*

<sup>114</sup> *Casado Arnaud*, L'environnement dans le droit des relations de travail, in Teyssié Bernard (dir.), *Les métamorphoses du droit du travail*, lexisnexis 2025.

<sup>115</sup> The mandatory establishment of environmental commissions within the committee is, however, demanded by the majority of trade unions.

<sup>116</sup> By way of critique, it should be noted that it is not mandatory for the training to include environmental content, its duration has not been extended by the *Climate and Resilience Act*, and it is not accessible to all workers' representatives.

and Environmental Council (CESE)<sup>117</sup> and certain trade unions advocate strengthening elected representatives' training rights, particularly by extending the leave for economic, social, environmental, and trade union training (ESES).<sup>118</sup>

Secondly, the Economic and Social Database (BDES) has been expanded to become the Economic, Social, and Environmental Database (BDESE).<sup>119</sup> This database may be adapted through collective agreements or, failing that, the environmental information required of the company is governed by supplementary provisions of the French Labour Code, depending on the company's size and its obligations under sustainability legislation.<sup>120</sup>

Finally, the Parliament designated chartered accountants as the default environmental experts for the CSE. Their responsibilities include all economic, financial, social, or environmental matters relevant to the information and consultation procedures submitted to the committee.<sup>121</sup> To perform these duties, chartered accountants may engage specialized individuals, particularly for environmental issues, to assist in drafting their reports. Additionally, the French Labour Code permits the use of authorized experts for introducing new technologies or major projects that significantly alter health, safety, or working conditions, as provided under Article L. 2312-8 II (4°) of the French Labour Code (French Labour Code, Article L. 2315-94, 2°).

In conclusion, regarding expertise, it should be noted that in the absence of explicit provisions in the Climate and Resilience Act, there is nothing to prevent the committee from commissioning independent expertise to prepare for its meetings.<sup>122</sup>

While the numerous improvements of the Climate and Resilience Act make it a cornerstone of the action of workers' representatives, this law does not encompass all their prerogatives. It is therefore necessary to identify the environmental responsibilities that exist outside the framework of the Climate and Resilience Act.

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<sup>117</sup> The Economic, Social and Environmental Council (CESE) is the third constitutional assembly of the French Republic. It advises the Government and Parliament. It represents civil society organizations and involves citizens in democratic life.

<sup>118</sup> Avis du CESE sur proposition de la commission Travail et Emploi, Travail et santé-environnement : quels défis à relever face aux dérèglements climatiques ?, 25 avr. 2023, préconisation 8, p. 24 ; DGT, *La négociation collective en 2022*, éd. 2023, Bilan et rapport p. 35.

<sup>119</sup> The BDESE collects information on the company's main economic and social strategies. It includes mandatory elements that vary depending on the company's size. This information is freely accessible to the members of the Social and Economic Committee (CSE).

<sup>120</sup> *Casado Arnaud*, JCP S 2022, act. 179. The disappearance of the extra-financial performance declaration on January 1, 2025 is likely to have an impact on the supplementary content of the BDESE.

<sup>121</sup> For understanding the company's strategic orientations (French Labour Code, Article L. 2315-87-1), for consultation on the economic and financial situation (French Labour Code, Article L. 2315-89), and for consultation on the company's social policy, working conditions, and employment (French Labour Code, Article L. 2315-91-1).

<sup>122</sup> For further details on expertise, particularly its financing, see A. Casado, *op. cit.* n°139 et s.

## II. Environmental Responsibilities Outside the Climate and Resilience Act

Outside the framework of the Climate and Resilience Act, elected workers' representatives have environmental prerogatives either under their traditional responsibilities (1) or in their capacity as stakeholders (2).

### 1. Through Traditional Responsibilities

Articles 1 and 2 of the Environmental Charter and Article L. 110-2, paragraph 2 of the French Environmental Code provide that it is everyone's duty to ensure the safeguarding and preservation of the environment and to contribute to its protection and improvement. In other words, like all citizens, workers' representatives must participate in environmental protection. Several traditional prerogatives of the Social and Economic Committee (CSE) enable elected workers' representatives to address environmental issues. This is notably the case with social and cultural activities (ASC). These activities, which are not legally mandatory but are primarily carried out for the benefit of company personnel to improve their living conditions,<sup>123</sup> can have an environmental dimension. Even though the law has not explicitly provided for the possibility of «greening» these activities, workers' representatives are still able to do so of their own accord. While it is difficult to provide an exhaustive list of all social and cultural activities that can integrate an environmental purpose, practice offers numerous examples of this possibility, which is widely supported by employees.<sup>124</sup> For instance, the CSE may raise awareness among employees about environmental protection through the editorial policies of company newsletters or by organizing exhibitions or conferences on environmental topics. The CSE can also influence the content of company libraries to strengthen their environmental sections. Additionally, the management of social welfare and mutual aid institutions (French Labour Code, Article R. 2312-35, 1°) offers opportunities to invest funds in financial vehicles that support the energy and ecological transition, as opposed to those financing fossil fuels<sup>125</sup>. Other examples include implementing organic canteens or adopting responsible funding for company travel.

<sup>123</sup> Cass. soc., 13 november 1975, n° 73-14.848. Article R. 2312-35 of the French Labour Code provides a non-exhaustive list of these activities.

<sup>124</sup> Représente.org, Avantages CSE et transition écologique : des enjeux compatibles ? 11 milliards pour la transition écologique : élus CSE, à vous de jouer !, sept. 2020, synthèse, p. 3. According to the study, "9 out of 10 employees would like to benefit from a partial or complete offering of sustainable CSE benefits."

<sup>125</sup> To this end, they can notably invest their savings in a fund certified with the Greenfin label or a fund bearing the SRI (Socially Responsible Investment) label.

This is also true for the prerogatives of workers' representatives in matters of occupational health and safety. The recognition of a link between health protection and environmental protection is not new.<sup>126</sup> The concept of «mixed risks»<sup>127, 128</sup> has been well understood for a long time.<sup>129</sup> However, the consequences of climate change are expected to exacerbate risks<sup>130</sup> to the health of workers exposed to extreme heat or severe weather conditions. As a result, in companies with more than 300 employees, the committee can address environmental issues through the Health, Safety, and Working Conditions Commission (CSSCT) (French Labour Code, article L. 2315-36).

This is also true for public health and environmental alerts. A law of April 16, 2013, on the independence of expertise in health and environmental matters and the protection of whistleblowers introduced two alert procedures into the French Labour Code concerning public health and environmental issues. These procedures can be initiated either directly by an employee (French Labour Code, article L. 4133-1) or by a member of the elected workers' representation (French Labour Code, article L. 2312-60 and L. 4133-2). In the latter case, a workers' representative on the Social and Economic Committee (CSE) who observes a serious and imminent danger, notably through information provided by a worker, must immediately alert the employer and document their findings in writing. The employer is then required to conduct an investigation with the workers' representative and take the necessary measures to address the danger.

In addition to this specific environmental alert, elected workers' representatives may invoke the provisions of the 2016<sup>131</sup> and 2022<sup>132</sup> whistleblower acts. These laws allow the reporting of certain environmental violations.<sup>133</sup> Workers' representatives can also utilize the alert procedure for serious and imminent danger, particularly when the danger arises from climatic hazards.

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<sup>126</sup> *Rodière Pierre*, Rapport introductif « Travail et environnement : aspects de droit international et européen », in *Droit du travail et droit de l'environnement*, Colloque de la Société pour le droit de l'environnement, Toulouse, 30 sept. et 1<sup>er</sup> oct. 1993. p. 21 et s.

<sup>127</sup> A phenomenon that presents a risk both to the worker and to the environment is classified as a mixed risk.

<sup>128</sup> *Supiot Alain*, L'alerte écologique dans l'entreprise, in *Droit du travail et droit de l'environnement*, colloque de la société pour le droit de l'environnement, Toulouse, 30 sept. et 1<sup>er</sup> oct. 1993, p. 95.

<sup>129</sup> *Vanuls Caroline*, Travail et environnement. Regards sur une dynamique préventive et normative à la lumière de l'interdépendance des risques professionnels et environnementaux, préf. Bugada Alexis, PUAM, 2014.

<sup>130</sup> For a critique of assessing environmental issues solely through the lens of risk, see *Casado Arnaud, Vanuls Caroline*, Controverse : Quel droit du travail pour la transition écologique ?, RDT, janv. 2022, n°1, p. 9-17.

<sup>131</sup> Loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique.

<sup>132</sup> Loi n° 2022-401 du 21 mars 2022 visant à améliorer la protection des lanceurs d'alerte.

<sup>133</sup> These texts notably allow for the reporting of criminal acts. The majority of pollution offenses, however, are misdemeanors (*délits*).

Beyond these prerogatives derived from their traditional responsibilities, there has been a notable development of new prerogatives linked to the role of workers' representatives as stakeholders.

## **2. As stakeholders**

The Act of March 27, 2017, on the Duty of Vigilance of Parent Companies and Ordering Companies introduced the obligation of a duty of vigilance for certain large French companies. These companies are required to establish a vigilance plan. This vigilance plan «is intended to be developed in collaboration with the company's stakeholders» (French commercial Code, article L. 225-102-1, I). While French law does not define the concept of stakeholders, a Senate report clarified that workers' representatives and unions are stakeholders.<sup>134</sup> This position has been reiterated by the Corporate Sustainability Due Diligence Directive (CS3D): stakeholders – including employees of the company and/or its subsidiaries, unions, and workers' representatives – must be consulted during various stages of the vigilance process.<sup>135</sup> In implementing the duty of vigilance, companies are specifically required to «engage in constructive dialogue with stakeholders».<sup>136</sup>

The duty of vigilance must be integrated into all policies and risk management systems of companies subject to the CS3D directive. To this end, the duty of vigilance policy must be developed «in consultation with the company's employees and their representatives».<sup>137</sup> An evolution in the responsibilities of the Social and Economic Committee (CSE) is therefore foreseeable, as companies must now promptly update their duty of vigilance policies in the event of significant changes. Furthermore, these policies must be reviewed and, if necessary, updated at least every 24 months.

Recent developments in French law highlight the growing significance of environmental responsibilities for elected workers' representatives. However, the latter are not the only actors capable of taking action. Unions also have environmental prerogatives, reflected in the greening of collective bargaining.

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<sup>134</sup> Rapp. Sénat n° 572 (2019-2020), Responsabilité sociétale des entreprises (RSE) : une exemplarité à mieux encourager, 25 juin 2020.

<sup>135</sup> 2024/1760/UE Directive.

<sup>136</sup> *Ibid.* art. 5.

<sup>137</sup> *Ibid.* art. 7.



## C. Prerogatives of Designated Workers' Representatives: Greening the Collective Bargaining

Collective bargaining on environmental issues<sup>138</sup> is not a new phenomenon,<sup>139</sup> particularly in the context of Corporate Social Responsibility (CSR).<sup>140</sup> However, environmental social dialogue has recently expanded to cover new negotiation topics. To enhance awareness of these topics, the national interprofessional agreement (ANI) of April 11, 2023, on ecological transition and social dialogue aims to «enable social and professional dialogue to address environmental issues at the company level» and to «integrate environmental issues into collective bargaining».<sup>141</sup>

The legislation has not explicitly assigned the management of all environmental matters to social partners. However, in several collective agreements, the provisions have expressly provided for the possibility of negotiating and concluding agreements on specific environmental issues or criteria. Alongside this explicit greening of collective bargaining (1), social partners may also incorporate environmental considerations into other agreements, provided there is no employer objection (2).

### I. The Greening of Collective Agreements Mandated by Law

The Parliament has mandated the incorporation of environmental considerations («greening») into certain collective agreements, both at the branch level (1) and at the company level (2). Nevertheless, the obligations imposed on employee representatives remain relatively limited.

#### 1. At branch level

Several topics falling under branch level negotiations can include measures supporting the ecological transition.

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<sup>138</sup> Bugada Alexis (dir.), *Négociation collective et environnement*, Agreement rapport français, LexisNexis, coll. « Planète social », 2021; Casado Arnaud and Despax Mathilde, *La montée en puissance du dialogue social environnemental*, in Géa Frédéric and Stévenot Anne (dir.), *Le dialogue social l'avènement d'un modèle ?*, Bruylant, 2021, p. 625 et s.

<sup>139</sup> Illustrating the greening of collective labor relations, the two national interprofessionals agreements (*Accords Nationaux Interprofessionnels*) of 2023 highlight the growing interest of trade unions in environmental collective bargaining. Both the ANI of February 10, 2023, on value-sharing within companies, and the ANI of April 11, 2023, on ecological transition and social dialogue, include provisions relevant to environmental collective bargaining.

<sup>140</sup> Petit Franck and Garnier Sophie, *La responsabilité sociale de l'employeur*, Gualino, 2022.

<sup>141</sup> ANI 11 avr. 2023, relatif à la transition écologique et au dialogue social.



Firstly, since the Climate and Resilience Act, negotiations on forward-looking employment and skills management (GPEC) must consider «the challenges of the ecological transition» (French Labour Code, article L. 2241-12). These negotiations are essential for planning the jobs needed to achieve a carbon-neutral economy by 2050. Unfortunately, such negotiations remain underdeveloped. According to observations from the General Directorate of Labour (DGT),<sup>142</sup> «the sectoral agreement for complementary retirement and provident institutions is the only one that explicitly identifies addressing the challenges of the ecological and energy transition as an objective».<sup>143</sup> Sectoral organizations still need to fully embrace this issue.

Secondly, sectoral or branch negotiations must address the impact of exposure to occupational risk factors listed in Article L. 4161-1 of the French Labour Code, including «extreme temperatures». Since the notion of extreme temperatures is not defined in the French Labour Code, this issue is crucial for managing the effects of climate change on workers exposed to heatwaves or extreme heat. Proposed legislation aims to amend the French Labour Code to strengthen workers' rights in this area,<sup>144</sup> although it does not go as far as Spanish legislation.<sup>145</sup>

Thirdly, sectoral negotiations must address certain value-sharing mechanisms such as profit-sharing, employee participation, and savings plans. Since the Act of November 29, 2023, which transposed the national interprofessional agreement on value-sharing within companies, a portion of the funds collected through the collective retirement savings plan must be invested in a socially responsible investment (SRI) fund.

Thus, workers representatives can contribute at the sectoral level to support the ecological transition. The same applies at the company level.

## 2. At the company level

The greening of collective bargaining is also required at the company level. In several topics, the legislation has explicitly provided that collective bargaining must incorporate environmental concerns. For instance, within companies, forward-

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<sup>142</sup> The General Directorate of Labour (DGT) is a department of the French state administration, attached to the Ministry of Labour. The DGT's mission is to coordinate and oversee labour policy to improve collective and individual relations, working conditions within companies, and the quality and effectiveness of the laws governing them.

<sup>143</sup> DGT, *La négociation collective en 2021*, éd. 2022, Bilan et rapport, p. 395.

<sup>144</sup> AN, Proposition de loi visant à adapter le code du travail aux conséquences du réchauffement climatique, n° 1587, déposée le 20 juillet 2023 ; AN, Proposition de loi visant à protéger les travailleurs de l'exposition aux températures extrêmes, n° 2124, déposée le 30 janvier 2024.

<sup>145</sup> *Casado Arnaud*, *Adaptation du droit du travail aux « phénomènes météorologiques défavorables »*, *Le Club des juristes*, 13 déc. 2024.

looking management of jobs and career paths must «in particular [meet] the challenges of the ecological transition» (French Labour Code, Article L. 2242-20, 1°). This mechanism is comparable to the one provided for forward-looking employment and skills management at branch level.

Similarly, at the company level, negotiations may address the «prevention of the effects of exposure to occupational risk factors provided for in Article L. 4161-1», including «extreme temperatures» (French Labour Code, article L. 4161-1, I, 2°, c). In the absence of thresholds established by the legislation, the role of workers representatives is crucial for managing the effects of climate change on employees exposed to heatwaves or extreme heat. On this topic, it is worth noticing that the government recently amended the atmospheric conditions considered as inclement weather for construction and public works employees.<sup>146</sup> Heatwaves can now give rise to compensation for workers in these sectors (French Labour Code, article L. 5424-6 and D. 5424-7-1). For other sectors, workers representatives must negotiate a collective agreement if they wish to extend similar mechanisms to their employees.

Within companies, it is worth noting that telework agreements must address environmental concerns. This work organization method, implemented either through a collective agreement or, failing that, through a charter unilaterally developed by the employer after consulting the Social and Economic Committee (CSE), must include provisions for «the conditions for transitioning to telework, [...] in the event of a pollution episode mentioned in Article L. 223-1 of the Environmental Code» (French Labour Code, Article L. 1222-9 II 1°). Nothing prevents social partners from including other scenarios for telework based on environmental reasons.

To conclude on the explicit greening of collective bargaining, it should be noted that negotiations on sustainable mobility encourage «the use of environmentally friendly modes of transport» (French Labor Code, article L. 2242-17, 8°). In companies with at least fifty employees, negotiations must address measures aimed at improving employee mobility between their usual place of residence and their workplace, particularly by reducing mobility costs and promoting the use of environmentally friendly transportation. In practice, sustainable mobility

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<sup>146</sup> Décret n° 2024-630 du 28 juin 2024 relatif au régime particulier d'indemnisation des salariés par les entreprises du bâtiment et des travaux publics en cas d'arrêt de travail occasionné par les intempéries, JORF n°0152 du 29 juin 2024.

agreements represent the primary entry point for environmental negotiations within companies.<sup>147</sup>

Faced with the increasing integration of environmental objectives or criteria Within legislation, trade unions are increasingly training their members on these issues to enhance the effectiveness of collective bargaining. According to the report on collective bargaining prepared by the General Directorate of Labour, environmental agreements are on the rise.<sup>148</sup>

## II. The Greening of Agreements at the Discretion of Trade Unions

In the absence of legislative prohibition, social partners may choose to incorporate environmental considerations into collective agreements.<sup>149</sup> It is up to workers representatives to take the initiative to maximize the environmental impact of collective bargaining. However, establishing an exhaustive typology of such «agreements»<sup>150</sup> is challenging.<sup>151</sup> Workers' representatives enjoy considerable freedom in this regard.

Mandatory negotiations<sup>152</sup> nonetheless present an opportunity to green the company's normative framework, both through negotiations on remuneration, working time, and value-sharing (1), and through negotiations on professional equality and the quality of life and working conditions (2).

### 1. Negotiations on Remuneration, Working Time, and Value-Sharing

A variety of negotiation topics can incorporate environmental concerns within the framework of discussions on remuneration, working time, and value-sharing. The following are a few illustrative examples.

First of all, we can consider negotiations on actual wages (French Labour Code, article L. 2242-15, 1°). These negotiations can support the environmental transition of the labor market by increasing base salaries in the emerging green sectors of tomorrow. More generally, remuneration policies can align with sustainability

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<sup>147</sup> Casado Arnaud, SSL., 31 oct. 2022, n°2019, p. 7-10.

<sup>148</sup> DGT *préc. cit.*

<sup>149</sup> As long as the agreements remain within the scope of Articles L. 2221-1 and L. 2221-2 of the French Labour Code.

<sup>150</sup> Bugada Alexis (dir.), *op. cit.*

<sup>151</sup> There are several typologies of *agreements*. While the ANI of April 11, 2023, and the authors of the report "*Négociation collective et environnement, Agreement*" both present a list of seven agreements with environmental characteristics, it must be noted that these characteristics are not identical. In our work, we propose a third typology based on mandatory negotiations. A. Casado, *op. cit.* n°189 et s.

<sup>152</sup> The legislature has established mandatory negotiations in French law, provided for by the Labour Code, requiring employers to periodically engage with employee representatives on specific topics (C. *trav.*, L. 2242-1 et seq.).

objectives by implementing pay structures tied to environmentally responsible practices.<sup>153</sup>

Secondly, negotiations on working time can contribute to reducing a company's environmental footprint by introducing a four-day workweek. Supporters argue that reducing working hours would lead to a decrease in production, and consequently, a reduction in greenhouse gas emissions. Furthermore, if such negotiations on reducing working time were combined with discussions on work organization, it could potentially reduce the number of commutes between home and work. This, in turn, would amplify the greenhouse gas reduction effects.

Thirdly, the annual mandatory negotiations can also address «profit-sharing, employee participation, and employee savings plans». The allocation of part of the funds collected under the collective retirement savings plan to a socially responsible investment (SRI) fund contributes to the environmental transition of society. Similarly, this applies to the «acquisition of shares in funds invested in socially responsible enterprises».

In the same direction, since the Pacte Act of 2019,<sup>154</sup> it has been possible to conclude profit-sharing agreements based on CSR (Corporate Social Responsibility) criteria.<sup>155</sup> Article 2 of Decree n°. 2019-862 of August 20, 2019, implementing the provisions of Act n° 2019-486 of May 22, 2019, concerning corporate growth and transformation in the field of employee savings and shareholding,<sup>156</sup> specifies that the performance criteria for profit-sharing agreements may include those listed in Article R. 225-105-II of the French Commercial Code. These criteria include the company's approach to environmental issues, resources allocated to environmental risk and pollution prevention, measures for waste prevention, recycling, reuse, recovery, and disposal, as well as actions to combat food waste. Sustainable resource use, climate change prevention, and biodiversity protection can also be incorporated into these agreements. The use of CSR criteria in collective agreements is on the rise today.<sup>157</sup>

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<sup>153</sup> Roche Vincent, JCP S 14 déc. 2021, n° 50, 1320 and 1321.

<sup>154</sup> Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises, JORF n°0119 du 23 mai 2019.

<sup>155</sup> *Casado Arnaud*, JCP S 9 déc. 2023, n°49, Act. 490.

<sup>156</sup> JO n° 0194, 22 août 2019; *BJT* oct. 2019, n° 112f2, p. 9.

<sup>157</sup> AEF Info Dépêche n°703929, Intéressement, participation, abondement...: "2022, une année record pour les primes de partage du profit" (*Eres*), 7 déc. 2023. According to a recent study, "68% of companies in the SBF 120 incorporate CSR criteria into the activation of their profit-sharing schemes. The main criteria include: reducing greenhouse gas emissions, reducing material usage, and reducing energy consumption."

## 2. Negotiations on Professional Equality and Quality of Life and Working Conditions

As with negotiations on remuneration, working time, and value-sharing, several aspects of negotiations on professional equality and quality of life and working conditions (French Labour Code, Article L. 2242-17 and other) can have environmental implications. The following are a few illustrative examples.<sup>158</sup>

Firstly, negotiations must address the balance between employees' personal and professional lives (French Labour Code, Article L. 2242-17 1°). Reflecting on this balance can help envision a future in a less productivity-driven world. Similarly, negotiations on the right to disconnect (French Labour Code, Article L. 2242-17 7°) contribute to reducing employees' digital footprint.

Secondly, negotiations must include the exercise of employees' right to direct and collective expression (French Labour Code, Article L. 2242-17 6°). Strengthening this right can support the ecological transformation of the company. Indeed, much like the logic of the right to alert, employees can act as environmental sentinels within their organizations.

Finally, negotiations can address occupational health and safety issues (French Labour Code, article L. 2242-19-1). In this regard, social partners can anticipate the consequences of mixed risks, which pose threats to both workers and the environment.

## D. Conclusion

At the end of this brief overview of the potential actions available to workers representatives in environmental matters, one can see the glass as either half full or half empty.

From an optimistic perspective, it is obvious that French law has already integrated numerous obligations related to the environmental responsibilities of workers representatives. Furthermore, European Union law is expected to further enhance the rights of worker representatives on those topics.<sup>159</sup>

Conversely, from a pessimistic perspective, it becomes apparent that French law does not grant workers representatives – whether elected representatives or unions – a general competence in environmental matters. This prompts a call for

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<sup>158</sup> However, this discussion will not address measures aimed at improving employee mobility between their usual place of residence and their workplace (*Art. L. 2242-17, para. 8*) or negotiations on the prevention of exposure to professional risk factors as provided for in Article L. 4161-1 of the French Labour Code (*Art. L. 2242-19*). These negotiations have, in fact, been expressly greened by the legislature.

<sup>159</sup> Cf. CSRD, CS3D.

a paradigm shift. Labor law as a whole must integrate environmental considerations. The discipline should be reimagined so that labor law rules are no longer solely used to address existing situations between employers, employees, or the collective workforce, but are also leveraged to protect the environment.

This is the ambition of environmentally oriented social law. The 21st century will be ecological – or it will cease to be. Thus, to not merely implement an ecological transition but to strive for a just transition, it is necessary to rethink our approach to labor law. Environmentally oriented social law offers a new vector of sustainability for businesses by integrating environmental objectives into social law. Norms are no longer mobilized solely to regulate relations between different actors in the world of work but also to protect the environment. To move beyond traditional oppositions between nature and industry, labor and capital, environmentally oriented social law seeks to achieve win-win-win balances. This means scenarios where the application of labor law rules reduces a company's environmental footprint (a win for the planet), improves employees' wages or their quality of work life (a win for workers), and does so without negatively impacting the company's cash flow or even by enabling it to benefit from social or fiscal incentives (a win for businesses). The world of work must rise to the challenge of the ecological transition. Workers' representatives have a crucial role to play in this fight.

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## § 4 PROMOTING THE GREEN TRANSITION – THE ROLE OF WORKERS' REPRESENTATIVES IN GERMANY

Prof. Dr. Rüdiger Krause

### A. Introduction

Human-induced climate change is undeniably one of the most pressing challenges of the 21st century and must be effectively combated in order to avoid a global 'greenhouse effect' with an increase in extreme weather events such as heat waves, droughts and floods.<sup>160</sup>

In recent years, policymakers and legislators have increasingly responded to the need to decarbonize the economy as the most significant economic transformation since the Industrial Revolution. At a global level, the Paris Agreement, adopted at COP 21 in 2015 and since been ratified by 195 of the 198 UN Member States<sup>161</sup> responsible for 98% of global greenhouse gas emissions,<sup>162</sup> sets the climate protection target in line with SDG 13<sup>163</sup> that the increase in the global average temperature must be kept well below 2°C above pre-industrial levels and efforts should be made to limit the temperature increase to 1.5°C above pre-industrial levels. At European level, the European Union not only joined the Paris Agreement in 2016,<sup>164</sup> but – following the 'European Green Deal' in 2019<sup>165</sup> – adopted the European Climate Law in 2021, which stipulates climate neutrality by 2050 and a reduction of net greenhouse gas emissions by at least 55% compared to 1990 levels by 2030 as binding and directly applicable Union law in all Member States.<sup>166</sup> Finally, at German level, the 2016 Climate Action Plan set the political course to make Germany largely greenhouse gas-neutral by 2050.<sup>167</sup> Accordingly, the

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<sup>160</sup> For a comprehensive account of the scientific facts, see Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis*, 2021. See also United Nations Environment Programme (UNEP), *Making Peace with Nature*, 2021, describing the ecological crisis as threefold emergencies (climate, biodiversity and pollution).

<sup>161</sup> See United Nations, *Treaty Series*, Vol. 3156, 79.

<sup>162</sup> However, in January 2025, US President *Donald Trump* issued an executive order declaring the withdrawal of the US, responsible for around 13% of global greenhouse gas emissions, from the Paris Agreement, cf. <https://www.whitehouse.gov/presidential-actions/2025/01/putting-america-first-in-international-environmental-agreements/> (last accessed 20.7.2025).

<sup>163</sup> A/RES/70/1.

<sup>164</sup> Council Decision (EU) 2016/1841, OJ EU 2016, No. L 282, p. 1.

<sup>165</sup> COM(2019) 640 final; for an analysis of the European Green Deal, see *Fetting*, *The European Green Deal*, 2020; see recently also the 'Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation', COM(2025) 85 final.

<sup>166</sup> Regulation (EU) 2021/1119, OJ EU 2021, No. L 243, p. 1. For more details, see *Schlacke/Köster/Thierjung*, *Europäische Zeitschrift für Wirtschaftsrecht (EuZW)* 2021, 621 et seq.

<sup>167</sup> Available at: <https://www.bmwi.de/Redaktion/DE/Publikationen/Industrie/klimaschutzplan-2050.pdf> (last accessed 20.7.2025).

Federal Climate Protection Act of 2019<sup>168</sup> concretises the climate protection targets in a binding legal framework with specific time frames and affected sectors.<sup>169</sup>

Against the backdrop of international, European and German policies and legislation outlined above, this article attempts to analyse the role of workers' representatives in the green transition towards climate neutrality in Germany. In line with the dual model of industrial relations in Germany, this means examining the concepts, strategies and institutional framework of membership-based trade unions on the one hand and staff-based works councils, including employee representatives on the supervisory boards of large companies, on the other.

## **B. Concepts and strategies of workers' representatives in the green transition**

The role of workers' representatives in the green transition in Germany can be better understood by first gaining an overview of the concept of 'just transition' as well as the possible strategies of trade unions concerning the work-environment nexus, which have been the subject of intense international debate since the 2010s.<sup>170</sup>

The term 'just transition' emerged in the United States in the 1970s and was explicitly coined by US trade unionists in the 1990s to protect the interests of workers when hazardous production facilities in the chemical sector were closed down.<sup>171</sup> The global trade union movement immediately took up this concept and broadened it to the whole economy with the goal to overcome the 'jobs versus environment' dilemma.<sup>172</sup> Particularly the trade unions aimed to implement it at UN

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<sup>168</sup> Federal Law Gazette (Bundesgesetzblatt = BGBl.) I 2019 p. 2513 (with subsequent adjustments in 2021, BGBl. I 2021 p. 3905, and 2024, BGBl. I 2024 no. 235 p. 1).

<sup>169</sup> See also the German Federal Government's Climate Action Programme 2023, available at: <https://www.bmwr.de/Redaktion/DE/Downloads/klimaschutz/20231004-klimaschutzprogramm-der-bundesregierung.pdf> (last accessed 20.7.2025).

<sup>170</sup> Cf. UNEP, Labour and the Environment: A Natural Synergy, 2007; UNEP/ILO/IOE/ITUC, Green Jobs: Towards decent work in a sustainable, low-carbon world, 2008; ILO/UNEP, Working towards sustainable development: Opportunities for decent work and social inclusion in a green economy, 2012; Rätzzel/Stavis/Uzzell (eds.), The Palgrave Handbook of Environmental Labour Studies, 2021; Rätzzel/Uzzell, Global Environment Change 21 (2011), 1215 et seq.; Rätzzel/Uzzell (eds.), Trade Unions in the Green Economy: Working for the Environment, 2013; see also the special issues: Comparative Labor Law & Policy Journal (CLLPJ) 40 (2018) (1) with introduction by Zbyszewska, of Globalizations 15 (2018) (4) with introduction by Stavis/Uzzell/Rätzzel; European Journal of Industrial Relations (EJIR) 26 (2020) (4) with introduction by Clarke/Lipsig-Mummé; Journal of Industrial Relations (JIR) 64 (2022) (4) with introduction by Flanagan/Goods; International Journal of Comparative Labour Law & Industrial Relations (IJLLIR) 39 (2023) (3-4) with introduction by Arabadjieva et al.; special feature: International Labour Review 164 (2025) (1) with introduction by Herzog/Zimmermann; on the German discourse see the recent issue of Industrielle Beziehungen 31 (2024) (1) with introduction by Hossfeld/Kellermann/Kirton-Darling.

<sup>171</sup> Cf. Mazzocchi, Green Left Review 114 (1993); Stavis/Felli, International Environmental Agreements (Int Environ Agreements) 15 (2015), 29 (32); Vachon in: Rätzzel/Stavis/Uzzell (eds.) (fn 11), 105 (107 et seq.). See also Galgóczi, EJIR 26 (2020), 367 (369), with reference to a Canadian pioneer as early as the 1960s ('labour environmentalism').

<sup>172</sup> For this see Rätzzel/Uzzell, Global Environment Change 21 (2011), 1215 et seq.

level. After being mentioned in the trade union declaration at the Kyoto Climate Conference in 1997, the concept of 'just transition' was included in the preamble of the Paris Agreement<sup>173</sup> and is an integral part of the 'Silesian Declaration on Solidarity and Just Transition' (adopted at COP24).<sup>174</sup> The EU also incorporated the concept of 'just transition' (sometimes referred to as 'fair transition') in its policies on climate protection.<sup>175</sup> In particular, the EU set up a 'just transition mechanism' with a 'just transition fund' as first pillar, equipped with 19.7 billion Euros and the expectation to mobilise around 7.3 billion Euros of national co-financing, amounting to a total of 27 billion Euros,<sup>176</sup> although the EU has not yet established a genuine and comprehensive policy framework for a just transition, as called for by the ETUC<sup>177</sup>. Moreover, the ILO started in 2008 to promote 'just transition' as an orientation for policymakers<sup>178</sup> and published in 2015 its 'Guidelines for a just transition' as a benchmark for just transition policies.<sup>179</sup>

However, the exact meaning of the concept 'just transition' is not easy to define. The International Trade Union Confederation (ITUC) provides the following definition: "'Just transition' describes the transition towards a low-carbon and climate-resilient economy that maximises the benefits of climate action while minimising hardships for workers and their communities. Needs will vary in different countries, though some policies must be applied everywhere." Central pillars of a just transition are job creation, social dialogue, skills development and social protection.<sup>180</sup> The Intergovernmental Panel on Climate Change (IPCC) defines 'just transition' in a similar way as a set of principles, processes and practices that aim to ensure that no people, workers, places, sectors, countries or regions are left behind in the transformation from a high-carbon to a low-carbon economy. Key principles of just transition include inter alia social dialogue, the creation of decent jobs, social protection, and rights at work.<sup>181</sup> In essence, from a functional perspective the concept stands for *just outcomes*, i.e. the new

<sup>173</sup> Cf. Paris Agreement (fn 2), Preamble.

<sup>174</sup> Galgóczi, EJIR 26 (2020), 367 (369).

<sup>175</sup> Cf. European Green Deal, COM(2019) 640 final, 15 et seq.; Council Recommendation of 16.6.2022 on ensuring a fair transition towards climate neutrality (2022/C 243/04); see also Council Recommendation of 12.6.2023 on strengthening social dialogue in the European Union (C/2023/1389) (1) (f).

<sup>176</sup> For details, see at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/finance-and-green-deal/just-transition-mechanism\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/finance-and-green-deal/just-transition-mechanism_en) (last accessed 20.7.2025).

<sup>177</sup> Cf. ETUC position: A Just Transition Legal Framework to complement the Fit for 55 package, 2021; see also Akgüç/Arabadjieva/Galgóczi, ETUI Policy Brief 2022.06.

<sup>178</sup> UNEP/ILO/IOE/ITUC (fn 11), 27-28, 277 et seq.

<sup>179</sup> ILO, Guidelines for a just transition towards environmentally sustainable economies and societies for all, 2015.

<sup>180</sup> ITUC, Climate Justice: There are no jobs on a dead planet (2015), 16.

<sup>181</sup> IPCC (fn 1), Annex I, 1806.

employment and social landscape, and *just processes*, i.e. the active involvement of workers' representatives in the process of the green transition.<sup>182</sup>

It is noteworthy that the ILO proposed not limiting social dialogue to follow-up issues, but also making environmental protection issues, and not least the reduction of emissions, a direct subject of collective agreements.<sup>183</sup> In other words, trade unions should not only address the social impacts of ecological change, but also act as agents of ecological change themselves. This is clearly linked to the expectation that the active involvement of the employee side will make ecological change more effective: on the one hand, by using the knowledge and skills of employees to make certain operational processes more climate-friendly and environmentally compatible, and on the other hand, by creating additional legitimacy and social acceptance for the necessary change processes among employees.

However, the approaches to 'just transition' and to the transformation process toward a decarbonised economy vary. While most workers in Germany feel well informed about climate change and support governmental measures to combat global warming,<sup>184</sup> resistance to 'overly ambitious' climate protection targets can also be observed sometimes among unionised production workers in the automotive industry.<sup>185</sup> Focussing the possible strategies of trade unions,<sup>186</sup> the literature proposes several analytical classifications. Some authors distinguish between the 'shared solution approach' the 'differentiated responsibility approach' and the 'social ecological approach'.<sup>187</sup> Others distinguish only between 'ecological modernisation' within the current socio-economic system and 'social ecological transformation' which goes beyond the existing system.<sup>188</sup> Another classification is the distinction between 'green growth business unionism', 'eco-social partnership unionism' and 'climate movement unionism'.<sup>189</sup> Some authors differentiate between 'opposition', 'hedging' and 'support',<sup>190</sup> while others prefer a fourfold

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<sup>182</sup> *Galgóczi*, EJIR 26 (2020), 367 (369). For more details, see *Novitz* in: Davidov/Langille/Lester (eds.), *The Oxford Handbook of The Law of Work*, 2024, 851 (859 et seq.); comprehensively *Doorey*, *Journal of Environmental Law and Practice* 30 (2017), 201 et seq.; *Eisenberg*, *Southern California Law Review* 92 (2019), 273 et seq.; *Flanagan*, *IJCLIR* 39 (2023), 393 et seq.; *Tomassetti*, *Industrial Law Journal* 52 (2023), 34 et seq.

<sup>183</sup> Cf. ILO, *Guidelines* (fn 20), no 18 (d): "Social partner should ... promote the inclusion of specific environmental provisions through collective bargaining and collective agreements at all levels, ... including but not limited to emissions reductions, ...". See also UNEP (fn 10), 115 et seq.: "Making the Environment a Focus of Collective Bargaining".

<sup>184</sup> *Schulz/Trappmann*, HBS Working Paper No. 308 (2023), 9 et seq.

<sup>185</sup> Cf. *Dörre/Liebig/Lucht/Sittel*, *Berliner Journal für Soziologie* 34 (2024), 9 et seq.

<sup>186</sup> See in this context also *Snell/Fairbrother*, *Transfer* 16 (2010), 411 et seq.; *Sweeney/Treat*, *Trade Unions and Just Transition. The Search for a Transformative Politics*, TUED Working Paper No. 11 (2018).

<sup>187</sup> *Stavis/Felli*, *Int Environ Agreements* 15 (2015), 29 (36 et seq.).

<sup>188</sup> *Brand/Niedermoser*, *Journal of Cleaner Production* 225 (2019), 173 (176 et seq.).

<sup>189</sup> *Trappmann/Eversberg/Schulz*, *Industrielle Beziehungen* 31 (2024), 35 (39).

<sup>190</sup> *Thomas/Doerflinger*, EJIR 26 (2020), 383 (388 et seq.), following the analysis of possible business strategies by *Meckling*, *Global Environment Politics* 15 (2015), 19 et seq.

distinction between ‘oppositional’, ‘reactive’, ‘affirmative’, and ‘transformative’ strategies.<sup>191</sup>

Against this background, the following remarks deal with the question of what strategies the German trade unions are pursuing before they turn their attention to the institutional framework of works councils and workers’ representatives on supervisory boards. In this context, it is worth remembering that the German system can be characterised as a ‘coordinated market economy’, in which the trade unions in cooperation with works councils and employee representatives on supervisory boards traditionally have a strong influence on the organisation of the labour market, on the distribution of growth profits and on the behaviour of firms at plant and company level through autonomous collective bargaining.<sup>192</sup> The German model of ‘conflictual partnership’ thus combines elements of a continuous cooperation between labour and capital with conflict.<sup>193</sup> This model does not apply to the economy as a whole,<sup>194</sup> but primarily to key industries (automotive, chemicals and energy). However, as the transition to a carbon-neutral economy primarily affects these sectors, the green transformation is having an impact on the core of the German industrial relations system.

### **C. Worker participation through trade union activities**

With regard to the position of German trade unions, a distinction must be made between the central level, represented by the German Trade Union Confederation (DGB), and the sectoral level, represented by the respective industry trade unions. DGB is Germany’s main trade union confederation (totalling 5.579 million members)<sup>195</sup> and is the umbrella organisation for IG Metall (2.097 million members), ver.di (1.865 million members) and IGBCE (567,000 members) and five other smaller unions. While DGB formulates the programmatic principles of the trade union policy in Germany and, in particular, attempts to influence government policy at the federal level, only the industrial trade unions conclude collective agreements with employers, mainly at sectoral level, but in some cases also at company level.

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<sup>191</sup> Kalt, JIR 64 (2022), 499 (502).

<sup>192</sup> Hall/Soskice, *Varieties of Capitalism*, 2001, 21 et seq.; see also Esping-Andersen, *The Three Worlds of Welfare Capitalism*, 1990, 27.

<sup>193</sup> Cf. Müller-Jentsch, *Employee Relations* 40 (2018), 634 et seq.

<sup>194</sup> Cf. Hohendanner/Kohaut, *WSI Mitteilungen* 2024, 289 et seq.: Coverage of employees by collective agreements: 51% (West-Germany) and 45% (East-Germany), representation of employees by works councils: 42% (West-Germany) and 37% (East-Germany).

<sup>195</sup> By way of comparison, the total number of people in employment in Germany is 39.07 million.

In general terms, the German trade unions began to address the issue of environmental protection as early as the 1970s.<sup>196</sup> However, a thorough analysis of DGB's climate policy over the last three decades, i.e. from the 1996 policy statement, which is still valid today, to the federal congresses in the 2020s, revealed a strong continuity in that combating climate change is primarily seen as a joint task for the state, business and unions, and not primarily as a topic for collective bargaining.<sup>197</sup> At the same time, DGB emphasises the need for technological innovation and renewable energies. Furthermore, the transition process is seen not only as an ecological issue, but also as a social one. Consequently, the main task of the state is to set clear targets and timetables for reducing greenhouse gas emissions and the main task for business to comply with these targets, while the main task of unions is to protect workers from the negative effects of the green transition. DGB's approach can thus be described as state-driven ecological modernisation and eco-social partnership unionism. This strategy is affirmative in that it does not question the general elements of the existing socio-economic system, the primacy of the market, property rights and the need for permanent growth. Although some trade unionists reflect on the end of the 'fossile welfare state capitalism' and argue in favour of a radical path change,<sup>198</sup> DGB officially insists that "debates on post-growth and deindustrialisation won't help"<sup>199</sup>. In other words, though DGB endorses the concept of a just transition, it also supports to some extent a continuation of the 'treadmill of production' that embraces the capitalistic projection of 'infinite growth on a finite planet'. After all, this growth should be qualitative growth stimulated by 'green Keynesianism'.

Basically, the sectoral unions follow the same rhetoric and have long included a commitment to environmental protection in their statutes.<sup>200</sup> However in practice there are remarkable differences. IGBCE, which mainly organises workers in the chemical and energy industries as well as mining, can be classified as a business-oriented (market-oriented) union in terms of *Richard Hyman's* typology.<sup>201</sup> Accordingly, IGBCE defines 'just transition' in a business-friendly manner stressing the need for competitiveness and profitability in order to promote a jobs-first

<sup>196</sup> Cf. *Gärtner*, *Gewerkschaften und Ökologie*, 1985; *Heine/Mautz*, *Industriearbeiter contra Umweltschutz?*, 1989; generally, on the relationship between the social question and the ecological question *Beck*, *WSI-Mitteilungen* 1990, 750 et seq.

<sup>197</sup> *Trappmann/Eversberg/Schulz*, *Industrielle Beziehungen* 31 (2024), 35 (42 et seq.).

<sup>198</sup> *Urban*, *WSI-Mitteilungen* 2022, 337 et seq.; *Urban* in: *Becke/Bleses* (eds.), *Interdependenzen von Arbeit und Nachhaltigkeit*, 2022, 177 et seq.; *Urban*, *Blätter für deutsche und internationale Politik* 2024, 94 (100 et seq.).

<sup>199</sup> DGB, *Beschlüsse des 22. DGB-Bundeskongresses 2022*, 23, available at:

<https://bundeskongress.dgb.de/antraege> (last accessed 20.7.2025).

<sup>200</sup> Cf. Section 2(1) of the statutes of IG Metall: "Protection of the natural environment to safeguard the existence of humanity"; Section 5 no. 2(4) of the statutes of ver.di "Protection of the natural environment"; Section 2 no. 2(2) of the statutes of IGBCE: "Idea of sustainability" "Shaping the social dimension in balance with economy and ecology".

<sup>201</sup> Cf. *Hyman*, *Understanding European Trade Unionism*, 2001.



strategy. Consequently, IGBCE initially pursues an oppositional strategy and attempts to delay the coal phase-out characterising coal as a ‘crucial bridging technology for the energy transition’.<sup>202</sup> In the sense the very influential unionist *Michael Vassiliadis* (since 2009 IGBCE chairman and since 2012 also president of IndustriAll Europe) states in 2011, that coal will still be the most important source of energy worldwide in 2050 and that there is no way around coal as an energy source in Germany either.<sup>203</sup> In the meantime, IGBCE has accepted the politically mandated phase-out plan and is focusing on a reactive strategy to protect the interests of its members.<sup>204</sup> IG Metall, which organises predominantly workers in the manufacturing, including the automotive and engineering industries, can be classified as a mix of market- and society-oriented union. The general strategy seems to be neither to fight nor to force the transition to a carbon-free economy, but rather to pursue a reactive strategy focused on new technologies (especially e-mobility) and renewable energies in order to secure as many jobs as possible for its members. Although its rhetoric is sometimes progressive in the sense of a more radical eco-social transformation, IG Metall takes the material interests of its members into account in its practical policies and is committed to a green treadmill rather than questioning the treadmill itself.<sup>205</sup> Ver.di, which organises most of the public and service sectors, is also a mix of market- and society-oriented union. Generally, its position is similar to the position of IG Metall. However, due to its diverse membership and a less dependence on fossile energy consuming sectors, ver.di embraces more environmentalism narratives and puts more emphasis on the transformation to a carbon free economy.<sup>206</sup>

In the context of Germany’s energy transition, the cessation of hard coal and lignite (coal-fired power generation) holds significant importance, since Germany was the world’s sixth largest carbon emitter in 2019 although between 2011 and 2019 the share of coal in the electricity dropped from 42.72% to 28.0%.<sup>207</sup> After a first unsuccessful attempt of the government for recall phase-out in 2015 with massive protests in the affected regions in Germany including opposition by the trade unions,<sup>208</sup> in 2018, the government launched – as an expression of the model of a coordinated market economy – the Commission on Growth, Structural Change

<sup>202</sup> *Kalt*, JIR 64 (2022), 499 (508); *Keil/Krein*, JIR 64 (2022), 564 (570); *Prinz/Pegels*, Energy Research & Social Science 41 (2018), 210 (216).

<sup>203</sup> *Vassiliadis*, WSI Mitteilungen 2011, 369 (369).

<sup>204</sup> *Kalt*, JIR 64 (2022), 499 (508).

<sup>205</sup> *Keil/Krein*, JIR 64 (2022), 564 (570-571); *Prinz/Pegels*, Energy Research & Social Science 41 (2018), 210 (216-217.).

<sup>206</sup> *Keil/Krein*, JIR 64 (2022), 564 (570-571); *Prinz/Pegels*, Energy Research & Social Science 41 (2018), 210 (217).

<sup>207</sup> Cf. *Kalt*, JIR 64 (2022), 499 (506).

<sup>208</sup> *Kalt*, JIR 64 (2022), 499 (506); *Prinz/Pegels*, Energy Research & Social Science 41 (2018), 210 (217).

and Employment ('Coal-Commission'), which was a multi-stakeholder social dialogue including top-level union representatives, the purpose of which was to establish a broad social consensus on the organisation of the transition to a carbon free economy. In its final report of 2019,<sup>209</sup> the commission recommends a full but slow phase-out until 2038. With a specific view to the structural change in the German coal mining areas, sufficient funding for the entire area of coal mining and coal-fired power generation are recommended, so that all employees can take advantage of the opportunity of a future-oriented job with adequate wages and working conditions. In particular, the commission recommends that these points should be part of contractual agreements, that co-determination bodies and trade unions should be involved in the negotiations, and that the regulations should be anchored in collective agreements.<sup>210</sup>

In 2020, the Coal Phase-out Act (Kohleausstiegsgesetz), which regulates the reduction and termination of the generation of electrical energy through the use of coal in Germany,<sup>211</sup> implements most of the recommendations. One element of the strategy was the option for operators of hard coal-fired power plants to participate at a tender for receiving financial compensation in the case of reducing coal-fired power generation at an earlier stage as prescribed by the law. Participation in the tendering procedure is linked to the existence of a collective agreement concerning the impact on the workers due to the premature phase-out.<sup>212</sup> The goal of this linkage between the participation at the tender and a collective agreement is to safeguard the rights of the workers and to organise the job cuts in a socially acceptable manner.<sup>213</sup> This option was used shortly afterwards by the major German energy company RWE, responsible of 0,38 percentage of global greenhouse emissions in the timespan of 1965 to 2023.<sup>214</sup> The collective agreement on the coal phase-out includes, among other things, provisions on the exclusion of redundancies, on the material increase of the so-called adjustment allowance, on benefits for training and placement in alternative jobs, on the exclusion of reductions in company pension schemes, and on vocational training and employment.<sup>215</sup> Ver.di concluded similar collective agreements with other energy supply companies (Uniper, Onyx, swb).<sup>216</sup> In this context, the

<sup>209</sup> Commission on "Growth, Structural Change and Employment", Final Report, 2019.

<sup>210</sup> Final Report (fn 50), 70.

<sup>211</sup> BGBl. I 2020 p. 1818. See *Michaels/Däuper*, Zeitschrift für das gesamte Recht der Energiewirtschaft (EnWZ) 2020, 291 et seq.

<sup>212</sup> Cf. Section 12(1) sentence 2 no. 5 Kohleverstromungsbeendigungsgesetz.

<sup>213</sup> Cf. Bundestagsdrucksache 19/17342 of 24.2.2000, 115.

<sup>214</sup> Cf. <https://carbonmajors.org/Entity/RWE-93> (last accessed 20.7.2025).

<sup>215</sup> For the situation in Germany, see also *Schmidt/Braga*, The role of collective bargaining in promoting just transitions, ILO Working Paper 145 (2025), 20 et seq.

<sup>216</sup> See: <https://ver-und-entsorgung.verdi.de/themen/energiewende/++co++710824e6-e923-11ea-a053-001a4a160119> (last accessed 20.7.2025).



‘Revierwende’ project should also be mentioned, an initiative of the Deutscher Gewerkschaftsbund (DGB) for the just transition in the German coal-mining areas, an element of which are six district offices to promote knowledge transfer and networking and offer counselling and qualification.<sup>217</sup>

The collective agreements as part of the normative architecture of the Coal Phase-out Act elucidate that their content lies in ensuring the social acceptability of ecological transformation, rather than directly addressing the issue of climate change and setting more ambitious climate targets. It is true that legal scholars suggest that collective agreements should make the transition plan for climate protection in the sense of Article 22 of the CDSDD<sup>218</sup> binding or set lower emission levels than those provided for by law.<sup>219</sup> However, several decades ago, a leading trade unionist spoke out against setting upper limits for emissions in collective agreements because the state cannot shift the overall responsibility for environmental protection onto the parties to collective agreements and it would also be absurd if fundamental environmental standards were only to apply to companies bound by collective agreements and companies could evade these regulations by avoiding collective agreements.<sup>220</sup> Such reservations are also encountered in other countries where examples of bilateral or tripartite agreements relating to environmental and climate protection can be found.<sup>221</sup> Moreover, it is unclear whether genuine collective agreements directly concerning climate protection and set out corresponding requirements for companies would even be permissible under German labour law, because case law has not yet definitively clarified whether collective bargaining autonomy also extends to questions of the fundamental organisation of production and the technology used with the aim of reducing greenhouse gases.<sup>222</sup>

Beyond the Coal Phase-Out Act, there are other collective agreements that deal with ‘green’ issues in some way. An early example is an agreement on the exclusive use of environmentally friendly chainsaw oils.<sup>223</sup> However most collective agreements on environment-related issues concluded since the second half of the 1980s concern institutional arrangements of capacity building such as the

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<sup>217</sup> For more information, see: <https://revierwende.de/> (last accessed 20.7.2025).

<sup>218</sup> Corporate Sustainability Due Diligence Directive (EU) 2024/1760, OJ EU 2024, No. L series of 5.7.2024.

<sup>219</sup> Däubler, Klimaschutz und Arbeitsrecht, 2023, 98 and 102.

<sup>220</sup> Lang in: Roth/Sander (eds.), Ökologische Reform der Unternehmen: Innovationen und Strategien, 1992, 151 (154 et seq.).

<sup>221</sup> See for this Eurofound, Moving with the times: Emerging practices and provisions in collective bargaining, 2022, 17-18.

<sup>222</sup> For a broad understanding Däubler (fn 60), 94 et seq.; for a narrow understanding Rieble, ZTR 2000, 1, 5 et seq., however, arguing for the option of mere agreements (within the limits of competition law).

<sup>223</sup> For more details, see Rieble, Zeitschrift für Tarif-, Arbeits- und Sozialrecht des öffentlichen Dienstes (ZTR), 2000, 1, 4; Schmidt, WSI-Mitteilungen 1993, 330, 332 et seq.

establishment of environmental committees, the appointment of environmental officers, and the creation of complaints procedures for employees in the event of environmental pollution.<sup>224</sup> Climate change is only tackled in an indirect manner. One example is the collective agreement in the metal industry on mobile work, which contributes to a reduction of commuting by employees between home and work and hereby to a reduction in greenhouse gases.<sup>225</sup> Unlike a comparable Dutch collective agreement,<sup>226</sup> however, this German collective agreement does not include additional monetary incentives for employees to work from home.<sup>227</sup> In a broad sense, the improvement of working conditions for public transport workers can also be counted among the collective agreement measures that indirectly serve climate protection. Finally, in 2024, IG Metall, the general works council and Volkswagen AG agreed on a roadmap for the German sites, dealing with topics like e-mobility and the circular economy,<sup>228</sup> which indirectly brings benefits for the environment in general and the climate in particular.

In addition, there are some examples of cooperation between trade unions and the environmental movement in Germany. In 2019, IG Metall launched the initiative “Shaping the climate and mobility transition” with the two environmental protection associations BUND (German Association for the Environment and Nature Conservation) and NABU (German Nature Conservation Association).<sup>229</sup> In some cases, there has also been interaction between trade unions and the Fridays for Future climate protection movement. In 2019, for example, IG Metall declared its solidarity with the ‘climate strikes’ initiated by this movement.<sup>230</sup> In 2020, ver.di entered into an alliance with Fridays for Future for a better public transport system at the local, regional and national level<sup>231</sup> and in 2023 it jointly called for the global climate strike.<sup>232</sup> However, there have not yet been any ‘real’ strikes, i.e. work

<sup>224</sup> Kluge/Obst/Schmidt (eds.), *Umweltschutz und gewerkschaftliche Interessenvertretung: Beteiligungsrechte, betriebliche Gestaltung und Tarifpolitik*, 1993; Lang (fn 61), 151 et seq.; Pickshaus, WSI-Mitteilungen 1991, 188 et seq.; Schmidt, *Gewerkschaftliche Monatshefte* (GMH) 1989, 672 et seq.; Schneider (ed.), *Arbeit und Umwelt: Gewerkschaftliche Umweltpolitik*, 1986; see also Heuermann, *Gewerkschaftliche Beschlüsse und Publikationen zu Umweltschutz und Ökologie: Eine Bibliographie*, 1996.

<sup>225</sup> Available at: <https://www.bw.igm.de/tarife/tarifvertrag.html?id=86699> (last accessed 20.7.2025).

<sup>226</sup> Cf. Eurofound, *Moving with the times: Emerging practices and provisions in collective bargaining*, 2022, 17.

<sup>227</sup> The so-called “transformation allowance” (“Transformationsgeld”), which has been part of collective agreements in the metal industry since 2021, could also be mentioned here, even if it is not explicitly geared towards the green transformation, cf. Ulber, *Soziales Recht* (SR) 2022, 81, 90.

<sup>228</sup> For more information see: <https://www.igmetall.de/tarif/tarifrunden/tarifrunde-volkswagen-2024> (last accessed 20.7.2025).

<sup>229</sup> For more information see:

[https://www.igmetall.de/download/20190710\\_Erkl\\_rung\\_BUND\\_NABU\\_IGM\\_1bf343a30d004a12002efd0332050b319657e168.pdf](https://www.igmetall.de/download/20190710_Erkl_rung_BUND_NABU_IGM_1bf343a30d004a12002efd0332050b319657e168.pdf) (last accessed 20.7.2025).

<sup>230</sup> For more information see: [https://www.igmetall.de/download/20190826\\_20190826\\_Erkl\\_rung\\_FFF\\_Demo\\_20\\_09\\_GFVM\\_final\\_ea1179dd0c1173bf313a45b4b88e27c9ffa3cb5f.pdf](https://www.igmetall.de/download/20190826_20190826_Erkl_rung_FFF_Demo_20_09_GFVM_final_ea1179dd0c1173bf313a45b4b88e27c9ffa3cb5f.pdf) (last accessed 20.7.2025).

<sup>231</sup> For more information see: <https://www.verdi.de/presse/pressemitteilungen/++co++e7c87ad6-cc13-11ea-960d-525400940f89> (last accessed 20.7.2025).

<sup>232</sup> Available at: <https://www.verdi.de/themen/politik-wirtschaft/++co++924118e6-9d39-11eb-84f5-001a4a16012a> (last accessed 20.7.2025).

stoppages, for an ecological turnaround at the political level or concrete climate protection measures in companies in Germany. From a pure legal point of view, such strikes would only be lawful under German labour law if the main goal is a collective agreement to improve working conditions and climate protection is only a side effect. If, vice versa, the primary goal is climate protection, the labour courts would probably consider such actions to be illegal.<sup>233</sup>

For decades, the social partners in the chemical industry, i.e. IGBCE and the employers' association at federal level, have been particularly committed to capacity building for works councils. As early as 1987, the 'Gesellschaft zur Information von Betriebsräten über Umweltschutz in der chemischen Industrie (GIBUCI)' was founded as a joint institution of the employers' and employees' side, which was replaced in 2016 by the social partner workshop for innovation and sustainability (So.WIN). By 2016, more than 4,000 works council members had been informed and trained in environmental protection by these institutions.<sup>234</sup> Through this activity, IGBCE once again demonstrates its business-oriented character taking up management rhetoric.

## D. Worker participation through works councils

It is evident that the green transition can only succeed if companies switch their operations to a carbon-free and resource-saving mode of production. This raises the question of whether and how works councils can contribute to this process.

Since works councils do not have the right to strike under German labour law, their ability to promote the green transition depends to a large extent on the legal framework enshrined in the Works Constitution Act (Betriebsverfassungsgesetz = BetrVG), which grants works councils institutional powers. As early as in the 1990s, some works councils interested in environmental protection had been trying even without an explicit legal basis, to raise employees' awareness of environmental protection issues by means of notices, flyers, and in-house campaigns.<sup>235</sup> Since a reform in 2001, the Works Constitution Act contains explicitly a number of provisions relating to what is known as 'environmental protection in the establishment'.<sup>236</sup> With the new regulations, particularly with Section 80(1) no. 9

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<sup>233</sup> Deviating opinion by *Däubler* (fn 60), 108. For a detailed analysis of climate related strikes, see *Vogt/Subasinghe*, *CLLPJ* 45 (2025), 424 et seq.

<sup>234</sup> For more information see: <https://igbce.de/igbce/neue-gemeinsame-einrichtung-der-chemie-sozialpartner-23100> (last accessed 20.7.2025).

<sup>235</sup> Cf. *Meyer-Fries/Richter/Wildeboer* in: *Freimann/Hildebrandt* (eds.), *Praxis der betrieblichen Umweltpolitik – Forschungsergebnisse und Perspektiven*, 1995, 211, 217 et seq.; *Muscheid*, *Umweltschutz und betriebliche Interessenvertretung: Die Rolle der Betriebsräte im ökologischen Modernisierungsprozeß*, 1995, 47 et seq.

<sup>236</sup> Comprehensive overview by *Kohle*, *Mitbestimmung beim betrieblichen Umweltschutz*, 2007.

BetrVG,<sup>237</sup> the legislator has made it clear that promoting environmental protection in the workplace is one of the general tasks of the works council and thus a legitimate field of activity.<sup>238</sup> The works council is to be a (additional) ‘in-house environmental watchdog’.<sup>239</sup> In this way, the company knowledge and the workplace-related experience of the employees are to be harnessed for environmental protection in order to achieve more effective measures.<sup>240</sup>

According to the definition in Section 89(3) BetrVG, ‘environmental protection in the establishment’ comprises all personnel and organisational measures as well as all measures relating to the establishment's buildings, rooms, technical equipment, working methods, working processes and workplaces that serve the protection of the environment. The environment is understood to encompass all natural fundamentals of life (soil, water, air, etc.), so that environmental protection is about protecting these fundamentals from harmful effects.<sup>241</sup> However, due to the lack of case law, it has not yet been conclusively clarified how far the concept of ‘environmental protection in the establishment’ actually extends. Regularly, the term is understood to mean all measures that serve to protect the environment from negative impacts as a result of operational conditions and processes, as well as to protect the environmental assets present in the operation from external influences.<sup>242</sup> In this context, the term ‘operation’ is understood in a functional sense.<sup>243</sup> This means that it does not matter either whether the negative effects on the environment as such occur inside or outside the company.<sup>244</sup> Although climate protection is not explicitly mentioned in the Works Constitution Act, it is certainly included if emissions from the company contribute to an intensification of the climate crisis.<sup>245</sup> Some authors define the concept of environmental protection in the establishment more broadly and link it to the actors, so that it includes all measures taken by the employer or the works council that serve to protect the environment.<sup>246</sup> Irrespective whether a narrow or a broad concept applies, there is consensus that general (external) environmental protection, i.e. the elimination or reduction of negative environmental impacts that have nothing to do with the

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<sup>237</sup> Section 80(1) no. 9 BetrVG imposes works councils as a general duty, to promote ... the protection of the environment in the establishment.

<sup>238</sup> However, as early as 1991, the Regional Labour Court Frankfurt/Main of 21.3.1991 – 12 TaBV 191/90, *Neue Zeitschrift für Arbeitsrecht (NZA)* 1991, 859, decided that a newsletter on work and ecology (‘Arbeit & Ökologie-Briefe’) belongs to the material the employer has to provide to the works council.

<sup>239</sup> *Hoffmann*, Bausteine für eine “umweltgerechte Unternehmensführung”, 2018, 191.

<sup>240</sup> Bundestagsdrucksache 14/5741 of 2.4.2001, 30.

<sup>241</sup> *Fitting*, BetrVG, § 89 marginal no. 9; *Reichel/Meyer*, *Recht der Arbeit (RdA)* 2003, 101, 103.

<sup>242</sup> *Konzen*, *RdA* 2001, 76, 89; see also *Fitting*, BetrVG, § 89 marginal no. 9.

<sup>243</sup> *GK-BetrVG/Gutzeit*, § 89 marginal no. 33; *Wiese*, *Betriebs-Berater (BB)* 2002, 674, 677.

<sup>244</sup> *Seidel*, *Arbeit und Recht (AuR)* 2024, 109, 110.

<sup>245</sup> Cf. *Fitting*, BetrVG, § 89 marginal no. 9.

<sup>246</sup> *Buschmann* in: *Däubler/Klebe/Wedde* (eds.), *BetrVG*, § 89 marginal no. 61 et seq.; *Buschmann* in: *Ahrens/Donner/Simon* (eds.), *Arbeit – Umwelt, Festschrift für Joachim Heilmann zum 60. Geburtstag*, 2001, 87, 100 et seq.

operations of the establishment is not covered. The legislator did not intend works council to be an auxiliary organ of the state environmental protection authorities.<sup>247</sup> According to the legislator, this would lead to irreconcilable conflicts between the economic interests of the company and thus the employment situation on the one hand and general environmental protection interests on the other.<sup>248</sup> The works council therefore is not generally competent for the protection of the environment as such<sup>249</sup> and thus may not use the personnel and material resources available to it by law to pursue environmental objectives beyond those of environmental protection in the establishment. However, it would be permitted, for example, to make proposals for the introduction of a job ticket to encourage employees to use public transport systems more frequently.<sup>250</sup>

Furthermore, the works council is expressly required to support the implementation of the regulations on environmental protection in the establishment (Section 89(1) sentence 1 BetrVG), which is partially interpreted as a general duty of the works council to monitor all environmental hazards emanating from the establishment.<sup>251</sup> In order to provide the works council with a sufficient basis of information, the employer must consult the works council concerning all inspections and issues relating to environmental protection in the company, and has to inform it immediately of any conditions imposed and instructions given by the competent bodies relating to environmental protection in the establishment (Section 89(2) sentence 2 BetrVG). In addition, the works council has a general right to information under Section 80(2) BetrVG.<sup>252</sup> According to this, the employer must supply comprehensive information to the works council in good time to enable it to discharge its duties under the act. Furthermore, at its request, the works council is to be granted access at any time to any documentation it may require for the discharge of its duties. In order to enhance competence in matters of environmental protection in the establishment, the works council member may also have a right to paid release to enable him or her to participate in training and educational courses, as the Federal Labour Court (Bundesarbeitsgericht = BAG) ruled as early as 1995.<sup>253</sup> With the 2001 reform, the legislature also expressly implemented the possibility of regulating environmental protection issues in the

<sup>247</sup> Bundestagsdrucksache 14/5741 of 2.4.2001, 31.

<sup>248</sup> Bundestagsdrucksache 14/5741 of 2.4.2001, 30. Critical to this argument GK-BetrVG/*Gutzeit*, § 89 marginal no. 31.

<sup>249</sup> Bundestagsdrucksache 14/5741 of 2.4.2001, 48.

<sup>250</sup> *Däubler* (fn 60), 50. Practical example for a job-ticket in BAG of 11.8.1998 – 9 AZR 39/97, NZA 1999, 474.

<sup>251</sup> *Fitting*, BetrVG, § 89 marginal no. 11.

<sup>252</sup> *Fitting*, BetrVG, § 80 marginal no. 48; *Seidel*, AuR 2024, 109, 111; deviating opinion by GK-BetrVG/*Weber*, § 80 marginal no. 59.

<sup>253</sup> Cf. BAG of 11.10.1995 – 7 ABR 42/94, NZA 1996, 934 (937), concerning a training course in terms of § 37(7) BetrVG.

establishment through voluntary works agreements (Section 88 no. 1a BetrVG). However, the conclusion of such works agreements cannot be enforced against the will of the employer but is based solely on voluntary cooperation.<sup>254</sup> Thus, works councils have only a right to a discourse on matters of environmental protection in the establishment, without having a right to co-determination.

However, it is conceivable to use general co-determination rights on the basis of the central regulation on co-determination at the operational level according to Section 87(1) BetrVG. In particular, ‘arrangements for the prevention of accidents at work and occupational diseases and for the protection of health on the basis of legislation or safety regulations’ (Section 87(1) no. 7 BetrVG) stand out from the catalogue of co-determination rights. Environmental protection at work and occupational safety and health (OSH) are not identical, but they do overlap to a certain extent.<sup>255</sup> This applies, for example, to the handling of hazardous substances, which can pose risks to employees, but often also to the environment at the same time.<sup>256</sup> Insofar as the works council has a say in the operational implementation of occupational health and safety regulations, it is thus involved on an equal footing in measures that serve to protect the environment. However, it should be emphasised that environmental protection in general and climate protection in particular are not in themselves subject to co-determination. Rather, it is only a matter of the fact that measures in the field of occupational safety can also serve environmental and climate protection. A right to co-determination may also come into consideration with regard to the form, structuring and administration of social services whose scope is limited to the establishment (Section 87 (1) no. 8 BetrVG), which exists, for example, when an environmentally friendly meal and tableware are required in a company canteen. It is also conceivable that there may be co-determination on questions related to remuneration arrangements in the establishment (Section 87(1) no. 10 BetrVG). This may arise, for example, if a job ticket is to be introduced for the workforce in order to encourage employees to switch to public transport systems. However, the works council can only have a say in the distribution principles, but not in whether the employer provides such a job ticket at all. Finally, principles for suggestion schemes in the establishment come into consideration (Section 87(1) no. 12 BetrVG), which are intended to reward suggestions from employees that contribute to production that conserves resources and reduces emissions. However, the works council can only regulate

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<sup>254</sup> *Däubler*, NZA 2020, 1155, 1157.

<sup>255</sup> *Däubler*, NZA 2020, 1155, 1158; *Reichel/Meyer*, RdA 2003, 101, 104; see also *Schottelius/Küpper-Djindjić*, BB 1993, 445 et seq.; for a strict separation of environmental protection at work and OSH GK-BetrVG/*Gutzeit*, § 89 marginal no. 37; *Wiese*, BB 2002, 674, 678.

<sup>256</sup> *Seidel*, AuR 2024, 109, 112.



the procedure but cannot demand that such a suggestion scheme be introduced in the company at all. The works council certainly cannot demand that the employer then follow the employees' suggestions for environmental or climate protection. The same principles apply to the structuring of mobile work performed by means of information and communication technology (Section 87(1) no. 14 BetrVG), as the works council only has a right to co-determination on the modalities of mobile work, including home office, which can reduce traffic-related greenhouse gas emissions, but cannot demand their introduction.

In companies with more than hundred employees, there is an additional mechanism for information and consultation. In these companies, a so-called economic committee must be set up, the members of which are appointed by the works council (Section 106(1), 107(1) and (2) BetrVG) and which is intended to support the works council in the performance of its duties. The matters to be discussed at the monthly meetings also include questions of environmental protection in the establishment (Section 106(3) no. 5a BetrVG).<sup>257</sup> This mechanism contributes to the effectiveness of employee participation by discussing and clarifying company policy issues with employee representatives at an early stage, before more concrete plans and measures are developed, which then trigger specific participation rights of the works council.<sup>258</sup> However, the economic committee can only make suggestions to the employer, while it has no co-determination rights itself.

Moreover, since the 1970s, various environmental protection laws oblige companies to appoint environmental protection officers for different areas. For example, companies must appoint an emissions protection officer,<sup>259</sup> a water protection officer,<sup>260</sup> and a waste officer<sup>261</sup> if the relevant requirements are met. These organisational requirements for the internal governance of companies rest on the concept that external governance is not sufficient to effectively combat environmental risk but internal governance is needed to induce an environmentally friendly corporate policy.<sup>262</sup> All these regulations stipulate that the employer must inform the works council about the representatives and their tasks before the appointment. The same applies to changes in the area of responsibility and to

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<sup>257</sup> Göpfert/Stöckert, NZA 2022, 452, 454-455.

<sup>258</sup> Cf. Fitting, BetrVG, § 106 marginal no. 23.

<sup>259</sup> Section 53 of the Federal Immission Control Act (Bundesimmissionsschutzgesetz = BImSchG).

<sup>260</sup> Section 64 of the Federal Water Act (Wasserhaushaltsgesetz = WHG).

<sup>261</sup> Section 59 of the Closed Substance Cycle and Waste Management Act (Kreislaufwirtschaftsgesetz = KrWG).

<sup>262</sup> Renken, KJ 1994, 218 et seq., see also comprehensively Spindler, Unternehmensorganisationspflichten – Zivilrechtliche und öffentlich-rechtliche Regelungskonzepte, 2001, 15 et seq.; Springmann, Der Betriebsrat und die Betriebsbeauftragten, 2004; sceptical in regard to the effectiveness of the officers Reh binder, Jahrbuch für Rechtssoziologie und Rechtstheorie 13 (1988), 109, 117 et seq.; see also Oppermann, WSI-Mitteilungen 1993, 399 et seq.

dismissal.<sup>263</sup> If an employee employed in the company is to take on the role of an officer, this is also regularly a transfer, so that an additional participation procedure is applicable in which the works council may object to the appointment for certain reasons, for example due to a lack of professional skills (Section 99 BetrVG).

To sum up, works councils have various institutional powers to influence environmental and climate protection within the establishment under German labour law. At the same time, the practical relevance of voluntary works agreements on environmental and climate protection is hard to assess. The longest experience in this area has been gained in the chemical industry, where works agreements have been in place since the late 1980s. The content of these agreements was concerned, on the one hand, with organisational provisions, for example, the set up of an environmental committee (with or without equal representation of both sides) with a focus on issues of environmental protection in the establishment, and the training of works council members in the field of environmental protection in order to improve their technical expertise. On the other hand, procedures were introduced to inform and consult employees at an early stage on topics such as energy saving, waste reduction, recycling, etc.<sup>264</sup> Similar works agreements have been concluded in other sectors as well.<sup>265</sup>

However, a comprehensive empirical study of works agreements on sustainability issues conducted in 2020 by the union-affiliated Hans Böckler Foundation<sup>266</sup> comes to a sobering conclusion. According to the study, these agreements often remain purely rhetorical, often emphasise economic goals in the context of sustainability, and pursue a harmonious approach that obscures the differing interests of employers and employees. In terms of content, they often deal with traditional safety and health issues as well as qualification and vocational training. Aspects directly related to environmental protection are less common in these agreements. And even if this issue is touched, the content usually deals with procedural regulations such as informing the workforce and setting up a special environmental committee. Collective regulations on specific environmental protection measures are a rare exception.<sup>267</sup> At the same time, another empirical study concludes that companies with deep-rooted worker involvement structures and traditions are likely to have a form of 'participatory modernisation management' in place, whereby management and the works council attempt to

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<sup>263</sup> Section 55(1a) BImSchG, Section 60(3) KrWG, Section 66 WHG.

<sup>264</sup> *Froschauer*, Arbeitsrecht und Umweltschutz, 1994, 204 et seq.; *Salje*, BB 1988, 73, 76-77; *Teichert/Küppers*, WSI-Mitteilungen 1990, 755 et seq.

<sup>265</sup> Cf. *Leitretter*, Betrieblicher Umweltschutz, 1999, 15 et seq.

<sup>266</sup> *Haunschild et al.*, Nachhaltigkeit durch Mitbestimmung, HBS-Study no. 452 (2021).

<sup>267</sup> *Haunschild et al.* (fn 107), 44 et seq.



secure jobs and working conditions in the long term through ecological modernisation of the company.<sup>268</sup>

In order to make environmental protection at the company level more effective by involving works councils, as early as the late 1980s, proposals were submitted by the opposing political parties<sup>269</sup> by the DGB as well<sup>270</sup> to include measures of environmental protection in the establishment in the catalog of matters subject to co-determination. In the sense, the DGB draft for a renewed BetrVG of 2022 also expressly calls for a right of co-determination to apply to measures that are suitable for environmental and climate protection.<sup>271</sup> According to the general principles of Section 87 BetrVG, this would mean that the works council would have a corresponding right of initiative and that, if necessary, an internal conciliation body with a neutral chairperson would decide on proposals made by the works council. However, it is currently uncertain whether this reform proposal will be implemented.

## **E. Workers' representatives at the supervisory board**

A further channel of workers' agency on corporate policies with the aim of taking greater account of environmental and climate protection concerns is co-determination on the supervisory board of large German companies. If a company has more than 500 employees, workers' representatives have a quota of one-third of the seats on the supervisory board, if a company has more than 2,000 employees, the quota is even half of the seats.<sup>272</sup> The workers' representatives have the same institutional rights as the shareholder representatives under company law.<sup>273</sup>

The central task of the supervisory board is the monitoring of the management board (Section 111(1) of the German Stock Corporation Act (Aktiengesetz = AktG). This duty comprises to monitor the legality of the management board's actions, such as compliance with the legal requirements of environmental and climate protection law, but at the same time to participate in the management board's strategic planning,<sup>274</sup> which includes increasingly the issue of sustainability. To make the monitoring more effective, according to the draft for the implementation

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<sup>268</sup> Schoppengerd/Auer/Wissen, WSI Mitteilungen 2025, 81 (85 et seq.).

<sup>269</sup> Cf. Bundestagsdrucksache 11/4525 of 11.5.1989 (proposal of DIE GRÜNEN), 24: Section 94(1) no. 10 BetrVG-draft; less far Bundestagsdrucksache 11/2995 of 28.9.1988 (proposal of SPD), 24: Section 87a no. 11 BetrVG-draft.

<sup>270</sup> Froschauer (fn 105), 222 et seq.

<sup>271</sup> Section 87(1) no. 15 BetrVG (DGB-draft).

<sup>272</sup> Section 1 et seq. Drittelbeteiligungsgesetz (DrittelbG), Section 1 et seq. Mitbestimmungsgesetz (MitbestG).

<sup>273</sup> Krause in: Hommelhoff/Hopt/Leyens (eds.) Unternehmensführung durch Vorstand und Aufsichtsrat, 2024, § 24 marginal no. 1 et seq.

<sup>274</sup> Winkelfjohann in: Hommelhoff/Hopt/Leyens (fn 114), § 25 marginal no. 3 et seq.

of the CSRD,<sup>275</sup> the supervisory board can set up a specific supervisory committee to monitor the new comprehensive sustainability reporting.<sup>276</sup> However, this regulation is not expected to come into force before the second half of 2025. Compliance with the obligations under the CSDDD would thus also fall within the task of the management board to draw up a transition plan for climate change mitigation in the sense of Article 22 of the Directive.<sup>277</sup> Consequently, this topic would be covered by the supervisory board's monitoring obligation and would therefore also fall within the scope of duties of the workers' representatives on the supervisory board. In fact, the supervisory boards of numerous large German companies have already set up 'sustainability committees' that deal specifically with environmental issues.<sup>278</sup> This gives workers' representatives influence over company policy that takes environmental and climate issues sufficiently into account. Furthermore, each member of the supervisory board has the individual right to demand a report from the management concerning matters of the company, which must be forwarded to the supervisory board as such so that all members of the supervisory board have the same level of information (Section 90(3) sentence 2 AktG). In this way, the workers' representatives can address the company's environmental sustainability more effectively than the shareholder representatives often would do.<sup>279</sup>

As the deliberations of supervisory boards are confidential, it is difficult to assess the actual impact of co-determination. Nevertheless, from an empirical point of view, a recent study by the Hans Böckler Foundation of 2023 comes to the conclusion that co-determination has a positive influence on the fulfillment of ESG criteria, whereby it is by no means only about social aspects ('S'), but also about environmental aspects ('E').<sup>280</sup> Even if trade-offs cannot be completely ruled out, it is clear that ecological transformation can often go hand in hand with social sustainability.

<sup>275</sup> Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD), OJ EU 2022, No. L 322, p. 15.

<sup>276</sup> Section 107(3) sentence 2 no. 1 AktG-draft, Bundestagsdrucksache 20/12787 of 9.9.2024, 51.

<sup>277</sup> For details, see *Kerkemeyer*, *Der Betrieb* (DB) 2025, 609 et seq.; *Weller/Schwemmer*, *Die Aktiengesellschaft* (AG) 2024, 517 et seq.

<sup>278</sup> *Jaspers*, AG 2022, 309 et seq.; *Lieder/Döhrn*, AG 2023, 722 marginal no. 31 et seq.

<sup>279</sup> See in this context also *Winzen*, DB 1996, 94 et seq.

<sup>280</sup> *Scholz*, *Unternehmensmitbestimmung und die sozialökologische Transformation: Zusammenhang zwischen Mitbestimmungsindex und ESG-Kriterien in börsennotierten Unternehmen*, I.M.U. Mitbestimmungsreport no. 79 (2023).

## F. Conclusion

Workers and their representatives are crucial for an effective transition to a climate-neutral and sustainable economy. This is true because a successful green transition requires the knowledge and experience of the employees regarding the technical and organisational challenges. Moreover, the transformation process requires legitimacy and social acceptance which is only guaranteed if workers' representatives are involved. This is particularly true in order to counter the view that the fight against climate change is a middle-class project far away from the real problems and material interests of ordinary workers. In this regard, the active involvement of workers can serve as a crucial catalyst in raising awareness among the working population about the need for an ecological transformation and the simple truth that 'there are no jobs on a dead planet'<sup>281</sup>.

After some initial scepticism about the need for ambitious climate protection policies, German trade unions now unanimously accept the politically mandated reduction targets for greenhouse gas emissions, but are seeking to ensure that workers' interests are adequately taken into account in order to guarantee a 'just transition'. In addition, German labour and company law grants works councils and workers' representatives on supervisory boards institutional rights to influence the conduct of companies towards environmentally and climate-friendly policies. Nevertheless, collective agreements and works agreements could be used more intensively in future as instruments not only to manage the effects of ecological change, but also to shape the ecological change itself – in the interests of employees *and* climate protection, and thus in the interests of an effective and just socio-ecological transformation.

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<sup>281</sup> Cf. International Trade Union Confederation (ITUC), *Frontlines Briefing – Climate Justice: There are No Jobs on a Dead Planet*, 2015.

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## § 5 GREEN TRANSITION AND THE ROLE OF WORKERS' REPRESENTATIVES – THE CASE OF HUNGARY

Prof. Dr. Attila Kun<sup>282</sup>

### A. Introduction: political context and policy-background

It is worth noting that there seems to be several fundamental differences between the — so to say — ‘mainstream’ European (and EU-based) and Hungarian overall perception of the green transition and sustainability issues in general. This is especially so in a social policy, labour law context. As an introduction and illustration, only three such fundamental differences, particularities are briefly highlighted here: first, the general, dominant, unique political and policy-related perception of the green transition in Hungary; second, the limited role of social partnership and collective labour law (in general and in relation to climate policies); and third, the overwhelming economic, flexibility-related embeddedness of related policies.

First, while the notion of green transition and the overall ecological thinking is mostly associated with green movements, progressive, left-wing thinking and politics in the EU (and in most Member States), in Hungary, it is rather conceptualised along conservative values. The Hungarian government aims to promote a “conservative climate policy” within the international framework and in line with the EU’s climate policy. This philosophy is based on the general perception that it “is our God-given task and duty to preserve the created world.” Furthermore, the concept of “oikophilia” as a conservative value (i.e. attachment to home, to the self, to the local, to the family, to the landscape) as depicted by the British philosopher Sir Roger Scruton is often cited in this regard. The central idea of this philosophy is the deepest attachment to the world, the love of home, which can be a motivation to protect the environment.<sup>283</sup>

Along these lines, the Fundamental Law of Hungary (25 April 2011) states the following in its Preamble (National Commitment and Belief): “We pledge to treasure and preserve our heritage: our unique language, the Hungarian culture, the languages and cultural heritage of ethnic groups living in Hungary, and the man-

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<sup>283</sup> Steiner, Hungarian Conservative Vol. 2. No. 2, 2022, 28.

made and natural riches of the Carpathian Basin. We bear responsibility for our descendants; we shall therefore strive to use our material, intellectual and natural resources prudently so as to protect the living conditions of future generations.” Correspondingly, Article P (1) adds that “natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation’s common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual.”

In his 2020 state of the nation address, Prime Minister Viktor Orbán called protecting the climate and nature "our Christian and patriotic duty"<sup>284</sup> and the government later introduced a climate law with the target to reach climate neutrality by 2050 – which researchers have criticised for its lack of details (Act XLIV of 2020 on Climate Protection: the “Climate Protection Act”). In the 2024 “State of the Nation” address the following was mentioned: "In the economy, we see that the era of green energy is no longer knocking on our door: it has kicked the door in, arguing that Hungary "needs the green transition."<sup>285</sup>

As a further illustration of the political stance, it can also be mentioned that Prime Minister Viktor Orbán had an article published in the Financial Times in connection to the rotating presidency of the Council of the European Union. From 1 July to 31 December 2024, it was Hungary’s turn to hold the presidency of the Council of the European Union. The Prime Minister called for “making the European Union competitive again.” The cited article points out that the loss of the EU’s competitiveness has been a growing tendency in recent decades. This decline can be attributed primarily to “misguided Brussels decisions that go against the realities of the world economy,” as Mr. Orbán writes. The Prime Minister refers to the “green transition” as a chief example in which the EU has been imposing its own ideologically motivated goals without adequately consulting industry. At the same time, the Prime Minister believes it is obvious that Europe must aim for “leadership in the green industry” (with particular emphasis on electric vehicle development and manufacturing). However, imposing regulations that hinder industrial stakeholders and burden citizens is no longer sustainable. He proposes in particular “a new green industrial strategy” in collaboration with major industrial

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<sup>284</sup> Prime Minister Viktor Orbán’s “State of the Nation” address, available at: <https://2015-2019.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-state-of-the-nation-address-2020> (downloaded 02.12.2024).

<sup>285</sup> Prime Minister Viktor Orbán’s “State of the Nation” address, available at: <https://miniszterelnok.hu/en/prime-minister-viktor-orbans-state-of-the-nation-address-2024/> (downloaded 02.01.2025).

stakeholders.<sup>286</sup> In this respect, it must be noted that EU leaders adopted the Budapest Declaration on New European Competitiveness Deal on 8 November 2024.<sup>287</sup>

Second, while social partnership, social dialogue and collective labour law<sup>288</sup> values are inherent in the making and content of European labour law and social policy, in Hungary, in brief, the entire collective bargaining<sup>289</sup> system seems to fade away and struggle with fundamental structural problems.<sup>290</sup> In essence, without going into further details here, it can be stated that autonomous self-regulation of the labour market via collective bargaining is marginal. More generally, according to some opinions, postsocialist societies are – by default, as an overturn of the past – often “very individualistic, highly segmented and lack a strong grassroots institutional network”,<sup>291</sup> which is not a good foundation for sound and democratic labour relations, social partnership and the functioning of workers’ representatives. The current dysfunctionality of collective labour relations in general can also be largely traced back to the destructive socialist traditions. In sum, the strength and autonomy of social partners – the basic precondition of sound industrial relations – suffers from structural problems in most of the postsocialist countries (including Hungary).<sup>292</sup> All in all, the impact of social partnership and collective labour law in general seems to be marginal in Hungary. In contrast, in the EU it appears to emerge a revival of social/“human-centred”<sup>293</sup>/“human-faced”<sup>294</sup> narratives. Among others, the following documents exemplify this trend: the declaration on “A new start for social dialogue” (2015),<sup>295</sup> the EPSR (2017),<sup>296</sup> the ‘Report on Strengthening EU Social Dialogue’ (‘Nahles Report’, 2021),<sup>297</sup> the European Parliament’s report on democracy at work<sup>298</sup> etc. It is rather obvious that if social partnership and collective labour law in general are marginal, obsolete and

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<sup>286</sup> Prime Minister Viktor Orbán’s opinion piece in the Financial Times about making the EU competitive again, <https://miniszterelnok.hu/en/prime-minister-viktor-orbans-opinion-piece-in-the-financial-times-about-making-the-eu-competitive-again/> (downloaded 02.01.2025).

<sup>287</sup> Budapest Declaration on New European Competitiveness Deal, 2024.

<sup>288</sup> Kun/Ter Haar (eds.): EU Collective Labour Law.

<sup>289</sup> See for further details: Kun in Liukkunen, U. (ed.), Collective Bargaining in Labour Law Regimes, 333-356; Gyulavári in: Gyulavári/Menegatti, E. (eds.): The Sources of Labour Law.

<sup>290</sup> Gyulavári/Kártás in Boto, Brameshuber (eds.): Collective Bargaining and the Gig Economy, 99-116, 114.

<sup>291</sup> Tóth/Neumann/Hosszú in Lehndorff, Steffen (ed.): A triumph of failed ideas. European models of capitalism in the crisis, 137-154, 152. (The conclusion is about Hungary but seems to be apt for extrapolation for the region).

<sup>292</sup> Casale: Collective Bargaining and the Law in Central and Eastern Europe: Some Comparative Issues, 33.

<sup>293</sup> Cf. “human-centred approach to the future of work” – ILO: Centenary Declaration for the Future of Work; Work for a brighter future – Global Commission on the Future of Work.

<sup>294</sup> See: Novitz in Kun/Ter Haar (eds.): EU Collective Labour Law, 445-459.

<sup>295</sup> “A New Start for Social Dialogue”, available at: <https://op.europa.eu/en/publication-detail/-/publication/eb9d76b4-9a82-11e6-9bca-01aa75ed71a1/language-en> (downloaded 02.12.2024). Among other things, it affirmed that there is no social market economy without social dialogue.

<sup>296</sup> The European Pillar of Social Rights, Principle 8. Social dialogue and involvement of workers.

<sup>297</sup> Nahles, A.: Report on Strengthening EU Social Dialogue, European Commission.

<sup>298</sup> European Parliament: Report on democracy at work: a European framework for employee participation in company affairs and the revision of the European Works Council Directive.

increasingly irrelevant in Hungary, this is especially the case in relation to such modern, progressive topics as the green and just transition. In general, one can have the impression that workers' representatives seem to be unconcerned with focusing on sustainability and environmental protection. This presumption is also confirmed by empirical studies, concluding that "the green transition is reportedly not a priority for workers"<sup>299</sup> and their representatives in Hungary. Besides, politics also do not seem to assign a significant role for social partners in climate policies.

Third, the overriding "mantra" of Hungarian labour law policy has always been "flexibility",<sup>300</sup> while social and other "softer" values (including environmentalist, green ideas) have always been peripheral. For example, the (general) explanatory memorandum (official reasoning) of the Hungarian Labour Code (Act I of 2012 on the Labour Code, hereinafter: Hungarian Labour Code, HLC) contains a notable statement in this regard: "The Proposal attempted to make good use of the opportunities afforded by these in the course of the adoption of European labour law rules and to implement flexible regulations adjusted to the needs of the local labour market."<sup>301</sup> It is worth underlining two points from this quote: "to take advantage of" and "flexible". Furthermore, the "needs of the local labour market" are the dominant dynamics influencing policymaking, rendering the "business case" and competitiveness,<sup>302</sup> flexibility the overriding values and contextual factors. This general attitude is also reflected in relation to green issues, meaning that climate policy goals are usually framed subordinated and linked to economic development and labour market liberalization. Furthermore, the public is slightly less concerned by climate issues in Hungary in general than in Western Europe.<sup>303</sup>

## **B. Hungarian labour law and the environment**

The Labour Code (HLC) contains some scattered provisions in relation to the environment. However, as it will be presented below, it seems that all these provisions are rather technical in nature, and not genuinely based on "green" philosophies.

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<sup>299</sup> UNI Europa, EU Project "Make twin transition" – How to enhance social dialogue on the twin transition in the commerce sector.

<sup>300</sup> *Gyulavári/Hős*: The Road to Flexibility? Lessons from the New Hungarian Labour Code. *European Labour Law Journal*, 3(4), 252-269; *Gyulavári/Kártyás*: The Hungarian Flexicurity Pathway? New Labour Code after Twenty Years in the Market Economy.

<sup>301</sup> General justification 16.

<sup>302</sup> See also the above-mentioned Budapest Declaration on New European Competitiveness Deal, 2024.

<sup>303</sup> Public Perception of a Just Green Transition in Hungary, Policy Brief April 2022, The Foundation for European Progressive Studies (FEPS), 12. This report also notes, among other things, that while society receives much better the positive messages and slogans (protecting our natural heritage, creating green jobs, etc) it is still rather critical of the climate policies and action of the actual government, expecting the government to turn more attention to climate issues.

§ 54 (1) of the HLC states that “employees shall refuse to carry out an instruction if it would result in direct and grave risk to the life, physical integrity or health of others or to the *environment*” [emphasis added]. The reference to the environment ensures here that the employee has no discretion in this regard and is obliged to refuse to comply with those instructions which would result in direct and grave risk to the environment. Furthermore, this provision might also be a legal basis for obligatory withdrawal from work depending on climatic conditions (heatwave, etc.), when these would result in direct and grave risk to the life, physical integrity or health of others. § 54 (2) states that employees may refuse to carry out an instruction if it violates the provisions of employment regulations, or it would result in direct and grave risk to his or her life, physical integrity or health. This latter scenario, in principle, can occur due to extreme climatic conditions as well.

§ 108 (2) of the HLC sets forth that “overtime work may be ordered without limitation in the interest of the prevention or mitigation of any imminent danger of accident, natural disaster or serious damage or of any danger to health or the *environment*” [emphasis added]. Accordingly, the protection of the environment is envisioned as a superior value, surpassing even the employees’ interest to limitation of working time and overtime work. In the same manner, § 102 (3)(b) stipulates that an employer shall be considered to operate on public holidays by the nature of its business or a specific job shall be approved to operate or to be carried out on public holidays, among others, “if provided in the interest of the prevention or mitigation of any imminent danger of accident, natural disaster or serious damage or of any danger to health, the *environment* or property” [emphasis added].

The right of employees to information, consultation and participation also has an aspect related to the environment. § 264 (1) of the HLC declares that employers shall “consult” the works council prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees. It must be noted that the Hungarian wording of the law uses the notion of “asking for the opinion” of employee representatives instead of the regular term “consultation”, creating a certain degree of legal uncertainty.<sup>304</sup> § 264 (2) provides for an

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<sup>304</sup> In line with EU directives on information and consultation (e.g. Directive 2002/14/EC), consultation entails specific obligations. See Sec. 233(1) sentence (b) of the HLC: ‘consultation’ shall mean the establishment of dialogue and exchange of views between the employer and the works council or trade union. Sec. 233(2) sentence adds that consultation shall take place with a view to reaching an agreement, in such fashion as consistent with the objective thereof and ensuring: a) that the parties are properly represented; b) the direct exchange of views and establishment of dialogue; c) substantive discussions. Sec. 233(3) sentence states that the employer may not carry out the proposed action during the time of consultation, or for up to seven days from the first day of consultation, unless a longer time limit is agreed upon. In the absence of an agreement the employer shall terminate consultation when the said time limit expires.



exemplificative list in this regard concerning the relevant employer's actions. Among other things, "measures for the protection of the environment relating to the employer's operations"<sup>305</sup> are listed here as mandatory topics for consultation. Similarly, "plans relating to training and education"<sup>306</sup> is also a mandatory topic for consultation (which might also be highly relevant concerning training and (re)skilling for new jobs in the green transition). In sum, no co-decision/co-determination right is granted in such cases, just the obligation for "consultation". Moreover, the essence of consultation is further weakened by the actual, ambivalent wording of the law, as mentioned above ("asking for the opinion" of employee representatives instead of the customary term "consultation"). On top of that, consultation is not enforceable in Hungarian labour law at all, as explained below.

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishes a general framework for informing and consulting employees in the European Community (hereinafter: information and consultation framework directive, ICFDR).<sup>307</sup> Article 8 of the ICFDR (the so-called "Framework Directive") lays down strict requirements for the protection of rights. Member States shall provide for appropriate measures in the event of non-compliance with the Directive (i.e. informing and consulting employees) by the employer or the employees' representatives. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced. Member States shall provide for "adequate sanctions" to be applicable in the event of infringement of the Directive by the employer or the employees' representatives. These sanctions — as usual in EU labour law directives — must be effective, proportionate and dissuasive.

The Hungarian legislation is particularly problematic and flawed in this respect. § 289 of the HLC states that the employer, the works council or the trade union may bring an action within five days in the event of any violation of the provisions on information or consultation. The court shall hear such cases in non-contentious civil action. This provision in fact institutionalises a so-called "lex imperfecta" rule, since although a breach of the information and consultation norms leads to an unlawful situation, which can be established by the court, the norm cannot in fact be enforced by the courts (in the absence of sanctions). Case-law has also confirmed that, in the case of a breach of the rule on consultation, a finding of

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<sup>305</sup> Sec. 264(2) sentence (l) HLC.

<sup>306</sup> Sec. 264(2) sentence (g) HLC.

<sup>307</sup> On the importance of participation in general, see: *Hungler*: The Dual Nature of Employee Involvement.



illegality may be made in non-litigation proceedings, but that consultation cannot be enforced.<sup>308</sup> It is worth noting that, although employee participation is undoubtedly a complex, ongoing learning process, the effectiveness of which certainly does not (only) depend on legal sanctions, the absolute unenforceability of participation rights in this way grossly and dysfunctionally — and also contrary to the cited article of the ICFDR — devalues the legal institution information and consultation.

Professional opinions are divided on the matter, what type (i.e. criminal, civil, administrative etc.) and how big sanctions could really fit to the requirement of “effectiveness, dissuasiveness and proportionality.” On the one hand, in theory, probably one of the most suitable sanctions would be a possibility to nullify measures executed by management without respecting the procedures of (information and) consultation. However, such a strict sanction striking the validity of the measure in such a context may not always pass the proportionality test. Sanctions of other kinds, including fines, seem to be more common and more appropriate in this regard.<sup>309</sup> However, Hungarian law contains no sanction at all in this regard.

### **C. Industrial relations’ practices: illustrative examples (selection)**

Inclusion of environmental questions in collective agreements and negotiations between employers and trade unions is extremely rare – almost non-existent – in Hungary. For example, based on an empirical study, Rossu reports that out of the 103 collective bargaining agreements analysed, only 5 included or even mentioned the environment or relating issues. These 5 collective agreements were all local level ones (being the dominant level of collective bargaining in Hungary). He states that “apart from the incredibly low number of occurrences, the reference to the aspects mentioned is far from satisfactory.” 2 cases out of 5 are provisions that required active behaviour and cooperation on behalf of the parties. These collective agreements included the plan to set up covered bicycle storage areas on the employer’s premises in order to promote commuting using a bicycle. Thus, as Rossu also notes, even if the provisions can easily be linked to environmental issues somehow, “the original idea had little to do with environmental

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<sup>308</sup> Curia, EBH 2014.M.24.

<sup>309</sup> See for a general discussion of this matter: Jagodzinski (ed.): Variations on a theme? The implementation of the EWC Recast Directive, 172-174.

consciousness.”<sup>310</sup> In sum, environmental clauses in collective bargaining agreements are very exceptional and if they are in place, they tend to be purely formal declarations.

Not only collective bargaining is deficient in terms of sustainability and “green” issues, but these are rarely considered via information and consultation mechanisms as well (see above in Chapter 2 for the legal framework). There are some good corporate practices, but these are usually based on unilateral managerial decisions, and most of them “revolve around economic decisions.”<sup>311</sup> In general, according to experts, trade unions do not have the resources to tackle challenges of digitalization and green transition thoroughly. “At best, conferences or workshops were organized on these issues, but these did not result in a sustainable strategy or outcome.”<sup>312</sup>

There are some projects and endeavours of social partners (and other civil actors) in Hungary (and in the region) which aim to put sustainability and “green” issues on the agenda and to make such issues a priority also for social partners. Such projects result in varying degrees of success. Below, some random, outstanding examples are mentioned for the sake of illustration. For example, the EU funded project “Make twin transition”, with UNI Europa Commerce as sole applicant, aims to enhance social dialogue on the twin transition – green and digital – in the commerce sector in some target-countries (including Hungary).<sup>313</sup> As part of the project, a toolkit with guidance and recommendations for unions on how to shape the green and digital transition in the commerce sector was produced. The project aimed to raise awareness and improve the understanding of employers, workers and their representatives of the risks, opportunities and challenges in the world of work resulting from the green and digital transition. At the same time, the ambitious key message of the project is that social dialogue should be an integral part of the future policy-making process.

From June 2023 to March 2024, a team from the EU Coal Regions in Transition’s initiative, under the START technical assistance programme, collaborated with the Hungarian Trade Union of Mining and Industrial Workers (BDSZ) to identify and address issues related to economic and labour market transitions in Heves County,

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<sup>310</sup> *Rossu*: Environmental Sustainability in Collective Agreements and Other Policies in Hungarian Practice, EJCLS, Adapt, Vol. 10, No. 1/2021, 38-51, 46-47.

<sup>311</sup> *Rossu* EJCLS 49. These decisions include: providing separate waste collection by material (e.g. placing different coloured bins throughout company premises); installing motion sensors in common areas in order to save energy that would be wasted otherwise, should employees fail to turn off the lights when they leave; and reducing the use of paper by switching to electronic systems to be used for payrolls and accounting.

<sup>312</sup> *Meszmán/Szabó Imre G.* in Waddington, Müller, Vandaele (eds.): Trade Unions in the European Union, 543-584, 576.

<sup>313</sup> <https://www.uni-europa.org/news/green-and-digital-uni-europe-commerce-launches-twin-transition-project/> (downloaded 02.01.2025).

Hungary. The phase-out of lignite-fired electricity generation at MVM Mátra Energy Ltd., anticipated for 2025, is expected to have significant economic and labour market impacts on the region. BDSZ aims to anticipate the changes and create new local opportunities for workers who are likely to be made redundant.<sup>314</sup>

The LIFE-IP North-HU-Trans “For Just Transition” project aims to secure and start implement an effective roadmap for the low-carbon transition of the single largest coal-region in Hungary. The overall objective of the project is to enhance the successful implementation of the Hungarian National Energy and Climate Plan (NECP), with special emphasis on the decarbonisation and sustainable, just transition of the Mátra Power Plant (MPP) and its region. The project contains social objectives as well, namely, to provide for “sustainable and just transition for lignite-sector employees: contribution to the Territorial Just Transition Plans of Heves and Borsod-Abaúj-Zemplén counties, complex training programmes for MPP workers.” Trade unions, chambers are among the members of the consortium. Expected results include trainings and knowledge sharing for 500 workers and miners of the MPP.<sup>315</sup>

On a more general level, the so-called Green Deal CEE project aimed at creating networks in Central and Eastern Europe to support the implementation of the European Green Deal and its ‘Fit for 55’ package. The project aimed to advance EU climate and energy policies on a national level in the Czech Republic, Hungary, Poland, Bulgaria, Romania, and Slovakia. To achieve this goal, it strengthened civil society organisations, NGOs, think tanks, business associations, academia, representatives of cities and of national, regional, and local authorities in their joint engagement around the European Green Deal. Through trainings, seminars, and joint publications, members of the target group were able to connect with each other and access relevant knowledge on social, economic, and ecological co-benefits of a fair energy transformation in CEE. This expertise enabled them to participate in national energy and climate plans revision processes and to contribute to ambitious implementation of climate and energy policies. In Hungary, a broad variety of more than 60 stakeholders, including EU and national authorities and public administration, think tanks, business associations, and civil society, gathered to exchange opportunities and challenges, resulting in specific recommendations for national policies including energy efficiency, renewables, and community energy.<sup>316</sup>

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<sup>314</sup> Just Transition in Heves County: An analysis of challenges and opportunities, European Union, 2024.

<sup>315</sup> <https://igazsagosatmenet.eu/en/home-2/> (downloaded 02.01.2025).

<sup>316</sup> <https://www.euki.de/en/euki-projects/green-deal-cee/> (downloaded 02.01.2025).

Not only some projects for capacity-building and awareness-raising are evolving, but some controversial situations are also occurring. For example, the European Trade Union Confederation (ETUC) has raised attention to the fact that while foreign investments can serve the EU's climate policy goals for a green transition, there are some scandals. "In Hungary, for example, the booming battery manufacturing sector, boosted by investment from China, Japan and South Korea, is failing to deliver decent work and quality jobs because of problems such as the denial of freedom of association." Among other things, such controversies have triggered the ETUC to express the "urgent need to support just transition ambition in Environment Council Conclusions" at the EU-level. Such a measure, as the ETUC argues, should compel companies, regardless of where they are headquartered, to develop just transition plans and ensure the fair and equitable retraining of workers.<sup>317</sup>

A new IMF (International Monetary Fund) report points out that the green transition could exacerbate inequalities, in particular through regional differences in labour market outcomes. National green policies often have different local impacts, depending on the regional heterogeneity of carbon-intensive activities and employment. In Hungary, higher income regions generally have a higher share of green jobs in total employment. Budapest leads both in terms of economic development and share of green jobs, with a GDP per capita of around 5.0% of the EU-27 average and a share of green jobs of around 3.0%. It is followed by Western Transdanubia with a GDP of around 4.6% and a share of green jobs of around 2.2%. In contrast, regions such as the Northern Great Plain and Southern Transdanubia, with GDP per head well below the EU average, have much lower shares of green jobs, around 0.7-0.8%.<sup>318</sup>

## **D. Concluding remarks**

Hungary will definitely need some time to develop more widespread and more structural, efficient practices on just transition policies and green collective bargaining. Given the — by default — marginal, obsolete and increasingly irrelevant status of social partnership and collective labour law in general in Hungary (as described and referred to above), a huge degree of optimism is needed to envisage a considerably more vivid prospect for green collective

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<sup>317</sup><https://www.etuc.org/en/document/urgent-need-support-just-transition-ambition-environment-council-conclusions> (downloaded 02.01.2025).

<sup>318</sup><https://www.euractiv.com/section/economy-jobs/news/transition-may-exacerbate-regional-disparities-in-hungary/> (downloaded 04.01.2025).

bargaining soon. The awareness of the impact of the green transition on the world of work and on social issues in general is still rather limited in Hungary. The understanding of the need for social partners to have a say in this regard is even more limited. The expected “shared political commitment and responsibility”<sup>319</sup> (or ‘policy delivery’<sup>320</sup>) in relation to the EU’s policies on the green and just transition are also limited and (if any) take place in a different, special policy-, social dialogue and regulatory context in Hungary, as described above.

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<sup>319</sup> Cf.: Interinstitutional Declaration on the proclamation of the European Pillar of Social Rights, Preamble (17).

<sup>320</sup> Cf.: *Countouris*: Enforcing EU labour rights. – A look into the future of law enforcement: options and possibilities for action, A Thematic Working Paper for the Annual Conference of the European Centre of Expertise (ECE) in the field of labour law, 4, 9.

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## § 6 GREEN TRANSITION AND THE ROLE OF WORKERS' REPRESENTATIVES IN ITALY

Prof. Dr. Antonio Loffredo<sup>321</sup>

### A. Introduction

The recognition of the debt of life between generations, as well as the duty of solidarity between peoples, cannot be questioned, let alone postponed within the global market; that's why, in recent decades, both in Italy and internationally, there has been a strong demand for sustainability in the activities of companies,<sup>322</sup> which has increased in proportion to the multiplication of "irresponsible" companies, i.e. those that believe, beyond elementary legal obligations, that they do not have to answer to any public or private authority, nor to public opinion, for the economic, social and environmental consequences of their activities. Indeed, responsibility and sustainability go hand in hand since only companies that are concerned with the consequences of their actions towards the rest of mankind, can be sustainable in an interconnected world like the modern one. It is well known that the capitalist system developed over the years to the current situation through two types of exploitation: the of one human being on another human being and that of the human beings on the environment.<sup>323</sup> But while workers have developed collective power to respond to the first type of exploitation, no one has spoken up for the environment for years.<sup>324</sup> So many scholars studied labour law for a long time without looking at the elephant in the room, until they were forced to do so, when the environment started to express its countervailing power, such as the natural disasters we are facing all over the world.

For those reasons, the sustainability referred to cannot only be interpreted in the environmental sense and it must be declined into at least three categories: environmental, economic and social. In fact, it has long been evident that the modern capitalist economic model, which has based the governance of business on maximising its market value on the stock exchange at any cost, and in the short term, whatever its turnover or production size,<sup>325</sup> is no longer sustainable from either a social or environmental point of view, and even from an economic one. Indeed, the negative consequences of the activities of these companies are also

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<sup>322</sup> GALLINO, *L'impresa irresponsabile*, Einaudi, 2005, p. VII.

<sup>323</sup> POLANYI, *La grande trasformazione. Le origini economiche e politiche della nostra epoca*, Einaudi, 1974.

<sup>324</sup> MARTELLONI, La riconversione ecologica del diritto del lavoro tra limiti e prospettive, in Quaderni DLM, n. 18.

<sup>325</sup> GALLINO, *L'impresa irresponsabile*, op. cit., p. VIII.



evident in the commercial perspective of the proper functioning of the European single market because it promotes unfair competition between companies, since it tends to set the benchmark for the entire sector.

For many years now, the most important international organisations have been raising a cry of alarm that should have made people and scholars change the traditional approach to this issue.<sup>326</sup> Actually, various ILO and UN documents and policies have emphasised the need to combine environmental and social sustainability, which should never conflict with each other. Furthermore, the European Commission has also chosen to sign up to a climate-neutral Europe by 2050, first by promoting the Green Pact for the European Union and its citizens (2015) and, more recently, the European Green Deal (2019-2024), which accompanies the 2030 Agenda on Sustainable Development.<sup>327</sup>

The National Plan for Restoration and Resilience (PNRR) for Italy fits coherently into this European trend because it has set ecological transition as its main objective, with almost 70 billion euros to support it. These actions clearly show the will to make all demands for environmental protection effective and the need to overturn the anthropocentric vision on which the relationship between humans and the environment is based. The implementation of the green transition is mainly envisaged in mission 2 of the PNRR, entitled 'Green Revolution and Ecological Transition' and divided into four main components: 'Sustainable Agriculture and Circular Economy', 'Renewable Energy, Hydrogen, Networks and Sustainable Mobility', 'Energy Efficiency and Building Renewal and Land and Water Protection', to prevent the effects of climate change. In fact, on the one hand, it's possible to underline how the ecological transition represents a mainstream in the Plan and, therefore, it also involves other objectives for some specific sectors envisaged in the PNRR. The production sectors most involved in the energy transition process are, of course, those of transport and energy, construction and agriculture, which will be called upon to radically transform current production models, including by training workers in the sector in new green skills. In some of them, especially in the energy sector, as will be seen below, it is also developing a new collective bargaining that is trying to adapt the sector to the new challenges of the so-called green economy.

On the other hand, it must be admitted that there is generally little attention in the PNRR to the relationship between the world of work and green transition. In fact,

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<sup>326</sup> A recent publication on the subject is the monographic issue of the journal *Lavoro e diritto*, n. 1, 2022.

<sup>327</sup> BRINO, *Il raccordo tra lavoro e ambiente nello scenario internazionale*, in *Lavoro e diritto*, 2022, 1, p. 97.

apart from a few rare exceptions, no points of contact are currently identified between these two spheres, despite the need to manage employment transitions from sectors that will have to close to those that will instead play a significant role in the green economy. The most important exception among these normative measures is probably the *Fondo Nuove Competenze* (New Skills Fund), established by Article 88 of Decree-Law n. 34 of 2020: this is an active labour policy tool that aims to support Italian companies in their digital and ecological transition by promoting workers' acquisition of new skills. This Fund reimburses the cost of labour hours devoted to training, offering employees the opportunity to acquire skills needed to adapt to changes in the labour market. Despite being active for a short time, unfortunately it already shows some criticalities related to the fact that only larger companies with significant union participation are able to access the fund, in addition to an apparent lack of focus on green skills.

## **B. Labour law and sustainability: Italian approach**

According to recent research made by National Institute for Public Policy Analysis<sup>328</sup> (INAPP), only one in four companies have introduced at least one type of green investment in Italy. Most of them (66%) have made investments to improve energy efficiency or to implement eco-friendly technologies (52%). On average, the monetary amount of all green investments per capita was just €1,453. The few companies that have chosen to make green investments are slightly larger than Italian average, which explains why there are not many of them; indeed, Italian production is mainly composed of small and medium-sized enterprises. It is worth to stress that almost all those enterprise count with a significant trade union presence, which shows that Italian trade unions have taken this commitment seriously. By the way, the research shows that these companies have had also better performances in terms of turnover.

This inadequate attention of Italian companies<sup>329</sup> to green investments is also mirrored by the careless approach of most labour scholarship to the subject for several years.<sup>330</sup> Indeed, the traditional approach through which the relationship between environment and work has been studied has usually shifted towards the analysis of laws aimed at preventing the exposure of workers to unhealthy

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<sup>328</sup> DAMIANI M., POMPEI F., QUATRARO F., RICCI A., *Green investments, training costs and performance-related pay: Are small and medium-large firms different?*, Roma, Inapp, WP, 2024, p. 123  
<https://oa.inapp.gov.it/handle/20.500.12916/4360>

<sup>329</sup> SPEZIALE V., *Impresa e transizione ecologica: alcuni profili lavoristici*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2,2023, p. 280.

<sup>330</sup> ZOPPOLI L., *Derecho laboral y medioambiente: stepping stones para un camino difícil*, in *Diritti Lavori Mercati Int.*, 2023, I, p. 257.

conditions arising from the environment in which the work is carried out. However, what is new is the opening of labour regulation<sup>331</sup> to other topics<sup>332</sup> such as conditionality,<sup>333</sup> corporate responsibility<sup>334</sup> and the relationship between climate migration and labour relations.<sup>335</sup>

This new regulatory season should deconstruct the opposition between labour and environment in order to protect workers and nature in an integrated way.<sup>336</sup> This trend finds a significative juridical source now also in Italian Constitution after the Constitutional reform of 2022.<sup>337</sup>

Environmental protection has usually been recognised together with the protection of the landscape enshrined in Article 9, para. 2 of Italian Constitution. Since the '80s, our Constitutional Court has enhanced the protection of the landscape by including environmental protection;<sup>338</sup> nevertheless, in 1987 a unitary concept of environment that includes all natural and cultural resources was developed in a famous Constitutional Court ruling that constitutes an essential milestone for the subject.<sup>339</sup> The autonomous nature of environmental protection has been then confirmed during the same year with ruling no. 641,<sup>340</sup> in which the Constitutional Court specified that the multiform nature of the environment does not undermine its nature and substance as a unitary good that the legal system takes into consideration, specifying that its protection expresses the need for a natural habitat in which man lives and which is necessary for the community.

As already mentioned, a constitutional reform in February 2022, approved almost unanimously, amended Articles 9 and 41 of the Constitution, changing in a significant way the constitutional protection of environment when it regards its relationship with labour law. Indeed, a third paragraph was added to Article 9, which attributes to the Republic the duty to protect the environment, biodiversity and ecosystems, also in the interest of future generations.

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<sup>331</sup> DÄUBLER W., *Protezione del clima e diritto del lavoro*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 4, 2023, p. 543.

<sup>332</sup> TOMASSETTI, *Diritto del lavoro e ambiente*, Adapt University press, 2018, *passim.*, A. LASSANDARI, *Il lavoro nella crisi ambientale*, in *Lavoro e diritto* 2022, I, p. 7; L. ZOPPOLI, *Derecho laboral y medioambiente: stepping stones para un camino difícil*, in *DLM Int.*, 2023, I, p. 251.

<sup>333</sup> Cfr. F. MARTELLONI, *I benefici condizionati come tecniche promozionali nel Green New Deal*, in *LD*, 2022, p. 293.

<sup>334</sup> An interesting publication on the subject is the monographic issue of the journal *Rivista giuridica del lavoro e della previdenza sociale*, n. 4, 2021.

<sup>335</sup> TOMASSETTI P., *Diritto del lavoro e ambiente*, *op. cit.*, p. 247; C. CARTA, *La transizione ecologica nelle relazioni sindacali*, in *Lavoro e Diritto*, 2022, II, p. 327.

<sup>336</sup> CENTAMORE G., *Una just transition per il diritto del lavoro*, in *Lavoro e Diritto*, 2022, I, p. 129.

<sup>337</sup> MORRONE A., *La Costituzione del lavoro e dell'ambiente: un nuovo contratto sociale*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 4, 2022, p. 533.

<sup>338</sup> Sul punto cfr. C. Cost., 29/03/1985, n. 94, in *De Jure*; C. Cost., 24/06/1986, n. 151, in *De Jure*.

<sup>339</sup> C. Cost., 210/87, in *De Jure*.

<sup>340</sup> C. Cost., 17/12/1987, n. 641, in *De Jure*.

At the same time, the new wording of Article 41 shows more clearly than before how freedom of enterprise finds two limits in its development: the protection of the environment and health of all the people (not only of the workers, whose right was in the Constitution already). This constitutional reform thus seems to realign the constitution's axiological framework to the green requirements linked to the implementation of the European Green Deal.

However, Article 9.3 of the Constitution does not mean the abandonment of the anthropocentric vision in favour of an ecocentric one, since in the event of a conflict between the two visions, it seems that the former should prevail. Nevertheless, it can still be considered an important step forward because in any case the value of environmental protection requires the search for the balance point that, in function of human protection, sacrifices the integrity of ecosystems and biodiversity as little as possible. Therefore, it can at least be said that today, after the constitutional reform of 2022, environmental protection is enshrined among the fundamental principles of Italian Republic.

### **C. Health and safety at work: a traditional approach to environmental issues**

As previously mentioned, the traditional approach of Italian labour law to environmental issues has usually been linked to the subject of health and safety at work in addition to, of course, the cited constitutional principles. In this sense, there are some measures already adopted by the Italian legislator that are worth mentioning.

Legislative Decree 81/2008 is the fundamental legislation regulating risk prevention obligations in the workplace. One of the employer's main tasks is undoubtedly risk assessment: every employer is, in fact, obliged to assess risks to the health and safety of his workers. The assessment must include not only hazards related to the physical conditions of the workplace, but also psychological, ergonomic and chemical risks. This process must be updated periodically and, in any case, every time significant changes are introduced in the production process. Once the risks have been identified, the employer must take appropriate measures to minimise them. These measures may concern the adoption of personal protective equipment, the organisation of work in a safe manner and the appropriate training of workers. The employer is then obliged to ensure a system of health surveillance, including regular medical examinations for workers, especially those exposed to specific risks, including environmental risks in the

broadest sense. Finally, the employer has a duty to train workers on the risks present in their working environment and on procedures to prevent accidents or illnesses. Training must be continuous and adapted to technological and organisational changes. All these principles and rules cannot be unrelated to environmental protection, all the more so after the aforementioned constitutional reform of 2022.

An important regulatory reference concerns the risk assessment in the workplace and the role that social partners can play in it: the specific reference is to Annex IV of Legislative Decree 81/2008. This Annex deals with microclimate conditions (point 1.9) that may affect the health and safety of workers and integrates ventilation of enclosed workplaces (1.9.1), workplace temperature (1.9.2) and humidity (1.9.3) into the assessment of possible risks. More specifically, art. 18, par. Q, d.lgs. 81/2008 states that the employer must take appropriate measures to prevent the technical measures taken from causing risks to the health of the population or deterioration of the outdoor environment by periodically checking the continued absence of risk. In this rule, of course, the reference to the outdoor environment must be emphasised, which is thus among the legal goods that must not be affected by freedom of enterprise.

In this legislative context, the role that trade unions can play is very important because they could raise awareness of, for example, heat-related risks among employers and workers, participate in decision-making processes on organisational adjustments for better risk management, monitor the implementation of practices and sign joint protocols with other actors involved in the prevention of accidents at work. A clear example of the positive activity that has been carried out by trade unions in this field can be found in the agricultural sector in Southern Italy, where they have played a crucial role in catalysing public attention on the health and safety risks associated with heat waves. In this sense, in order to cope with these extraordinary heat waves, there is an important legislative provision that allows employers in some sectors to request the suspension or reduction of work activities, through the use of the *Cassa Integrazione Guadagni*, when temperatures are 35 degrees or higher. The existence of this rule should push the trade unions to put pressure on employers in order to actually apply for access to the *Cassa Integrazione Guadagni* when the conditions indicated by law are met.

The other fundamental principle of the Italian legal system concerning health and safety in the workplace, beyond the cited legislative Decree 81/2008, lies in Article

2087 of the Civil Code, which for decades was the only legal norm used by judges to guarantee this fundamental right of workers. Article 2087 of the Italian Civil Code, which enshrines the employer's obligation to take all necessary measures to protect the physical integrity and moral character of workers, has always been of fundamental importance in the regulation of health and safety in the workplace. However, as regulations and company policies have evolved, this article has acquired an even wider significance, becoming intertwined with the principles of environmental sustainability and corporate social responsibility.

More recently, some scholars have tried to verify whether the safety obligation enshrined in Art. 2087 of the Civil Code could also function as a linking mechanism between labour law and environmental law; this new way of interpretation of Article 2087 of the Italian Civil Code and Legislative Decree no. 81/08 with a view to environmental sustainability has been particularly successful<sup>341</sup>, demonstrating the need for a modernised approach to the issue. In the current context, the notion of 'protection of physical integrity' can no longer be limited to immediate and direct health risks alone but must also include risks related to environmental and climatic effects. Pollution, scarcity of natural resources and climate change are phenomena that not only affect people's lives and health directly but also have indirect effects on the well-being and safety of workers. A company that does not consider environmental sustainability in its corporate policies risks exposing its workers, and the whole community, to hazards from air pollution, illnesses related to exposure to toxic substances, and other problems cannot be seen as a responsible enterprise<sup>342</sup> and must, instead, be considered to be in breach of the legal obligations of our legal system<sup>343</sup>.

The linking of Article 2087 of the Civil Code with Articles 32 and 41 of the Constitution made it possible, in fact, to place on the employer not only the positive obligation to adopt safety measures, but also the negative obligation to refrain from any initiative that could be detrimental to the psychophysical integrity of the worker. In this light, Article 2087 might become a useful tool to promote a corporate vision that not only cares about the physical health of workers, but also strives for a more sustainable environmental impact. Companies that adopt responsible environmental policies reduce their ecological footprint and help protect workers

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<sup>341</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, Adapt University press, 2018, p. 169.

On this subject also C. LAZZARI, P. PASCUCI, *La gestione della circolarità dei rischi tra ambiente interno ed esterno all'azienda. Profili giuridici*, in *DSL*, 2023, I, p. 35; PASCUCI P., *Modelli organizzativi e tutela dell'ambiente interno ed esterno all'ambiente*, in *Lavoro e Diritto*, 2022, 2, p. 335; DI STASI A., *Diritto del lavoro, principio di precauzione e sostenibilità ambientale: una convergenza necessaria*, in *VTDL*, 2023, I, p. 207.

<sup>342</sup> Reference is again made to the expression coined by GALLINO, op. cit.

<sup>343</sup> TREU T., *Politiche europee e nazionali per la transizione verde*, in *WP C.S.D.L.E. "Massimo D'Antona".INT – 160/2024*, at [https://www.csdllex.unict.it/sites/default/files/Documenti/Articoli/1-2024\\_Treu.pdf](https://www.csdllex.unict.it/sites/default/files/Documenti/Articoli/1-2024_Treu.pdf).

from harm from a deteriorating environment. Integrating environmental sustainability into business practices can thus be a direct application of Article 2087, since the well-being of workers is inextricably linked to the quality of the environment in which they work. Businesses should therefore be called upon to adopt solutions that reduce their environmental impact, protecting biodiversity and contributing to the long-term well-being of the community and the planet.

Moreover, if we link Art. 2087 with the mentioned Art. 18, par. Q, Legislative Decree 81/2008, thus, the public dimension of the health and safety prevention apparatus may extend to the effects that these risks, and the whole prevention system, may have on the population and the external environment. If we agree with this interpretation, the employer should also be under an obligation to find organisational solutions to avoid the environmental risk not only with regard to the health of the workers, but also with regard to the integrity of the external environment.

## **D. The “Ilva case”**

A paradigmatic example of the conflict, that should never exist, between the right to work and environmental protection is the judicial dispute that developed within former ILVA in Taranto,<sup>344</sup> one of the largest steel mills in Europe that carries with it the dramatic burden of a long trail of deaths and serious illnesses for workers and people living nearby. For this reason, in 2012, the Taranto Public Prosecutor's Office ordered the closure of the ILVA plant because its emissions were considered harmful to the environment and the health of the population. After the judge's intervention, the government of the time issued the first of the so-called ‘save-Ilva’ decrees (no. 207 of 2012), which allowed the continuation of activities at the plants, also thanks to strong pressure from the most representative trade unions, concerned about the employment situation not only of the company but of the entire city which, unfortunately, to a large extent depends on it.

It did not have to wait too long for the reaction of the judge in Taranto, who decided to raise a question on the constitutionality of the decree; the judge's numerous arguments are mainly attributable to the balancing of the right to a healthy environment against the freedom to conduct business.

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<sup>344</sup> LAFORGIA S., *Se Taranto è l'Italia: il caso Ilva*, in *Lavoro e Diritto*, 1, 2022, p. 29.



The Constitutional Court ruled in 2013<sup>345</sup> and considered the balancing of interests carried out by the legislator to be constitutional. The Constitutional Court ruled that the starting point of the judge in Taranto, according to which the right to health and safety in the workplace and environmental protection were interests overriding other personal rights (including the right to work), was incorrect. In fact, all constitutional rights must be considered in a relationship of mutual integration. It follows that, according to the Constitutional Court, even the right to health and safety – also understood as the right to live in a healthy environment – must be constantly balanced with all other constitutional rights, the balance point of which is dynamic and must be identified, from time to time, by the legislator. Thus, the Court's reasoning was aimed at finding an appropriate balance between the protection of employment levels and the protection of health and safety at work and the environment.

Nevertheless, although the Court's legal argument may be considered correct, the fundamental rights set against are probably the wrong ones; indeed, the Court should have probably achieved the balance by placing freedom of enterprise on one side and environmental and workers' protection on the other, while the constitutional judges left freedom of enterprise in the background<sup>346</sup>. The Constitutional Court might have made a logical error, arriving at the paradoxical result of (implicitly) attributing responsibility for the environmental disaster to the activity of protection of workers' interests. Moreover, the ruling only takes into account a quantitative view of the right to work, just protecting the employment levels,<sup>347</sup> omitting to consider its qualitative dimension, which requires, for example, workers to guarantee their right to work without having to sacrifice their psychophysical integrity.

Some years later, in 2018, the Constitutional Court<sup>348</sup> seemed to have slightly changed its perspective somehow. In fact, another question of constitutionality was raised against the second 'Save-Ilva Decree' of 2015 (decree No. 92). This time, the Constitutional Court declared the illegitimacy of Article 3 of the 2015 decree for violation of Article 41 of the Constitution. According to the Court, the legislator ended up excessively privileging the interest in the continuation of production,

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<sup>345</sup> Judgment n. 85, in De Jure.

<sup>346</sup> Così BUOSO S., *Principio di prevenzione e sicurezza sul lavoro*, Giappichelli, 2020, p. 109; TOMASSETTI P., *Diritto del lavoro e ambiente*, op. cit., p. 113 e ss.

<sup>347</sup> PASCUCCI P., *La salvaguardia dell'occupazione nel decreto "salva Ilva". Diritto alla salute vs diritto al lavoro?* in *Olympus W.P.*, 2013, 27, p. 6.

<sup>348</sup> Judgment No. 58, in De Jure.



completely neglecting the protection of health and life, to which the right to work in a safe environment is naturally connected.

These judgments have been also followed by a few decisions of the European Court of Human Rights,<sup>349</sup> which condemned Italy for violating Article 8 – that deals with the right for private and family life and whose broad interpretation requires the avoidance of serious damages to the environment that may adversely affect the wellbeing and privacy of citizens – and Article 13 of the ECHR, on the right to an effective (judicial) remedy. All these judgments must be interpreted as a direct message to Italian legislator, who must necessarily rethink the approach adopted so far, ensuring the gradual reconversion of the plant in order to restore the environment and preserve employment levels.

Probably also for these reasons, more recently it seemed that a new phase was beginning with the attempt to nationalise the company in 2021 and the investments made under the *Just transition fund*. Moreover, in 2023 (Decree Law No. 2), the latest Save Ilva decree was again approved to guarantee the continuity of the company's activities, but – this time – with, at least, the important limitation of not compromising the right to health of the community and workers; indeed, anyone who acts in order to implement a measure authorising the continuation of the activity of an industrial establishment or part of an industrial establishment declared to be of national strategic interest shall not be punishable for acts resulting from compliance with the prescriptions dictated by the measure aimed at protecting the legal assets protected by the incriminating provisions, if he has acted in conformity with those prescriptions. Unfortunately, however the most recent news seems to be not so reassuring because the former CEO of ILVA (now Acciaierie d'Italia) has been set under investigation, once again by the Taranto Public Prosecutor's Office, together with other people, on charges of criminal conspiracy aimed at pollution, environmental disaster and fraud against the State, which makes this legal case still not concluded. In this sense, it has to be underlined the intervention of the European Court of Justice that, in the case C-626/22, stated that "Directive 2010/75 must be interpreted as precluding national legislation under which the period granted to the operator of an installation to comply with the measures for the protection of the environment and human health provided for in the permit to operate that installation has been repeatedly extended, whereas serious and significant risks to the integrity of the environment and human health have been

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<sup>349</sup> Cordella and others v. Italy of 24/1/2019, in [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-192164%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192164%22]}); and Ardimento and others v. Italy, of 5/5/2022, in <https://www.lawpluralism.unimib.it/oggetti/1029-ardimento-and-others-v-italy-no-4642-17-e-ct-hr-first-section-5-may-2022>

identified. Where the activity of the installation concerned presents such risks, the second subparagraph of Article 8(2) of that directive requires, in any event, that the operation of that installation be suspended”.<sup>350</sup>

## E. The role of trade unions

In this framework, trade unions are in a very complicated situation and have a very delicate role to play.<sup>351</sup> A first possibility, which is probably also the one chosen by most of the representative trade unions in the *Ilva* case, is to continue doing their job in a traditional way, trusting that other institutions will take care of environmental protection, which is of course a topic of public interest. This path, in my opinion, is understandable but inadequate to contrast the climate crisis, also because it only results in a quantitative protection of employment, as the Constitutional Court did in the criticised ruling on the *Ilva* case. Moreover, in the globalised financial economy, the intervention of law and trade unions is more and more needed to try and make the enterprises at least responsible for the damages created to workers' health and the environment. In this difficult situation, some scholars and trade unions think that corporate democracy may be an element that could foster more sustainable attitudes for society as a whole; however, to what extent it can really work is still partly to be discovered.

An alternative path to the traditional could be the attempt for trade unions of being more involved in the climate transition: with the growing urgency of environmental issues, trade unions can increasingly play a significant role in promoting environmental sustainability. Their involvement can bridge the gap between labour rights and ecological responsibility, advocating for policies that protect both workers and the environment.

The increasing focus on the ‘ecological transition’ within industrial sectors is leading some Italian trade unions to call for the improvement of technologies used, the switch to renewable energy sources and the reduction of the environmental impacts of corporate activities, focusing on the rejection of harmful industrial practices, such as the extraction of raw materials in an unsustainable manner, deforestation or the pollution of rivers and seas.

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<sup>350</sup> Judgment of the ECJ (Grand Chamber) of 25 June 2024 (request for a preliminary ruling).

<sup>351</sup> On the difficult task of trade unions in just transition see. SGROI, *The sustainable industrial democracy and the role of trade unions in the Just transition*, in *ILLEJ*, 2, 2024, p. 299.

One of the key roles trade unions can play in environmental sustainability is advocating for the creation of **green jobs**.<sup>352</sup> This includes pushing for retraining programs, job creation in emerging green sectors, and the development of industries that align with sustainable practices. Among the many areas involved in such activity there is the contractual attribution to workers' representatives for health, safety and the environment of specific consultative, informative and training prerogatives on environmental policies and investments, sustainable conversion of workplaces and production processes.

Trade unions can incorporate environmental concerns into **collective bargaining agreements and in Italy** some positive and interesting experiences can already be reported. The starting point can surely be the Industrial Relations Policy Guidelines contained in the *CGIL, CISL and UIL* document "For a sustainable development model",<sup>353</sup> of 26 September 2019, which was implemented mainly through collective bargaining, both sectorial and at plant level. But, of course, implementing it required an important effort to rethink social bargaining.

Some good practices in this sense are the 2022 renewals of the National Collective Bargaining Agreements for electrical workers and for energy and oil, in which there are some measures to manage the social and employment effects of the energy transition.<sup>354</sup> Among these, the most relevant seems to be the adjustment of classification systems and the new professions involved in the process, especially through vocational training, which seems to be an indispensable element, even if sometimes it's the only one, for updating workers' skills.

For instance, with regard to sectorial bargaining in the Electricity sector signed by the most representative trade unions, among the most innovative elements it is important to recall that Article 10 of the collective agreement which provides that, in order to combine occupational health and safety requirements, respect for the environment and the development of production activities, the unitary trade union representatives will be the recipients, at company level, of special training and information programmes, which will provide them with the basic elements necessary for a correct understanding of the company's environmental strategies, improvement programmes and health, safety and environmental assessment and management initiatives.

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<sup>352</sup> BARBERA M., *Giusta transizione ecologica e disuguaglianze: il ruolo del diritto*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2022, 3, p. 343.

<sup>353</sup> [https://asvis.it/public/asvis2/files/Documento\\_Unitario\\_per\\_un\\_modello\\_di\\_sviluppo\\_sostenibile.pdf](https://asvis.it/public/asvis2/files/Documento_Unitario_per_un_modello_di_sviluppo_sostenibile.pdf)

<sup>354</sup> ALESSANDRINI, BORMIOLI, RUGIERO, *Energy for a just and green recovery deal: the role of the industrial relations in the energy sector for a resilient Europe*, in Working paper della Fondazione di Vittorio, n. 7, 2024.

Environmental protection has also found a place in some plant collective agreements, as a result of the prominence that environmental issues have *de facto* assumed in the action strategies of workers' representatives. Alongside reporting clauses on company policies on the environment, and style clauses in which company management undertakes to guarantee high standards of environmental protection in the broadest sense, we find the presence of plant agreements containing provisions concerning training courses on environmental issues dedicated to trade union representatives and to workers themselves; programmes aimed at raising awareness among human resources about eco-sustainable production, and the reduction of emissions, waste and refuse; constitution of continuous improvement groups aimed at improving company performance by reducing waste through the participation of workers and trade union representatives; performance bonuses linked to energy saving and efficiency objectives; sustainable mobility plans for the home-work journey; social and environmental clauses that commit the company to selecting only business partners that guarantee full compliance with labour and environmental regulations and that agree to checks on compliance and adherence to sustainability principles.

The model applied by the ENEL company in Italy, in agreement with the most representative trade unions, to accompany the workers of thermoelectric power plants earmarked for closure with flexible exit measures and retraining and outplacement interventions is one of the good practices of social dialogue in this strategic sector. Another important example of territorial bargaining adopted in the same sector are the shared protocols signed by the company ENI for the transformation of traditional refineries into biorefineries.

Finally, the role of trade unions in this topic can also extend to the field of the industrial conflict and, especially, on the right to strike. Many trade unions and workers have realised that the fight for labour rights must necessarily complement the fight for environmental protection. For this to happen, however, the ecological potential of workers' mobilisations must also imagine new social alliances, for example with the youth and women's movements. It is necessary for the representative organisations of labour, the labour movement and its trade union articulations to express not only the collective interest of workers but also of future generations. But this different perspective calls for a new strategy of trade union action and new priorities in the demands of the international and national labour movement.

The connection between strikes and environmental protection represents a new frontier in the struggle for workers' rights, where sustainability and the well-being of the planet have become strategic goals for trade union movements. The adoption of ecologically responsible working practices not only improves the quality of working life, but also has a positive impact on the entire community. Actually, the right to strike is used less and less in its more traditional function while it is increasingly associated with environmental protection and sustainability, because those who organise mobilisations know that in this way they can involve people, and generations, who are sometimes quite distant from the classic workers' conflicts. The growing awareness of ecological issues has given rise to a new type of mobilisation, in which workers and citizens demand more responsible corporate and institutional policies towards the planet.

Trade unions can **collaborate with environmental organizations** to strengthen the fight for sustainability. This partnership can amplify their collective voice in advocating for strong environmental policies at local, national, and international levels. By joining forces, unions and environmental groups can work towards shared goals, such as advocating for stricter climate change regulations, promoting sustainable development, and ensuring that workers' rights are protected in industries undergoing green transformations.

An interesting case in this sense is that of GKN in Florence<sup>355</sup>: the environmental strike involving GKN workers and climate organisations is part of a growing concern about the environmental impact of industries. Indeed, GKN is not only a benchmark for the automotive industry, but also for the production of mechanical components that have a direct impact on CO2 emissions and the consumption of natural resources. The demands put forward by workers and environmental organisations are an ecological reconversion of the plant, where instead of laying off workers and closing the plant, they invest in new technologies that reduce the environmental impact of production. The idea is to reconvert the car industry towards more sustainable models, such as the production of components for electric vehicles or low-emission solutions, which could guarantee both environmental protection and employment protection. The environmentalist strike at GKN is an emblematic case of how the conflict between work and environment can only be overcome with an integrated approach that takes into account the need to safeguard both jobs and the planet. The GKN workers' struggle is not only a

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<sup>355</sup> On the matter see LEONARDI E., GABRIELLINI F., *La just transition come strategia partecipativa del lavoro: sapere operaio e democrazia economica nella vertenza ex GKN*, in *Economia e società regionale*, 3, 2023, p. 53.

battle for jobs, but also for a more sustainable vision of the future of industry and society, which is why it has maintained a clear convergence with the climate movement of *Fridays for future*, in the conviction that one cannot try to achieve climate justice without touching the deeper economic interests of society.

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## § 7 GREEN TRANSITION AND THE ROLE OF WORKERS' REPRESENTATIVES – THE NETHERLANDS

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### A. Introduction

In this report we will first briefly sketch the general context concerning the green transition in the Netherlands with specific attention for the general political and labour market sensitivities (section 2). Second, we will elaborate on the motivation for Dutch employers and workers to be actively engaged with activities that contribute to the green transition (section 3). Third, we will provide a non-exhaustive overview of measures and activities that are already undertaken in practice as part of the green transition employment conditions. These measures and activities can be grouped as part of employment conditions, related to the workplace, and related to work more broadly (section 4). Following these measures and activities, we will address in sections 5 and 6 the role of trade unions and works councils respectively. In section 7 we will draw some conclusions, especially addressing the underlying research question whether the current Dutch legal framework offers trade unions and works councils enough support to represent workers within the broad context of the green transition.

Before moving on we need to elaborate on what we understand with the green transition. For comparative reasons, we have decided to use the policy framework of the European Union. Based on the EU's Green Deal Industrial Plan (GDIP)<sup>359</sup> the green transition concerns foremostly a transition to a net-zero technology. Translated to work, this implies a substantive change in production processes, methods and tools. Many of such changes are expected to be driven by new technologies. This, in turn implies that workers need to be (re)trained to adjust and improve their (work-related) skills. This is then also one of the four pillars of the GDIP: enhancing skills.<sup>360</sup>

Related to the theme of this report, this means that it can be expected that there will be many changes at the workplace and related to work more broadly, which

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<sup>359</sup> *European Commission*, The Green Deal Industrial Plan. Putting Europe's net-zero industry in the lead (2019-2024), available on the EU's website on the European Green Deal: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/green-deal-industrial-plan\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/green-deal-industrial-plan_en) (accessed 14 January 2025).

<sup>360</sup> *Ibid.*



would, ideally, require the involvement of workers' representatives when deciding on and implementing those new work processes, methods, tools and technologies. To a certain extent this is also recognised in the green deal with the expression that while making the transition, "no person and no place should be left behind".<sup>361</sup> The part about leaving no one behind goes together with a recognition of stakeholders, and more particularly the involvement of all relevant stakeholders in decision-making at all levels. The latter not only refers to decision-making in politics but includes also decision-making in companies, or better, the broader context of work.<sup>362</sup> This makes it more important, and probably even an obligation of the Member States, to ensure that workers representatives, as recognised stakeholders, have the legal means and powers to be involved in all decisions that affect the workers they represent. Hence, as expressed above, this is the main research question underpinning this report.

## B. General context green transition in the Netherlands

Like in many countries, in the Netherlands the green transition is a politically sensitive topic. Thus, when exploring the role of workers' representatives in the green transition, it is good to be aware of some of the major specific political issues surrounding the green transition. For the Netherlands the following two issues are of major influence. First, the fact that geographically a substantive part of the Netherlands lies below sea level. Consequently, the Netherlands is one of the countries in the world at risk of serious flooding.<sup>363</sup> This creates a common sense that something needs to be done to fight climate change, especially when it comes to activities that contribute to slowing down or possibly even turning the rising temperature on the planet.

Second, given its geological size, the Netherlands is a remarkable big export country for food, including meat. This means that the Netherlands holds a relatively large number of livestock.<sup>364</sup> As a result, the Netherlands has a specific issue with

<sup>361</sup> *European Commission*, The European Green Deal. Striving to be the first climate-neutral continent, (2019), available on the EU's website on the European Green Deal: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en) (accessed 14 January 2025).

<sup>362</sup> Cf. *Novitz*, Trade, Labour and Sustainable Development. Leaving No One in the World of Work Behind, 70-72, with reference to activities of the European Trade Union Confederation (ETUC), which are based on the *International Labour Organization's* (ILO) 2015 Tripartite Guidelines for a Just Transition and the 2016 Guidelines for a just transition towards environmentally sustainable economies and societies for all, both available at the website of the ILO: <https://www.ilo.org/publications/guidelines-just-transition-towards-environmentally-sustainable-economies> (accessed 14 January 2025).

<sup>363</sup> Cf. *Igini*, Sea Level Rise Projections: 10 Cities at Risk of Flooding *Earth.org* 4 June 2022; <https://www.floodmap.net/?gi=2759821> (accessed on 10 January 2025); and *Masterson, Hall, and North*, Sea level rise: Everything you need to know, World Economic Forum 20 September 2024.

<sup>364</sup> Cf. *Reilly*, Cutting-edge tech made this tiny country a major exporter of food, *The Washington Post* 21 November 2022.

exceptionally high levels of nitrogen emissions. Reducing these emissions, which is not only a goal of the Dutch government, but also a demand from the EU,<sup>365</sup> will have major impacts on the Dutch agricultural sector, and other industries such as the construction sector and road transport.<sup>366</sup> This has split the support for the green transition by groups that are fiercely opposing government (nitrogen-reducing) policies,<sup>367</sup> especially farmers, and groups that are of the opinion that the government policies are by far not sufficient enough to make the transition to a zero-net economy,<sup>368</sup> especially united in the movement extinction rebellion.<sup>369</sup>

Another issue to be highlighted is that especially the younger generations (Y and Z), are more particular about what kind of employer they want to work for. In general, these generations are growing up in an era in which their future is uncertain compared to the older generations (especially the boomers and generation X). Whereas the older generations have grown up in an era which offered them, in general, a more promising future than that of their parents, this is no longer the situation for the younger generations. The younger generation is faced with (s)lower economic growth, the digital transition leaving them uncertain about what kind of work activities will be there for them in the (nearby) future, and climate change.<sup>370</sup> Especially the latter has made the younger generations more concerned with and conscious about what kind of employer they want to work for. Some sectors and regions are more sensitive for this attitude of the younger generations than others. For example, the energy sector in general has a hard time attracting workers, partly due to a shortage of qualified workers, but also because younger generations refuse to work for a company in “grey energy”. This is even more the case for energy companies in the province of Groningen, which has a specific history with gas. Consequently, such companies are forced to get engaged with forms of “green energy”. More generally, the younger generations also demand more green or sustainable employment conditions, forcing companies and

<sup>365</sup> Commission Implementing Decision (EU) 2022/2069 of 30 September 2022 on granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (notified under document C(2022) 6859, published in OJ L277 [2022] 195-207).

<sup>366</sup> Van Halm, The Dutch nitrogen crisis shows what happens when policymakers fail to step up, EnergyMonitor.ai 16 August 2022; and <https://www.government.nl/topics/nature-and-biodiversity/the-nitrogen-strategy-and-the-transformation-of-the-rural-areas> (accessed on 10 January 2025).

<sup>367</sup> E.g. Tullis, Nitrogen Wars: the Dutch farmers' revolt that turned the nation upside down, The Guardian 16 November 2023.

<sup>368</sup> E.g. the groundbreaking case: Dutch Supreme Court of 20 December 2019 *Urgenda vs The Netherlands* [ECLI:NL:HR:2019:2007]; and more recently District Court The Hague of 22 January 2025 *Greenpeace vs The Netherlands* [ECLI:NL:RBDHA:2025:578], including the news message: District Court The Hague, ‘Staat moet wettelijk stikstofdoel 2030 halen en voorrang verlenen aan gebieden met grootste stikstofoverbelasting’, *Rechtspraak.nl* of 22 January 2025.

<sup>369</sup> This is particularly true for the organisation *Extinction Rebellion* (<https://extinctionrebellion.nl/> – accessed 10 January 2025). See also: *Civicus Lens Staff*, The Netherlands: climate action faces backlash. Climate protesters criminalised as anti-environmental politics rises, *Lens.Civics.org* 27 April 2023.

<sup>370</sup> See more elaborately on this: *Ter Haar* in: Mocella and Sychenko (eds.) *The quest for labour rights and social justice. Work in a changing world* (FrancoAngeli 2024), 310.

employer organizations to bargain with trade unions for “green” or sustainable collective labour agreements.

Although the above explained general (political) sensitivities would suggest a governmental policy that is refined and diversified, in general and regarding work in particular, this seems not to be the case. As Kullmann analysed in her report for the Agreement project, work-climate related policies are mainly oriented on the labour supply side with a labour market approach steering for sustainable employability of workers.<sup>371</sup> Despite the rather limited policy focus of governmental policies, the motivations for employers and workers to be engaged with the green transition seem to be wider (addressed in section 3), leading to a wider variety of measures and activities (addressed in section 4).

### **C. Motivations of employers and workers to be engaged in the green transition**

Besides the above sketched general political and labour market context that drives Dutch companies to actively engage in the green transition, there are also other motivations for both, employers and workers, to actively contribute to the green transition.

The biggest employers’ organisation, the Algemene Werkgeversvereniging Nederland – AWWN (General Employers Association Netherlands), actively promotes “green employership”, among other activities, by organising meetings, their website, and guides. Since the AWWN is an association, its activities are limited to what its members are interested in. The fact that sustainability and green employership are part of those activities, therefore means that companies/employers are interested in these topics. Green employership is part of the broader concept of responsible business conduct, which, according to the AWWN, consists of doing the right thing (ethically correct behaviour); doing the smart thing (focus on sustainability); and doing what is legally required.<sup>372</sup> This is further worked out in what AWWN calls three dimensions: equality; wellbeing and development; and sustainability.<sup>373</sup> Sustainability, as the smart thing to do, refers to businesses that are intrinsically motivated to focus on sustainability in the sense of contributing to the world to make it a better place, this includes making a positive

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<sup>371</sup> Kullmann, Labour and Environmental Sustainability. Dutch Report (Adapt University Press, 2020), 8.

<sup>372</sup> Source: thematic page “maatschappelijk verantwoord werkgeven” at the website of the AWWN: <https://www.awvn.nl/maatschappelijk-verantwoord-werkgeven/> (accessed 14 January 2025).

<sup>373</sup> Ibid.

contribution to the environment and climate. This is interesting for businesses, because in the long run this will lead to better financial benefits (read: profits).

To create a sustainable business, the green employer ensures that the values and needs of the individuals and society are taken into account within its organisation, such by ensuring that business processes are sustainable, within the company, at the workplace, and beyond. The latter includes employment conditions that contribute to awareness of ecological conscious behaviour of workers, and therewith the business itself. To support the green employer, the AWWN has published a guide (a green paper) with inspirational ideas for green employment conditions.<sup>374</sup> Many of these ideas are in fact good practices from members of the AWWN that have already been experimenting with green working conditions. Many of these employers have started to do so, to remain an attractive employer for workers. As elaborated on in section 2, especially for the younger generations Y and Z.<sup>375</sup>

Motivations for workers to be actively engaged in the green transition are promoted by trade unions. The biggest trade union federation (FNV) mentions four reasons for workers to be concerned with the green transition, namely that there will be no jobs on a dead planet, nothing about workers without their involvement, workers have valuable knowledge about work- and production processes, and to ensure a fair distribution of the transition costs.<sup>376</sup> To promote an active involvement of its members, FNV facilitates the participation in a network in which like-minded workers/FNV members meet and work together with climate action groups (which groups is not indicated). The network is based on the principle that the interests of the workers and the planet are aligned since the climate crisis concerns the wellbeing of people and planet. The aim of the network is to make climate a top priority for the trade union FNV.<sup>377</sup>

Other activities undertaken by FNV to motivate workers to actively engage with the green transition include documentation with information about transition related topics, webinars about the development goals and the energy transition, an app to check whether it is safe to perform work activities given the weather (especially heat), and the promotion of green working conditions in collective labour

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<sup>374</sup> Available on the website of the AWWN: <https://www.awvn.nl/arbeidsvoorwaarden/publicaties/inspiratiegids-groene-arbeidsvoorwaarden/> (accessed 14 January 2025).

<sup>375</sup> This was recognised as one of the reasons to become a green employer in earlier documentation of the AWWN, especially in a 2023 factsheet and a 2023 blog written by an AWWN staff member with the title: Green benefits: voorkom een klimaatkloof in uw bedrijf, available at: <https://www.awvn.nl/arbeidsvoorwaarden/blog/green-benefits-voorkom-een-klimaatkloof-in-uw-bedrijf/> (accessed 14 January 2025).

<sup>376</sup> FNV Werken aan een eerlijke transitie. FNV-visie op klimaatbeleid (2024), available on the website of FNV: <https://www.fnv.nl/acties/klimaat> (accessed 14 January 2025).

<sup>377</sup> Cf. the network's webpage: <https://netwerkklimaatfnv.nl/#organisatie> (accessed 14 January 2025).

agreements.<sup>378</sup> Similar to the employers organisation AWWN, FNV frames “green activities” as part of the wider context of responsible business conduct (RBC), more particularly FNV relates RBC to the initiatives of the Social and Economic Council on international RBC.<sup>379</sup>

Employers’ organisations and workers organisations are together organised in the Labour Foundation (Stichting van de Arbeid – STAR). Within the theme “labour market”, the focus lies with the changing labour market due to, among other things, the digital and green transitions. Within this context, the STAR recognises the need for workers to be able to learn new and update existing skills and knowledge in order to remain employable in the rapidly changing labour market. Since the function of the STAR is to set out guidelines for social partners when bargaining new collective labour agreements, this recognition (the need for learning and upskilling) is of influence on the content of the new to be bargained collective labour agreements. As such, one may expect to find increasingly more provisions in collective labour agreements supporting training and upskilling activities.<sup>380</sup>

## **D. The green transition through employment conditions, at the workplace, and beyond the workplace**

The elaboration in section 3 makes clear that employers and workers are actively engaged in the green transition, albeit for different reasons. In her report of 2020, Kullmann concluded that hardly any collective labour agreement contains provisions directly addressing social and environmental sustainability.<sup>381</sup> With regard to indirect measures that may contribute to sustainability, such as teleworking and the form of transport from home to work (car, car-sharing, public transport, bike), Kullmann found that many collective labour agreements hold such provisions. However, some of those provisions contradict each other, for example, when public transport or traveling by bike is promoted but traveling by car to commute between home and work is more favourably compensated.<sup>382</sup> In November 2024 the Ministry of Social Affairs and Employment published a study

<sup>378</sup> Cf. on the thematic page on website of FNV: <https://www.fnv.nl/acties/klimaat> (accessed 14 January 2025).

<sup>379</sup> Ibid and: <https://www.fnv.nl/mondiaal-fnv/acties-thema-s/wat-fnv-doet-aan-imvo> (accessed 14 January 2025). See about iRBC also the webpage of the SEC, especially about the sector specific iRBC Conventions: <https://www.imvoconvenanten.nl/nl> (accessed 14 January 2025).

<sup>380</sup> There is no data available about how many collective labour agreements hold clauses about training, but it is a generally recognised topic to be included in collective labour agreements, which suggests that it is included in the majority of collective labour agreements. Cf. AWWN Persoonlijk Ontwikkelbudget, available at: <https://www.awvn.nl/arbeidsvoorwaarden/hr-van-a-tot-z/persoonlijk-ontwikkelbudget-pob/> (accessed 15 January 2025).

<sup>381</sup> Such established by reviewing a selection of collective labour agreements on the following terms: environment, sustainability, green, green employment and working conditions. Kullmann (n 16), p. 41.

<sup>382</sup> Kullmann (n 16), p. 41.

on sustainability and green employment conditions in collective labour agreements (further: the 2024 study of MinSA&E)<sup>383</sup> which shows similar results as Kullmann's study. From this it can be concluded that a good part of the green transition at work takes place through green employment conditions. More particularly, these green employment conditions can be divided in five domains: home; mobility; the office; social; financial.<sup>384</sup>

The domain "home" is concerned with the sustainability of the homes of the workers and sees on financial support for the insulation of the worker's home, the installation of solar panels, double/triple glassed windows and the purchase of sustainable white goods. Besides contributing to sustainability, such an employment condition contributes to employees saving on fixed expenses, which reduces financial worries, which in turn leads to a better vitality and productivity of the workers.<sup>385</sup> The 2024 study of MinSA&E found provisions for a "climate budget" in ten collective labour agreements.<sup>386</sup> The results of a survey by AWWN showed that about ten percent of the employers have included a climate budget in the collective agreement.<sup>387</sup> This type of budget is not without critique, as some people prefer a general wage increase over a climate budget and because not all workers can benefit from the budget, for example when they rent a house.<sup>388</sup>

The domain "mobility" is concerned with sustainable forms of traveling for work with the aim to reduce CO2 emissions. To act on this follows, among others, from the Decision CO2-reduction work-related mobility which applies to all employers with 100 or more workers.<sup>389</sup> About one third of the current collective labour agreements contain a provision on sustainable mobility.<sup>390</sup> Some employers, like KPN, provide a higher travel allowance for commuting by bike instead of by car. More generally many collective labour agreements include a provision that enables to worker to

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<sup>383</sup> Ministry of Social Affairs and Employment, *Cao-afspraken over verduurzaming en groene arbeidsvoorwaarden* (2024), available at: <https://www.rijksoverheid.nl/documenten/rapporten/2024/11/14/cao-afspraken-over-verduurzaming-en-groene-arbeidsvoorwaarden-2024> (accessed 21 January 2025).

<sup>384</sup> Ibid, p. 13-35. See also: the AWWN webpage on green working conditions: <https://www.awvn.nl/arbeidsvoorwaarden/hr-van-a-tot-z/groene-arbeidsvoorwaarden/>. Similar topics are also found on the websites of trade unions like Federatie Nederlandse Vakbeweging FNV (see "Wat kan er verduurzaam worden" at <https://www.fnv.nl/acties/duurzame-werkvloer>) and Christelijk Nationaal Vakverbond CNV (<https://www.cnv.nl/over-ons/waar-zetten-we-ons-voor-in-in-2025/toekomst-van-werk-en-groene-arbeidsvoorwaarden/>) all webpages accessed on 29 January 2025.

<sup>385</sup> Cf Webpage AWWN on green working conditions (n 29).

<sup>386</sup> Ministry of Social Affairs and Employment (n 28), p. 31-33.

<sup>387</sup> AWWN De vruchten plukken van groen werkgeverschap (june 2023), 8 available at: <https://www.awvn.nl/app/uploads/2023/06/Rapport-ledenonderzoek-groene-arbeidsvoorwaarden.pdf> (accessed 12 May 2025).

<sup>388</sup> Cf. *Reijnen*, Groene cao's. Trend: gratis zonnepanelen of dubbelglas op kosten van de baas (RTL News 16 February 2024), <https://www.rtl.nl/nieuws/rtl-z/artikel/5434720/hoeveel-betaalt-mijn-werkgever-mee-aan-verduurzamen-zonnepanelen> (accessed 12 May 2025).

<sup>389</sup> Besluit van 28 november 2023 tot wijziging van het Besluit activiteiten leefomgeving en het Omgevingsbesluit in verband met het beperken van emissies van kooldioxide door werkgebonden personenmobiliteit, *Staatsblad* 2023, 472 18 December 2023.

<sup>390</sup> Ministry of Social Affairs and Employment (n 28), p. 17-30.



purchase a (electric) bike through a work expense scheme or to obtain a pass for public transport. Further, it is claimed that the best way to reduce emissions for commuting from home to work and back is not commuting at all,<sup>391</sup> therefore, the promotion of teleworking is listed as one of the measures in this domain. To motivate workers to work from home, employers could provide a telework allowance and facilitate in the creation of a home office, for example by lending office furniture that can be reused for other workers.<sup>392</sup> Working from home is included in approximately one third of the existing collective labour agreements, but this is often not linked to sustainability.<sup>393</sup> And lastly, since providing workers with a lease car is a common tertiary working condition in certain sectors, AWWN recommends to replace all regular lease cars for electric cars. This comes with an investment in charging points in the company's car park.

The third domain, "the office", is less related to working conditions,<sup>394</sup> but can be of interest of workers representatives, since they concern the workplace more generally and require investments that might be submissive to information and consultation rights of the works council. Investments, for example to insulate the building or to instal solar panels, may lead to a reduction of regular costs (especially in electricity, heating, cooling, and water). Other issues related to the office include a more circular approach to office furniture such as especially materials for new furniture, repairing instead of renewing of furniture/equipment, and more sustainable catering, particularly less meat and more biologically grown foods.<sup>395</sup>

Fourth, the social domain, is about the green employer sharing its sustainability values with his workers, especially by facilitating workers in time and space to make "green" or sustainable choices. For example, to grant a leave day for voluntary work contributing to something "green" or to grant extra annual leave

<sup>391</sup> Although some experts argue that overall teleworking does not always result in lower CO2 emissions. See for example: *Bouscayrol, Lepoutre, and Castex*, IEEE Vehicle Power and Propulsion Conference 2021 (doi: 10.1109/VPPC53923.2021.9699220); and *Marz and Şen*, Journal of Environmental Economics and Management 2022 (doi.org/10.1016/j.jeem.2022.102746).

<sup>392</sup> On a separate webpage AWWN elaborates on the complexity of defining a proper telework allowance: <https://www.awvn.nl/hybride-werken/publicaties/vergoeding-voor-thuiswerken-denk-breder-2/> (accessed 17 January 2025). Trade unions also provide information about telework to inform workers about their rights and their possibilities. See for example the information trade union FNV provides on their website at: <https://www.fnv.nl/werk-inkomen/veilig-gezond-werken/thuiswerkvergoeding-en-thuiswerkplek> (accessed 17 January 2025). The information provided by trade union FNV gives us the impression that teleworking is mainly an issue between the individual employee and employer rather than a collective labour law topic. This may have to do with the law on flexible working (ID number: BWBR0011173), which gives individual workers the right to ask the employer to telework a part of the weekly working hours (art. 2).

<sup>393</sup> Ministry of Social Affairs and Employment (n 28), p. 31.

<sup>394</sup> Accordingly, few provisions on "the office" are included in collective labour agreements. See Ministry of Social Affairs and Employment (n 28), p. 34.

<sup>395</sup> Cf. <https://www.awvn.nl/arbeidsvoorwaarden/hr-van-a-tot-z/groene-arbeidsvoorwaarden/> (accessed 17 January 2025).

days to workers who choose to travel by foot or bike, instead of car or plane to reach their holiday destination.<sup>396</sup>

The fifth domain concerns “green” or sustainable aspects related to wages in a broad sense. This includes pension schemes supported by investments in funds and industry that contribute to sustainability, regular bonuses and result-sharing schemes,<sup>397</sup> donation of parts of wages (13th month) or leave days for a “green” goal, for example by using the initiative *The social handshake*, which offers the possibility to support charities directly from salaries (with a tax benefit) known as Payroll Giving.<sup>398, 399</sup>

In general, all these green actions and working conditions signal to (prospective) workers that the employer values sustainability. As already mentioned in section 2, this is something that is particularly important (or attractive) for younger workers of the generations Y and Z.

As mentioned before, trade unions also promote “green” or sustainable working conditions and mention/list similar issues,<sup>400</sup> with trade union FNV also having a climate change and work vision.<sup>401</sup> While they recognise that from a sustainability perspective all these are interesting and relevant working conditions to be considered, they also warn that the characteristics of a company need to be taken into account and that workers need to be involved with the decisions about such working conditions. For example, promoting cycling for the home-work commuting will not be realistic when the majority of the workers have to commute a big distance, for instance because the workplace is at a distant location.<sup>402</sup> The involvement of workers relates to the main question of this report, namely whether workers and their representatives are provided with sufficient rights to be involved in and influence the decisions on measures of employers that contribute to the green transition.

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<sup>396</sup> Ibid.

<sup>397</sup> I.e. (additional) payments based on the achievement of certain goals related to work processes that can be influenced by the workers, such as the reduction of garbage, obtaining an ISO-certification, reduction of (customer/client) complaints, extension market share, general cost reduction, decrease of sick days, successful execution of a safety plan. The goals should be realistic and relevant, and formulated specific, measurable, acceptable, realistic and time-bound (SMART). Cf. <https://www.awvn.nl/belonen/hr-van-a-tot-z/resultatendeling/> (accessed 17 January 2025).

<sup>398</sup> <https://www.thesocialhandshake.com/> (accessed 17 January 2025).

<sup>399</sup> <https://www.awvn.nl/arbeidsvoorwaarden/hr-van-a-tot-z/groene-arbeidsvoorwaarden/#> (accessed 17 January 2025).

<sup>400</sup> E.g. Trade unions FNV and CNV (n29).

<sup>401</sup> See “FNV Klimaatvisie” available at: <https://www.fnv.nl/acties/klimaat> (accessed 29 January 2025).

<sup>402</sup> E.g. CNV: <https://www.cnv.nl/nieuws/groene-arbeidsvoorwaarden-in-opkomst/> (accessed 20 January 2025).



## E. Workers representation by trade unions

The act on collective labour agreements (CLA Act) basically regulates trade unions, as well as organisations of employers, and their mandate to bargain collective labour agreements. Article 1 stipulates that a collective labour agreement is an agreement concluded by one or more employers or one or more employers' associations with full legal capacity on the one hand and one or more workers' associations with full legal capacity on the other hand. Full legal capacity means that the association fulfils all legal requirements for associations as stipulated in Book 2 of the Dutch Civil Code. Furthermore, Article 2 CLA Act stipulates that those associations are only competent to conclude collective labour agreements when such is explicitly mentioned in their statutes.

Other provisions of the CLA Act deal with formal requirements concerning the collective labour agreement (Art. 3-8), the legal bindingness of the collective labour agreement (Art. 9-10), consequences of the dissolution of the collective labour agreement (Art. 11), the relationship between the individual employment contract and the collective labour agreement (Art. 12-14), the maximum duration and prolongation (Art. 18-19), and the termination of the collective labour agreement (Art. 20-21). Nothing is stipulated about the content of the collective labour agreement. Moreover, following the main rule in Dutch contract law, the collective labour agreement is subjected to the freedom of contract.

In principle, the freedom of contract means that employers (associations) and workers associations can bargain about whatever topic they deem fit. This makes it easy for employers (associations) and workers associations to “renew” the content of collective labour agreements, including introducing “green” provisions as presented above in section 4. If any limitation to the contractual freedom of employers (associations) and workers associations, it is EU competition law. As worked out in the case law of the Court of Justice of the European Union,<sup>403</sup> provisions in collective labour agreements may not hinder fair competition, like creating a cartel or granting a monopoly position one particular service provider. Since this effect is characteristic for certain provisions of collective labour agreements, for example of wages, pension providers, insurance providers, an exception is created for such provisions when that provision is concluded (1) in the context of collective bargaining and (2) in pursuit of social policy objectives, such

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<sup>403</sup> Particulari: ECJ of 21 September 1999, Case C-67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [ECLI:EU:C:1999:430]; ECJ of 21 September 1999, Case C-115/97-117/97 *Brentjens' Handelsonderneming BV v Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen* [ECLI:EU:C:1999:434]; and ECJ of 21 September 2000, Case C-222/98 *Hendrik van der Woude v Stichting Beatrixoord* [ECLI:EU:C:2000:475].

as the improvement of working and employment conditions. Then, such a provision by virtue of its nature and purpose, must be regarded as falling outside the scope of competition law. This exception is known as the *Albani-exception*.<sup>404</sup> Another limitation to the freedom of contract of employers (associations) and workers associations, is that the provisions in the collective labour agreement may not violate laws, such as the law on minimum wages and working time, or general principles of law. Based on Article 1, par. 3 CLA Act, provisions that oblige employers to employers to refuse to hire workers based on race, religion, or political views, are null and void.

Although it is generally accepted that collective labour agreements contain provisions dealing with conditions of work and employment, it is also generally accepted that they are not strictly limited to such provisions. This follows from the legislative history of the CLA Act which considered changing future needs and from the case law of the Dutch Supreme Court which recognised a practice of provisions in collective labour agreements that go beyond pure work and employment conditions.<sup>405</sup> With Kullmann, we are therefore of the opinion that the CLA Act leaves employers (associations) and workers associations, the room to bargain on issues related to workers' health and wellbeing, which, as Kullmann points out, extends beyond the regular work and employment conditions. This wide material scope includes issues related to social and environmental sustainability.<sup>406</sup>

More concretely related to the research question of this report, the above means that the Dutch legal framework, especially the CLA Act, enables trade unions to address a wide range of topics related to the green transition. This includes topics that have been mentioned in the previous sections, including topics moving beyond the workplace, such as sustainability throughout a company's value chain, as well as not yet known topics that may rise in the future.

## **F. Workers representation by works councils**

While trade unions operate at multiple levels (national, sectoral, company), works councils represent workers at company-level only. To this end, the Works Councils Act (WCA) grants works councils the right to be informed and consulted (art. 23 and 31 WCA), the right to give advise (art. 25 WCA), and the right to endorse the

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<sup>404</sup> See more elaborately about this: *Jaspers* in: Ter Haar and Kun (eds.) EU Collective Labour Law, 376.

<sup>405</sup> Dutch Supreme Court of 30 January 1987, n. 12894, NJ 1987/936 (*Van Velden*). See on this also: Kullmann (n16), p. 23.

<sup>406</sup> Kullmann (n16), p. 23.

decision of the entrepreneur (art. 27 WCA).<sup>407</sup> Each of these rights may give a works council a representative role in the context of the green transition.

The provisions governing the works council's right to be informed and consulted is formulated rather open, since meetings between the entrepreneur and works council 'shall deal with matters relating to the enterprise concerning which either the entrepreneur or the Works Council considers a consultation meeting desirable or concerning which a consultation meeting between the entrepreneur and the Works Council is required by or pursuant to this Act' (art. 23(2) WCA). Furthermore, based on art. 31 WCA, the entrepreneur shall upon request of the works council, 'in a timely fashion provide' the works council with all the information and data as may reasonably be deemed to be required by the works council to perform its duties. This means that the WCA leaves the works council a wide margin to discuss matters relating to the enterprise with the entrepreneur. In fact, the WCA excludes only matters related to (the performance of) duties under public law (art. 23 WCA), which makes sense, because the entrepreneur has no influence or decision-making power over those matters since that is the prerogative of the law maker.

In addition to the consultation meetings following from art. 23, art 24 WCA obliges the entrepreneur to consult the works council about the general operation of the enterprise, especially on matters mentioned in art. 25 (right to give advise) and art. 27 (right to endorse decisions). Art. 24 further stipulates that during these meetings agreements will be made about when and how the works council will be involved in the decision-making process. This should ensure a proper involvement of the works council in the decision-making process.

Roughly summarised, matters covered by art. 25 WCA concern important measures relating to the functioning of the company in general. More particularly, this concerns measures such as the transfer of the control of (a part of) the enterprise (sub a), any significant change in the enterprise's activities (sub d) or operations (sub f), major financial matters (sub h-j), the introduction or alteration of technology (sub k), and, most importantly for the context of this report, 'an important measure regarding the management of the natural environment by the enterprise' (sub l). Although the latter matter is the only one that explicitly mentions the "natural environment", within the context of the green transition, any of the other matters may also be relevant. For example, the enterprise may consider taking out a significant loan to "green" its building, production process or operations. The

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<sup>407</sup> An English translation of the act can be found at: <https://www.ser.nl/-/media/ser/downloads/engels/2023/works-councils-act-jan2023.pdf> (accessed on 21 January 2025).

enterprise may also consider introducing new technology which renders the production process more sustainable. Although there seems to exist consensus that art. 25 WCA grants the works council a right of advice on “green” issues, it is unclear to what extent this is also used in practice.<sup>408</sup> At least, the case law shows no evidence of this.<sup>409</sup>

Based on art. 27 WCA a works council has the right to endorse the decision of the entrepreneur on certain organizational matters in the context of employment policies. If the works council refuses to endorse the decision, the entrepreneur can request the district court to rule on the matter (art. 27(3) WCA). The district court will only rule in favour of the entrepreneur if the works council is unreasonable or ‘when the decision is required for important organisational, economic or social reasons relating to the enterprise.’ Any decision without the endorsement of the works council or district court is invalid if the works council submits a written appeal to the entrepreneur (art. 27(4)). The fact that the entrepreneur needs the endorsement of the works council or a replacing decision by the district court, makes this a strong right of the works council. The policies covered by art. 27 WCA, include, among others, regulations on pensions and profit-sharing (art. 27(1), sub a), working hours, rest periods and holidays (sub b), pay- or job-grading schemes (sub c), on leave rights (sub d), or training (sub f). None of the matters covered by art. 27 WCA concern “green” or sustainability explicitly or directly, however, as the examples listed above in section 4 illustrate, several green measures that are already considered and offered by employers, fall within the scope of art. 27 WCA. Hence, the works council is ensured of representation rights in the form of endorsing the decision of the entrepreneur.

Furthermore, it should be mentioned that based on art. 32 WCA more powers can be transferred to the works council in a collective labour agreement, or in the absence thereof it can be done in a so called “enterprise agreement” concluded between the entrepreneur and works council. The additional powers can include granting the right of advice or endorsement on matters that are not covered by articles 25 and 27 WCA respectively. In such situations, the requirements of articles 25 and 27 WCA fully apply to the additional matters. Although, so far, in general such additional matters concern further regulation of matters covered by

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<sup>408</sup> The lack of insight on what kind of measures employers are adopting and to what extent workers and their representatives are involved in the decision-making processes was reason to develop the research project *SoGreen*. See for more details about the project: *Ter Haar/Peters/Menegatti*, Fireside Chat. The social effect of the green transition on the workplace, working paper presented at the 6th bi-annual conference of the Labour Law Research Network June 2023, available at: <https://research.rug.nl/en/publications/fireside-chat-the-social-effect-of-the-green-transition-on-the-wo> (accessed 20 January 2025).

<sup>409</sup> See *Sprengers/Terpstra*, *ArbeidsRecht* 2023/10.

the collective labour agreement to allow for tailor-made regulations, the extension of the powers could concern any matter social partners agreed upon, including those related to the green transition or sustainability more generally.

Lastly, and maybe most interestingly in the context of this report, based on art. 28(4) WCA, the works council has an obligation to do 'all in its power to promote environmental care on the part of the enterprise, including the taking or changing of policy-related, organisational or administrative measures relating to the natural environment.' In this regard, the right to information (art. 31) is extremely important since it enables the works council to receive all the information and data to fulfil this duty. Although this enables the works council to discuss environmental matters, including those related to the green transition and sustainability in general, it also requires the works council to have insights in environmental matters at the enterprise. While this might be the case on environmental issues related to work processes, this may less be the case for issues beyond the workplace. Thus, while it is positive that the works council has an acknowledged role when it comes to environmental issues related to the enterprise, this is no guarantee that the works council has full in- and oversight of those environmental issues.<sup>410</sup>

## G. Conclusions

In this report, we explored whether the current Dutch legal framework offers trade unions and works councils sufficient competences to represent workers within the broad context of the green transition. While we noted a rather limited policy focus of governmental policies mainly oriented on the labour supply side, we can conclude that in their policy documents workers and employers are actively engaged in the green transition. This conclusion is backed up by the increasing existence of provisions on green working conditions in collective labour agreements.

From a more legal perspective, we can conclude that the most relevant legislative frameworks, the law of collective labour agreements and the works council act, leave workers representatives wide margins to represent workers in the green transition. The law on collective labour agreements because it is based on contractual freedom, with mainly limitations from competition law. The works council act, because most of the matters covered by the rights to information, consultation and endorsement of decisions of the entrepreneur, seem to cover also

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<sup>410</sup> See on this *Ter Haar/Peters/Menegatti* (n 57).

matters related to the green transition or sustainability more broadly. More particularly, the works council act allocates a role to the works council to promote environmental care within the enterprise.

Based on the legal framework, it seems that workers representatives, i.e. trade unions and/or works councils, are sufficiently provided with rights and tools to represent workers in the green transition. However, two issues need to be highlighted. Firstly, the impression exists that so far workers representatives, especially works councils, underutilize their legal possibilities to represent the workers' interests in the green transition. Second, there might be a knowledge gap, at the side of workers representatives, as well as the side of employers, about the full scope of measures taken as part of the green transition and its effect on workers, the workplace and working conditions. The combination of the two creates a high risk that despite the open legal framework that in principle leaves the workers representatives sufficient room to represent the interests of workers in the green transition, in practice this may not be the case. As such, more research is needed about what kind of measures are adopted by employers to contribute to the green transition and what their effect is on the worker, workplace and working conditions and to what extent workers representatives are or can be involved in the decision-making processes of those measures. Yet, for the measures known and as described in this report, the legal framework regulating the role of workers representatives in the green transition suffices (in theory).

To bridge the gap between the possibilities in theory and the use of those possibilities in practice, it is essential to promote awareness among workers' representatives about their existing legal rights and how these can be applied in the context of the green transition and sustainability more generally. Additionally, fostering stronger collaboration between employers and workers' representatives could accelerate the adoption of green initiatives at workplaces and beyond. Finally, further research is needed to identify best practices and explore how Dutch labour law could be optimized to facilitate a just and inclusive green transition.

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ECJ of 21 September 1999, Case C-67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [ECLI:EU:C:1999:430]

ECJ of 21 September 1999, Case C-115/97-117/97 *Brentjens’ Handelonderneming BV v Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen* [ECLI:EU:C:1999:434]

ECJ of 21 September 2000, Case C-222/98 *Hendrik van der Woude v Stichting Beatrixoord* [ECLI:EU:C:2000:475]

## Abbreviations

AWVN	Algemene Werkgeversvereniging Nederland (General employers association Netherlands)
CJEU/ECJ	Court of Justice of the European Union
CLA Act	Collective Labour Agreements Act
CNV	Christelijk Nationaal Vakverbond
ETUC	European Trade Union Confederation
FNV	Federatie Nederlandse Vakbeweging
ILO	International Labour Organization
iRBC	international Responsible Business Conduct
ISO	International Organization for Standardization
KPN	Koninklijke Post Nederland (Royal Mail Netherlands)
MinSA&E	Ministry of Social Affairs and Employment
RBC	Responsible Business Conduct
SEC	Social and Economic Council
STAR	Stichting van de Arbeid (Labour Foundation)
WCA	Works Councils Act

## § 8 GREEN TRANSITION AND THE ROLE OF WORKERS' REPRESENTATIVES IN POLAND

Dr. Marta Otto<sup>411</sup>

### A. Introduction

Over the past three and a half decades, Poland has undergone a profound transformation, evolving from an economy dominated by central planning, inefficient industries, and agriculture to a dynamic social market economy. This shift has been accompanied by a series of institutional, economic, and environmental reforms, positioning Poland as an active participant in global efforts to address environmental challenges.<sup>412</sup> Since joining the European Union in May 2004, Poland has embraced the opportunities provided by EU integration while also committing to international agreements focused on environmental sustainability.<sup>413</sup>

Notably, the concept of sustainable development was introduced into Polish legislation already in the 1980 Environmental Protection Act. At that time, however, its application was largely symbolic, since until 1989, the Polish People's Republic (PRL) economy was resource and energy-intensive. In 1997, the Polish Constitution, under Article 5, formally embedded environmental protection in accordance with the principle of sustainable development.<sup>414</sup> The specification of this principle was introduced into ordinary legislation through the amendment of August 29, 1997, to the Environmental Protection Act. In 2001<sup>415</sup>, the Polish legislator further clarified sustainable development in Article 3, item 50 of the relevant Act, describing it as a socio-economic process wherein political, economic, and social actions are integrated to preserve ecological balance and ensure the sustainability of natural processes. This approach seeks to address the fundamental needs of both current and future generations, thereby securing long-term socio-economic and environmental stability.

A critical component of Poland's broader environmental and economic strategy is the transition from an energy model based on coal extraction (in place for the past

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<sup>411</sup> University of Warsaw, **ORCID ID:** <https://orcid.org/0000-0002-8970-9643>.

<sup>412</sup> See generally, *Instytut Ochrony Środowiska. Państwowy Instytut Badawczy*, *Klimat dla Polski. Polska dla klimatu 1988 – 2018 – 2050*.

<sup>413</sup> Poland is a signatory of the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

<sup>414</sup> The Constitution of the Republic of Poland of April 2, 1997. *Journal of Laws* 1997, No. 78, item 483.

<sup>415</sup> Act of April 27, 2001, Environmental Protection Law, *Journal of Laws* 2001, No. 62, item 627.

70 years) to more sustainable sources. After Germany, Poland is the EU's second-largest coal producer and consumer.<sup>416</sup> In 2020, over 40 percent of the country's total energy supply (TES) and 70 percent of its electricity generation came from coal and lignite, the highest rate in Europe.<sup>417</sup> Poland is also a country where nearly 10 percent of employees are employed in sectors that will be most affected by the Green Deal.<sup>418</sup>

The transition away from coal, however, as highlighted in the Institute of Public Affairs report *'What After Coal? Miners on Climate, Transition, and the Future'*,<sup>419</sup> has revealed a significant shortcoming in the state's capacity to effectively plan and execute the transformation of the mining industry. This failure has hindered the development of solutions that address the needs of workers and communities in coal-producing regions. According to the report, more than 80% of the miners surveyed, from regions including Eastern Greater Poland, Upper Silesia, and Bełchatów, felt that national authorities did not listen to their concerns. Around two-thirds of miners admitted that they lacked access to information about retraining opportunities or clear plans for the future of their respective mines. 90% of miners surveyed were not involved in the planning or decision-making processes related to the conversion or closure of plants.

Interestingly enough, a majority of miners (63%) acknowledged that addressing climate change should be one of the European Union's primary objectives. 55% of the respondents believed that failing to tackle climate change would ultimately deny future generations the opportunity for a secure future. This shift in awareness among miners demonstrates growing support for environmental action, although concerns about the socio-economic implications of the transition prevail.

This paper aims to explore the role that workers' representatives play in Poland's green transition, particularly within the context of industrial sectors undergoing significant transformation, such as mining and energy. As Poland shifts towards a greener economy, the involvement of trade unions and workers' representatives has become indispensable in shaping policies that ensure the social dimension of the transition is adequately addressed.

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<sup>416</sup> Total (hard and brown) coal consumption in Poland amounts to 117.6 Mt in 2021 or 26.9 percent of the EU's total (hard and brown) coal consumption. Eurostat, Coal production and consumption statistics, 2022. [https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Coal\\_production\\_and\\_consumption\\_statistics#](https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Coal_production_and_consumption_statistics#).

<sup>417</sup> IEA 2022, <https://www.iea.org/reports/world-energy-outlook-2022>.

<sup>418</sup> Główny Urząd Statystyczny, Rocznik Statystyczny Pracy 2023, Warszawa 2023, [https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/7/8/1/rocznik\\_statystyczny\\_pracy\\_2023.pdf](https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/7/8/1/rocznik_statystyczny_pracy_2023.pdf). In the EU it is 6.2 percent. Cf. Eurostat, Employment and unemployment (LFS). Information on data, <https://ec.europa.eu/eurostat/web/lfs/information-data#LFS%20main%20indicators>

<sup>419</sup> Sobiesiak

Penszko, Koziarek, Pazderski, Co po węglu? Górnicy o klimacie, transformacji i przyszłości, Instytut Spraw Publicznych 2022.

## B. Industrial Relations Challenges

Industrial relations in Poland, as in other Central and Eastern European countries, are shaped by a complex history that has left lasting legacies on the functioning of labour and employment relations. Following decades of authoritarian rule, Poland transitioned to democracy in the 1990s, which was accompanied by the introduction of neoliberal economic policies. These policies not only redefined the country's economic landscape but also marginalized trade unions, collective bargaining, and the broader concept of industrial democracy.<sup>420</sup> As a result, the structure and functioning of industrial relations in Poland diverge significantly from those of Western European countries, where trade unions and industrial democracy have historically been stronger and more embedded within the socio-economic fabric.

A key feature of Poland's industrial relations system is the decentralization of collective bargaining, which remains limited both in scope and effectiveness. With collective agreements and bargaining coverage estimated to be around 10%,<sup>421</sup> unionization rates are low, with only about 13% of the workforce being unionized. The trade union movement itself is fragmented, as is the employer side. In 2022, there were 353 active employers' organizations and 11,656 trade unions with approximately 1.4 million members. The largest concentration of union members was in the education sector (19.3%), while employers' organizations were most prevalent in healthcare and social assistance (16.6%).<sup>422</sup> This fragmentation, coupled with a dearth of sectoral-level bipartite dialogue, means that collective agreements in Poland in practice are mainly negotiated at the company level.

The Act of April 7, 2006, on informing and consulting employees,<sup>423</sup> introduced works councils in larger enterprises, providing another avenue for employee participation. However, coverage of works councils remains limited, with fewer than 500 enterprises (those with at least 50 employees) having implemented them. As a result, works councils cover less than 10% of the total workforce, leaving the vast majority of workers without formal mechanisms for engagement in decision-making processes within the workplace.<sup>424</sup>

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<sup>420</sup> Surdykowska, Poland – Green.Transport.Deal. Brief report, Instytut Spraw Publicznych, 2023, 2.

<sup>421</sup> Eurofound, Collective bargaining coverage, European Industrial Relations Dictionary, Dublin, 2022.

<sup>422</sup> Statistics Poland, Social dialogue partners – employers' organizations and trade unions in 2022, <https://stat.gov.pl/en/topics/social-economy/third-sector/social-dialogue-partners-employers-organizations-and-trade-unions-in-2022,18,1.html>.

<sup>423</sup> Journal of Laws 2006, No. 79, item 550.

<sup>424</sup> See generally: Skorupińska-Cieślak, What determines the presence of works councils in Polish companies? Employee Relations. 40, 2018, 10.1108/ER-07-2017-0159.

The largest Polish trade union structures, through their membership in the European Trade Union Confederation, participate in the European social dialogue. However, at the national level, the same trade unions have a limited impact on policymaking, which undermines their capacity to effectively advocate for workers' interests within the broader political and economic framework. While tripartite dialogue between government representatives, trade unions, and employers' organizations does exist, it is often constrained in its scope and impact. The Social Dialogue Council (*Rada Dialogu Społecznego*) serves as the central platform for such dialogue, with sectoral teams addressing industry-specific concerns.<sup>425</sup> Yet, these tripartite bodies in practice tend to operate more as ad hoc forums, convened primarily in response to external pressures, such as EU directives. As a result, they lack the continuity and strategic planning necessary for proactive, long-term policy development. This reactive nature of tripartite dialogue limits its capacity to foster sustained collaboration.

Overall, the contemporary industrial relations system in Poland presents a complex and fragmented picture. The decentralization of collective bargaining, low trade union density, and the reactive nature of tripartite dialogue all create a system that struggles to engage workers meaningfully. Thus, one of the most significant challenges in the first decades of the 21st century in the area of labour and its protection in Poland is the crisis of social dialogue. Its effect is an increasingly apparent dissonance between the concept of shaping labour order with the participation of social partners and the practice of labour relations.<sup>426</sup> The mining and energy sectors to some extent stand as exceptions to this general trend, as will be further explained in the subsequent sections. These sectors have historically had stronger union representation<sup>427</sup> and have been the key actor behind the introduction of more structured social agreements in the context of the ongoing green transition.

### **C. Towards a Just Transition: The Social Agreement and the Future of Coal Mining in Poland**

The COVID-19 pandemic exposed the misalignment of Poland's hard coal mining sector with the realities of the contemporary world. Long-struggling with financial difficulties and heavily subsidized by the state, the industry found itself on the brink

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<sup>425</sup> The Act of July 24, 2015, on the Social Dialogue Council and other social dialogue institutions, Journal of Laws 2015, item 1240.

<sup>426</sup> See generally, *Pisarczyk, Rumian, Wieczorek*, Zakładowe układy zbiorowe – nadzieja na dialog społeczny?, PiZS 2021/6; *Pisarczyk, Rumian*, Ponadzakładowe układy zbiorowe: zmierzch instytucji?, PiZS 2019/11/.

<sup>427</sup> The Trade Union of Miners in Poland has been active in Poland since 1945.



of collapse. The Polish Mining Group (PGG), the largest coal enterprise in the country, reported a loss of approximately 2 billion PLN in 2020.<sup>428</sup> As a result, since mid-2020, discussions have been ongoing between the government, industry representatives, and trade unions which aimed to find a constructive solution to the relevant impasse.

On May 28, 2021, following nine months of negotiations, the Polish government, trade unions, and mining companies signed the Social Agreement addressing the transformation of the hard coal mining sector.<sup>429</sup> This agreement outlines a systematic approach to the phase-out of hard coal mining by 2049, with a focus on ensuring energy security for Poland, and facilitating the economic transition of coal-mining regions, primarily in the Silesian Voivodeship.

A central element of the Social Agreement is its commitment to safeguarding job security for coal miners until their retirement. The agreement introduced guarantees of employment for workers in underground mining or coal processing plants as of September 25, 2020, and, in some cases, beyond this date. If continuous employment cannot be assured due to industry changes, workers will be entitled to social protection benefits, contingent upon employer consent. The specific solutions referred to in this section were later incorporated into the Act of 7 September 2007 on the functioning of the hard coal mining industry.<sup>430</sup>

The Agreement stipulates that workers' contracts cannot be terminated for reasons unrelated to their performance, except in specified circumstances. However, this protection does not extend to workers whose contracts are terminated due to employee-related reasons or the expiration of fixed-term contracts.

Additionally, the Social Agreement provides for retraining programs to help workers acquire new skills for employment outside the coal mining sector. Each worker is entitled to one free retraining program, designed to facilitate their transition to new roles.

The Agreement provides for a separate support system for specialized mining enterprises and mining communities affected by the closure of coal production units. This support system is to be developed through additional agreements involving the government, trade unions, and local authorities, ensuring compliance

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<sup>428</sup> <https://katowice.wyborcza.pl/katowice/7,35063,26646178,polska-grupa-gornicza-zakonczy-2020-rok-ze-strata-ok-2-mln.html>.

<sup>429</sup> Ministry of State Assets, Social Agreement for the Hard Coal Mining Sector in Poland from 2021, May 28, 2021, Social Agreement for Mining Signed – Ministry of State Assets – <https://www.gov.pl/web/aktywa-panstwowe/umowa-spoleczna-dla-gornictwa-podpisana>.

<sup>430</sup> Journal of Laws 2007 No. 192 item 1379.

with applicable regulations, including public aid rules. Accordingly, for workers impacted by the closure of production units, social protection benefits, such as mining leave and severance payments, will be provided in line with the terms of the Social Agreement and relevant national legislation. Furthermore, workers who receive severance pay or other social benefits will be prohibited from re-entering the coal sector or affiliated companies, including those providing underground services.

The proposed changes to the social protection benefits for employees of liquidated production units were introduced through an amendment to the Act on the functioning of the hard coal mining industry (*vide* chapter 3a). One of the key adjustments is the increase in the social benefit provided to employees during mining leave or leave for employees of the coal beneficiation plant. The benefit was raised from 75% to 80% of the monthly salary, calculated based on the employee's holiday pay.

Another significant change was the revision of the one-time severance payment. The payment will no longer be based on a variable amount tied to a multiple of the average monthly salary from the first half of the year preceding the termination of employment. Instead, it will be a fixed amount of 120,000 PLN net for each employee who decides to terminate their employment contract with the employer's consent.

Finally, employees working on the surface of the production unit, including those at the mechanical coal beneficiation plant, who have at least one year of service in the mining company, as well as employees working underground with at least one year of underground service, will be eligible for the one-time severance payments. However, employees who are entitled to mining leave or leave for employees of the coal beneficiation plant will not qualify for these severance payments.

These changes were designed to provide appropriate financial support to employees affected by the liquidation of production units, ensuring their smooth transition to new opportunities or retirement. The Social Agreement also outlined a clear timeline for the closure of coal mines in Poland. By 2030, employment in the affected entities is expected to be reduced by 848 jobs due to the closure of certain coal blocks.<sup>431</sup> This includes the reduction of 269 jobs at units that support power plants.<sup>432</sup> As part of this transition, 474 employees have been transferred to

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<sup>431</sup> Załącznik nr 1 do Uchwały Zarządu Województwa nr 2326/383/VI/2022 z dnia 21.12.2022 r., TERYTORIALNY PLAN SPRAWIEDLIWEJ TRANSFORMACJI WOJEWÓDZTWA ŚLĄSKIEGO 2030.

<sup>432</sup> Załącznik nr 1 do Uchwały Zarządu Województwa nr 2326/383/VI/2022 z dnia 21.12.2022 r., TERYTORIALNY PLAN SPRAWIEDLIWEJ TRANSFORMACJI WOJEWÓDZTWA ŚLĄSKIEGO 2030.

other power plants or energy blocks that continue production, infrastructure maintenance, or decommissioning activities. A total of 246 workers are undergoing retraining to prepare for new roles in these sectors.<sup>433</sup>

Notably, the social agreement for the mining sector has yet to be notified to the European Commission, a process that was meant to be carried out already by the previous government. The Commission's approval is critical for securing social protections for workers transitioning out of the mining industry. Without the approval of the European Commission, the Polish government will not be able to allocate funds for public aid to the mining sector (in 2025 it is expected to total 7.8 billion PLN), which casts doubt on the future of the industry as well as the agreement with the trade unions.

## **D. From Social Agreement to Shield Law: Ensuring Social Protection for Employees in the Lignite Mining and Electricity Sectors**

For more than 20 years, Silesia has had an early retirement (leave) mining scheme that generously supported employees in the hard coal mining sector.<sup>434</sup> However, this benefit was not available to the nearly 20,000 employees in the lignite mining and energy sector. To address this disparity, the Polish government, at the initiative of the ZE PAK Group (a major electricity producer from lignite and the primary employer in Eastern Wielkopolska), initiated the process of drafting a law on social protection for workers in the electricity and lignite mining sectors in early 2022. This process unfolded amidst a series of pivotal milestones, all set against the backdrop of the Russian invasion of Ukraine, which caused unprecedented spikes in electricity prices and shifts in energy supply routes.<sup>435</sup>

In April 2022, trade unions launched a campaign to collect signatures for the proposed law, garnering over 12,000 supporters, aided by Bishop Krzysztof Wętkowski. By May 2022, Piotr Woźny, CEO of the ZE PAK Group, presented the sector's transformation challenges at a Parliamentary Subcommittee meeting, emphasizing the absence of funds from the Equitable Transformation Fund. During

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<sup>433</sup> Załącznik nr 1 do Uchwały Zarządu Województwa nr 2326/383/VI/2022 z dnia 21.12.2022 r., TERYTORIALNY PLAN SPRAWIEDLIWEJ TRANSFORMACJI WOJEWÓDZTWA ŚLĄSKIEGO 2030.

<sup>434</sup> See Chapter 3 a of the Act of September 7, 2007, on the functioning of hard coal mining Journal of Laws 2007 No. 192, item 1379.

<sup>435</sup> See generally Woźny, et al., Moving away from coal. A Just Transition in Eastern Wielkopolska. ZE PAK, 2024.

this time, trade union leader Alicja Messerszmidt also collected MPs' signatures for the civic bill.

In July 2022, the Legislative Initiative Committee for the draft law was established, with Messerszmidt serving as plenipotentiary and Mirosław Reśkiewicz, Chairman of the Inter-company Organization of the NSZZ "Solidarność" at ZE PAK, as deputy. The committee submitted the citizens' bill to the Chancellery of the Sejm and continued to collect additional support for the initiative.

By December 2022, negotiations between the Tripartite Teams for the Lignite and Energy Industries were concluded. Early in 2023, the Social Agreement on the Transformation of the Electricity and Lignite Mining Sectors was signed by the government, trade unions, and state-owned energy companies. Despite its private status, the agreement extended its provisions to ZE PAK Group employees, providing a comprehensive framework for the closure of lignite mining and introducing social protection measures for workers in both the lignite mining and electricity sectors.

In April 2023, Minister Jacek Sasin and other government officials met with ZE PAK unions to launch the shielding program, which was later presented to the European Commission during Vice-President Frans Timmermans' visit to Konin. In May 2023, the draft shielding law was submitted to the Sejm. By July and August 2023, the law was passed with near-unanimous support, incorporating amendments from the Senate. The President signed the Act into law on August 17, 2023.<sup>436</sup>

The subsequent months were dedicated to securing European Commission approval. In September 2023, a ZE PAK Group delegation visited Brussels to request state aid notification, which was ultimately granted by the European Commission in February 2024. The law officially came into force, marking the successful culmination of a multi-year collaborative effort to protect workers during the sector's transition.

The Act on social protection for employees in the electricity sector and the lignite mining industry introduced the option to take energy and mining leaves, as well as one-time severance payments for specific employees in these sectors. The list of job positions that entitle workers to energy and mining leaves is included in the regulation by the Minister of State Assets regarding the list of positions qualifying for energy or mining leave and the template for the certificate of the period during

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<sup>436</sup> The Act of 17 August 2023 on social protection for employees in the electricity sector and the lignite mining industry, Journal of Laws 2023, item 1737.

which the employee used such leave.<sup>437</sup> The aforementioned leaves, lasting up to 4 years, as well as additional financial benefits, are granted to employees in the electricity sector during the shutdown of generating units and to employees in the lignite mining industry during the system-wide reduction, limitation, or cessation of lignite extraction, as part of the energy sector transformation.

The eligibility for energy or mining leave is contingent upon several conditions. First, there must be a prior agreement between the employee and employer stipulating that the employment contract will be terminated by mutual consent as part of a group or individual layoff, with no fault attributable to the employees, at the conclusion of the last day of the leave. Second, the employee must have exhausted their holiday leave by the time the energy or mining leave commences. Third, the employee must have acquired pension entitlement through the use of one of the specified leave options. The Social Insurance Institution (ZUS) is tasked with determining the periods that qualify employees for pensions, including the duration of leave required to secure pension rights.

During the period of energy or mining leave, employees are entitled to receive a social benefit amounting to 80% of their monthly salary, calculated in the same manner as holiday pay. Importantly, the taking of energy or mining leave is voluntary, offering employees a choice in how they engage with the transition process. However, should the employee engage in any form of gainful employment—whether through an employment relationship, a civil law contract, or self-employment with one of the entities specified in Article 3 of the Act (including energy companies or lignite mining companies, or entities providing services to these companies) or should they acquire pension rights during the leave period, they forfeit their entitlement to the leave.

Additionally, employees whose employment contracts are terminated as part of the transformation process are entitled to a one-time severance payment. This severance payment is calculated as twelve times the employee's monthly salary, based on holiday pay calculations. The Act stipulates that this payment should be made on the day the employment contract is terminated. To qualify for the severance payment, employees must have at least five years of service with the company and must be unable to take energy or mining leave.

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<sup>437</sup> Regulation of the Minister of State Assets of April 9, 2024, on the list of job positions entitling employees to energy leave and mining leave, and the template for the certificate of the period during which an employee used energy leave or mining leave (Journal of Laws 2024, item 629).

The employees eligible for these benefits are those working within specific entities, namely: i) Energy companies or designated parts of energy companies; ii) Subsidiaries of energy companies; iii) Lignite mining companies or designated parts of lignite mining companies; iv) Subsidiaries of lignite mining companies.

Overall, this structured approach to social protection incorporated in first the social agreement and later on in the relevant legislative act reflects a deliberate effort to manage the social dimension of the restructuring of key sectors in Poland, balancing the need for economic and environmental transformation with the protection of workers' livelihoods. The role of trade unions in this process has been pivotal in advocating for the rights of workers in the lignite mining and electricity sectors. From the inception of the social agreement to the ongoing efforts to secure European Commission approval, trade unions have played a crucial role in representing employees' interests and ensuring their voices are heard in policy discussions. Their active participation in collecting signatures, engaging with lawmakers, and pushing for fair treatment in the context of industry transformation has been instrumental in advancing social protection measures for workers.

## **E. Trade Union Resistance to European Green Deal**

Trade unions in Poland, despite the developments outlined in previous sections, continue to approach the European Green Deal with radical opposition to its proposals and their potential consequences. On March 19, 2024, in its official stance on the social and economic risks associated with the Green Deal,<sup>438</sup> the Presidium of OPZZ Solidarność expressed concern over the European Commission's demands for Poland to quickly dismantle vital industries, such as mining and coal-fired power generation, which remain integral to the country's economic structure. The pressure to close these critical sectors and eliminate jobs was deemed unjustified, particularly given the absence of clear alternative solutions. The OPZZ also noted the broader economic ramifications of the Green Deal, particularly the indirect employment generated by the mining and energy sectors (including in raw material transportation, the use of combustion by-products, machinery manufacturing, construction component production, and facility maintenance).

The OPZZ's primary critique, however, revolves around the lack of meaningful consultation with trade unions in the design and implementation of the Green Deal.

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<sup>438</sup> <https://www.opzz.org.pl/media/download/571aae49-9773-4c57-a46c-b74014456780>.

The unions argue that the absence of dialogue with workers' representatives undermines the legitimacy of the policy and fails to account for the social and economic impacts on affected communities.

In response to mounting social discontent, the Presidium called on Polish authorities and European Union officials to revise the provisions of the Green Deal, which it argued threatened the competitiveness of both the Polish and European economies. Having acknowledged the urgent challenges posed by climate change, the OPZZ emphasized that the need to prevent environmental degradation, which directly affects daily life, health, and education, is a goal that must be pursued. However, the Presidium stressed that this transformation must be sustainable and fair, with due consideration given to the socio-economic costs it may impose on affected communities. According to OPZZ, the transformation must be based on reliable analyses of the social and economic effects, precisely planned and monitored with the participation of the social side. This clarity and certainty according to workers' representatives are still lacking.

Notably, at the request of NSZZ Solidarność, a comprehensive analysis of the impact of climate policy on the Polish economy was conducted. The report, titled 'Predatory Green (Non)Deal',<sup>439</sup> was prepared by a group of independent experts and presented for the first time in September 2024 at the 33rd Economic Forum in Karpacz.

According to one of the expert opinions presented in the report, the concept of a top-down, forced, and scientifically justified restructuring of society and the economy is irreconcilable with Article 1 of the Polish Constitution, stipulating that the Republic of Poland is the common good of all citizens. The European Green Deal is also deemed incompatible with the principle of a social market economy expressed in Article 20. Replacing market-based rules with climate correctness rules in the process of transforming the EU means that the criterion for competitive advantage becomes not the ability to produce, but low emissions. It is also inconsistent with the principle of property protection established in Article 21, as well as the principles of limiting the exercise of constitutional freedoms and rights, defined in Article 31, section 3. It creates a potential threat to the right to protection of private and family life, guaranteed in Article 47 of the Constitution of the Republic of Poland. Its implementation would violate Article 76 (protection of consumers). The expert opinion further argues that the regulations set out in the European Green Deal extend beyond the scope of competencies that may be transferred

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<sup>439</sup> [https://preczzzielonymladem.pl/wp-content/uploads/2024/10/Zielony\\_Lad\\_07A\\_online.pdf](https://preczzzielonymladem.pl/wp-content/uploads/2024/10/Zielony_Lad_07A_online.pdf).



under Article 90, Section 1 of Polish Constitution. While this article allows the transfer of competencies to state authorities on certain matters, it does not permit transferring the decision-making power of citizens' lives to an international organization or body without affording citizens the ability to make choices. Most importantly, the arbitrary nature, disproportionality, and lack of alternatives within the Green Deal's framework suggest a disregard for Poland's ability to determine its own future. This, the report concludes, amounts to a constitutionally excluded renunciation of Poland's right to decide its fate, particularly with respect to the planned transformation of the European Union.

This general disregard for the Green Deal's impact on workers and industries has been reflected in the numerous protests organized by trade unions. On 10 May 2024, a coalition of trade unions, including the NSSZ 'Solidarność' and the NSZZ of Individual Farmers 'Solidarność', staged a large demonstration in Warsaw, expressing their opposition to the Green Deal with the slogan 'Down with the Green Deal.' The protest, initially triggered by concerns over the 'From Farm to Fork' Strategy, which seeks to establish a fair, healthy, and environmentally friendly food system, evolved into a broader, multi-sectoral movement. As the protests grew, the focus expanded beyond the specific provisions of the strategy, ultimately questioning the legitimacy of the European Union's broader vision for development.<sup>440</sup>

On February 7, 2025, around a thousand activists from 'Solidarność' protested in front of the European Solidarity Centre (ECS) against the European Union's implementation of the Green Deal principles. The timing and location were not coincidental: inside the building, EU commissioners, including European Commission President Ursula von der Leyen, were in discussions with members of the Polish government, led by Prime Minister Donald Tusk. Piotr Duda, the leader of NSZZ „Solidarność” called for Prime Minister Donald Tusk to take concrete action against the Green Deal, including supporting a referendum on rejecting the European Green Deal. In 2024 NSZZ 'Solidarność' began collecting signatures for a nationwide citizen initiative to organize the relevant referendum. The proposed question in the referendum is as follows: 'Do you agree with committing the President of the Republic of Poland, the Parliament of the Republic of Poland, and the Government of the Republic of Poland to reject the EU climate

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<sup>440</sup> See generally: <https://preczzzielonymladem.pl/>.

policy in its current form, as outlined in the European Green Deal?’ To submit the petition to the Sejm, 500,000 signatures are required.<sup>441</sup>

In conclusion, the position of trade unions, as reflected in the aforementioned official position and protests, underscores the need for a more equitable and transparent approach to the green transition. The concerns raised by unions highlight the absence of meaningful consultation and participation in the planning and execution of the Green Deal. Trade unions demand a stronger role in decision-making processes, with an emphasis on protecting workers’ rights, ensuring job security, and providing adequate support for affected sectors. The unions stress that without addressing these fundamental issues, the green transition risks exacerbating social and economic inequalities, rather than fostering a just and sustainable future.

## F. Conclusions

Poland’s climate policy has undergone significant evolution in recent years, driven by a combination of structural, legislative, and economic reforms, along with EU funding dedicated to environmental protection. However, the country continues to face substantial challenges, largely due to its energy landscape and continued reliance on fossil fuels, particularly coal, which still dominates its energy mix.

As Poland moves forward with its energy transition, the lack of a robust and cohesive industrial relations system may hinder the ability to manage the social impacts of this transformation effectively. The green transition, which requires significant changes in labour markets and industries, would benefit from stronger, more proactive industrial relations mechanisms that ensure worker interests are integrated into the decision-making process. Without such mechanisms, the risks of social and economic inequality linked to the green transition may be exacerbated. However, as Mądrzycki and Pisarczyk aptly observe, while restructuring the Polish legal framework is essential, it cannot replace the active involvement of social partners themselves. There is no doubt that in Poland trade unions are faced with the need to search for a new identity and strategies that are adapted to the changing reality and at the same time appealing to today’s workforce.<sup>442</sup>

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<sup>441</sup> Art. 63 of the Act of March 14, 2003, on Nationwide Referendum, Journal of Laws 2024, item 574.

<sup>442</sup> Mądrzycki, Pisarczyk, Ekspertyza na temat aktualnej sytuacji oraz perspektyw rozwoju układów zbiorowych w Polsce, 2022, <https://www.gov.pl/web/dialog/krajowy-plan-odbudowy>.

Interestingly enough, there are already solutions in the Polish legal system that provide for new avenues of cooperation, yet they are not used in practice. Pursuant to art. 45 of the Act on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments,<sup>443</sup> various organizations- including environmental groups, local government auxiliary units, workers' self-government bodies, volunteer fire brigades, and trade unions- are empowered to cooperate with administrative authorities in the field of environmental protection. This cooperation is essential for fostering a collective effort toward more sustainable practices and ensuring that environmental concerns are integrated into decision-making processes at both local and workplace levels.

Trade unions and workers' self-government play specific roles within this framework. They are authorized to establish workplace environmental protection committees and appoint social environmental inspectors. These bodies are responsible for organizing and conducting environmental controls within workplaces, ensuring that companies comply with environmental standards and adopt practices that minimize harm to the environment. Such initiatives are key in promoting a culture of environmental awareness and responsibility among workers, allowing them to take an active role in protecting their working environments.

By leveraging the new channels of cooperation, trade unions have the potential to play a crucial role in advancing a more integrated and inclusive approach to environmental governance. However, the true effectiveness of these provisions will depend largely on improving the understanding of both employers and employees regarding the transition to greener, socially responsible business practices. For this shift to succeed, it is essential that all stakeholders are equipped with the knowledge and tools needed to implement sustainable practices effectively. This process can be further strengthened through transnational cooperation, enabling the exchange of strategies and best practices that will facilitate a collective effort toward a sustainable future.<sup>444</sup>

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<sup>443</sup> Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments, Journal of Laws 2024, item 1112.

<sup>444</sup> See: Green.Smart.Transport.Deal project, which focuses on fostering transnational collaboration among social partners (including Polish trade unions) to increase worker involvement in actions aimed at implementing the EGD and the Strategy for Sustainable and Smart Mobility in the transport sector (<https://greensmarttransportdealplatform.com/>). See also: Let's Get Green! Social partners' joint action to enhance worker involvement in company-level implementation of the European Green Deal, co-financed by the EU, which encourages joint action by social partners, including Polish trade unions, to strengthen worker

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## § 9 PERSPECTIVES FROM THE SPANISH LEGAL SYSTEM AND NATIONAL PRACTICE

Prof. Dr. Diego Álvarez Alonso<sup>445</sup>

### A. Introduction: the promises and perils of the green transition

Our societies are currently immersed in the complex but indispensable process of the green transition. This entails facing the many transformations required for reducing carbon footprint (decarbonisation), avoiding use of fossil fuels, transitioning to alternative green energy sources, controlling global heating, and limiting resource consumption, waste generation and environmental impact. The green transition necessarily implies a multi-level reorganisation of social life and economic activities towards environmental sustainability (“meeting the needs of the present without compromising the ability of future generations to meet their own needs”<sup>446</sup>), adopting more sustainable paradigms of development and production as namely those of the circular economy [“an economic model based inter alia on sharing, leasing, reuse, repair, refurbishment and recycling, in an (almost) closed loop, which aims to retain the highest utility and value of products, components and materials at all times”,<sup>447</sup> with the ultimate objectives of decoupling economic activity from the consumption of finite resources and eliminating waste from the system by design].<sup>448</sup>

The green transition is bringing new economic and employment opportunities, including the so-called “green jobs”.<sup>449</sup> However, it entails productive and organisational changes for the adaptation of economic activities to sustainable and circular models, which might also involve adverse consequences for some traditional forms of business and work. In other words, it will imply a large and hard “industrial reconversion” seriously concerning traditional production structures. So, many economic and professional activities, sectors and geographic areas are resulting obliged to face a very intense socioeconomic transformation, or even

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<sup>446</sup> *World Commission on Environment and Development*, Our common future, UN 1987.

<sup>447</sup> *European Parliamentary Research Service*, Closing the loop: New circular economy package, EU Parliament 2016.

<sup>448</sup> *MacArthur*, *Journal of Industrial Ecology* 2013, 23 et seq. *Ellen MacArthur Foundation*, Towards a circular economy: Business rationale for an accelerated transition, Ellen MacArthur Foundation 2015. *Castro-Lopez/Iglesias/Santos-Vijande*, *Journal of Business Research* 2023, 113823 et seq.

<sup>449</sup> *ILO*, Green jobs: Towards decent work in a sustainable, low-carbon world, ILO 2008. *ILO*, Sustainable development, decent work and green Jobs, ILO 2013. *Álvarez Cuesta*, Empleos verdes: una aproximación desde el Derecho del Trabajo, 1 et seq. *Kahale Carrillo*, Los Empleos Verdes en Europa, *Revista del Ministerio de Trabajo y Seguridad Social* 2018, 539 et seq.

doomed to disappearance (for instance, mining, thermal power plants, metal sector, automotive industry). Consequently, there will be a significant number of “green transition losers”: declining sectors, de-industrialised geographic areas, workers suffering loss or restructuring of employment, particularly elder workers with more difficulties for requalification and reallocation, etc. In terms of employment impact, many new jobs and professional chances are certainly emerging, but many others might be destroyed or, at least, deeply affected.

Moreover, it is necessary to consider the significance and scale of the challenges ahead. Differently to other previous processes of industrial reconversion, with a more limited or localised scope, the green transition involves a very wide range of transformations, with intersectoral and global implications. In addition, the green transition is to be simultaneously faced along with the digital transition, forming together a context of “double transition”. There are multiple inferences among these two co-related transition processes, some of them maybe symbiotic (for instance, the use of digital technologies can facilitate some transformations towards sustainable production models), but some of them problematic, as they tend to multiply the number, assortment, intensity, and speed of the changes to be faced and the difficulties of readaptation for business and workers.

Acknowledging and addressing this is crucial. The effective success of the green transition requires paying due attention not only to environmental aims, but also to the potential social consequences. In the absence of an adequate governance, those social consequences might lead to unacceptable situations of vulnerability, inequalities or exclusion, or even to conflicts, which may in turn hamper the whole transition process and the achievement of its sustainability objectives. Hence, the public policies and the measures adopted for green transitioning should fully consider the social impact and the corresponding need for protection or compensations to the mostly affected or vulnerable sectors of the population, especially regarding particularly exposed economic activities and workers. Besides, it is important to consider the convenience of endorsing green transition and sustainable development policies through inclusive and participative methods, with representation of the multiple interested persons and groups.<sup>450</sup> Namely, the workers and their representatives should have an own voice adequately heard in the processes of the double green/digital transition, with effective intervention in the design and implementation of the plans, measures, and governance instruments on the matter.<sup>451</sup> Here, the workers’ representatives can play a key

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<sup>450</sup> Novitz, *Revista Internacional del Trabajo* 2020, 507 et seq.

<sup>451</sup> Novitz, *Giornale di Diritto del Lavoro e di Relazioni Industriali* 2023, 177 et seq.

role in many aspects related to the green transition at different levels, as it will be explained in this paper, from the perspective of the Spanish experience and legal framework, paying attention to supranational instruments and documents too.

## B. A fair or just green transition

Many key instruments and documents at the international level, provided by the United Nations (UN) or the International Labour Organisation (ILO), highlight that the green transition should be “fair” or “just”, sometimes referring the idea to the digital transition too, or to the “double transition” considering them together (UN Convention on climate change, 1992; Paris Agreement, 2015; ILO, *Guidelines for a just transition*, ILO 2016). Although the formulas can vary from one text to another and can even be quite diverse in the degree of precision, this could be summarised in outlining the need to give support to vulnerable or affected sectors and persons (the aforementioned “green transition losers”), integrating climatic and social objectives and policies in the processes of transformation for the green transition<sup>452</sup>. This is sometimes condensed in the maxim of “not leaving anyone behind”. In terms of the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDG), this can be expressed as the need for reconciling or integrating climatic and environmental sustainability-related Sustainable Development Goals (numbers 6, 7, 9, 12, 13, 14 and 15) with Sustainable Development Goal number 8, decent work and economic growth, as pointed by the International Labour Organisation.<sup>453</sup>

On the other hand, the claim for not just a green transition, but a *fair or just* green transition is indeed a recall on the necessary attention to all the three pillars of sustainability. There is a quite extended use of the terms “sustainable development” and “sustainability” focusing primarily on the environmental and economic aspects and aims, somehow leaving aside the social dimension, or even trying to relegate social standards and instruments to a secondary position. However, a deep insight on international texts, and the already mentioned framework of the Sustainable Development Goals lead to conclude that sustainable development, even to be considered as such, shall necessarily include, in balanced terms, the three dimensions of sustainability: environmental sustainability, economic sustainability, and social sustainability too.<sup>454</sup>

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<sup>452</sup> Chacartegui Jávega, Trabajo y Derecho 2023, 1 et seq. Ramos Quintana, Trabajo y Derecho 2024, 1 et seq.

<sup>453</sup> ILO, Time to Act for SDG 8: Integrating decent work, sustained growth and environmental integrity, ILO 2019.

<sup>454</sup> Novitz, Revista Internacional del Trabajo 2020, 507 et seq.



In the context of the European Union, the European Green Deal (2019) and Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') recognise that the required transition should be fair and inclusive. At the Spanish national level, Law 7/2021, of 20 May, on Climate Change and Energy Transition, which is the leading legal text providing the general framework for the green transition, outlines with more emphasis and detail concerns, principles, and guidelines on the requirements of fairness and social justice regarding such process<sup>455</sup>. It explicitly states that sustainability shall include decent work, social cohesion, reduction of inequalities and protection of vulnerable groups and persons. Ahead, regulates on some public policy instruments for further development, which should serve to integrate green transition policies with due attention to those other social objectives: a) the National Plan for Adaptation to Climate Change; b) the National Strategy for Just Transition, and c) the so-called just transition agreements (which will be addressed in more detail later).

These instruments are oriented to adequately face the difficult and potentially traumatic transformations required and their socioeconomic impact, in particular in some especially affected sectors and activities as, for example, mining, thermal power plants, metal industry or the automotive sector. They seem to try to acknowledge some lessons learned from past industrial reconversion experiences, sometimes not fully satisfactory regarding cases of misuse of funds, investments without adequate return and other bad practices to be avoided. Hence, those governance instruments pretend to ensure the adequateness of economic alternatives and compensations, long-term vs. short term objectives, adequate planification, concretion of objectives and monitoring and evaluation. Nevertheless, the rules on the matter established in Law 7/2021 seem to be still too programmatic or vague, creating a paradoxical impression of statutory law quite looking like *soft law*. Their real efficacy will largely depend on further practical development. From the perspective of the workers' representatives, there is consequently a role for them to play here.

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<sup>455</sup> Álvarez Cuesta, Iuslabor 2020, 74 et seq.

C. The role of the workers’ representatives in the green transition: a general overview

What can (or should) the workers’ representatives do concerning climate change, sustainability, circularity, and the green transition? There is not an explicit and clear answer to such question directly provided by statutory law. However, taking the range of competencies and possibilities of action recognised to the representatives along the legal framework as starting point, and matching it with climatic or green transition related issues and objectives, it is possible to deduce a wide range of potential actions that they could perform on the matter. These could be systematised in a typology composed of three groups. Firstly, actions for mitigation, this is, those that pretend to contribute in a proactive manner to the achievement of ecologic aims, as fighting against climate change, reducing the carbon footprint, and preventing or limiting environmental impact. Secondly, actions for adaptation, as those for addressing the consequences of climate change (for example, extreme meteorologic conditions and risks), or for the articulation of the required productive and professional changes deriving from the green transition towards sustainable, decarbonised, or circular economy models.<sup>456</sup> Thirdly, we could still identify a group specifically referred to mechanisms of participation, protection and compensation for the workers aiming to ensure a fair/just green transition with due attention to social objectives and concerns. Following those criteria, the typology on the role of the workers’ representatives in the green transition is summarised in Table 1.

**Table 1.** The role of the workers’ representatives in the green transition: a typology.

TYPE OF ACTIONS	OBJECTIVES AND DESCRIPTION OF ACTIONS
MITIGATION  (implication and contribution regarding ecological aims and concerns)	<ul style="list-style-type: none"><li>• Reducing environmental impact and fighting climate change (controlling externalities, reducing emissions and waste, promoting sustainable production and mobility, adopting circular economy practices, raising awareness, whistleblowing on environmental damages or incomppliance).</li></ul>

<sup>456</sup> Álvarez Cuesta, Revista Galega de Dereito Social 2023, 9 et seq.

ADAPTATION (addressing climate change consequences and articulating transitions)	<ul style="list-style-type: none"> <li>• Adjustments for facing climate change consequences and normative limits (i.e. draught, exposure to extreme temperatures or other meteorologic risks, limited energy and resources access or consumption).</li> <li>• Productive, organisational and management changes for green transition towards sustainable and circular models.</li> <li>• Exploring emerging opportunities (new green activities and green jobs).</li> <li>• Learning and training.</li> </ul>
Ensuring a <b>FAIR/JUST GREEN TRANSITION</b> (social aims and concerns)	<ul style="list-style-type: none"> <li>• Driving transitions with attention to social impact – workers' rights and social protection.</li> <li>• Reducing or compensating negative socioeconomic consequences.</li> <li>• Participating in the planification and implementation of economic alternatives.</li> <li>• Granting that the green discourse doesn't undermine labour/social rights and concerns.</li> </ul>

Going a step beyond in the degree of detail, it is possible to identify different types of workers' representation structures or bodies (trade unions, workplace elective representatives, specific health and safety representation) potentially performing a role on issues linked to the green transition at diverse levels of action (intersectoral, sectoral, national/regional/local, undertaking/plant level), by means of different instruments for collective action (social dialogue, collective bargaining, information and consultation rights, participation in decision making at the undertaking, monitoring, etc.). A summarised scheme on this is given in Table 2, while a more complete explanation on the most outstanding areas and instruments for labour collective action in the green transition hereby identified will be provided in the following sections.

**Table 2.** Different types and levels of workers' representation, and their respective role concerning the green transition.

TYPE OF REPRESENTATION	LEVELS	MEANS/ INSTRUMENTS	ROLE
Trade Unions	Intersectoral/ sector  National/ regional/ local	Tripartite <b>social dialogue</b>	<ul style="list-style-type: none"> <li>• Participating in green policy making</li> <li>• Participating in transition and reconversion processes</li> </ul>
	Intersectoral/ <b>sector</b>  National/ regional	<b>Collective bargaining</b>	<ul style="list-style-type: none"> <li>• Environmental CBA clauses</li> <li>• Framework for transition processes</li> </ul>

			<ul style="list-style-type: none"> <li>• Training on competencies for transition</li> <li>• Representation and info. and consultation rights</li> <li>• Dealing with climate change-related risks</li> <li>• Sustainable mobility</li> </ul>
<b>Workplace representatives</b>	Undertaking/ plant level		
	Undertaking/ plant level	<b>Information and consultation/ monitoring/ participation competencies</b>	<ul style="list-style-type: none"> <li>• Information, monitorisation and consultation on economic situation of the undertaking and future prospect, environmental issues, impact on work organisation and employment</li> <li>• Negotiating restructuring and transitions: <ul style="list-style-type: none"> <li>○ Internal flexibility with previous consultation</li> <li>○ Collective dismissals with previous consultation</li> </ul> </li> <li>• Proactive environmental action at undertaking or plant level: cooperation, participation, monitoring, and whistleblowing</li> </ul>
<b>Specific health and safety representation</b>	Undertaking/ plant level	Specific H&S competencies	<ul style="list-style-type: none"> <li>• Integrating climate change-related risks in health and safety assessment and plans</li> <li>• Monitoring and prevention of environmental risks</li> </ul>

## D. Social dialogue for a fair/just green transition

As stated by the EU Economic and Social Committee, “trade unions play a key role in preparing and representing workers in the process of social-ecological transformation, so an active and coherent social dialogue must be guaranteed to ensure that climate action delivers for workers, makes the transition just and

genuinely leaves no one behind”.<sup>457</sup> Tripartite consultation and negotiation among governments, trade unions and employers’ associations can provide a significant contribution to sustainable development. Moreover, it can be considered an essential instrument or even a *condictio sine qua non* for ensuring an adequate, fair/just and inclusive green transition, through the participation of trade unions and employers’ associations expressing their own voice and representing the interests and concerns of the world of work in the design and implementation of the public policies on the matter and in the mechanisms for articulating the unavoidable socioeconomic transformations, as highlighted by the ILO.<sup>458</sup>

In Spain, there is a solid tradition – notwithstanding some periods of impasse or blockage – of social dialogue and tripartite consultation among the Government, the unions, and employers’ associations regarding labour issues. It is even frequent the previous tripartite negotiation of public policy decisions and programs, including the approval and contents of normative texts, in the areas of Labour Law, Social Security and other close matters, prior to the final enactment in legal provisions, which often just reproduce the agreement earlier concluded. In recent years, this tripartite social dialogue practice has been invigorated, as reflected in many previously agreed legal provisions on, for example, extraordinary labour and social protection measures during the COVID-19 pandemic, the 2021 Labour Law reform, platform work or retirement pensions. Acknowledging that experience, this method needs to be projected now on the area of the green transition, where there is a wide margin to increase the currently not so relevant presence of trade unions, employers’ associations, and social dialogue.

On the other hand, social dialogue on the green transition should be held at the national and intersectoral level regarding participation in the design of general policies and legislation on the green transition. However, it should be developed beyond, at other multiple functional and geographical levels too. Sectoral, regional, or local social dialogue can be important considering concrete economic activities and areas especially affected by the green transition, particularly for granting the participation of trade unions in the transformation and reconversion processes. The possible areas of action for that multi-level social dialogue could be summarised as follows: participation in green transition policy-making; participation in sectoral implementation; governance and driving of general/sectoral/regional transition processes with participation in design and implementation of the corresponding

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<sup>457</sup> *EU Economic and Social Committee*, Social dialogue within the green transition, *EU Economic and Social Committee 2022*.

<sup>458</sup> *ILO*, Social dialogue for sustainable development, *ILO 2012*; *ILO*, Guidelines for a just transition, *ILO 2016*.  
Álvarez Cuesta, Lan Harremanak 2019, 1 et seq. Chacartegui Jávega, Trabajo y Derecho 2023, 1 et seq.

economic alternatives, compensation measures, public strategies and investments; identification of alternatives and new employment opportunities, namely in green and digital activities; specific attention to particularly vulnerable sectors, geographic areas and categories of workers.

In particular, social dialogue might be relevant regarding the just transition agreements foreseen in Law 7/2021 on Climate Change and Energy Transition (art. 28).<sup>459</sup> These are public (or public/private) agreements for facing green transition and socioeconomic reconversion, paying attention to especially affected sectors or geographic areas, vulnerable workers, and groups at risk of exclusion.<sup>460</sup> The aim is planning and putting in place measures for promoting economic activity and its modernisation, as well as the employability of people in the transition to a low-carbon economy, especially in cases of cease of activity. The contents are: a) assessment of the state of vulnerability of the geographical area or group affected; b) commitments of the parties participating in the agreement, including companies benefiting from transition support measures; c) support measures (taxing advantages, funding, support for R+D+i, digitalisation, entrepreneurship, employment, social protection and training activities to encourage the adaptation of workers, etc.); finally, d) time schedule for the adoption of the measures, with measurable objectives and follow-up mechanisms. Those agreements are arranged among the national Government (Ministry for the Ecological Transition, with report from the Ministry of Labour, the Ministry of Inclusion, Social Security and Migration, and the Ministry of Industry) and other public administrations, in particular those of the concerned autonomous communities and municipalities. Participation is open to other public and private stakeholders as companies, business organisations, trade unions, universities, educational centres, environmental associations, and non-governmental organizations and any interested or affected entities. Hence, trade unions can participate, but there is no recognition of a starring role. In practice, there are currently 15 just transition agreements in force, and none has been signed by trade unions, although they had some – but not significant – degree of involvement in several cases.<sup>461</sup>

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<sup>459</sup> *Álvarez Cuesta*, *Iuslabor* 2020, 74 et seq.

<sup>460</sup> *Canalda Criado*, *Trabajo y Derecho* 2021, 1 et seq.

<sup>461</sup> See the data provided by *Instituto para la Transición Justa*, available at: [https://www.transicionjusta.gob.es/es-es/Paginas/Convenios\\_transicion\\_justa/Convenios.aspx](https://www.transicionjusta.gob.es/es-es/Paginas/Convenios_transicion_justa/Convenios.aspx) (last accessed 21.04.2025).

## E. Green transition and collective bargaining

Collective bargaining might have an important role to play in the green transition.<sup>462</sup> There are still few mentions to this in the Spanish legal framework, but statutory law references to a “green collective bargaining” are starting to appear in some recent texts. The Law 34/2007, of 15 November, on Air Quality and Protection of the Atmosphere, calls for collective bargaining to introduce clauses on sustainable mobility. In that regard, the ongoing Bill for a Law on Sustainable Mobility foresees compulsory sustainable mobility plans for undertakings of more than 250 employees, which shall be negotiated with the workers’ representatives (similarly to sex/gender equality plans). The V Framework Agreement for Employment and Collective Bargaining (V AENC 2023), which is the agreement among the most representative trade unions and employers’ associations at the intersectoral level for orientation and guidelines to be followed on lower-level collective bargaining, refers to this too. It concretely calls for negotiating on collective transport for the workers, mentioning the convenience of joint collective transport for employees of different undertakings with workplaces located in the same area. Anyhow, this “green collective bargaining” on sustainable mobility could embrace other measures as promoting or even providing eco-friendly means for transport (i.e. bicycles or electric vehicles) or working time rearrangements for reducing the volume of movements. On the other hand, a key instrument for reducing movements and environmental impact can be telework, where workers’ collective representatives and collective bargaining play a key role according to the specific legal framework contained in Law 10/2021, of 10 July, on Remote Work.

The V Framework Agreement for Employment and Collective Bargaining (V AENC 2023) specifically addresses the green transition, decarbonisation, and circular economy, in connection with digital transition too, considering that both are interrelated. It calls for collective bargaining concern and action on the matter, and for transition processes with participation of the workers’ representatives. It significantly highlights the importance of collective bargaining regarding the following aspects: identifying new qualifications needed in the green, digitalised, and circular economy; redesigning of jobs and positions; information, training and requalification for green and digital transition, and sustainable mobility plans.

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<sup>462</sup> *EU European Economic and Social Committee*, Green collective bargaining: good practices and future prospects (exploratory opinion), EU Economic and Social Committee 2023.



Nevertheless, in practice, nowadays existing collective bargaining provides still very few references to environmental issues and to the green transition.<sup>463</sup> In a general overview, it is possible to conclude that the clauses on the matter are scarce and often too vague, lacking a precise articulation of objectives, rules, monitoring instruments and evaluation mechanisms. Summarising, collective bargaining on this is still incipient, with more relevant contributions in directly or specially concerned sectors and activities (for instance, the chemical industry), and lesser attention in others.<sup>464</sup> Besides, the current “state of art” might even raise some queries from a critical perspective. Is there a true awareness and involvement on sustainable development and the green transition by the bargaining parties? Are the existing clauses really in line with general green transition policies? Do collective agreements reflect sufficient connection to changes in production and management towards sustainability and circular economy? Do the environmental or green clauses evidence real and effective commitment to sustainability aims, or are they just *greenwashing*?

Nevertheless, some collective bargaining agreements already pay some attention to sustainability and mitigation of environmental impact, including *green-friendly* clauses.<sup>465</sup> But many of them are mostly programmatic declarations or references to corporate social responsibility (for example, collective agreements of companies Eroski and Mapfre). Some clauses include environmental issues among information and consultation rights of the workers’ representatives. Some others refer in more detail to the undertaking’s commitment and compliance regarding sustainability or circular practices (collective agreement for the natural drinks sector, agreement for Eroski supermarkets and Framework Agreement of ArcelorMittal group). Even, some agreements foresee disciplinary penalties for workers’ environmental infringements (collective agreement for convenience shops, and company-level agreement of Endesa).

Some collective bargaining clauses address environmental issues and climate-change related risks from the health and safety perspective. They sometimes regulate the competencies of the workers’ representation bodies on the matter or even create specific representative structures for these purposes (as explained in the following section). The collective bargaining agreement for the construction sector explicitly refers to climate-change related risks, regulating on the need to avoid the exposure of workers to extremely hot temperatures or other meteorologic

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<sup>463</sup> Chacartegui Jávega, Negociación colectiva y sostenibilidad medioambiental, 87 et seq. Álvarez Cuesta, Revista de Trabajo y Seguridad Social CEF 2022, 89 et seq.

<sup>464</sup> Laabbas-El-Guennouni, Temas laborales 2023, 129 et seq.

<sup>465</sup> Chacartegui Jávega, Negociación colectiva y sostenibilidad medioambiental, 87 et seq.

threats. It is possible to find some clauses on the need for specific information and training to workers on environmental issues and climate-change derived risks (agreement for company Ercros). Besides, it is worth mentioning a collective bargaining agreement already considering sustainable mobility plans (Airbus Group), even before the enactment of the forthcoming legal obligation on the matter. However, the clauses for directly dealing with the changes required in the framework of the green transition and for ensuring that such processes are fair/just are surprisingly very scarce to the date, limited to quite abstract references to information and consultation rights and to training and requalification for concerned workers.

## **F. The role of the workplace representatives: information and consultation rights, and other possibilities for action**

Spanish law does not regulate specifically the role of the workplace elective representatives regarding sustainability aspects or green transition implications. However, the general regulation of the competencies of the workplace representatives (works councils or staff delegates) contained in article 64 of the Workers' Statute (Royal Legislative Decree 2/2015, of 23 October) includes broad information and consultation rights on the economic and employment situation at the undertaking. Many of them are applicable regarding the challenges transformations and needs for adaptation or restructuring in the context of the climate change and the green transition. Namely, the representatives are granted a right to periodical information on “the economic situation of the undertaking and the recent and probable evolution of its activities, including environmental measures that have a direct impact on employment”. Also, they have a right to periodical information and previous consultation too on the following areas: “the situation and structure of employment in the company or in the workplace”; “the likely evolution of employment”, including consultation in case of expected changes; “decisions of the undertaking that could cause relevant changes in terms of the organization of work and employment contracts in the company”, and “adoption of possible preventive measures, especially in the event of risks for employment”. Moreover, the works council is entitled to issue a previous report prior to the adoption of some measures or decisions by the undertaking on some matters as restructuring of the workforce, dismissals, and vocational training plans. Hence, relying on the traditional legal framework, the workplace representatives have an important set of information and consultation rights that can be put in place

regarding green transition subjects. For instance, concerning possible adjustments in the organisation of business and work for reducing environmental impact, for adaptation to climate change consequences and green transition requirements or for evolving towards sustainable and circular production models, especially if they entail consequences on the volume of employment or on working conditions. Particularly, in case of forced restructuring, reconversion or cease of activity processes in the framework of the transition to a more sustainable and low-carbon emissions productive system, with an inherent impact in terms of job losses. Also, in connection to requalification and new skills required in the context of the digital and green transition, and the corresponding learning and training to be provided. However, it might be interesting to consider the need for further adaptation and empowerment of workers' representation structures and information and consultation rights precisely in view of the double green and digital transition,<sup>466</sup> either by means of legal reforms or via collective bargaining agreements.

From that standpoint, some collective bargaining agreements have created specific workplace representation bodies or participation mechanisms for environmental or green issues, as, for example, a system for integrated management of quality, environment and health and safety (collective agreement of Abertis Autopistas), a committee with mixed health and safety and environmental functions (sectoral national agreement for the chemical industry), or special environmental committees or delegates (collective agreements for the cement sector and the leather sector; Framework Agreement of ArcelorMittal group; company or group-level collective agreements as those of Repsol and Generali). Some other agreements attribute additional competencies on the matter to classic health and safety committees and delegates (collective agreement of Liberty Seguros) or to general elective representatives (sectoral collective agreement for meat industries).

With a more proactive and collaborative approach, the workers' representatives could participate in designing and implementing strategies and decisions aiming to evolve towards ecologic, sustainable, or circular paradigms. In this regard, article 64 of the Workers' Statute says that the workplace representation shall "collaborate with the undertaking's management to achieve the establishment of any measures aimed at maintaining and increasing productivity, as well as the environmental sustainability of the company, if this is agreed in the collective agreements". Nevertheless, this provision looks quite vague, and it is criticisable that it seems to

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<sup>466</sup> Sáez Lara, *Revista Crítica de Relaciones de Trabajo* 2024, 147 et seq.

condition such participation possibilities to the existence of a prior entitlement established by a collective bargaining agreement, therefore creating an obstacle in case of lack of such kind of provision previously agreed.<sup>467</sup>

On the other hand, the workers' representatives can have a starring role in reporting or *whistleblowing* concerning environmental damages or incompliance by the undertaking. They might provide early and well-informed warnings on the matter, as the workers are frequently the closest persons to the sources of contamination or environmental impact, and at the same time the most directly affected victims, as they usually live in the nearby geographic area.<sup>468</sup> From an individual perspective, this connects to the normative framework on whistleblowing provided by EU Directive 2019/1937 on the protection of persons who report breaches of Union law and Spanish Law 2/2023, of 20 February, regulating the protection of persons who report regulatory breaches and on the fight against corruption, which have nevertheless a very individualistic approach and do not give much consideration to the role of collective workers' representatives. However, reporting of perils, damages or infringements related to the environment by the workers' representatives is broadly protected under constitutional fundamental rights of freedom of speech and information (art. 20 of the Constitution) and trade union freedom of action (art. 28 of the Constitution), within due respect to the requirements of the veracity of the information revealed and exclusion of unfaithful defamation, according to consolidated case law of the Constitutional Court.<sup>469</sup>

Finally, both the elective workplace representatives and trade unions can play an important role regarding environmental issues and the green transition through the mechanisms and requirements in the areas of corporate social responsibility and due diligence, bearing in mind the obligations emerging in the framework of Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence. Particularly, corporate social responsibility and due diligence can be crucial for transnational extending of green commitments and obligations all through global subcontracting, supply, or value chains, where the implication of the workers' representatives is essential. A key instrument in this regard are the international framework agreements resulting from transnational social dialogue.<sup>470</sup> However, the developments in this field are still incipient in practice.

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<sup>467</sup> *Álvarez Cuesta*, *Revista de Trabajo y Seguridad Social* CEF 2022, 89 et seq.

<sup>468</sup> *Álvarez Cuesta*, *Revista de Trabajo y Seguridad Social* CEF 2022, 90 et seq.

<sup>469</sup> Constitutional Court Judgments 88/1985, 4/1996, 213/2002 and 109/2018.

<sup>470</sup> *Correa Carrasco*, *Revista de Trabajo y Seguridad Social* CEF 2022, 155 et seq.

## **G. The role of the workers' representatives in restructuring processes derived from the green transition: internal flexibility, RED Mechanism, and collective dismissals**

In the context of the green transition and decarbonisation, many undertakings will be obliged to face intense or dramatic transformations, or even to reconsider or to terminate some of their former activities considered incompatible with the climate neutrality objectives. Consequently, there will be restructuring processes with an enormous potential impact on employment. According to the principles of a fair or just transition, this should be done as smoothly as possible for the affected workers, with an adequate pace, gradually and proportionally, reducing or attenuating the employment impact, exploring alternatives and opportunities for requalification and reallocation, and providing adequate compensations, economic support, and social protection.

In that regard, “internal flexibility” mechanisms should be a key instrument for facing transitions by means of readaptation or adjustment of the undertakings’ workforce needs and structures while intending to maintain employment at the same time, representing an alternative to more drastic measures as collective dismissals.<sup>471</sup> In Spain, the internal flexibility measures legally foreseen are: a) temporary working time reduction on economic, technical, organisational or production grounds (with corresponding adjustment of wages and compensation by proportional payment of unemployment benefits), and b) temporary suspension of employment contracts on economic, technical, organisational or production grounds (which involves transitory interruption of work performance and wage payment, with compensation by unemployment benefits). Both are known as temporary employment regulation measures (often referred to with the acronym ERTes). These can be applied for adaptation or restructuring on the said economic or other objective business grounds, but also on *force majeure* grounds, including the possibility to reduce or interrupt the activity due to dangerous weather conditions or catastrophic damages linked to climate change-related extreme meteorologic phenomena (as addressed in next section).

The legal framework on these temporary employment regulation measures is contained in articles 47 and 47 bis of the Workers’ Statute and Royal Decree 1483/2012 and was deeply amended by the 2021 Labour Law Reform. Accordingly, the ERTes require a compulsory period of previous consultation with the workers’ representatives, who are therefore a starring actor in the adoption of

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<sup>471</sup> Miñarro Yanini, Revista de Trabajo y Seguridad Social CEF 2022, 5 et seq.

such measures. Besides, they require to follow a special procedure before the labour administration. They entail possibilities of modulating the provision of work and saving costs for the undertakings. From the Social Security perspective, they involve additional advantages for the undertakings regarding the cost of social contributions, but they also imply protection for workers through unemployment benefits. Besides, the adoption of these measures is linked to commitments by the undertaking on maintaining employment. It is connected to requalification of the employees too, pointing to training in competencies for new contexts, as those emerging with the digital and green transition.

There are two modalities of ERTes: the ordinary one (art. 47 of the Workers' Statute), and the so-called RED (significantly meaning "security net" in Spanish) Mechanism for Flexibilization and Stabilisation of Employment (art. 47 bis of the Workers' Statute, Decree-Law 4/2022, and Royal Decree 608/2023). This RED Mechanism was introduced by the 2021 Labour Law Reform, considering the previous experience of the special COVID-ERTes rules adopted in this field during the period of the pandemic, as an important employment support measure during that context. It is aimed at offering special legal and socioeconomic support to undertakings and employees in situations of crisis or drastic transitions. It provides special reinforced social protection for affected workers and special discounts and exemptions for employers concerning social security costs. However, such advantages are conditioned to the implementation of a plan for requalification, training and/or professional transition for the workers, and to a commitment on maintaining employment and avoiding dismissals (applicable until 6 months after the end of the period covered by the measure). It has specific funding, including EU Next Gen Funds. It requires activation by means of a decision of the National Government, that might be adopted at the request of the most representative trade unions and employers' associations. It necessarily entails previous consultation with the workers' representatives and a parallel procedure before the labour administration.

There are two sub-modalities of the RED Mechanism: a) the cyclic modality, with a maximum duration of 1 year, for situations of general cyclic macroeconomic crisis, and b) the sectoral modality, with a maximum duration of 1 year with 2 possible six-month extensions, for sectors of activity facing structural changes that generate the need for requalification of workers and professional transition processes. This second modality perfectly matches with restructuring processes derived from the green transition in especially affected sectors, particularly

industrial activities obliged to reconversion in the context of decarbonisation or to transformation towards sustainable production models.<sup>472</sup>

Although internal flexibility measures aim to avoid it, the restructuring decisions derived from green transition requirements might involve dismissals justified on economic, technical, organisational, or production-related grounds. In this regard, the workers' representatives play an extremely relevant role, by means of negotiation with the undertaking's management aiming to activate the alternative of internal flexibility measures instead, to reduce the number of dismissals or to establish compensations or social support deals for the affected employees. This function of the representatives is to be performed within the important legal framework on collective dismissals set in article 51 of the Workers' Statute and in Royal Decree 1483/2012, which provide the national transposition of the European Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. As it is well known, the main objective of the mentioned Directive and of the corresponding transposition provisions, in line with article 27 of the Charter of Fundamental Rights of the European Union and other supranational texts, is to require an indispensable previous period of information and consultation with the workers' representatives whenever the employer is contemplating collective redundancies.

Consequently, in the light of those provisions, collective dismissals imply the obligation to open a period of consultation with the representatives, as well as following a specific parallel procedure before the labour administration. The parties should intend to reach an agreement during such consultation period, which shall cover, at least, ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, *inter alia*, at aid for redeploying or retraining workers made redundant, according to Directive 98/59/EC. In Spanish Law, article 51 of the Workers' Statute explicitly indicates the following issues to be necessarily addressed in that dialogue: possibilities of avoiding or reducing the number of dismissals, criteria for selection of affected workers, compensations, social support measures, reallocation, and requalification, which might include training in new competencies. Ahead, in companies with more than 50 employees, it is compulsory to negotiate an external reallocation plan with specialised entities, at least for 6 months, including training and professional orientation, personalised attention, and active employment search. Of course, the law establishes minimum

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<sup>472</sup> Miñarro Yanini, *Revista de Trabajo y Seguridad Social* CEF 2022, 5 et seq.



economic compensations for redundant workers too, but the amount of these can be increased by means of an agreement within the consultation period. Hence, the workers' representatives have a significant area for intervention here, in those cases where the green transition leads to this sort of most drastic consequences on employment.<sup>473</sup> Moreover, there are some ongoing discussions on a possible reform of that legal framework on collective redundancies. For instance, there are proposals on legally limiting collective dismissals as a last resort or *ultima ratio* and configuring internal flexibility as a necessary alternative. Besides, there are claims for further legal empowerment, ampliation and anticipation of the consultation period required prior to collective dismissals.<sup>474</sup> Nevertheless, there is still not a concrete bill for legislative innovation on the matter.

## **H. The climate change and emerging risks for workers' health and safety**

Labour Law and the workers' representatives should be aware of the emerging workplace risks linked to the climate change, global warming, and contamination.<sup>475</sup> For instance, excessively high temperatures or some other extreme meteorologic conditions and phenomena entailing serious risks or even potential catastrophic effects (as pouring rains and floods caused by the so-called "isolated depression at high levels", which has become more frequent because of the climate change), or workplace risks linked to air quality. The Spanish National Health and Safety Strategy 2023-2027 has already included the integration of such issues in the risk assessments and in the plans for prevention of risks and hazards at work of undertakings as an important target. In fact, this is starting to be compulsorily mandated by some normative provisions. In the case of outdoor work, considering the exposure to extreme temperatures in the risk assessment and for the adoption of corresponding preventive measures is yet mandatory, as a result of Decree-Law 4/2023, of 11 May, containing rules on prevention of occupational risks in episodes of high temperatures, which amends in that regard Royal Decree 486/1997, of 14 April, on workplace health and safety minimum provisions. Moreover, there is an envisaged update of the Law on prevention of risks at work, preceded by proposals and tripartite social dialogue which are paying some attention to this kind of issues.

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<sup>473</sup> *Canalda Criado*, Documentación Laboral 2023, 103.

<sup>474</sup> *Baylos Grau* (Ed.), La reforma del despido, 1 et seq.

<sup>475</sup> *Igartúa Miró*, Revista de Trabajo y Seguridad Social CEF 2022, 47 et seq.

Preventing the mentioned risks might require, among other things, measures regarding working time. For example, reducing or adapting working time for limiting exposure, avoiding outdoor work at hottest times, as it is yet established in a clause of the collective bargaining agreement for the construction sector. Ahead, it makes sense to consider that in case of a meteorologic alert on extreme or dangerous weather conditions there should be an obligation of adaptation of working time to avoid the risks, or even a right to stop working. Actually, regarding all forms of work done outdoors, the mentioned reform of Royal Decree 486/1997 by Decree-Law 4/2023 establishes that, in the event of a warning of adverse meteorological phenomena of orange or red level by public meteorologic agencies or authorities, where there are no other previous preventive measures guaranteeing the protection of workers, the adaptation of working conditions will be mandatory, including the reduction or modification of the hours of work performance.

Moreover, after the natural disaster of the pouring rains and floods caused by an isolated depression at high levels (“DANA”) in eastern Spain in October 2024, with catastrophic effects including the death of more than 200 people and the destruction of many workplaces, some legal provisions have been approved considering this sort of situation, firstly aiming to give support to the victims and to the rebuilding process concerning that terrible event, but secondly establishing some rules for facing this kind of risks in the future. These include some new labour rights with the orientation hereby pointed. Concretely, Decree-Law 8/2024, of 28 November, establishes new rules on the possibility of interruption of working activities in situations of natural disasters and meteorologic risks.<sup>476</sup> It amends the Workers’ Statute [art. 37.3.g)], introducing a leave (preserving remuneration) of up to four days due to the impossibility of accessing the workplace or traveling through the necessary traffic routes to get there, as a consequence of the recommendations, limitations or prohibitions on movement established by the competent authorities, as well as in case of serious and imminent risks, including those derived from a catastrophe or adverse meteorologic phenomenon. After those four days, the interruption can be extended until the circumstances that justified it disappear, but in this case the employer is entitled to apply a temporary suspension of the employment contract or a temporary reduction in working hours on the grounds of *force majeure*, with the corresponding saving in wage payment, and compensation to the workers by unemployment benefits (this is, the measures

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<sup>476</sup> Miñarro Yanini, El nuevo permiso por riesgo catastrófico o fenómenos climáticos adversos, *Briefs AEDTSS* 5.12.2024, <https://www.aedtss.com/el-nuevo-permiso-por-riesgo-catastrofico-o-fenomenos-climaticos-adversos/>.

for temporary employment regulation – ERTes – according to the rules explained in the precedent section).

Anyhow, beyond the explicit contents of statutory provisions, the workers' representatives have a significant area for acknowledgement and action in this field, with multilevel possibilities for intervention of trade unions, elective works councils or staff delegates, and especially of the specific health and safety representation bodies. In particular, the role of collective bargaining might be crucial to adequately address these challenges and adaptations, with due consideration to the concrete circumstances and risks of each sector or undertaking, and even to the particularities of each geographic area, which, regarding environmental hazards and meteorologic phenomena, might significantly differ from one region to another.

## **I. Conclusions**

So far, the Spanish legal system does not provide a specific and systematised Labour Law framework explicitly regarding the green transition, nor a clear and complete regulation on the role of the workers' representatives on the matter. There are just fragmented or piecemeal legal provisions potentially or indirectly relevant. Often, those provisions come from legal texts systematically situated outside the borders of Labour Law, rising from the emerging “green legislation”, as the Law 7/2021 on Climate Change and Green Transition or the still being discussed Bill for a Law on Sustainable Mobility. It is also worth mentioning the indirect influence of other partly connected texts, as, for instance, the EU Directive on due diligence and the expected national transposition norms.

However, even in such disperse, unsystematic and indirect way, the current legal system offers some useful regulations and tools concerning the social impact of the green transition and the role of the workers' representatives, by means of projecting some broader-scope – and not specifically adapted – Labour Law provisions to that concrete context, as explained in detail in the preceding sections (for instance, apropos the competencies of the workplace representatives or the rules on internal flexibility measures and collective dismissals). Besides, along with statutory “hard law”, “green soft law” (declarations, public policy documents, plans and strategies, etc.) is acquiring a starring role in this field. Anyhow, from a legal perspective, this is an area still under construction, not well structured, and in need for systematisation.

Focusing on the role of the workers' representatives, it must be emphasised that enabling their effective participation, at various levels and by different means (social dialogue, just transition agreements, collective bargaining, workplace representation information and consultation rights, negotiation of restructuring measures at the undertaking), is essential for granting a fair or just green transition, implemented through inclusive proceedings and with attention not only to environmental sustainability, but also to social sustainability aims. These ideas should be acknowledged by the social actors themselves, and, on the other hand, reinforced by adequate enactment and empowerment by the law, including Labour Law.

In practice, it is worth outlining that the green transition and consequent productive and organisational changes are already affecting the economy and the world of work, so the workers' representatives should currently be developing corresponding awareness and involvement. Certainly, there is raising political concern and action on the matter by trade unions, and even an incipient implementation of specific structures and strategies specifically aiming at sustainability and green transition affairs. But that response to the challenges of the green transition seems to be still embryonic and insufficient. Meanwhile, it is doubtful if the role of the workers' representatives on the green transition is being adequately recognised and empowered by the law. Leaving apart the few emerging provisions mentioned on workers' sustainable mobility and on increasing climatic risks, Labour Law has not been amended or adapted from the specific perspective of facing the green transition and supporting workers' collective representation, participation and action on this subject.

Hence, although there might be some useful instruments already present in current law or collective bargaining agreements, there is a wide margin for further developments, bearing in mind that the role of the workers' representatives is crucial for ensuring that the green transition is fair or just, integrating environmental and sustainability objectives with social objectives, namely the decent work sustainable development goal number 8. In this regard, it is possible to say that "the future will be green or will not be", but also that the green transition will be fair/just or will not be.

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## § 10 MULTILATERAL, MULTILEVEL AND MULTIDISCIPLINARY SOCIAL DIALOGUE AND FUNDAMENTAL RIGHTS

Vittoria Parroco, Vittoria Ziviello, Antonella Gravinese, Alex Sans, David Petri and Anna Schmieder

### List of abbreviations

ECL	European Climate Law
EU	European Union
ILO	International Labour Organization
NGO	Non governmental organisation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
the Charter	EU Charter of Fundamental Rights
the Convention	European Convention on Human Right
UN	United Nations

### A. The multilevel dimension of social dialogue within the international and supranational communities

Green transition is one of the main demands of today's Western society, owing to its increased awareness concerning the need to foster an environmentally (and socially) sustainable global economy. The main underlying principle guiding this transformation is that of «*intergenerational solidarity*», according to which, the actual human generations must reduce and mitigate their adverse impacts on the environment and human rights, both significantly exploited, in order to make future generations inherit a world where natural resources are preserved and safeguarded and where, at the same time, social inequalities are increasingly levelled.

However, this transition does eventually produce major effects on workers and the labour market as a whole: many industries may be forced to gradually cease their «*brown*» activities, thus creating substantial rates of workforce displacement, and



additionally, workers themselves may be requested to develop new and highly specified skills.

In order to avoid and mitigate such negative externalities on workers, trade unions have consistently advocated for a transition that is not only “green” but foremostly “just”, i.e. capable of granting decent work for all while also protecting the global environment.<sup>477</sup> In particular, a pivotal instrument for achieving this objective has been the “social dialogue” that, owing to its tripartite structure, allows the perspectives of workers, employers, and government to be voiced and considered. Social dialogue serves, indeed, as a practical mechanism to address the side effects of these profound and groundbreaking transformations, enabling the identification of mutually beneficial solutions in which responsibilities and benefits are equally distributed among all stakeholders. The core essence of the “social dialogue” mechanism is thus inherently multilateral.

In view of the focus of this chapter, which is the “multilevel” dimension of social dialogue, it is of utmost importance to examine how this tool is regulated at the international and supranational levels.

## I. The international level

Among all the international organizations, the International Labour Organization (ILO) is the one that stands out for having dedicated the most significant attention to the topic of “social dialogue” and its connection to the transition towards a green and just economy. As a matter of fact, the ILO provided a detailed conceptualization of “social dialogue” in a guide published in 2013. In particular, according to the ILO’s “*Guide for Improved Governance*”, social dialogue is that governance mechanism which includes «*all types of negotiation, consultation or information sharing among representatives of governments, employers and workers or between those of employers and workers on issues of common interest relating to economic and social policy*». <sup>478</sup>

The ILO consecrates the utmost relevance of social dialogue in the field of green transition through its 2015 publication. i.e. the “*Guidelines for a just transition towards environmentally sustainable economies and societies for all*”: from the very outset of the document, it emphasizes the centrality of social dialogue in

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<sup>477</sup> Galgóczi, EJIR 2020 Vol. 26 Issue 4, 369.

<sup>478</sup> International Labour Organization, National Tripartite Social Dialogue. An ILO guide for improved governance. (Social Dialogue and Tripartism Unit, Governance and Tripartism Department, 2013), p. 12.

fostering a sustainable economy, affirming its indispensable role at the policy-making level.

In this ILO document, the social dialogue is articulated across its three dimensions: namely as a simultaneously multilevel, multilateral, and multidisciplinary tool.

Regarding the first dimension, the ILO specifies that, as the primary guiding principle for achieving a green and just transition, the social dialogue mechanism must be institutionalised and systematically implemented within all the possible levels of governance and discussion. To this end, it is essential to promote the mutual and functional integration of the solutions identified in each of those levels: it must be taken into consideration that each tier of social dialogue has its own peculiar focus and objectives. For instance, if the supranational and international ones aim at identifying the main guidelines and policies, at all the other levels social dialogue is more directly concerned on the actual implementation of those policies, tailoring them to the specific circumstances and conditions of each country, sector, industry or company.

With reference to the multilateral aspect, ILO Guidelines explicitly prescribe that, for social dialogue to achieve effectiveness, it must involve «*all relevant stakeholders*», thereby ensuring that each can offer meaningful contributions to the consultation process. Even though a more detailed and comprehensive investigation of this dimension will be presented later in this paper, it is important to note that in the context of the ILO Guidelines the multilateral dimension is closely intertwined with that of multidisciplinary, according to which all the policies elaborated within the social dialogue mechanisms and aimed at driving the just and green transition must coherently address and integrate the economic, environmental, social, educational and labour spheres. In addition to that, it must be acknowledged that the ILO Guidelines do not merely define the fundamental components of these policies; rather, they provide detailed recommendations for governments and social partners regarding their respective roles and responsibilities.

Having outlined how the international community addresses and promotes social dialogue within the framework of “green” and “just” transition policies, the next upcoming paragraph will be focused on the supranational level, where the European Union (EU) emerges as a prominent leader.

## II. The supranational level

Challenges arising from the current climate crisis are not limited exclusively to the national or regional level, but must be addressed taking into account both its global projection and the multiple dimensions of this phenomenon. Therefore, despite not being the only supranational actor and not having the largest territorial scope, the EU explicitly assumes its vocation to be a world leader in climate matters, developing its own ambitious environmental policy and taking into account the multilateral perspective.<sup>479</sup>

The EU's particular suitability to lead the climate transition is due to several factors, such as its high standards of political democracy and commitment to human rights, its participation in multilateral international organisations, and the fact that it has one of the most advanced economies in the world. According to the World Bank,<sup>480</sup> in aggregate terms, the EU is the third largest economy in the world; for the EU economy, the industrial sector accounts for 20% of gross value added and 16% of employment.<sup>481</sup> However, despite the fact that in the last two decades, employment in brown activities has decreased significantly in the overall EU<sup>482</sup> and despite the progress made in terms of clean energy and decarbonisation, among others,<sup>483</sup> European authorities believe that this progress is not sufficient to meet the ambitious objectives required to tackle such a serious and complex problem, which is highly interconnected in its different factors and manifestations.

At the same time, with a long history of social dialogue<sup>484</sup> rooted in the Union's highest legislative expressions (see Title X, Treaty on the Functioning of the European Union (TFEU)) and aware of the social dimension inherent in the fight against climate change and environmental degradation, the European institutions sponsor a wide range of measures in the climate field, with the participation of the social partners. Thus, on the basis of existing legislative and institutional structures, the EU is promoting spaces for meetings and dialogue at different levels, in different formats and with different contents, in order to achieve a more plural and deeper involvement of the actors involved in the anticipation and management of change.

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<sup>479</sup> Chacartegui (ed.), *Labour Law and Ecology*.

<sup>480</sup> EUROSTAT, *Key figures on the EU in the world*.

<sup>481</sup> EUROSTAT, *Three jobs out of four in services*.

<sup>482</sup> Bohnenberger, *Ecological Economics* 2022 Vol. 200, 107469.

<sup>483</sup> Vandeplas/Vanyolos/Vigani/Vogel, *The Possible Implications of the Green Transition for the EU Labour Market*.

<sup>484</sup> Bir, in: Scherer et.al., *The future of Europe* (ETUI 2019).

In this context, the main EU instrument for achieving climate neutrality is the EU Green Deal, a recent set of policy initiatives, structured around different policy areas, promoted by the European Commission and approved in 2020<sup>485</sup> with the aim of achieving climate neutrality by 2050. In order to address the climate crisis in a comprehensive and proactive manner, the EU recognises social dialogue as one of the fundamental instruments for action in achieving the objectives set out in the Plan. In this regard, one of the thematic areas of the Green Deal is 'Mobilising industry for a clean and circular economy', in which the Commission identifies the danger posed by the continued overexploitation of the Earth's resources by extractive industries, while advocating the expansion of sustainable economic activity that does not forgo the creation of decent jobs. Such a transition implies both a green and a digital transformation (twin transition), of which there are already concrete experiences in the EU area.<sup>486</sup>

The EU Green Deal, in line with the 2030 Agenda, the United Nations (UN) Sustainable Development Goals and the European Pillar of Social Rights, includes an Industrial Plan<sup>487</sup> with the objective of accelerating the green transition of industries to achieve climate neutrality while preserving the competitiveness, modernity and resource-efficiency of the European economy, with the social partners being particularly called upon to support this plan; in turn, other instruments of the Pact, such as the European Climate Pact, integrate the participation of the social partners.<sup>488</sup>

The European Commission is also promoting the so-called Clean Transition Dialogues, which began in October 2023, to strengthen and sustain the implementation of the EU Green Deal around different thematic axes and the pillars of the Industrial Plan, in which the social partners highlighted the need to 'ensure the social equity of the transition to create good quality jobs and the need to strengthen a structured social dialogue'. For its part, the Council issued a Recommendation on 16 June 2022 calling for the promotion of the coordination of policy-making with the involvement of the social partners.

The importance of social dialogue, as mentioned above, is provided for in EU primary law. Thus, Article 152 TFEU imposes a duty on the Union as a whole to

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<sup>485</sup> See Communication from the Commission, The European Green Deal, COM (2019) 640 final.

<sup>486</sup> *Bednorz/Sadauskaitė/Czarzasty/Surdykowska*, Unionisation and the twin transition. Good practices in collective action and employee involvement (European Parliament Directorate-General for Internal Policies, 2022).

<sup>487</sup> See Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A Green Deal Industrial Plan for the Net-Zero Age, COM/2023/62 final.

<sup>488</sup> *L'Hotellerie-Fallois/Manrique/Bianco*, EU Policies for the Green Transition, 2019-2024. (Banco de España, 2024).

promote social dialogue, expressly providing for the establishment of the Tripartite Social Summit for Growth and Employment. This forum for regular dialogue between the European institutions and employers' and workers' representatives is composed, among other social partners, of actors such as BusinessEurope, the European Trade Union Confederation, SGI Europe, SMEunited and Eurocadres. In 2024, the Summit addressed 'an industrial strategy complementing the green deal with quality jobs at its heart', in line with the immediately preceding summits and in the framework of EU efforts to develop the EU Green Deal with the objective of a fair and inclusive green transition for all. Other spaces for social partner dialogue on the social dimension of the Green Transition can be identified in the European Employment & Social Rights Forum (2022) or in the 7th joint multiannual work programme of the European Social Partners.

In regard to EU secondary legislation, Recital 7 of the European Climate Law (ECL)<sup>489</sup> stresses the need to involve economic actors, recommending that the Commission promote a sector-specific climate dialogue so that, with the aim of achieving climate neutrality by 2050, they take on an active and leading role in the design of plans and roadmaps that serve both as a guide for sustainability-oriented investment and as an element to strengthen sectoral commitment in the search for climate-neutral solutions. The involvement of the different social actors is a cross-cutting element of the Regulation (Article 9 ECL), and the Commission is responsible for promoting dialogue and public participation at all levels.

As part of the evaluation of the social dimension of the EU Green Deal, the Economic and Social Council issued its opinion on Social Dialogue in the framework of the Green Transition (2022), at the request of the Czech EU presidency. In this document, the Committee concludes that social dialogue must be meaningful at all levels, from the EU level up to the workplace. In order to ensure that the process towards a climate-neutral Union leaves no one behind, the strong involvement of trade unions and employers' organisations in climate policies, geared to the benefit of workers, is necessary. The Committee also underlines the relevance of the ILO's Decent Work Agenda and the European Pillar of Social Rights, and the social dimension of the Green Pact should be linked to the latter and reflected in the macroeconomic coordination process of the European Semester, so that the results of the social dialogue are real and effective.

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<sup>489</sup> European Parliament and Council Regulation (EU) 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') [2021] OJ L243.

To sum up, the fight against climate change is a complex and dynamic process that requires the effective participation of the social partners both in the identification and anticipation of risks, challenges and objectives and in the design and implementation of appropriate measures and policies across the board to ensure that the transitions towards the goal of climate neutrality are socially just and economically competitive, leaving no one behind.<sup>490</sup> The process towards the achievement of the ambitious targets has already started and involves social actors at EU level in the implementation of the commitments, with some concrete experiences in this area already being presented. Given the demands of finding a sustainable balance between the different interests involved, social dialogue can contribute to a better representation of interests that might otherwise remain deliberately excluded or undervalued, as well as to give more legitimacy to decision-making on environmental sustainability.<sup>491</sup>

## **B. Balancing legal interests of different stakeholders**

### **I. Green transition – a complex playing field**

The green transition process engages a multitude of stakeholders, each with their own specific interests. In first place, at the bottom of the pyramid, citizens play a key role. With regard to labour-related aspects of the green transition, the group of citizens can be divided into two sub-groups: employers and employees.<sup>492</sup> They are traditionally organised in associations, namely trade unions and employers' associations. At the second level, nowadays, new movements, associations and NGOs, such as Fridays for Future, Greenpeace and Gilets Jaunes, are also assuming significant roles in advocating the citizens' interests. At the top of the scheme is the public administration, which mainly leads the green transition through its legislative and administrative decisions.

The number of stakeholders increases with each new level, at which the green transition and concrete measures are negotiated. At the local level citizens are directly confronted with decisions made by the public administration. Other decisions need to be taken at regional, national or supranational level to be

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<sup>490</sup> Novitz, *International Journal of Comparative Labour Law and Industrial Relations* 2005 31(3), 243.

<sup>491</sup> Crespy/Munta, *Transfer: European Review of Labour and Research* (2023) 29(2), 235.

<sup>492</sup> To simplify the presentation, solo-self-employed were not regarded as a distinct category.

effective and fruitful. Furthermore, climate change is a global phenomenon. Thus, local actions have an impact on other regions of the world.

Moreover, the green transition touches on multiple disciplines. First and foremost, natural sciences assess the impact of human actions and suggest appropriate countermeasures. Additionally, social and economic analysis are required to ensure a fair and equitable distribution of impacts and burdens.

Given the complexity and interconnectedness of the green transition process, public administration should adopt a multilateral, multilevel and multidisciplinary consultation procedure.<sup>493</sup> Consequently, collaborative governance can be an extremely efficacious instrument. Although this term was not used at the time, social dialogue may be seen as one of the pioneers of collaborative governance. The parties recognised mutually their rights and established occasions for institutionalised dialogue. The idea behind this approach was that discussions between parties with contradictory positions could result in beneficial compromises. On the contrary, aggravating the conflict, for instance through industrial action, is ultimately disadvantageous for all parties.

Therefore, many regulations on international and supranational level promote collaborative governance to manage green transition processes. In addition to conflict resolution, collaborative governance can – above all – enable the public administration to identify the different interests of stakeholders.

## **II. Analysing the different legal interests**

At the local level, it can be assumed that citizens desire to live in a healthy environment, beneficial not only to themselves, but also to the local ecosystems. Additionally, at the abstract national level, there may be an aspiration to mitigate climate change in order to ensure life on Earth in the future. Such “intergenerational solidarity”, as explained in the beginning, is guiding many people.

Legally these interests are protected by Arts. 1, 2, 3 and 7 of the EU Charter of Fundamental Rights (the Charter) and Arts. 2 and 8 of the European Convention on Human Rights (the Convention). While claims before the Court of Justice of the European Union have been rejected as inadmissible,<sup>494</sup> the European Court of

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<sup>493</sup> ECHR of 9 April 2024 – 53600/20 – Verein Klimaseniorinnen and others v Switzerland, para. 539c).

<sup>494</sup> CJEU of 14 January 2021 – C-297/20 – Peter Sabo and others v European Parliament and Council of the European Union; CJEU of 25 March – 2021C-565/19 – P Armando Carvalho and others v European Parliament and Council of the European Union.



Human Rights issued a precedent-setting decision on climate litigation in 2024.<sup>495</sup> According to the judgement, the right to life or the right to the integrity of the person are only at stake if there is a real and imminent risk to life or health.<sup>496</sup> The scope of the right to family life and privacy is only engaged when an “actual, severe interference” with private or family life or home happened.<sup>497</sup> According to the European Court of Human Rights, an interference can even occur through noise, emissions, smells or other forms of non-concrete and non-physical interference.<sup>498</sup> Moreover, the dignity of persons, also encompasses the right to an ecological minimum standard of living,<sup>499</sup> whereas the internationally recognised right to a healthy environment<sup>500</sup> is not explicitly protected by the European human rights mechanisms.<sup>501</sup> Lastly, Art. 37 of the Charter is worth mentioning. Although this Article is merely a fundamental principle and does not enshrine an individual fundamental right to the preservation of nature, it is nevertheless a significant consideration when discussing the limits of other rights.<sup>502</sup>

The primary objective of employers in the field of green transition is to ensure the continued operation of their business or the establishment of a new enterprise. Secondly, reducing costs by increasing productivity and efficiency is a central aim in order remain competitive. Thirdly, they aspire to increase profits. In the context of the green transition this is closely linked to the attractiveness of the product and brand positioning for consumers who value “green products”. All those decisions and objectives are protected by the freedom to conduct a business, set out in Art. 16 of the Charter.

Regarding green transition processes, employees are primarily concerned with maintaining their occupation. In addition, healthy and flexible working conditions, including work-life balance, are important to employees nowadays. These interests are safeguarded by the freedom to choose an occupation and the right to engage in work in Art. 15 of the Charter and by the right to fair and just working conditions in Art. 31 of the Charter. Moreover, the European Convention on Social Rights also guarantees the right to work in Art. 1, the right to just conditions of work in Art. 2 and the right to safe and healthy working conditions in Art. 3.

<sup>495</sup> ECHR of 9 April 2024 – 53600/20 – Verein Klimaseniorinnen and others v Switzerland.

<sup>496</sup> ECHR of 9 April 2024 – 53600/20 – Verein Klimaseniorinnen and others v Switzerland, para. 513.

<sup>497</sup> ECHR of 9 April 2024 – 53600/20 – Verein Klimaseniorinnen and others v Switzerland, para. 514.

<sup>498</sup> ECHR of 9 April 2024 – 53600/20 – Verein Klimaseniorinnen and others v Switzerland, para. 516.

<sup>499</sup> BVerfG of 24 March 2021 – BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, para. 114; *Calliess*, in: Calliess/Ruffert (eds), EUV und AEUV, Art. 2 EU-GRCharta, para. 14.

<sup>500</sup> UN General Assembly, Resolution on the human right to a clean, healthy and sustainable environment, A/76/L.75

<sup>501</sup> European Parliamentary Research Service, ‘A universal right to a healthy environment’, PE 698.846.

<sup>502</sup> See for another opinion: CJEU of 21 December 2016 – Case C-444/15 – Associazione Italia Nostra Onlus v Comune di Venezia and others, para. 62.

Last, but not least, the public authorities pursue their own interests as well. Maintaining as many people in work as possible and thereby moderating the unemployment rate, is one objective. Concurrently, public authorities seek to attract businesses to increase the tax revenues. Lastly, transparency and acceptance of policies by the citizens as well as compliance with supranational and international obligations, influence the agenda of public authorities. Some of these objectives are even legally binding for public authorities. The principles of democracy and the rule-of-law, as established in Art. 2 Treaty on European Union (TEU), require transparent and reliable regulation. Moreover, Member States are obliged to implement EU-law according to the *effet utile* principle, set forth in Art. 4 III 2 TEU. Subsequently, states are obliged by the treaties they ratified to transpose the provisions of international treaties into national law.

### III. An illustrative example

The aforementioned legal interests rarely coexist in a harmonious manner. Consequently, it falls upon public authorities to determine which interest they deem more worthy of protection than the others. The following example, inspired by existing cases,<sup>503</sup> is offered to demonstrate the conflict of interests.

*A private investor is proposing to establish a battery factory for electric vehicles in a region with a high unemployment rate. The construction of the factory will result in the felling of an entire forest, which will inevitably lead to the extinction of various species. The production of the batteries requires a considerable quantity of water. The ground water level in the region where the factory is supposed to be constructed is known to drop significantly in summer.*

The example serves to illustrate the inherent conflict between climate mitigation measures, such as the promotion of e-mobility, the protection of concrete ecosystems, the exhaustion of natural resources and social aspects, such as increasing in the employment rate. Moreover, the example shows the conflict between on the one hand the freedom to conduct a business, the right to engage in work, the obligation to guarantee future freedoms and on the other hand the right

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<sup>503</sup> *Gaál*, Hungary's big bet on batteries — and its costs, <<https://www.dw.com/en/hungarys-big-bet-on-batteries-and-its-costs/a-65193569>> accessed 27 November 2024; *Lau*, Meet the mothers in small-town Hungary leading a fight against Chinese EV battery plants, <<https://restofworld.org/2024/hungary-china-ev-battery-factory-environmental-protest-mothers/>> accessed 27 November; Deutschlandfunk, Werksausbau kann kommen – Segen oder Fluch?, <<https://www.deutschlandfunk.de/tesla-gruenheide-kritik-berechtigt-100.html>> accessed 27 November 2024.

to personal integrity, the right to family and private life and the ecological minimum standard of living.

It is evident, therefore, that the role of public authority is of significant importance and, at the same time, of considerable responsibility. Collaborative governance can assist in identifying the concerned interests of the various stakeholders, determining the importance of these interests and finally reaching a compromise. It would be erroneous to underestimate the role of the social partners in such contexts. They should therefore be actively involved in the decision-making procedure. In order to effectively address the challenges of climate change it is necessary to overcome traditional roles and topics. Thus, for example, roundtables, inspired by the social dialogue, involving all the aforementioned stakeholders should be institutionalised.

If the parties are unable to reach a compromise, it falls upon the public authority to decide the case. The proportionality test is a well-known and useful instrument to balance conflicting legal interests. According to the test, the envisaged decision must be deemed suitable, necessary and proportionate to achieve the desired aim. Relevant aspects of the test are the abstract weight of the rights concerned and the concrete intensity and likelihood of those rights of being infringed by the measure in question. Thus, even when no compromise has been reached, collaborative governance helps to identify the interests concerned and their importance for each stakeholder, which is crucial for balancing the conflicting rights.<sup>504</sup>

## **C. Identifying constitutional patterns for EU Countries**

EU countries follow a cohesive yet diverse approach to green transition, heavily influenced by EU directives, regulations, and policies. The integration of these supranational regulations ensures a harmonized effort across the region, while national initiatives allow for tailored approaches that address specific country needs and circumstances. This balance between EU-wide coordination and national flexibility is a key characteristic of the green transition in the EU.

In order to define a balance among the said multiple interests and social rights involved in a just transition the enquiry remains on whether is possible to determine

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<sup>504</sup> ECHR of 9 April 2024 – 53600/20 – Verein Klimaseniorinnen and others v Switzerland, para. 539c).

a general pattern in which EU countries can relate regarding the implementation on green transition in their constitutions.

Some countries like Italy, France, Hungary and Belgium adopt a traditional approach, addressing the right to a safe environment as part of the constitutionally guaranteed rights as health and safety/preservation of natural resources, amending their constitutional charts according to the EU Regulations. In these cases, the most immediate consequence was a rewriting of the relationship between the environment, private property, and freedom of enterprise.

On the other hand, countries like Spain, Netherlands, Germany and Poland prefer to delegate the application of EU Regulations concerning just transition to a second level legislation and/or to public authorities because it guarantees a more flexible adaptation to the specificities of the single Nations.

While it is true that many of the constitutions of the post-World War II era originally did not pay particular attention to the value of the environment, many of the more recent ones have included specific provisions regarding it. However, subsequent constitutional revision procedures have allowed the inclusion of the environment and its protection among the key principles even in the older constitutions. More specifically, the Constitution of the Italian Republic, in line with other contemporary European post-war constitutions, did not initially include an explicit reference to the environment. Nevertheless, it has been interpreted that environmental protection already had a constitutional basis in the combined reading of Articles 9 and 41, as well as Article 32, and in accordance with Articles 10 and 11, through which Italy commits to subsuming the legal good of the environment in international treaties or community sources.

A similar approach can be found in the Belgian Constitution, that after affirming everyone's right to lead a life in accordance with human dignity, identifies the "right to the protection of a healthy environment" as one of the economic, social, and cultural rights guaranteed by the legal system and contributing to the achievement of this primary objective (Art. 23).

The Netherlands, on the other hand, expressly refer to the role of public authorities, who are called upon to ensure the habitability of the country through the protection and improvement of the environment (Art. 21).

In the Basic Law for the Federal Republic of Germany, in Art. 20a, there is an explicit reference to future generations. It implies that the State shall protect the natural foundations of life (*natürliche Lebensgrundlagen*) and animals, assuming

responsibility for future generations, through legislative power within the framework of the constitutional order and executive and judicial powers in accordance with the law and justice.

In France, the Constitution highlights the importance of the environment in various provisions. The preamble, for instance, explicitly includes the proclamation by the French people of their fidelity to human rights and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and supplemented by the Constitution of 1946, and those defined in the Environmental Charter of 2004 (environmental protection is part of the protection of the “constitutional block” (*bloc de constitutionalité*)).

The Spanish Constitution, in Art. 45, provides that everyone has the right to enjoy an environment suitable for the development of the person, and everyone has the duty to preserve it.

In this regard, the Hungarian Constitution, after recognizing everyone’s right to a healthy environment, states that anyone causing environmental damage is required to restore it or bear the costs of restoration (Art. XXI).

Furthermore, it should be taken into account the important role of National courts in shaping the characteristics of this fundamental principle before its formal constitutional recognition, as well as in defining or extending its scope following its positivisation. In particular, National Courts (e.g. Bundesverfassungsgericht, German Federal Constitutional Court<sup>505</sup>) often highlight the fact that principals concerning just transition are of global interest, therefore they should overcome domestic limits.

In conclusion, the dialogue among the ILO, EU, and states illustrates a unified yet diverse approach to the green transition, with the EU leading the charge through a framework of directives, regulations, and policies that guide and harmonize national efforts. EU countries have adopted varying approaches to implementing green transition principles, balancing cohesion with national flexibility. While countries like Italy, France, and Belgium integrate environmental protection directly into their constitutions, aligning with EU regulations, others such as Spain, the Netherlands, and Germany delegate the implementation to secondary legislation or public authorities, allowing for a more tailored approach. This reflects the EU’s

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<sup>505</sup> BVerfG of 24 March 20211 – BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20; but also Brussels Court of Appeal of 30 November 2023 – 2021/AR/1589, 2022/AR/737, 2022/AR/891 – VZW Klimaatzaak v Kingdom of Belgium and others; Supreme Court of the Netherlands of 20 December 2019 – Case 19/00135 – Urgenda Foundation v State of the Netherlands.

commitment to addressing both environmental concerns and social rights within the green transition. Through constitutional amendments and judicial interpretations, many EU nations have recognized the importance of environmental protection, underscoring the interconnectedness of sustainability and human dignity. National courts play a crucial role in expanding and enforcing these principles, sometimes even extending beyond domestic boundaries, demonstrating the EU's dedication to global sustainability. Overall, the green transition is both a shared and flexible effort, strongly addressed all across Europe, with EU countries committing to a sustainable future through national adaptations within a unified EU framework.

## D. Conclusion

At international, supranational and national level climate change mitigation, environmental protection and climate change adaption is addressed by many regulations. They usually oblige the governments and public administrations to consult the relevant stakeholders in the decision-making process. As a just green transition has to reconcile contradictory (legal) interests, this dialogue is of immense importance. Historically, the “social dialogue” and its outcomes show that a well-established exchange and discussion procedure can lead the way to well-thought compromises and decisions. As such, promoting the social dialogue procedure and opening it to other relevant stakeholders could help to increase the acceptance and to mitigate the social impacts of the green transition.

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## **§ 11 HOW IS GREEN TRANSITION AFFECTING WORKING CONDITIONS AND WORKING RELATIONSHIPS?**

**Matilde Biagiotti, Savannah Rose Dawud, Manon Desbat, Marco Aurelio Leonardi, Maria del Mar Crespí Ferriol, Macarena Ángel Quiroga, Giovanna Zampieri**

### **A. Introduction**

When dealing with issues, including sociological and legal ones, related to the so-called Green Transition, it is appropriate to make a preliminary distinction. It is necessary to differentiate between the climate change phenomenon and the Green Transition one. The former can be considered the cause of the latter and, therefore, what justifies the need for a Green Transition. Embarking on and implementing a Green Transition means finding a way to address the consequences that climate change has caused, affecting numerous aspects of people's lives.

In terms of working conditions and employment relationships, both have been affected by climate change and will be further affected by the Green Transition. Depending on how individual legal systems have approached the issues of climate change and the Green Transition, the regulation of working conditions and employment relationships has sometimes turned out to be a mechanism to protect against climate change and sometimes an opportunity to promote the Green Transition.

Therefore, this paper aims to illustrate how the Green Transition is affecting working conditions and employment relationships. To this end, several aspects of the employment relationship are examined, such as health and safety, right to refuse, remuneration, telework, sustainable mobility, vocational training and skills, and dismissals. The paper will outline the impact that climate change and the Green Transition have had on the legislation of various European countries regulating the aspects of the employment relationship and working conditions.

### **B. Health and Safety**

Traditionally, Occupational Safety and Health (OSH) laws addressed risks associated with established industrial processes and working environments. However, the green transition has introduced unprecedented challenges, as

workers now face significant health risks. Climate change exacerbates issues such as extreme weather events – including floods, storms, and heatwaves – that increase the risk of workplace accidents. Higher UV radiation levels contribute to eye and skin damage, while climate-related air pollution, pandemics, and allergies further strain respiratory health. These physical challenges are compounded by mental health stressors associated with environmental changes.

Moreover, the transition to green technologies, renewable energy, waste management practices, energy-efficient construction, and other green initiatives – designed to mitigate the causes of climate change – has also introduced new hazards linked to emerging green jobs. For example, wind turbine maintenance exposes workers to chemical, mechanical, and electrical risks. Bioenergy production carries fire and explosion hazards, and green buildings, while sustainable, often involve flammable materials, necessitating strict safety measures.

The protective framework common to all European Union countries already appears sufficiently structured to address the aforementioned risks, as the Council Directive No. 89/391/EEC of 12 June 1989, on the “Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at Work”, (known as the “OSH Framework Directive”) offers a comprehensive protection system designed to adapt to changing working environments and unforeseen risks.

First, Article 5 of the Directive establishes a general duty of employers to ensure the safety and health of workers in all aspects related to their work (the so-called “duty of care”), which is implemented across all European countries through various provisions<sup>506</sup>. This duty is further detailed in a series of employer responsibilities, strongly based on risk assessment, as outlined in Article 6 of the Directive. Employers are required to identify “all potential risks” in the workplace, including both current and foreseeable risks; take preventive and protective measures to address those risks; and adapt the measures already in place as new risks emerge or working environments evolve. This general framework can be applied to the specific case of the green transition: new and emerging risks can be incorporated into the employer’s risk assessments, enabling them to adapt the working environment with measures designed to protect workers in new modes of work performance.

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<sup>506</sup> Cf. Article 2087 of the Italian *Codice Civile*, Article 618 of the German *Bürgerliches Gesetzbuch*; Article 4121-1 of the French *Code du Travail*; Article 19 of the Spanish *Estatuto de Los Trabajadores*, and Sections 1 and 2 of the Hungarian Act XCIII of 1993 on Labor Safety.

This appears to be the reason why most European Union Member States have preferred to implement their OHS regulations through guidelines rather than specific laws, guiding employers toward such adaptations. For example, this is the case in Italy, France, and Germany, where the guidelines share common features. The primary scenario addressed, regardless of the regulatory source, concerns high temperatures. Common recommendations include incorporating climate-related risks into the occupational health and safety risk assessments that employers are required to conduct; specifying temperature thresholds beyond which targeted measures must be implemented; and adjusting protective equipment accordingly.<sup>507</sup> In some countries, such as Italy, the guidelines also require employers to suspend work activities when temperatures exceed a defined tolerance threshold.<sup>508</sup>

Other European countries have implemented specific laws with content similar to the guidelines mentioned above. For instance, the Belgian *Codex over het Welzijn op het Werk* incorporates the WBGT Index (Wet Bulb Globe Temperature), a tool used to assess heat stress by accounting for air temperature, humidity, wind speed, and radiant heat. The Code establishes maximum WBGT levels for different workloads, such as light, moderate, and heavy tasks. When these thresholds are exceeded, employers are required to take immediate measures to protect workers. These measures include adjusting work schedules to incorporate work-rest cycles, providing hydration stations, ensuring the availability of shading or cooling systems in high-heat environments, and supplying appropriate protective clothing and equipment to effectively reduce heat exposure.<sup>509</sup>

Recently, Spain introduced two legislative acts specifically addressing the effects of climate change. The first is Royal Decree-Law No. 4 of 11 May 2023, which amends Royal Decree No. 486 of 14 April 1997, with the aim of enhancing worker protection against adverse weather events. To this end, Royal Decree-Law No. 4/2023 repeals para. 5 of Annex III of Royal Decree No. 486/1997. The repealed provision merely required employers to adopt measures to protect workers

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<sup>507</sup> Cf. Among others, *Ministero del Lavoro e delle Politiche Sociali*, *Rischi Lavorativi da Esposizione ad Alte Temperature*; *ANSES (Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail)*, *Travail et Chaleur: Prévenir les Risques Liés à l'Exposition des Travailleurs aux Fortes Chaleurs*; cf. also the German *Technische Regeln für Arbeitsstätten*. In general, for a comparative analysis of the regulations concerning extreme temperatures see *EUROGIP*, *Working in extreme heat and heatwaves: what legislation and preventive measures at international level?*.

<sup>508</sup> In this regard, see *INPS (Istituto Nazionale della Previdenza Sociale)*, Circular No. 139 of 1 August 2016 and Message No. 1856 of 3 May 2017, which authorizes employers to suspend or reduce work performance in the event of temperatures exceeding 35 degrees, allowing them to request ordinary wage guarantee funds for their employees.

<sup>509</sup> Cf. *Codex over het Welzijn op het Werk*, Book V, ("*Environmental factors and physical agents*"), Title 1 ("*Thermal atmospheres*").

performing tasks outdoors “as far as possible,” without obliging them to suspend work in extreme conditions.<sup>510</sup>

In contrast, Decree-Law No. 4/2023 introduces a Sole Additional Provision into Royal Decree No. 486/1997, mandating employers to adopt specific measures to protect workers from risks associated with adverse weather conditions, such as extreme temperatures. These measures must be identified through professional risk assessments based on criteria defined by the new provision. Specifically, these criteria include the nature of the tasks performed, the environmental conditions in which the work occurs, and the personal characteristics or known biological state of the workers. Additionally, the provision outlines necessary measures, including the prohibition of certain tasks during specific hours when adverse weather conditions prevail, if adequate worker protection cannot be ensured. Furthermore, in cases of orange or red weather alerts issued by the State Meteorological Agency or relevant regional authorities, the provision stipulates that employers must adapt working conditions to eliminate or minimize risk exposure. This may involve reducing or modifying working hours if adequate worker protection cannot otherwise be guaranteed.<sup>511</sup>

The second act, Royal Decree-Law No. 8 of 28 November 2024, introduces urgent measures in response to the damage caused by the DANA (*Depresión Aislada en Niveles Altos*). Among its significant amendments to the *Estatuto de los Trabajadores*, the Royal Decree-Law revises Article 85.1 to include an obligation to negotiate, within the framework of collective bargaining, action protocols for risk prevention measures specifically aimed at managing disasters and adverse meteorological phenomena.<sup>512</sup>

## C. The right to refuse

The study distinguishes between temporary (a) and permanent (c) cessation of work for environmental reasons. In addition, the study considers the possibility for an employee to refuse to carry out an instruction or a task for environmental reasons (b).

### a) *Right to Withdraw from a Dangerous Activity: Temporary Work Cessation.*

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<sup>510</sup> Cf. Royal Decree No. 486/1997, Annex III, para. 5.

<sup>511</sup> Cf. Royal Decree-Law No. 4 of 11 May 2023, First Final Disposition (my translation of *Disposición Final Primera*).

<sup>512</sup> Cf. Royal Decree-Law No. 8 of 28 November 2024, Second Final Disposition (my translation of *Disposición Final Segunda*).

Safety and health at work are addressed by the International Labour Organization (Convention No. 155, 1981) and the European Union (Framework Directive of 12 June 1989). In some labour laws, employees facing a situation of serious and immediate danger to their health and safety may suspend their work. This action requires that the employer be notified immediately. The decision to cease work depends on the severity of the danger and the adequacy of preventive measures implemented. During this period, workers are protected: wages cannot be withheld, and penalties cannot be imposed. Additionally, employers cannot compel employees to resume work while the danger persists.

French labour law includes specific provisions for such situations. Similarly, in Belgian legislation there is a law on this topic, and Italian and German legal systems recognize this principle through case law. The right to suspend work allows employees to stop their activities if a reasonable belief exists that the situation poses a serious and imminent threat to life or health. There are no restrictions on the origin of the risk; climatic or natural phenomena may justify exercising this right. For instance, extreme heat can cause health issues such as heatstroke or brain damage. Although the French Labour Code does not specify working temperature thresholds, the Caisse Nationale de l'Assurance Maladie des Travailleurs Salariés (CNAMTS) recommends evacuating premises when prolonged air-conditioning failures cause temperatures to exceed 34 degrees Celsius.

Case law illustrates this principle. For example, the Social Division of the French Court of Cassation ruled on 1 April 2009 (No. 07-45.511) that an employer cannot dismiss a roofer's helper for serious misconduct after the worker exercised their right to withdraw during a heatwave. Italian case law states that if an employer fails to ensure suitable working conditions that protect employees' physical and moral well-being (Article 2087, Civil Code), workers are entitled to refuse to perform their duties. This refusal does not negate the right to remuneration, as employees cannot face adverse consequences due to the employer's failure to fulfil obligations (Court of Cassation, Labor Section, Judgment No. 6631, 20 January–1 April 2015). The decision aligns with civil law principles stipulating that either party in a contract may suspend performance if the other party fails to fulfil its obligations.

This right is closely tied to the worker's situation and requires the presence of a serious and imminent threat to health or life.<sup>513</sup> These conditions underscore that

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<sup>513</sup> In France, faced with a peak in air pollution, In March 2014, three employees of *Agir Pour l'Environnement* (a french association) decided to make use of their right to withdraw from work and called on all employees

the right to withdraw is intended to be exercised in exceptional circumstances. Moreover, the requirement for imminence excludes situations involving environmental damage with long-term, non-immediate impacts on employees' health. Gradual or diffuse pollution, whose health effects manifest over time, typically does not meet the criterion of imminent danger.

Where environmental threats are not directly linked to an individual worker's safety, the right to withdraw may not be applicable. However, this raises the question of whether conscientious objection could provide an alternative means for workers to refuse tasks conflicting with ecological ethics.

*b) The Duty or Right to Refuse a Task: The Conscientious Objection.*

Hungarian labour law uniquely provides that "employees shall refuse to carry out an instruction if it would result in direct and grave risk to the life, physical integrity or health of others or to the environment" (Section 54(1), Hungarian Labour Law Code).

However, there is currently no case law interpreting this section of the Hungarian Labour Code, leaving its practical application and enforcement uncertain (see the Hungarian National Report in this book/review). This Hungarian provision is particularly noteworthy, as no comparable rule exists in the other Labour Law Code examined for this study.

As employment law is built around the idea of subordination, a question arises: a worker could refuse to do a task or refuse to do their job for a moment, because of the effects of the green transition or because of their ecological conscience?

The discussion then turns to the freedom of conscience of workers. According to the international and European law, all people have the right to think freely, and to entertain ideas and hold positions based on conscientious or religious or other beliefs. The conscientious objection is a fundamental right.<sup>514</sup>

According to the right to refuse to do a task, workers may refuse tasks due to the ecological consequences of their actions or personal environmental ethics. A distinction must be made between tasks (required by the employer) that are illegal and those that are legal but ethically objectionable:

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exposed to this pollution, foremost among them physically active workers (traffic wardens, refuse collectors, construction workers, couriers, etc.), to make use of this right. Similarly, dozens of teachers exercised their right to withdraw following the fire at the Lubrizol factory in Rouen. The air pollution caused by the fire was causing headaches, nausea and dizziness among pupils and teachers.

<sup>514</sup> For example, section 10.2 of The Charter of Fundamental Rights of the European Union recognises the right to conscientious objection.

*i. Illegal Actions.*

When an employer instructs an employee to perform an illegal act, refusal is typically not considered insubordination and cannot justify dismissal under criminal law provisions.

*ii. Legal Actions.*

Refusal of legal tasks based on environmental considerations intersects with the concept of conscientious objection. International and European law affirm the right to freedom of thought and the ability to act in accordance with conscientious, religious, or other beliefs. In labour law, conscientious objection is recognized in specific sectors, such as healthcare, scientific research, and journalism. For example, doctors may refuse to perform abortions under certain conditions if such actions conflict with their conscience.

Environmental conscientious objection lacks explicit legal provisions but has been proposed in some contexts. In France, a 2008 report suggested recognizing a "conscience clause" akin to a right of refusal. Although this proposal has not been implemented, the eco-union "Printemps Écologique" advocates for incorporating this right into the Labour Code. Such a clause could enable workers to refuse tasks that conflict with ecological ethics.

*c) Permanent cessation of work.*

Labour law provisions in some countries facilitate termination of employment when ethical orientations shift during the employment relationship. For instance, French and Spanish laws grant journalists a "conscience resignation clause," allowing contract termination with the same protections as employer-initiated termination when significant changes occur in the character or orientation of the publication (French Labour Code, Article L. 7112-5). The Spanish constitution recognizes similar rights for journalists. These provisions could serve as a model for creating an environmentally focused conscience clause.

Developing such a clause could provide workers with the right to refuse tasks or leave employment when ethical conflicts arise regarding environmental concerns.

## **D. Remuneration**

One of the aspects of the employment relationship that is affected by the Green Transition is that relating to employee remuneration. In particular, as far as European countries are concerned, it is possible to divide the provisions adopted



on this matter by individual States into two categories, depending on the function pursued by the national legislator. In a first group of States – such as Italy, Spain, and Germany – remuneration takes on the quality of a protective instrument to support workers who, due to climate change, see their employment relationship altered (or extinguished) and, consequently, the economic treatment dependent on it. On the contrary, for a second group of States – including Belgium, France, and the Netherlands – the provisions on remuneration are aimed at promoting virtuous behaviour on the part of workers on matters related to respect for the environment and the Green Transition.

As regards the first group of States, in Italy, extraordinary hypotheses of access to the Wages Guarantee Fund were introduced for workers in the agricultural sector or in the construction sector who are exposed to climatic conditions potentially harmful to health and safety due to heat waves. In particular, Article 2-*bis* of Decree-Law No. 63/2024 stipulated that «in order to cope with exceptional climatic situations, including those related to extraordinary heat waves, [...] the treatment referred to in Article 8 of Law No. 457 of 8 August 1972,<sup>515</sup> provided for in cases of seasonal bad weather, is granted to permanent agricultural workers even in the event of a reduction in work equal to half of the contractually agreed daily working time». Similarly, Article 1 of Decree-Law No. 98/2023 provided for access to the wage compensation fund outside the ordinary legal limits for companies in the construction, stone and quarrying sectors «in order to cope with exceptional climatic situations, including those relating to extraordinary heat waves, pending the definition of new emergency measures». However, both provisions are of limited duration and refer to further interventions of the Italian legislator for the systematic regulation of cases of suspension of work due to adverse weather conditions, such as heat waves.

In Spain, the *RED Mechanism* introduces a special social protection system for workers, as well as special benefits and exemptions about social security costs for employers whose companies face moments of crisis or retraining needs caused by unpredictable situations, such as those related to climate change. Art. 47-*bis* of the *Estatuto de los Trabajadores* (introduced by *Real Decreto 608/2023, de 11 de julio, por el que se desarrolla el Mecanismo RED de Flexibilidad y Estabilización del Empleo*) provides for two modes of application of the *RED Mechanism*, namely *Cíclica* and *Sectorial*. The first is applied «when a general macroeconomic situation

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<sup>515</sup> This provides that «agricultural workers with a contract of indefinite duration, who are temporarily suspended from work due to seasonal bad weather or other causes not attributable to the employer or the workers, shall be entitled to a payment instead of remuneration, for the days not worked, at the rate of two-thirds of the remuneration referred to in Article 3. This allowance shall be paid for a maximum of 90 days per year».

makes the adoption of additional stabilisation instruments advisable, with a maximum duration of one year». In contrast, the second can be used «when permanent changes occur in a specific sector or sectors of activity that generate the need for retraining and professional transition processes for workers, with an initial maximum duration of one year and the possibility of two extensions of six months each». In both cases, activating the *RED Mechanism* requires the intervention of the Public Administration and the involvement of social partners.

In Germany, the *Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP* provides a *bonus* to cope with rising coal and electricity costs. This agreement aims to develop a social compensation mechanism that allows German citizens to compensate for cost increases related to rising energy source prices and thus ensure acceptance of the market system.

Consequently, in Italy, Spain, and Germany, remuneration compensates for the economic hardship workers must endure due to weather conditions that directly or indirectly affect the employment relationship.

This is not the case in Belgium, where Collective Agreement No. 98 introduced the so-called *eco-cheques*, a collective bargaining wage institute consisting of vouchers that workers can use to purchase goods and services with a low environmental impact.<sup>516</sup> As far as the employer is concerned, the advantage of using *eco-cheques* as part of remuneration derives from the possibility of tax and social security contribution relief on the relevant sums.

Something similar happens in the Netherlands where measures to encourage environmentally responsible behaviour by workers have been introduced in numerous collective agreements.<sup>517</sup> Among the various measures introduced by collective bargaining, those providing for the investment of capital from workers' pension funds in activities of a sustainable nature are particularly relevant. Also important are those provisions of collective agreements that provide for the granting of loans and financing to workers for the purchase of sustainable real estate or furniture, so that the home environment – especially when it coincides with the work environment as in the case of smart-working – also acquires the character of environmental sustainability. There are also bonuses linked to the use of sustainable means of transport to get to work; about the latter, although the

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<sup>516</sup> Approximately half of all Belgian employees receive part of their compensation in cheques: *Sweens*, Working in Belgium: eco cheques en meal cheques. What are they and how do I use them?, Staffing ESG.

<sup>517</sup> Among several examples, MKB's agreement is particularly relevant: *Jansen*, Groene arbeidsvoorwaarden: stimuleer duurzaam denken. Groene arbeidsvoorwaarden nieuwe trend in arbeidsvoorwaarden, MKB Servicedesk 2023.

usefulness of such provisions is undeniable, it is necessary to draw attention to the possible discriminatory nature of these provisions (e.g.: in the case of bonuses paid to employees who reach work by bicycle, it would be necessary to provide a similar bonus for employees with mobility difficulties who reach work by public transport).

In France, on the other hand, there has been an intervention at the legislative level since the Decree of 20 August 2019 introduced novelties regarding profit-sharing by the company's employees, the purpose of which is to involve workers collectively in the results or performance of the company (*C. trav.*, art. L. 3312-1). The Decree of 20 August 2019 specifies that performance criteria may be included in negotiations for employee profit-sharing plans based on the results or performance of companies in the sector. Incentive plans can therefore be based on the extra-financial information listed in Article R. 225-105 of the French Commercial Code, which concerns, in particular, general environmental policy (resources allocated to the prevention of environmental risks and pollution, assessment and certification procedures), pollution (non. measures taken to prevent, reduce or remedy discharges into the air, water and soil that have a serious impact on the environment), climate change (significant greenhouse gas emissions generated by the company's activities, measures taken to adapt to the consequences of climate change) and the protection of biodiversity. The aim of the French legislator is therefore to make environmental issues a common concern for workers and employers, allowing both parties to the employment relationship to benefit from part of the results obtained through the company policies used to implement them.

Thus, in Belgium, France, and the Netherlands, remuneration demonstrates an incentive character of environmentally friendly behaviour and rewards those who respect green company policies.

## **E. Telework**

In recent years, increasing attention has been paid to the ways in which employment policies related to telework and sustainable mobility measures can support the green transition. While many European countries have general frameworks in place for telework (often derived from the EU Framework Agreement on Telework of 2002), their explicit linkage to environmental policy objectives is uneven. Telework has been proclaimed as a key component of organizational flexibility and a mechanism for improving work-life balance. Recent research,

including a 2020 Greenpeace study on Germany, underscores its environmental benefits by showing that even one additional day of telework per week can lead to a notable reduction in commuter-related carbon emissions. However, as Eurofound has observed, the direct environmental benefits of telework can depend on factors such as the energy efficiency of home offices, the mode of travel displaced, and the broader infrastructure of public transport and cycling networks. In parallel, mobility policies aiming to reduce polluting forms of commuting, including the expansion of public transport subsidies or cycling allowances are being applied in many European countries.

Belgium has a well-established legal framework for telework, encapsulated by Collective Agreement No. 85. However, telework is not explicitly discussed as a tool for ecological transition or environmental protection. More explicit, are Belgium's mobility incentives. In April 2024, social partners at the Conseil National du Travail concluded Collective Agreement No. 19/11, which amends CA No. 19/6. The goal is to encourage public transport usage by raising employer contributions to 71.8% of the price of a commuting subscription, starting June 2024, with annual adjustments planned through 2029. A separate Collective Agreement No. 164 focuses on cycling: it introduces a mechanism to compensate employers while generalizing and increasing cycling allowances for employees, thereby making bike commuting more economically attractive. In this way, Belgium presents a coherent model in which telework's environmental contributions are complemented by direct incentives for low-carbon commuting options.

Hungary, like many EU Member States, has legislation that implements the EU provisions on telework, ensuring basic conditions for remote work. Yet, explicit references to environmental objectives are absent from these regulations. Furthermore, while corporate practices to encourage environmentally friendly commuting do exist, they are often informal and not systematically recorded or codified in law.

France offers an instructive case of integrating telework with broader sustainability goals. The National Interprofessional Agreement (ANI) of November 26, 2020, explicitly addresses the environmental impact of telework by highlighting its role in reducing commuter travel. In terms of mobility, France has enacted policy tools that directly incentivize sustainable modes of transportation. Employers must reimburse a portion (50%) of their employees' public transport subscriptions or bicycle rental costs based on the shortest route between home and work. Furthermore, the "sustainable mobility package" allows employers to cover all or

part of commuting costs when employees cycle or carpool. The result is a comprehensive approach: telework is recognized as environmentally beneficial, while daily commutes that cannot be replaced by home working are incentivized to shift toward greener options.

In Germany, the discourse around telework and its green potential has grown significantly, particularly during and after the COVID-19 pandemic. According to the Greenpeace (2020) analysis, a conservative scenario of one additional day of telework per week could save up to 1.6 million tonnes of CO<sub>2</sub> per year by reducing passenger kilometers by 10.9 billion. However, an existing obstacle lies in the structure of travel allowances and tax deductions, which do not necessarily discriminate between modes of transport. Commuters driving long distances by car enjoy the same tax-deductible benefit as those using public transport or cycling, thereby undermining the incentive to switch to greener modes.

Italy's telework framework is set by Law No. 81/2017, which established many of the rules currently governing remote working arrangements. Nevertheless, it does not explicitly emphasize sustainability or environmental protection as part of telework objectives.

The Netherlands has been recognized for innovative approaches to both telework and sustainable commuting, underpinned by a culture of cycling and environmental consciousness. Many Dutch employers provide employees with a "climate budget," which can be used for installing solar panels, upgrading home insulation, or purchasing energy-efficient appliances. This notion goes beyond simply allowing employees to work from home; it actively transforms remote workplaces into more sustainable settings. Simultaneously, Dutch companies often incentivize employees to cycle or use public transport. Thus, telework becomes just one dimension of a larger sustainability strategy, reflecting an integrated vision that addresses both organizational needs and environmental concerns.

The Spanish Law on telework explicitly cites the reduction of environmental impact as a key objective, aligning with Sustainable Development Goals (SDGs) such as 8.4 and 11.6, which aim to decouple economic growth from environmental degradation and reduce per capita negative environmental impacts in cities. Another piece of legislation, Law 34/2007 on air quality and protection of the atmosphere, calls for collective bargaining to incorporate sustainable mobility clauses. Moreover, an ongoing Bill for a Law on sustainable mobility envisions "compulsory sustainable mobility plans" for employers and proposes "green collective bargaining." This draft bill also looks to emulate the Belgian model of tax

incentives to promote cycling (“En bici al trabajo”), which could shift Spanish commuting behaviors away from reliance on private cars—a factor that accounts for 86% of commuting, according to data cited by the International Labour Organization (ILO).

## **F. Sustainable mobility**

Car travel is one of the main contributors to climate change because of greenhouse gas emissions, mainly carbon dioxide (CO<sub>2</sub>), released during the combustion of fossil fuels such as petrol and diesel. In addition to emissions, cars generate other pollutants such as nitrogen oxides and fine particulate matter, which in addition to the climate also affect human health. All these emissions from vehicle use account for a significant part of the total global warming, especially in urban areas where private car use is predominant, congested traffic situations occur and especially due to the high number of vehicles with older engines that pollute even more.

To mitigate these effects, EU countries have begun to design and implement measures to promote alternatives such as the use of public transport, electric vehicles, bicycles and walking, as well as sustainable mobility and energy efficiency policies. In this line, one of the key areas of these policies focuses on the workplace, with the aim of encouraging workers to adopt environmentally friendly means of transport to and from work. The main incentives are financial, but infrastructure must also be improved and awareness-raising campaigns carried out. These initiatives contribute not only to environmental sustainability, but also to the well-being of employees and the quality of urban life.

In this context, some European Union countries have developed different initiatives to promote sustainable mobility among their working population.

In Germany, a monthly travel pass (Deutschlandticket) allows citizens and workers access to all regional and local public transport for 49 euros. This program aims to reduce private car use, alleviate urban congestion and reduce emissions. Many companies subsidize this pass for their employees, which encourages greater take-up. Germany also has an extensive network of cycle paths in cities such as Berlin and Munich, which integrate cycle paths with public transport stations. The most important measure is that employees can deduct €0.30 for each kilometer driven to work on their income tax return. In addition, some German cities offer low-cost bicycle rental programs.

Belgium also provides for compensation of €0.27 per kilometer cycled to and from work. This benefit has been backed by collective agreements and has led to a significant increase in cycling among workers, particularly in urban areas such as Brussels. Moreover, the Belgian government encourages companies to adopt green mobility policies through tax incentives, such as the deduction of costs related to bicycles and charging stations for electric vehicles. It also provides subsidies for workers for the use of public transport, allowing them to combine multiple modes of transport, such as trains and buses, for their daily commute.

In France, employers can cover the personal transport costs of their employees when commuting to and from work, if they use an alternative means of transport. It takes the form of a Sustainable Mobility Package, and it is not compulsory. When implemented, it can be exempt from social security contributions. The sustainable mobility package can be paid in the form of mobility vouchers. Employers can pay this Sustainable Mobility Package to employees who use alternative means of transport for their business trips. The means of transport covered are personal bicycle, including electric bicycle; carpooling, both as a passenger and as a driver; personal mobility equipment, mopeds and motorcycles for hire or self-service; car-sharing for the benefit of users and for the duration and destination of their choice. The vehicles may belong to the car-sharing operator or to the local authority. low-emission vehicles (in particular vehicles powered totally or partially by electricity, hydrogen or natural gas); motorized (electric) personal mobility devices for individuals; public transport (excluding season tickets). The means of transport that are excluded are personal vehicles, whether combustion-powered (gasoline, diesel, etc.) or electric: scooters, motorcycles, cars carrying a single person, etc.; cabs, chauffeur-driven vehicles (VTC), etc.; train; walking.

The sustainable mobility package is exempt from social security contributions up to €500 per year per employee, including a maximum €200 fuel allowance and €800 per year and per employee in total, for employees who are also reimbursed for their public transport passes or bicycle hire. This amount is applied to the total reimbursements granted to the employee as part of the sustainable mobility package and their public transport pass. The maximum fuel allowance is €200. France has also set up an aid scheme offering subsidies for the purchase of bicycles, from €150 to €2,000, whether new or second-hand, sold by professionals. The Netherlands has taken important steps towards sustainable mobility for employers and employees. The first of these consists of leasing or “company



bicycles”: the company provides the employee with a bicycle, whether conventional or electric, which he can use for his private commuting.

The employer pays for the bicycle and, as a rule, also for maintenance and repair costs. However, the employer increases his employee's annual salary by 7% of the price of the bicycle and its accessories, and the corresponding taxes are paid by the employee. The employer may choose to take over that 7% per year, including it as a “work-related cost”, which exempts the employee from paying the corresponding tax.

A bicycle kilometer bonus is also contemplated in this country. This means that both self-employed and employees have a tax exemption of €0.25 for each kilometer traveled for work-related purposes.

It is necessary to take into account that not all EU countries can implement these measures in the same way, as the geography of the country plays a very important role in sustainable mobility.

In countries such as Italy and Spain, geographical characteristics represent a significant challenge for the widespread implementation of sustainable mobility measures based on the use of bicycles as the main means of commuting to work. These nations have mountainous regions and cities that, due to their steep slopes, make daily commuting by bicycle difficult, especially for long distances or in adverse climates.

Also, in certain cases it can be considered a discriminatory measure, since there are many people who, due to their physical condition, age, or different disabilities, cannot ride a bicycle, or live too far away from work to be able to pedal.

## **G. Vocational training and skills**

Among the many areas of the employment relationship affected by the green transition, particular attention must be paid to vocational training and skills. It is a fact that to keep pace with the transition and accelerate its progress, new and updated skills are necessary to avoid negative consequences for both workers, including redundancies and low professional classifications, and for companies, in terms of profits and sustainable production management. Moreover, investments in skill training are essential to benefit from the current evolution of the labour market, allowing workers to acquire adequate preparation to aspire to new

professional opportunities and increase their “employability” on the market, while also helping to reduce the mismatch between old and new skills of workers.

The situation at the European level appears critical, with employers denouncing skills shortages among workers, in addition to the persistence of phenomena such as demographic ageing and the digital transition, which are already disrupting the labour market.

Before delving into the legal framework designed to regulate the new skills training systems in the context of the green transition, it seems essential to provide some definitions of the types of jobs that will be regulated by this system and the skills that will have to be developed. In this regard, green skills encompass a set of abilities necessary to embrace sustainable development within multiple fields that define contemporary European societies. Usually, in the employment context, these skills can be technical, related to workers’ professionalism and the organization of production processes, or transversal and soft, more focused on developing awareness of the sustainability phenomenon and its regulation. Concerning the classification of work activities involved in the green transition, first and foremost, “green jobs” refer to roles that already contribute to environmental sustainability, and therefore do not require specific updating interventions; on the other hand, “greening jobs” represent existing roles that are becoming significantly impactful in the context of the transition, and therefore require specific interventions in skill training; furthermore, “green + jobs” are new roles created, or that will be created, to respond to new environmental needs, in this case requiring a renewal of existing skills and the introduction of new knowledge through ad hoc vocational training; and finally, “non-green jobs” consist of a series of roles that, having no impact on environmental sustainability, do not require particular training interventions.<sup>518</sup>

We now continue with the analysis of the regulatory interventions and practices applied in the field of vocational training and green skills. The results of the comparative research conducted among some European Member States (Belgium, France, Germany, Hungary, Italy, Poland, Spain, and the Netherlands) are the following.

In relation to legislative interventions, overall, there is a generally widespread obligation on employers to provide training for employees in all the analysed States, especially with regard to job and task changes. However, scarce success

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<sup>518</sup> All the definitions can be found in: *ManpowerGroup*, Building Competitive Advantage with A People-First Green Business Transformation, Global Insights White Paper 2024, 7.

is noted with respect to this obligation, mainly due to the low number of imposed hours and the presence of legal strategies to avoid it. For example, in Belgium, employers can opt to proceed with the payment of fines into specific funds specialised in the organisation of training; while in France, workers who do not receive lifelong training can request refunds before a judge.

The analysis reveals that there are few regulatory references to training obligations related to the green transition and green skills. In this regard, a first good practice comes from France: in addition to the continuous training of workers that is an employer's obligation, precisely in preparation for possible shocks and transitions in the labour market, some provisions require specific training in the field of the green transition: for instance, article L 2315-63 of the Code du Travail, as amended in 2021, provides for five days of mandatory training for the company's Social and Economic Committee, which may be focused on the environmental consequences of business activity. Similarly, Spain addresses the issue of green skills in employment through, at least, two provisions: firstly, Spanish Law no. 7/2021 on climate change and energy transition requires the adoption of specific fair transition agreements, which also cover training activities to support workers who need to adapt to the changing labour market; secondly, the RED Mechanism for Employment Flexibility and Stabilisation, implemented by the Royal Decree 608/2023, allows the activation of this Mechanism for a minimum period of one year in sectors undergoing permanent changes, such as the green transition, and that require worker retraining.

The comparative analysis subsequently focused on the role played by social partners, especially by workers' organizations, in the field of vocational training for sustainability. In general, the analysis highlighted good practices deriving from the introduction of the green transition issue in the social dialogue conducted by trade unions with both governments and public and private bodies, in collective bargaining with employers, and within a series of initiatives aimed at fostering interest and engagement on the topic among workers and citizens in general.

In relation to collective bargaining, the topic of environmental sustainability is spreading, even though with varying intensity, in France, Spain, Italy, and the Netherlands. In France, once again to be considered at the forefront, article L2241-12 and article L2242-20 of the Code du Travail require the inclusion of the environmental issues within the topics addressed by collective bargaining, respectively at the branch level and the company level, with a shared focus on the "forward-looking management of jobs and skills, in particular to meet the

challenges of the ecological transition”. Additionally, large companies are required to provide tools “with regard to training, topping up the personal training account, validation of acquired experience, skills assessment and support for the professional and geographical mobility of employees”. In Spain, on the other hand, the directives on collective bargaining on training and green transition have been outlined by workers’ and employers’ organizations within the V Framework Agreement for Employment and Collective Bargaining (V AENC 2023), which identifies lifelong learning as an essential tool for the transition, together with the identification of new qualification needs and skills. In Italy, similarly, trade unions are paying increasing attention to the issue, especially through interventions at the company level aimed at organising training courses on green skills. In addition, within the framework of the 2024-2025 Fondo Nuove Competenze to support companies in the digital and ecological transition, specific collective agreements are being concluded to reorganise working hours to allocate a number of hours to workers training. As for the Netherlands, collective arrangements can be quite diverse and general on the green transition, including training and awareness-raising clauses. Finally, trade unions have been involved in large-scale projects aimed at the renewal of entire work sectors, playing a key role in identifying workers’ needs, skills gaps and organising training activities and tools to support the upskilling and reskilling processes of workers involved in the transition: examples include the “Revierwende” project in Germany, the “Réseau Intersyndical de Sensibilisation à l’Environnement” in Belgium and the “Let’s get green!” initiative in Poland and Spain.

In general, what is observed is the need to provide specific training activities about ecological transition, capable of involving workers, employers, citizens, and social partners. It is indeed essential to develop high awareness and knowledge on the subject among all the actors involved in the legislative process and tripartite and bipartite bargaining.

## **H. Dismissals**

The green transition — a strategic shift toward sustainable environmental practices — has profound implications for employment, including the dynamics of dismissals. While aiming to mitigate climate change and promote sustainability, this transformation imposes economic and technical challenges on industries, often necessitating structural adjustments that can lead to job terminations. This text explores how the green transition intersects with dismissals, highlighting legal

frameworks, policies, and best practices to ensure equitable outcomes for affected workers.

Across the European Union, there are no specific regulations explicitly linking dismissals to the green transition. However, economic and technical justifications for job terminations frequently arise from green initiatives. Industries transitioning to greener operations may phase out certain roles due to technological changes or operational restructuring. For instance, the decline in fossil fuel-based sectors, such as coal mining, contrasts with the growth of renewable energy jobs, creating a mismatch between existing skills and new requirements.

In Spain, the green transition is guided by several key principles and legal frameworks aimed at ensuring a fair and just transition. Key points related to dismissals include the emphasis on supporting vulnerable sectors and individuals, integrating social and environmental objectives, and the focus on sustainability, decent work, and social cohesion under Law 7/2021 on Climate Change and Energy Transition. Just Transition Agreements support affected sectors and workers through measures for taxation, funding, training, and social protection. The role of workers' representatives includes involvement in information, consultation, and negotiation on environmental issues and restructuring. The legal framework for collective dismissals (Art. 51 WS and RD 1483/2012) requires procedures before the Labour administration, previous consultation with workers' representatives, and measures to avoid or reduce dismissals, including reallocation plans, training, and redundancy compensations. Internal flexibility mechanisms, such as the RED Mechanism, provide temporary support for workers during transitions, with commitments to maintain employment and provide training.

In Poland, legislative measures<sup>519</sup> address dismissals in energy and mining sectors by offering tailored support to displaced workers. This includes up to four years of "energy and mining leave", during which employees receive 80% of their monthly salary and remain free from work obligations. Additionally, one-off severance payments equivalent to 12 months' salary are provided to workers whose employment is terminated due to industry transformations. These measures aim to cushion the socioeconomic impact of green transition-induced job losses.

The green transition introduces ethical dimensions to dismissals. Workers may face termination for refusing tasks that contradict their environmental values or conscience. Although few legal systems explicitly recognize this scenario,

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<sup>519</sup> Shield law – energy and mining leave and severance pay for departing employees, see for more: *Woźny, Baliński, Hetmański, Rączka*, Moving away from coal. A Just Transition in Eastern Wielkopolska, 2024.

conscientious objection—rooted in fundamental rights—offers potential pathways for reform. Analogous provisions exist in the media industry, where journalists in France and Spain can terminate contracts if significant changes alter the ethical orientation of their work.

Introducing a “conscience clause” for environmental ethics could empower workers to decline assignments misaligned with sustainability goals without jeopardizing their legal or financial security. This innovation would resonate strongly in roles directly impacted by the green transition, fostering alignment between individual values and organizational practices.

Dismissal should be treated as a last resort, with internal flexibility serving as a preferred alternative. This approach includes redistributing tasks, modifying roles, or reducing working hours to retain employees while adapting to green objectives. For instance, Spain’s “RED Mechanism” allows companies undergoing green transitions to suspend activities temporarily. During this suspension, employees receive financial support from the state while companies restructure or retrain staff for future roles.

## **I. Concluding remarks**

The comparative legal analysis of the regulations and practices implemented in the observed European States (Belgium, France, Germany, Hungary, Italy, Poland, Spain, and the Netherlands) reveals a varied landscape regarding the adaptation of the labor market to the green transition. To conclude the research, it is therefore interesting to highlight some best practices for regulatory management of the green transition that is sustainable not only from an environmental perspective but also from a social and economic standpoint.

With regard to health and safety issues, it is essential that the provisions governing workers’ health and safety evolve to take into account the new risks caused by climate change and the Green Transition, particularly at the risk assessment stage. Indeed, if the current system can be considered sufficient in the abstract to protect workers, specific regulations are particularly important to guide the employer towards more correct practices consistent with the new climate requirements. Consequently, workers should be provided with appropriate information and sufficient training on the “new” health and safety risks caused by the impact of climate change and the Green Transition.

Secondly, it seems relevant to tend toward a merging of workers' health and safety issues with those of the environment. This would lead to repercussions on the institutional level, affecting the regulation of representation and training mechanisms.

As far as remuneration is concerned, there are Countries – such as Belgium, France, and the Netherlands – where certain salary components are used to influence employees' behaviour and incentivise them towards a greener lifestyle. At the same time, the greening process of the company is linked to productivity and promotes a green culture shared by both employers and employees. In other Countries – such as Germany, Italy, and Spain – legal provisions on remuneration aim to protect employees' income in case of suspension or termination of employment due to climate change. Finally, in Countries such as Hungary and Poland, wage and green transition do not speak to each other. In this composite framework, a central role could be given to the social partners to implement the wage solutions of Belgium, France, and the Netherlands in other EU Countries through a negotiation process. Of crucial importance could also be State policies to incentivise, through tax relief, high-impact sustainable actions such as, in particular, the investment of pension funds and other employee savings in sustainable initiatives.

With regard to telework and mobility, a multifaceted approach combining telework incentives with sustainable mobility measures appears most promising. Drawing on the MKB (the association for small and medium-sized enterprises) in the Netherlands, one proposal is to tie telework to the greening of employees' homes. This could be actualized by offering financial support for solar panels, home insulation, or energy-efficient appliances. Furthermore, adopting loan-based furniture schemes can reduce waste and promote a more circular economy. Simultaneously, countries that still rely heavily on private cars for commuting—like Spain, Hungary, and to some extent Germany—may consider adopting tax-based strategies similar to those in Belgium and France, which reward biking and public transport use. Across the countries surveyed, there is a clear trend to embed environmental considerations into the design of telework and mobility policies. Belgium and France stand out for their explicit fiscal incentives that promote lower-carbon commuting, while Spain is making efforts to follow suit by introducing green collective bargaining requirements and sustainable mobility plans. The Netherlands exemplifies an integrated approach, seeing telework as part of a wider transition toward eco-friendly workplaces and lifestyles. In contrast, Hungary and Italy possess telework frameworks without distinct environmental linkages, and



Germany highlights the tension between telework's potential emission savings and a tax code that does not yet incentivize greener commuting choices. Policymakers, social partners, and employers would do well to combine telework policies with targeted mobility incentives, robust public transport systems, and explicit sustainability criteria for remote work arrangements. By doing so, they can ensure that telework's contributions to the green transition are maximized rather than undermined.

In relation to vocational training and skills, the comparative analysis has revealed a series of gaps for which some good practices have been identified to be replicated and improved in the future. Firstly, one option could be to develop and enhance the apprenticeship system, common to all States, to provide training on sustainability within the mandatory individual training plans for trainees: this would allow a specific preparation for young people on sustainability topics that is also valid in the long term, as well as a constant interaction between workers of different age groups and professional experiences, with the aim of effectively integrating innovations within the traditional corporate fabric. Secondly, it seems interesting to include training on the green transition and the risks associated with it in the field of health and safety at work: in this regard, the social partners should constantly include clauses regarding the creation of specific committees for health and safety at work, also responsible for dealing with environmental risks and developing ad hoc training in this regard, to be added to the standard one.

Finally, to ensure fairness and mitigate adverse effects of green transition-induced dismissals, several proposals merit consideration. Firstly, it appears necessary the adoption of harmonized reallocation obligations, for example through the establishment of EU-wide standards mandating training and reemployment support for displaced workers, modeled on Spain's reallocation plans. Secondly, the expansion of mandatory consultation periods for collective dismissals may be useful to enable robust dialogue between employers, workers, and representatives. Thirdly, it seems beneficial to provide financial or regulatory incentives to companies that adopt internal flexibility measures over layoffs. And lastly, it appears pivotal to enact legislation allowing workers to refuse tasks or terminate employment based on environmental ethics, through the implementation of conscience clauses with specific provisions for fair compensation and retraining.

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## § 12 COLLECTIVE ACTORS IN THE GREEN TRANSITION

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### List of abbreviations

BAG	Bundesarbeitsgericht
BetrVG	Betriebsverfassungsgesetz
CJEU	Court of Justice of the European Union
CSE	Social and economic committee
DPR	Decree of the President of the Republic
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
ESCR	European Committee of Social Rights
ETUI	European Trade Union Institute
EU	European Union
TFEU	Treaty on the Functioning of the European Union
WCA	Works Councils Act

### A. Introduction

In this contribution we examine the role collective actors (may) play in the green transition, focusing on their identity and the tools at their disposal to address the challenges that arise from it, both in the workplace and at the sectoral level.

The green transition can be divided into four key dimensions: mitigation, adaptation, dispute resolution, and ensuring a just transition.<sup>520</sup> More precisely, mitigation refers to efforts aimed at reducing a company's ecological footprint through measures such as productive, organizational, and managerial reforms, including changes in production processes, mobility strategies, worker training, and employment conditions. Adaptation, on the other hand, focuses on modifying

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<sup>520</sup> See the Spanish national report, where Álvarez Alonso classifies three types of actions for the workers representatives in the green transition, referring to: 1) adaptation, 2) mitigation and 3) ensuring a fair green transition.

the workplace environment to address the impacts of climate change, particularly in the realm of occupational health and safety, such as measures to cope with heat waves. In cases where mitigation or adaptation strategies prove insufficient and climate-related damage cannot be avoided, dispute resolution mechanisms become essential. Finally, ensuring a just transition pertains to safeguarding the social and economic protection of workers during the transition process.

As already mentioned, a pivotal area of focus in our discussion was identifying the collective actors involved in this transition. Most European Union (EU) countries have a dual system, with on the one side the trade unions, operating at sectoral and firm level, and on the other some sort of works councils operating on firm level. Only Italy has a different system, with trade unions operating mostly on sectoral level but also on firm level. Unfortunately, during our discussions it emerged that the actual role of these actors in the green transition remains unclear in most jurisdictions. The collective actors have different tools, such as information and consultation rights, co-determination rights (in some countries), the right to collective bargaining and the right to strike. However, are these tools effective in the context of the green transition? Do environmental issues fall under the scope of these tools?

As we consider these challenges, it is crucial to adopt a practical perspective. What would the real-world impact of these issues be? Are there concrete recommendations that could facilitate the active participation of collective actors in advancing environmental sustainability within the workplace and, more broadly, in economic activities? This exploration seeks to provide insights into these crucial questions, with the aim of facilitating a more inclusive and effective green transition.

## **B. Collective actors in the workplace**

To fully understand the push toward greener workplaces and sustainable organisational models, it is essential to examine the role of collective actors and the strategies they deploy. These groups, ranging from trade unions to works councils, vary widely in their influence and responsibilities, shaped by the legal systems in which they operate. As will be highlighted, in some EU countries, works councils are at the forefront of environmental advocacy within companies, while in others, trade unions take the lead. These differences underscore a flexible framework that recognizes "collective actors" as a broad category, encompassing

various entities that advocate for environmental practices within the workplace. The term may refer to trade unions or their representatives, works councils, and joint bodies comprising both employee and employer representatives.

## **I. The current legal status of collective actors in environmental issues**

From the very beginning, it is essential to underscore that in most EU countries, legal frameworks lack specific provisions addressing the role of collective actors in promoting the green transition within the workplace. Instead, they offer broad guidelines that often leave environmental issues unaddressed.

The Spanish legal system, however, stands as a notable exception and a model of good practice. Indeed, the Estatuto de los Trabajadores not only establishes conditions under which companies may temporarily reduce working hours or suspend employment contracts due to economic, technical, organizational, production-related reasons, or force majeure (art. 47 and 47-bis), but – above all – it empowers works councils to engage in collaboration with the company's management in the implementation of measures designed to preserve and enhance productivity, as well as to promote environmental sustainability, where such provisions are stipulated in collective agreements (art. 64, para. 7).

German works councils play a similar role in promoting environmental protection in the workplace.<sup>521</sup> Since 2001, Section 80(1) para. 9 Betriebsverfassungsgesetz (BetrVG) has expressly stipulated that the works council must promote corporate environmental protection. However, it must be considered that the participation rights of German works councils are only limited to “operational” environmental protection. This means that the task of the works councils extends to all effects on the environment emanating from the company and its organization, regardless of whether they occur inside or outside the company. Section 80(1) para. 9 BetrVG regulates the works councils right to information. Works councils should be able to check based on the provided information, whether they are faced with tasks relating to environmental protection. The importance of the right to information should not be underestimated, as it forms the basis for the works council's commitment to environmental protection.

In addition, the works council and employer in Germany have the option of concluding works agreements in accordance with Section 88 para. 1a BetrVG. In

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<sup>521</sup> For very detailed information on the legal situation under German law, see *Däubler*, HSI-Schriftenreihe 2023, 49.

these works agreements, they can agree participation rights of the works councils that go beyond the statutory regulations regarding company environmental protection. Unfortunately, to date there is no known case law on the validity or content of works agreements that deal with company environmental protection.<sup>522</sup> In this respect, it can be assumed that only a few works agreements are concluded in Germany that regulate company environmental protection. Furthermore, section 87(1) BetrVG regulates matters that are covered by the co-determination rights of works councils. The catalogue of Section 87(1) BetrVG is exhaustive. An explicit right of co-determination of the works council regarding operational environmental protection is not regulated yet. However, the right of co-determination indirectly extends to operational environmental protection if another area of application of the catalogue in Section 87(1) BetrVG is also opened at the same time. There is likely to be some overlap, for example, between occupational health and safety pursuant to Section 87(1) para. 7 BetrVG and company environmental protection.

Dutch works councils have some tools that can be used in the light of the green transition as well. Art. 28 para. 4 of the Works Councils Act (WCA) is quite similar to Section 80(1) sentence 9 of the German BetrVG. According to this article, the works council has been assigned the task of promoting, to the best of its ability, the company's care for the environment, including making or changing policy, organisational and administrative provisions related to the environment. Art. 25 para. 1 under I of the WCA gives the works council the right to advise on a proposed decision to take a significant measure relating to the company's concern for the environment, including the introduction or modification of a policy, organisational and administrative provision relating to the environment. The employer must ask the works council for advice. However, he does not need to comply with it if he gives a motivation. This provision does not seem to play a significant role in practice. But, with an increasing number of climate-related obligations on the company level, this right could play a bigger role in the future. Furthermore, there is a positive example that shows that collective actors in the Netherlands can also work for more green transition based on current law. The central works council has worked with Tata Steel and the FNV trade union on a "green steel plan". The aim of the plan is to reduce CO<sub>2</sub> emissions to 40% by 2030 and by 2045, production should even be completely emission-free.

In France, a social and economic committee (CSE) exists that must be informed and consulted on the environmental consequences according to the Labour Code.

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<sup>522</sup> Däubler, NZA 2020, 1155, 1157.

For example, in the event of the introduction of new technologies or major developments modifying health and safety conditions or working conditions, the information/consultation of the CSE must also cover the environmental consequences (Article L. 2312-8 of the Labour Code). This means that the employer must provide the CSE with sufficient information on the issue, and that the social and economic committee's consultative opinion will also cover these environmental consequences. Similarly, during the major recurring consultations of the CSE, namely those on the company's strategic orientations, its economic and financial situation, and its social policy and working conditions, the employer must inform the CSE of the environmental consequences of the company's activities (article L. 2312-17). These are opportunities for employee representatives to debate with management, make proposals and ensure that the company takes environmental issues into account. There are, however, some limitations. First, the employer is not obliged to follow the opinion of the CSE. Second, the environmental consequences are not defined.

Despite not providing regulations similar to those just highlighted, Italy provides a tool within its legislation that deserves to be mentioned: the certification of contracts concerning activities to be carried out at risk of pollution. Another initiative aimed at highlighting the role of social partners in the ecological transition (albeit limited to the construction and agriculture sectors) is encapsulated in Law No. 127/2023. According to article 3, the Ministries of Labor and Social Policies and of Health promote and ensure the convening of social partners to sign specific agreements to adopt guidelines and procedures to protect the health and safety of workers exposed to climatic emergencies. Without delving too deeply into this provision, it seems to allow trade unions, in exercising their traditional self-protection function, to go beyond it, touching on interests that intersect or overlap with the general interest.<sup>523</sup>

In some EU nations, existing rights to information, consultation, or co-determination are being leveraged to integrate environmental considerations. Nonetheless, explicit rights specific to environmental issues remain rare, disappearing entirely in countries such as Hungary. At this point, the described varied landscape makes evident the need for a clearer, more comprehensive framework that explicitly incorporates the environmental role of collective actors in workplace governance.

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<sup>523</sup> Stefano Cairolì, *AmbienteDiritto.it* 2024, 1.



## II. Possible solutions and difficulties

Considering the numerous inconsistencies between the legal frameworks under comparison, a series of pragmatic recommendations has been developed during our discussion to strengthen worker rights concerning the green transition and workplace environment. One key proposal is the establishment of an Environmental Committee, reflecting discussions aimed at enhancing workforce engagement in decisions impacting environmental matters. This committee would include workforce representatives, who would provide input on decisions with environmental consequences. In practice, the implementation of this proposal could involve the creation of a dedicated environmental committee within workplaces, particularly where environmental concerns intersect directly with occupational conditions. In France, for example, a recently introduced obligation requires certain larger pharmaceutical companies to establish a joint environmental committee.<sup>524</sup>

Another potential approach to enhancing worker involvement in environmental initiatives is the strengthening of rights within existing organisational structures, particularly those that already serve as representative bodies for employees. This strategy would focus on empowering current structures, such as German works councils, by expanding their formal rights and responsibilities to include explicit co-determination on matters of environmental protection within the workplace. As seen, under current German labour law, works councils primarily advocate for worker rights and contribute to decisions that impact employee welfare and company interests, however, this proposal would empower them to take a proactive role in influencing environmentally sustainable policies, monitoring ecological impact, and ensuring that workplaces adhere to high environmental standards. It should be noted that some limitations have been identified, necessitating careful consideration, particularly in accordance with the principle of proportionality. A first key challenge lies in the current lack of environmental expertise. For effective participation in advising on environmental matters, employees and their representatives would need a foundational level of knowledge in this area. One potential solution to bridge this gap is the establishment of company-wide training programs focused on environmental issues.<sup>525</sup> Additionally,

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<sup>524</sup> Article 3.4, Collective Agreement of October 17, 2023 on ecological transition and sustainable mobility, Pharmaceutical sector.

<sup>525</sup> Though not the result of legislative action but rather an agreement between social partners, the 2018 Italian “Patto della Fabbrica” merits particular mention. Signed by Confindustria along with CGIL, CISL, and UIL, the agreement calls for the development of training programs in collaboration with relevant territorial joint bodies to ensure alignment with regional needs and expertise. Additionally, it mandates a periodic five-year training

while it may be appropriate for companies to assume responsibility for such training, another critical factor must be addressed: the need for training to be conducted in an objective and unbiased manner.

The establishment and sustainability of the Environmental Committee would necessarily depend on the company meeting a minimum employee threshold, as smaller organisations may lack the resources or need for such a formal structure. Therefore, a more adaptable solution for small and medium-sized enterprises would be the designation of a specific representative, a figure elected by employees, who would have the formal responsibility and authority to represent workers on environmental matters. This individual would function as a liaison between employees and the company's management, bringing forward environmental concerns and contributing to decision-making processes relevant to sustainability. This approach could offer small and medium-sized enterprises a streamlined and cost-effective mechanism for addressing environmental issues without the complexities and overhead associated with establishing a full committee. In addition, for sectors and regions where numerous small and medium-sized companies share common environmental challenges, we propose the formation of sectoral or territorial environmental committees. This model would create a shared resource for addressing environmental matters, enabling collaboration across enterprises while reducing individual costs.

## **C. Inclusion of green clauses in collective agreements**

A key instrument to address the challenges posed by the green transition in and outside the workplace is the establishment of the so-called 'green clauses' through collective agreements. This is a relevant mechanism for many reasons, but primarily because it is the way we must address the legislative gaps that are found in the different laws, regulations, and statutes of the various Member States in relation to the green transition in the workplace. Moreover, unlike legislation, collective agreements can rapidly adapt to the new challenges and changes that may appear in the context of the green transition.

The analysis conducted on the different Member States that are the object of this study shows that unfortunately green clauses are rare to find across Europe's labour negotiated agreements. In this respect, it is observed that the countries that

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update, which must focus on new regulatory, organisational, or technical advancements, rather than merely repeating the content of initial training sessions.

have further developed this matter in the workplace are the ones of the South of Europe, particularly Italy and Spain. On the other hand, we can observe a very limited experience of collective bargaining on environmental issues, predominantly occurring at the sectoral level, rather than at the level of the workplace, such as the case of Italy.

## **I. Collective bargaining practices on environmental matters in the different European countries**

Thanks to the comparison among the different legal systems, it is possible to elaborate on the different bargaining practices across EU nations.

To start, in Hungary there are no examples of collective agreements that include provisions for a "real" green transition at the workplace. There are examples in the case law of employers implementing certain environmentally friendly and green transformation measures (e.g. installation of bicycle racks, transport to work support), but these do not fall within the narrow definition of green transformation.<sup>526</sup>

In Belgium and the Netherlands, the social partners have contractual freedom in collective bargaining. Collective agreements can contain more than just employment conditions and the legal regime does not seem to limit the possibility of including 'green' collective bargaining provisions. There is, however, no explicit power or obligation for collective bargaining on topics related to the green transition. It will therefore depend on the will of the social partners. In practice, there are almost no significant developments in terms of green clauses in Belgium. Research in the Netherlands shows that one in three collective agreements contains some sort of green clause, most of them about mobility.<sup>527</sup> In Belgium, the clauses identified also concern mobility.

In other countries more examples exist. Collective agreement's content is regulated in Germany by the Collective Agreement Act, which allows to conclude agreements with environmental clauses, such as green skills training for workers, climate-friendly forms of remuneration, financial benefits in the event that employees have made a special contribution to the company's environmental and climate protection or specific provisions on the employer's equipment. Examples in this respect are the Collective agreement between IG Metall and Volkswagen,

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<sup>526</sup> Rossu, Labour Studies, E-Journal of International and Comparative 2021, 1.

<sup>527</sup> Ministry of social affairs and employment, Cao-afspraken over verduurzaming en groene arbeidsvoorwaarden.

which introduces sustainability goals: promotion of electric vehicles, reduction of CO2 emissions, training programs to upskill the workers on electric mobility etc and Job security; or the Collective Agreement between IG BCE and the chemical industry, that establishes provisions on climate protection: clauses to protect climate at chemical production and supporting climate oriented research and training for workers.

There are many collective company level agreements in France including green clauses (on mobility, on profit-sharing, working conditions). We will focus on the very recently adopted first sector agreement on the ecological transition and sustainable mobility concluded in the pharmaceutical sector, the 17th of October 2023, since it goes beyond the provisions imposed by the labour code. Among the content of this agreement we can find relevant provisions on the reduction of emissions; selective sorting; the reduction of energy consumption; the reduction of the carbon footprint; water management, workers' representatives training, information initiatives and the creation of specific bodies in charge of environmental duties.<sup>528</sup> Together with this collective autonomy product, we may refer as well to the agreement of 8 December 2021 (SECTEC Energie Environnement), which includes attempts to create a "conscience clause", allowing employees to refuse certain projects or tasks, when such are not aligned with their values and beliefs; this includes environmental matters.

The limited experience of collective bargaining on environmental issues in Italy has predominantly occurred at the sectoral level, rather than at the level of the workplace. This is likely attributable to the traditional anti-competitive function of sectoral agreements in Italy. The coordination achieved by the sectoral bargaining machinery could prevent the introduction of environmental initiatives by enterprises from causing detriment to the companies most interested in a just transition. However, this potential is undermined by the lack of general effectiveness of sectoral collective agreements that do not have erga omnes effect. The initiatives taken by social partners concerning just transition have taken place on two specific sectors identified as "hard to abate", because they are more exposed to just transition processes, in the form of transformation and requalification of production and employment. For example, the collective agreement for the petrochemical sector contains some provisions on trade union involvement in the transition. The

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<sup>528</sup> According to Art. 3.4 of this agreement, "companies with more than 300 employees in the sector must set up at least one "Environmental Commission", or any other internal commission or working group, whether or not resulting from a company-wide collective agreement, to study the environmental impact of the company's strategic decisions or its environmental strategy".

tools provided at national levels are, for example, the creations of observatories;<sup>529</sup> the introduction of clauses devolving to the provincial labour contracts the task of defining the modalities for conducting training courses on health protection and ecological rehabilitation issues;<sup>530</sup> the institutionalisation of awareness events;<sup>531</sup> some clauses containing the involvement of the social partners in the elaboration of management plans, the initiatives of which are to be forwarded by the business partners to the national observatory in order to allow for appropriate monitoring and valorisation of the best experiences;<sup>532</sup> the creation of particular figures, such as the Workers' Representative for Safety and Environment.<sup>533</sup> At company level, it is possible to find clauses containing a commitment for the social partners to cooperate in order to achieve ecological transition.<sup>534</sup>

Similarly to Italy, Spain is starting to build a compendium of collective agreements that regulate environmental issues in the labour sphere; prompted in part by collective actors' contractual freedom to agree in whatever content they wish to regulate by virtue of Art. 85.3 of Estatuto de los Trabajadores (Workers' Statute). Collective agreements are further relevant in regulating working conditions by the fact that they have erga omnes nature, i.e. they apply to all workers in the sector or company regardless of trade union membership. Among the different collective agreements, we can refer to clauses creating new representative bodies for the green transition and new competences for the collective agreements' committee,<sup>535</sup> the establishment of training programmes on environmental matters<sup>536</sup> or the regulation of environmental issues through programmatic provisions that leave the issue to internal codes of practice in the company.<sup>537</sup>

<sup>529</sup> Art. 9 of the "Contratto collettivo nazionale di lavoro per gli operai agricoli e florovivaisti" – 23 May 2022; Premessa Cap. X of the "Contratto collettivo nazionale di lavoro per gli addetti all'industria chimica, chimico-farmaceutica, delle fibre chimiche e dei settori abrasivi, lubrificanti e GPL" – 13 June 2022.

<sup>530</sup> Art. 69 of the "Contratto collettivo nazionale di lavoro per gli operai agricoli e florovivaisti" – 23 May 2022.

<sup>531</sup> S. Premessa Cap. X of the "Contratto collettivo nazionale di lavoro per gli addetti all'industria chimica, chimico-farmaceutica, delle fibre chimiche e dei settori abrasivi, lubrificanti e GPL" – 13 June 2022.

<sup>532</sup> S. Premessa Cap. X of the "Contratto collettivo nazionale di lavoro per gli addetti all'industria chimica, chimico-farmaceutica, delle fibre chimiche e dei settori abrasivi, lubrificanti e GPL" – 13 June 2022.

<sup>533</sup> Art. 65 of the "Contratto collettivo nazionale di lavoro per gli addetti all'industria chimica, chimico-farmaceutica, delle fibre chimiche e dei settori abrasivi, lubrificanti e GPL" – 13 June 2022; art. 11 of the "Contratto Collettivo Nazionale di Lavoro per i lavoratori addetti al settore elettrico" – 18 June 2022.

<sup>534</sup> Art. 69 ss. of the "Global Framework Agreement on fundamental Rights and Social Dialogue in the Enel Group" – 16 July 2024.

<sup>535</sup> For example, in the Collective agreement for undertakings in the bread-making flour and semolina sector, of 23 April 2024, where Annex 6 establishes that "in companies with more than 50 employees, an Environment delegate shall be elected from among the members of the Works Council, having an additional time credit to carry out his/her duties"; or the National Collective Agreement for the Travel Agencies Sector, 23 August 2023, determines that "Workers' representatives may appoint an environmental delegate, and companies may appoint an environmental manager in order to promote collaboration and coordination in all environmental actions" (Art. 56). Art. 68 establishes an information right.

<sup>536</sup> Such as in Art. 68 of the National Collective Agreement for the Travel Agencies Sector, 23 August 2023, which mandates the establishment of training programmes.

<sup>537</sup> See, I Collective Agreement of the Company Passenger Transport in Passenger Cars for Hire with VTC Licence, of 20 July 2022. According to its Art. 44 "The parties to this collective bargaining agreement consider it necessary for companies in the sector to act in a responsible and respectful manner with regard to the

In addition to traditional collective agreements, the Spanish legislation introduced,<sup>538</sup> in 2021, a new instrument specifically contemplated for the green transition. We are referring to the so-called ‘just transition agreements’. These agreements have the objective “to promote economic activity and its modernisation, as well as the employability of vulnerable workers and groups at risk of exclusion in the transition to a low-carbon economy, in particular in cases of closure or conversion of installations” (art. 28 Law 7/2021). These agreements are to be subscribed between the Ministry and other public administrations such as the ones from autonomous communities and especially local entities. However, social actors' role in these agreements is limited to trade unions, and even in this case is programmatic, i.e. their involvement is not mandatory. In any case, if trade unions request to be involved, they should be able to do so without any constraints.

## **II. What is the most appropriate level of bargaining for environmental matters?**

Because of the different, and sometimes incompatible, models of clauses regarding the green transition that have been introduced in the various jurisdictions by collective bargaining, the following reflections need to be made.

First, it is necessary to ask what level of collective legislation is actually most effective in providing for such clauses. Collective legislation at the sectoral level might be more consciously focused on environmental issues, as it would allow for an expanded viewpoint. However, it is worth considering that the importance of the level depends, for environmental issues, on different system dynamics: in fact, we have to consider that some countries have an industrial environment characterized by small and medium-sized enterprises, which could find it difficult to comply with the environmental obligations set in the sectoral agreements that apply to them. In addition to this, such measures should never negatively affect the worker's pay, with a replacement mechanism similar to that introduced in the French system.

Given the situation of disparity, we suggest that it could be worth considering the promotion of social dialogue at the European level. Thus, a general European framework agreement on environmental issues could be developed, establishing common objectives and lines of action for social partners. This framework

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environment, paying attention to its defence and protection [...] This responsibility requires companies to establish and implement environmental policies, objectives and programmes and effective environmental management systems, and an environmental policy should be adopted [...].

<sup>538</sup> Law 7/2021 on climate change and energy transition.

agreement could also potentially turn into a directive (such as in the case of the fixed-term work agreement), by virtue of Article 153 of the Treaty on the Functioning of the European Union (TFEU) using occupational health and safety as the legal basis for it.

## **D. The right to strike**

Another possible tool is the right to strike. In this paragraph we will discuss if striking for the climate in the workplace is possible, according to national and European law, and if so, if the climate strike is actually the right tool for it. Ultimately, we have to ask ourselves, can collective actors, such as trade unions, through collective action, represent the climate interest?

### **I. The right to strike in the workplace**

Under some legislations, a climate strike falls under the right to strike in the workplace. For example, the right to strike is not regulated by law in Germany. But, the supreme Court of Germany (BAG) has emphasised in two decisions that there is reason to consider whether strikes should really only be allowed for the conclusion of a collective agreement. In this context, the generalising statement that strikes are always only permissible for the enforcement of collectively agreed objectives may need to be re-examined with regard to art. 6 para. 4 of the European Social Charter (ESC). An example occurred on February 2, 2024, as public transport workers and the organisation Fridays for Future, an important player in the climate protection movement, came together in a nationwide strike in Germany. The campaign #WirFahrenZusammen (#WeDriveTogether) was organised, amongst others, to fight for better working conditions for transport workers. The municipal transport companies joined forces in the dispute for better working conditions, with the action attracting particular attention due to the alliance with Fridays for Future. This campaign is an interesting example, as bus drivers and climate activists are not obvious allies. In Belgium there is no restriction on the right to strike. The current rules allow a strike for climate reasons because there is no restriction of strike based on its purpose. Technically, workers could strike to defend a better ecological strategy in their company. But in practice, only strikes related to working conditions occur.



## II. The distinction between political and political-economic strikes

The concept of climate strike asks the question of its qualification: is it a “political strike” or a political-professional strike? The latter are aimed at the adoption of measures that directly affect workers' interests, whereas in the political strikes, the workers act as an organised group with the aim of influencing government policy without impact on their interests. In many countries, the right to strike is limited to political-professional strikes.

In Italy, for instance, in the absence of a constitutional or statutory definition of the strike, the case-law of the constitutional court limits the scope of this fundamental right to the political-professional strike. Thus, a climate strike would be legal only if workers' interests are at stake. Similar distinctions exist in the Netherlands, Spain, and Hungary. In the Netherlands, art. 6 para. 4 ESC has a direct effect. A collective action is covered by the provision if the action can reasonably contribute to the effective exercise of the right to collective bargaining and thus to the objective of the action. According to the European Committee of Social Rights (ECSR) this is “any bargaining between one or more employers and a body of employees (whether ‘de jure’ or ‘de facto’) aimed at solving a problem of common interest, whatever its nature may be”.<sup>539</sup> Thus, a collective action in pursuit of the climate interest may possibly be covered by the ESC, for example, where the social partners have negotiated green collective bargaining provisions. Political strikes, however, do not fall under this definition. The biggest Dutch trade union, FNV, collaborated with environmental organisations in climate strikes (de Klimaatmars), as part of the Climate Crisis Coalition, but this was seen as a political strike.

The right to strike is a fundamental right in Spain, regulated by art. 28.2 of the Constitution and the Labour Relations Act 17/1977. The right to strike is recognised and protected only when it is exercised in connection with labour matters. According to art. 11 of the referenced Act, the strike is considered illegal when “it is initiated or sustained for political reasons or for any other purpose unrelated to the professional interest of the workers concerned”. Therefore, this might be an obstacle or mitigation for the execution of collective action in terms of environmental matters, since if the strike does not have a connection with professional goals, it would not be legal. For example, under Spanish law it can be a little difficult to strike about the bad implications of the company's practices to the

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<sup>539</sup> Conclusions IV 1979, p. 50.

environment if this does not correlate with the employees directly. They could manifest as citizens, but not strike.<sup>540</sup>

In Belgium, where a strike for the environment is possible in theory, the trade unions in practice never declare a strike for a purpose totally unrelated to work. There have been common demonstrations between trade unions and environmental organisations for which some workers used their right to strike to participate. It was not related to work directly, but the trade unions came with motto such as “there are no jobs on the dead planet”, which connects the demonstration to work issues. There are strikes against the government’s actions but one may always qualify them as political-professional strikes. For workers to take part in national climate demonstrations organised by the civil society and the trade unions, the latter have declared a strike, and some workers participated thanks to the strike notice and under its protection.

The mobilisation of the right to strike in environmental matters does not raise any legal questions in France. The vast majority of authors agree that this issue falls within the scope of professional demands made by trade unions.<sup>541</sup> However, one of the limits to the exercise of this right is that strikes must not endanger the environment or employee’s safety. To be licit, the exercise of the right to strike presupposes a collective and concerted cessation of work in support of professional revendications. As far as industrial demands are concerned, current events show that environmental considerations can be the starting point for industrial action. A prime example in France is the affair occurring at TotalEnergies, a French energy and petroleum multinational. The General Confederation of Labour, France’s second-largest trade union, teamed up with the non-profit organisation Greenpeace and went on strike to denounce Total’s greenwashing. In this case, employee representatives took up the issue of the environment in order to counter Total’s greenwashing and to ensure employee safety and the safety of the site as a whole.

The distinction between political and political-professional strikes could potentially limit the scope of climate-related strikes. However, when strikes are directly tied to working conditions influenced by ecological concerns, such as safe and sustainable workplace environments, they can fall under the right to strike in the workplace. It is also conceivable that entire workforces could join a climate

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<sup>540</sup> See also *Gutiérrez*, in: Consuelo Chacartegui Jávega (ed.), *Labour law and ecology* (Thomson Reuters Aranzadi 2022).

<sup>541</sup> *Morvan*, in: Arnaud Casado & Farah Safi (eds.), *L’entreprise face aux défis environnementaux* (IRJS Editions 2022); *Casado*, *Droit social à vocation environnementale. Vecteur de durabilité de l’entreprise*, 456.

campaign for a few hours, leading to a situation where sanctions by the employer are difficult to imagine: issuing a warning to practically all employees is not seen as a sensible personnel policy approach, as it would either not be taken seriously or would permanently damage the working atmosphere. Further measures such as dismissals are out of the question from the outset in such a situation, as they would violate the principle of proportionality.

### III. The European dimension of the right to climate strike

It may be possible that the right to strike for the climate is limited by European law. The European Court of Human Rights (ECtHR) has held that the right to strike is covered by Art. 11 of the European Convention on Human Rights (ECHR). In *Unison v UK*, the ECtHR held that the unions' argument that there was a future danger was not sufficient to permit a strike. Indeed, the workers did not face a real or immediate risk of being harmed.<sup>542</sup> In the *Viking* case, the Court of Justice of the European Union (CJEU) held that while the protection of workers may be a legitimate reason to impede freedom of establishment, such protection only comes down to the concrete protection of specific jobs or working conditions, which are actually at risk.<sup>543</sup> The 'Laval doctrine' could also limit the ability of trade unions to use the strike to condition the decisions of companies on environmental issues.<sup>544</sup> It may possibly follow from these rulings that collective action in pursuit of the climate interest is not possible where there is no real or immediate risk. With climate, this is often not the case, as changes need to occur now to prevent future dangers. It is therefore questionable whether collective action in pursuit of the climate interest will be allowed by the ECtHR or the CJEU.<sup>545</sup>

That being said, in our discussion the possibility of a right to strike for the climate in some European countries occurred. While there is potential, a European right poses risks, as frequent or minor strikes could disrupt workplace stability. Therefore, a balanced approach that respects both the rights of workers to advocate for sustainable practices and the operational needs of employers may be key to integrating climate activism into the labour framework responsibly. The right to strike, furthermore, does not fall under EU competence. But, fostering an open dialogue between workers' representatives and employers about conditions for

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<sup>542</sup> ECtHR of 10 January 2002, ECLI:CE:ECHR:2002:0110DEC005357499, (*Unison v. United Kingdom*).

<sup>543</sup> CJEU of 11 December 2007, C-438/05 (*Viking*), paras 81-86.

<sup>544</sup> CJEU of 18 December 2007, C-341/05 (*Laval*).

<sup>545</sup> See also Novitz, *International Journal of Comparative Labour Law and Industrial Relations* 2015, 31; Novitz, *International Labour Review* 2020, 4; Novitz, *Giornale di diritto del lavoro e di relazioni industriali* 2023, 177-178.

climate activism can help mitigate discouragement among employees. The introduction of a structured approach, such as collective agreements specifically addressing climate strikes, might offer a practical solution. However, such measures could introduce additional restrictions or practical concerns.

#### **IV. Climate strikes: a tool to be extended?**

Strikes give trade unions and workers more leverage to discuss environmental changes. While the right to strike can be a powerful tool for advancing workers' interests, it may not always be the ideal instrument for addressing climate-related goals. Strikes are traditionally viewed as a last resort and are most effective when used to address specific labour-related grievances directly tied to employees' working conditions. Climate activism, while important, often transcends the typical employer-employee relationship and intersects with broader societal and political objectives. This is why most of climate activism is made by activists instead of trade unionists. Some specialists propose for that reason to extend the scope of the right to strike to the activists in order to allow them to blockade companies or polluting activities legally.<sup>546</sup>

#### **E. Conclusion**

The green transition presents an urgent challenge for workplaces worldwide, requiring collaboration between collective actors. Almost no new tools have been identified in the light of the green transition. Existing tools, such as collective agreements or works councils' rights, can be used to address both ecological and social dimensions, ensuring that workers are not left behind in the pursuit of sustainability. The question is, of course, if collective actors are actually willing to use their tools in the light of the green transition.

Fostering partnerships between trade unions and environmental organisations offers significant potential, provided that both groups acknowledge and address each other's priorities. Trade unions and environmental organisations can be allies in promoting sustainable practices. Environmental organisations contribute specialised expertise on ecological issues but may lack focus on labour rights and working conditions. Conversely, trade unions have a historical focus on protecting workers' rights, which might not always align with broader environmental

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<sup>546</sup> *Porta*, Revue de droit comparé du travail et de la sécurité sociale 2023.

objectives. Their collaboration could bridge these gaps, leveraging complementary strengths to address the interconnectedness of labour and environmental justice. However, the involvement of environmental organisations in the workplace raises concerns about the balance of interests. While their ecological focus is valuable, it must be tempered with considerations for fair working conditions. Similarly, trade unions need to broaden their scope to include environmental sustainability, which could enhance their relevance, especially among younger workers, and attract new members.

The potential for an environmental trade union dedicated to workplace-focused green transition initiatives has been suggested during our discussions. While France offers an example of such an initiative,<sup>547</sup> concerns persist about the dilution of existing trade unions' influence and membership. Entities like the European Trade Union Institute (ETUI) already actively engage in green transition issues, offering trade unions a platform for broader collective efforts.

Several risks must be addressed. Employers might exploit climate concerns to justify workforce reductions or relocations, engaging in "environmental dumping" to lower costs. This not only undermines labour rights but also damages trust between employers and employees, hindering collective action. Proactive measures, such as negotiating protections in collective agreements, are essential to counteract such practices. Another challenge is the varying willingness of works councils and social partners to embrace green transition tools. Resistance from certain sectors or industries, coupled with competing priorities within trade unions, may limit the adoption of these strategies. Additionally, the focus on ecological concerns could overshadow the critical need for fair working conditions, particularly in collaborations with external actors like environmental organisations.

Ultimately, the green transition requires a collective, inclusive approach that incorporates the strengths of all actors. By aligning labour rights with environmental goals, workplaces can become drivers of sustainable change, offering a model for broader societal transformation.

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<sup>547</sup> In France, an ecologist union "le printemps écologique" has emerged, which provides the CSEs with a toolbox to promote training and awareness of environmental considerations. Its objective is to become representative at the national level in 2027. During the last elections, 300 employees were elected under its banner in some sixty companies including ORANGE, UBISOFT, and Too Good to Go.

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## § 13 NEW CHALLENGES FOR LABOUR LAW IN THE GREEN TRANSITION

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### A. Green transition and the repercussions on Labour Law

The green transition is a priority for the European Union, not to say of the United Nations. The Paris agreement of 12 December 2015 (COP21) sets the goal of limiting global warming to 1,5°C. The UN Sustainable Development Goal 13 claims for urgent action to combat climate change and its impacts. The European Climate Law aims at climate-neutrality by 2050.<sup>548</sup> European policy follows the idea of a European Green Deal in order to achieve these goals.<sup>549</sup> And it is not by chance that in some Constitutions, like in the German, Hungarian and Italian, environment protection is a primary goal. In others it is at least an aspect of fundamental rights to life and health, as well as a question of intergenerational equality, as stressed by the comparative report on social dialogue in this volume and by the German Constitutional Court.<sup>550</sup> This is certainly somewhat contradictory to the ECtHR's concept of real and imminent risks to life and health because the ECtHR does not discuss future harms to the young generation, rather than it focusses on present risks to health and life of people nowadays.<sup>551</sup>

The survival chances of mankind depend on effectively combating climate change, although some autocratic governments and political parties all over the world close their eyes to climate change, ignoring scientific evidence and presenting simplistic solutions to the people. Economic growth is nearer to the people than avoiding or even slowing down climate change. The distortions by climate change still seem to be little visible and therefore many people feel not to be in need to modify their behaviour in order to reduce or stop climate change.

The European Union is aware of the enormous challenge to combine its environmental policy with measures to secure that undertaking and workers will

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<sup>548</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243/1.

<sup>549</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM (2019) 640.

<sup>550</sup> BVerfG (Constitutional Court) of 24 March 2021 – 1 BvR 2656/18 and others, 157

*Bundesverfassungsgerichtsentscheidungen* 30.

<sup>551</sup> ECtHR of 9 April 2024 – 53600/20 (*Verein Klimasseniorinnen Schweiz and others v. Switzerland*).



not be economic and social victims.<sup>552</sup> Conversion of industrialised economies into CO<sup>2</sup> neutral industries depends on massive restructuration of production processes that cannot be only market driven. Affected interests must be weighed and balanced within the political decision-making process. Conversion of undertakings will lead to huge redundancies, while green economy is supposed to create many new jobs. Green transition needs industry producing and delivering equipment for conversion of carbon neutral economy and society, such as solar panels, green steel or green energy, as well as entities organising circular economy.<sup>553</sup> Green industry needs a suitable workforce in order to flourish. Reskilling towards “green” jobs against the old “carbon” ones is needed in terms of professional training and training on the job.<sup>554</sup> This shows that a green conversion is at the same time a big risk and a tremendous opportunity. To sum up, green transition will have intense effects on the labour market.<sup>555</sup>

The Just Transition Fund, established by Regulation (EU)2021/1056,<sup>556</sup> cannot absorb all the risks. High rates of unemployment will not only affect workers and the labour market, but also endanger stability of society, as the Polish report in this book indicates through the description of trade union’s opposition against a green deal without workers’ voice. High unemployment will also turn into hazard for economies, if employers will not find enough adequately skilled workforce.

It is, therefore, not by accident that the European Union or the COP21 claimed for a fair and just green transition.<sup>557</sup> The Green Deal can only succeed with social sustainability.<sup>558</sup> The EU legal framework reflects this.<sup>559</sup> Similarly, the Sustainable Development Goal 13 does not stand alone and is to be seen together with especially the Sustainable Development Goal 8.<sup>560</sup>

<sup>552</sup> Most recently, the European Commission (von der Layen II) has proposed two Omnibus Packages in this field [https://commission.europa.eu/news/commission-proposes-cut-red-tape-and-simplify-business-environment-2025-02-26\\_en](https://commission.europa.eu/news/commission-proposes-cut-red-tape-and-simplify-business-environment-2025-02-26_en).

<sup>553</sup> See Casado, *Droit social à vocation environnementale*, 2024, 213 et seq.

<sup>554</sup> See Ulber, in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.), *Green Transition and Qualification – Social and Labour Law Instruments*, in: *Green Transition and the Quality of Work, Implications, Linkages and Perspectives*, 2024, 287-310.

<sup>555</sup> See, for a German view in labour and social law issues of the green transition, Ulber, SR 2022, 81-97.

<sup>556</sup> Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund, OJ L 231/1.

<sup>557</sup> See for the overall linkages between the different sustainability goals and labour law in the instruments of different levels v. Schadewijk, *ELLJ* 2024, 677 et seq.

<sup>558</sup> Busch, *ZESAR* 2024, 143-151.

<sup>559</sup> See Ales in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.), *Never Too Late? The Integrated EU Social-Green Commitment Toward a Just Transition*, in: *Green Transition and the Quality of Work, Implications, Linkages and Perspectives*, 2024, 15-32.

<sup>560</sup> See ILO, *Time to Act for SDG 8*, 2019.

Employees and/or their representatives can furthermore act as promoters for the green transition.<sup>561</sup> If companies follow a shareholder value concept, management will not in any case steer towards green conversion. Employees as stakeholders may have a different view<sup>562</sup> and could induce green transition in the company, e.g. by suggestions and proposals or by using co-determination rights or other ways of workers' involvement. This may follow from the awareness that combatting climate change is indispensable for mankind or from the wish to (co-)design the transition. Companies as well can be subject to environmental progress. Moreover, labour protection may have an impact on climate protection as *Lerouge* has illustrated with reference to occupational safety and health.<sup>563</sup> The example of Sustainable Corporate Governance should be mentioned also insofar.<sup>564</sup> Eventually, workers can spot environmentally harmful behaviours in the undertaking and denounce them within the framework of the Whistleblowing directive.<sup>565</sup>

It follows from these reflections that the Green transition within the European Union creates big challenges in the field of labour law. Employees need job security, which, however, will not be possible without job transition requiring reskilling. Such processes can be facilitated and supported by setting legal frameworks and/or by social benefits. Employees' representatives' involvement through information, consultation, participation and/or co-determination or collective bargaining will be a precondition of professional satisfaction and for workforce stability.

## B. Labour policy answers in EU Member States

### I. Framework für shaping social rights in the EU green transition process

As pointed out by EU institutions, the Green transition should be just and fair. This includes flexibility for employers as well as protection of the employees. Although not addressed directly, many aspects of the just and fair Green transition had been anticipated by the European Pillar of Social Rights,<sup>566</sup> especially in numbers 5

<sup>561</sup> See Brino in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.) *op. cit.*, *Inside and Outside Labour Law: Challenges and Reactions Facing with Sustainable Corporate Governance*, 33-49; Casado, *Droit social à vocation environnementale*, 2024, 167 et seq. 279 et seq.; v. Schadewijk, *op. cit.*, 677-694.

<sup>562</sup> See Selberg in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.) *op. cit.*, *An Employment Relationship for the Anthropocene? Notes on Anchoring the Greening of Labour Law*, 263-286.

<sup>563</sup> See Lerouge in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.) *op. cit.*, *Conceptualising a sustainable Labour Law in Order to Assimilate the Blurring of Boundaries Between Occupational Health, Public Health and Environmental*, 245-261.

<sup>564</sup> See Escribano Gutiérrez, *Labour and Environmental Sustainability, Summary of Literature Reviews*, 3.

<sup>565</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJ L 157/1.

<sup>566</sup> Commission Recommendation (EU) 2017/761, OJ L 113/56, and institutional proclamation by European Parliament, Commission and Council, OJ C 428/10.

(secure and adaptable employment) and 10 (healthy, safe and well-adapted work environment). It should be noted that the Pillar does not extend the competencies of the European Union and therefore many issues of adjusting Labour Law to the Green transition can be regulated by national law of the Member States.

## II. Promotion of green transition through labour law

EU Member States found different avenues to adjust Labour Law to EU Green transition.<sup>567</sup>

Some Member States tried to reduce the CO<sup>2</sup> footprint of the enterprise, e.g. by regulating varieties of telework, even promoted during the pandemic also by the Administrative Commission for the coordination of social security systems.<sup>568</sup> In such a perspective, a group of Member States concluded a telework agreement to secure continued access to the social security system.<sup>569</sup> Although the Green transition is not the primary goal of telework, it should be noted that the latter is a helpful support instrument.

The same is true for some national regulations as described in the comparative report on the effects of Green transition on working conditions.

A further example of incentives for reducing carbon emissions is the Belgian system of *écocheques* promoting green products by remuneration benefits. Such *écocheques* are some kind of remuneration free of taxes and social contributions and make it possible to receive ecologically labelled products and services as described in the Belgian report in this volume. Having in mind the aim of the ILO Convention no 95, this seems to be compatible with that instrument because such measures of “green” remuneration do not play a role as some kind of “forced shopping”.<sup>570</sup>

Member States can also try to incentivize the use of public transport by introducing any kinds of fare reduction for workers, as highlighted in the Belgian and the French reports of this book. Moreover, the Dutch system of promoting biking for employees can be seen in this light.

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<sup>567</sup> From the viewpoint of international law c.f. v. Schadewijk, *op. cit.*, 677-694.

<sup>568</sup> EMPL/1053-01/22 – EN.

<sup>569</sup> <https://socialsecurity.belgium.be/en/internationally-active/cross-border-telework-eu-eea-and-switzerland> (last call: 24 February 2025).

<sup>570</sup> See v. Schadewijk, *op. cit.*, 677, 693.

### III. Climate change consequences on Labour Law

Climate change is likely to jeopardize occupational safety and health,<sup>571</sup> as emphasised by the French and Spanish reports in this book, but also in the comparative overview in this volume on effects on working conditions. If global warming continues, people working outdoor will have to cope with growing problems by extensive heat or flooding with direct lethal risks. As far as we can see the member states have hardly adopted specific measures insofar. It seems that they rely on the functioning of the existing system based on the primary responsibility of the employer to adopt necessary measures for secure working conditions as it follows from the framework Directive 89/391/EEC.<sup>572</sup> However, the comparative report on effects on working conditions in this volume points clearly out that these rights are not sufficient. The new Spanish legislation after “DANA” in autumn 2024 on a limited right to leave due to environmental circumstances has in this respect added value. However, a refusal to work for environmental reasons “only” is missing in most of the compared countries (see *infra*).

This shows ultimately that it is a vital interest of employees to countervail climate change also because their working conditions will be affected directly.

### IV. The role of workers in environment protection

This leads to the fact that employees should have a voice in environment protection and especially in promoting the Green transition of the enterprises. The right to whistleblowing as a human right under the ECHR according to the case law of the ECtHR since the *Heinisch-Case*<sup>573</sup> is also protected, as already mentioned, by EU law under the whistleblowing directive<sup>574</sup> to be seen as an enforcement tool *vis-à-vis*, among the others, environmental duties of the European enterprises.<sup>575</sup> But this is predominantly a retroactive tool in the follow-up of violations. Preferably employees should be entitled to take part avoiding such misconduct. The right to refuse work as laid down e.g. in the Hungarian legislation or following from a general civil law clause like section 273 of the German Civil Code or like in cases

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<sup>571</sup> Nizzoli in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.), *op. cit.*, *Occupational Health and Safety System in the Green Transition Era: the Need for an Integrated Policy of Risk Prevention Protecting the External and Internal Environment*, 89-106.

<sup>572</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183/1.

<sup>573</sup> ECtHR from 21 July 2011 – 28247/08 (*Heinisch v. Germany*).

<sup>574</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJ 157/1.

<sup>575</sup> See for French law Casado, *Droit social à vocation environnementale*, 2024, pp. 373 et seq.; for Italian Law Zoppoli, *Environmental Whistleblowing: an Opportunity Not to be Missed*, in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.), *op. cit.*, pp. 311-328.

of risky work according to section 8 (4) of the European health and safety framework Directive 89/391/EEC could be a mosaic tile insofar. The Hungarian example of overtime duty in the case of preventing environmental disasters may be mentioned here as well.

The individual employee seems normally not to be the actor for promotion of greening undertakings. Nevertheless, Labour Law could encourage individual employees for that task as well. E.g. operational suggestion schemes could be fostered. The role of workers in environment protection should, moreover, be accompanied by further measures, especially for collective behaviour. Social partners play a significant role in this context (see 3, *infra*). The European Corporate Social Responsibility Directive (EU) 2022/2464<sup>576</sup> (CSR Directive) should be seen in this view as well. The Directive undertakings accountable for their supply chain and distributors not only to protect human rights but also to protect the environment. As the French and Spanish reports indicate, workers representatives can play an important role in this field.

## **V. Labour Law adjustments and compensation instruments**

As already highlighted, a tremendous challenge for Labour Law results from the massive changes deriving from the Green transition in production processes. Workplaces and working conditions will change radically. This may result in numerous mismatches. Therefore, skills adaption will be necessary. If the legal orders have not yet adopted specific rules on reskilling, general rules will apply. The Directive (EU) 2019/1152 on transparent and predictable working conditions<sup>577</sup> is little helpful insofar because it provides for free and, if possible, during the working time training only in case it is mandatory, without any specification. If not specified by national legislation, this could be a prominent topic for collective bargaining.

If undertakings are not available to reskilling, redundancies will be envisaged. This is a reason why for example the German Labour Law makes dismissal as *ultima ratio* conditional on professional training (section 1 (2) sentence 3 of the act on dismissal protection (*Kündigungsschutzgesetz*)). As described above (1, *supra*) it is a common interest of employers, employees and the labour market to avoid such

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<sup>576</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322/15.

<sup>577</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186/105.

redundancies. This is the reason why the idea of working time reduction allowance comes to mind like in the Polish example. The working time reduction allowance is aimed to withstand a temporary crisis by reducing working time and remuneration in order to protect occupation (in the employee's interest) and workforce (in the employer's interest) and to avoid unemployment (in the interest of the labour market). The German employment promotion legislation extended the scope of application of working time reduction allowance to cases of structural crisis like the German Reunification. The labour authority can promote adaptation measures in the view of transitioning to new occupation. The Polish examples of social protection during mining leave which entitles energy and lignite mining workers to leave with social benefits as described in the Polish report in this volume are similar. A new tool of training promotion has been introduced by the German legislator that allows the promotion of professional training on the job (normally in the responsibility of the employer) in order to cope with disruptive structural change like the Green transition to the advantage of employees, employers and society.<sup>578</sup> The Spanish temporary employment regulation measures have a similar approach.

Such measures could be connected with the rules on mass dismissal as laid down in Directive 98/59/EC.<sup>579</sup> According to article 2 of this directive, the employer must consult workers representatives before collective redundancies. This allows representatives to propose alternative solutions to collective dismissal. Furthermore, according to article 3 of the directive, in order to mitigate the consequences of redundancies through labour market measures, the employer must also inform labour authorities before dismissing employees.

## **C. The role of social partners**

The country reports as well as the comparative reports collected in this book, especially that on working conditions and working relationships, show that national legal systems have not yet provided many specific rules on fair and just Green transition. However, many of the beforementioned measures could be also adopted by social partners. An overview of their role in making the green transition just and fair seems to be desirable.

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<sup>578</sup> Gesetz zur Stärkung der Aus- und Weiterbildungsförderung, 17 July 2023, BGBl. I no. 191.

<sup>579</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225/16.

## I. Collective bargaining

In most of the countries, employers' organizations and unions enjoy freedom of collective bargaining in the sense that the possibility to regulate working conditions is not restricted as long as the collective agreements are compatible with national and EU Competition Law (*Albany*<sup>580</sup> and *FNV Kunsten Informatie en Media*<sup>581</sup>).

Therefore, employers' organizations and unions agree on measures concerning fair and just green transition in several branches at different bargaining levels, which is in principle legitimate as, for instance, according to Dutch law, as pointed out in the Dutch report. It should be stressed additionally that according to article 3 (3) of the EU Treaty the protection of the environment as fundamental goal.<sup>582</sup>

Collective agreements are an effective instrument for adapting working conditions to a greening economy. Reskilling seems to be an important issue as, for instance, in Italy, Spain or in the Polish coal mining industry.

Furthermore, collective agreements may promote the understanding of employees for sustainability aspects.<sup>583</sup> Sustainable employability seems to be of higher significance than "greening" collective agreements as the Dutch report explicitly points out, although indirect measures for sustainable economy appear more often in collective agreements. However, management and labour as collective bargaining partners have in parts also focused on avenues to a green economy. In France and Spain this is for certain topics even induced by law. Less traffic by fostering telework is for example one of these topics.

As the report on collective actors in this volume points out, it seems to be no problem, from a comparative view, if social partners pursue the goal of stopping or slowing down climate change as long as they regulate working conditions. Therefore, wage settings following this farer goal seem to be unproblematic as well. Thus, also the promotion of public transport for example through cheaper fares as described in the Dutch report seems to be a meaningful tool. As the French and Dutch experiences show, collective actors may also regulate green investments on retirement schemes. Furthermore, working time arrangements may be combined with rules restricting traffic. Of high significance seems to be the Dutch experience supporting solar panels. Another route to promote the green conversion of the economy could lead over the strengthening of workers

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<sup>580</sup> ECJ from 21 September 1999 - C-67/96 (*Albany*).

<sup>581</sup> ECJ from 4 December 2014 - C-413/13 (*FNV Kunsten Informatie en Media*).

<sup>582</sup> *Brameshuber*, DRdA 2024, 97, 101.

<sup>583</sup> *Brameshuber*, *op. cit.*, 98.



representatives or the establishment of specific environmental committees as it is possible for example in Spain.

Irrespective of the wide range of ideas, collective agreements in this field seem still to be exceptional.

As far as the social partners can act as climate keepers in the described manner a climate strike may be justified. The comparative report on collective actors in this book indicates that as long as trade unions aim at regulating working conditions a (so-called) climate strike seem to be lawful. A climate strike, in a broader sense of taking collective action against emissions or for parliamentary measures against climate change, would be more problematic because it would not refer directly to working conditions and the employers could dispose on the aim.<sup>584</sup> However, from a comparative view, this seems not be a unique point of view.<sup>585</sup>

## II. Workers involvement

As we have seen above (2 *supra*) social partners play a significant role in avoiding undertakings' environmental misconduct in order to mitigate or slowdown climate change. In this field, workers representatives could play a significant role,<sup>586</sup> although most of them do not seem to be interested yet.<sup>587</sup>

The information and consultation Directive 2002/14/EC<sup>588</sup> does not refer specifically to green matters. Nevertheless, Member States could foresee farer reaching entitlements for workers representatives since the directive sets only minimum standards. However, it is not common sense of the Member States to go beyond the directive. Besides the fact that works councils do not exist in all legal systems (although their tasks may be fulfilled by trade union representatives), some legislations simply ignore the role of workers' representatives in this field. For instance, in the Belgian system Green transition is equalized to any other social and economic matter. However, information and consultation rights may open the way to meaningful adjustments like the Spanish experience shows us. Some kind of "social plan" for job training and/or reallocation are known in several legal systems.

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<sup>584</sup> Cf. Mosler, *DRdA* 2024, 104-109.

<sup>585</sup> Escribano Gutiérrez, *Labour and Environmental Sustainability, Summary of Literature Reviews*, 2.

<sup>586</sup> Landa Zapirain, *What Implications for Collective Bargaining in the Management of "just Transitions" at the Workplace in Front of the Role of Works Councils?*, in: Ales/Addabbo/Curzi/Fabbri/Senatori (Eds.), *op. cit.*, pp. 69-88.

<sup>587</sup> Escribano Gutiérrez, *Labour and Environmental Sustainability, Summary of Literature Reviews*, 4.

<sup>588</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80/29.

By way of exception, in France, Germany and – to a certain extent – in Spain information and consultation include at least environmental measures with direct impact on employment. In The Netherlands, works council has to promote environmental care in the undertaking and are entitled to the right to advice on green issues, although to a limited extent. In the German Works Constitution Act an amendment from 2001<sup>589</sup> does not really focus on green transition, which was not yet a hot topic in those days. Since then, however, works councils are involved into occupational environment protection according to section 80 (1) no. 9 of the Act.<sup>590</sup> In this respect, works council can use some information and consultation rights as described in detail in the German report. The even more modern French amendments to the Labour Code address in a much more concrete way the process of green transition, recognizing to workers' representatives specific rights to information and consultation. In France the Social and Economic Committee (SEC) has environmental responsibilities since the introduction of the Climate and Resilience Act from 21 August 2021. The French report also points out that these rights are somewhat incomplete; however, the SEC may use its traditional instruments for supporting “green matters”.

Concerning restructuring of the undertaking and adjustment of workplaces, with specific reference substantive changes to working processes or labour contracts and anticipative measures in cases of threat to employment, workers representatives are entitled to information and consultation rights according to article 4 (2) of Directive 2002/14/EC. Unlike many of the legal systems reported in this book, the German one establishes some strong co-determination, so that the employer cannot implement the desired instruments without the consent of the works council. This extends to training (section 98 of the Works Constitution Act) and to substantive changes of the workplaces or the working process (section 91 of the Works Constitution Act). However, according to a very recent reform of the act<sup>591</sup>, the promotion of professional training in general is subject to consultation.

The right to codetermination provided by the Dutch Works Councils Act does not cover green issues at all.

Irrespective of how far reaching the rights of representatives, it is a qualitative key issue to secure their specific “green” knowledge, as pointed out in the comparative report on the role of collective actors in this volume. Against this background, it

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<sup>589</sup> Betriebsverfassungs-Reformgesetz, 23 July 2001, *BGBI.* I 1852.

<sup>590</sup> On Green transition under the task of environment protection for the works council, see Seidel, *AuR* 2024, 109-114.

<sup>591</sup> Betriebsrätemodernisierungsgesetz, 14 June 2021, *BGBI.* I 1762.

seems worth to discuss the establishment of Environmental Committees as proposed in that report. A problem to solve in this case would be the establishment of a conflicts rule with the competencies of works councils and trade unions.

### III. Social Dialogue

Social Dialogue is a dazzling term. It may cover the system of collective bargaining between management and labour in order to reach a collective agreement. It may also include less specific dialogue on topics of common interest besides regulating working conditions. The term social dialogue may, moreover, cover a tripartite dialogue between both sides of industry and State' institutions, predominantly the government. Social dialogue may happen on any thinkable level from global up to national industrywide level. Also, the European level is relevant insofar, as described in this volume by *Klengel* as well as by the comparative report on social dialogue, both in this volume.

For this contribution, for Social Dialogue we understand tripartism, having already investigated collective bargaining at an earlier stage (*a, supra*).

Some countries like Belgium, the Netherlands and Spain rely on a tradition of tripartite dialogue in their Collective Labour Law systems. This allows to give management and labour a voice in the policy making progress which may lead to less need for later Labour Law adjustments, although the Belgian report in this book points out that there is, nevertheless, little influence of such Social Dialogue on government's policy. In other cases, such social dialogue is introduced in specific crises scenarios, as in the case of the Polish electricity and lignite mining sector. This kind of social dialogue is proposed by the 2013 ILO Guide for improved governance.<sup>592</sup> The same 2015 ILO Guidelines for a just transition<sup>593</sup> have been developed by a tripartite expert group.

Other systems like the German have a more liberal view on the collective labour relations. This does not mean that there is no dialogue between the organisations of employers and trade unions with the government. But this kind of dialogue does not result into tripartite agreements. The other side of the coin is that public policy sets the framework arena in which the social partners have to bargain on working conditions. In our view, this should not be criticised as long as the social partners are able to make the Green transition a just and fair one. It should be pointed out,

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<sup>592</sup> ILO, National Tripartite Social Dialogue, An ILO Guide for improves Governance, 2013.

<sup>593</sup> ILO, Guidelines for a just transition towards environmentally sustainable economies and societies for all have, 2015.

nevertheless, that the more blank spots exist in the landscape of bargaining branches, and the less employees are covered by collective agreements, the less it is acceptable to entrust social partners with such issues.

All the more, it seems problematic to us where, like in Hungary, a stable bargaining system does not exist in which the consequences of the green transition may be tackled.

## D. Concluding remarks

It seems that the legislators have forgotten the workforce as an important stakeholder of Green transition. This field is mostly not specifically addressed by statutes and, therefore, the general Labour Law rules apply, irrespective if these can meet the new challenges.<sup>594</sup> Legislation has left the field predominantly to the social partners.<sup>595</sup> However, the comparative report in this volume on the effects of green transition on working conditions highlights that there are some aspects that could and should be regulated in general, e.g. mandatory training on sustainability questions or incentives for internal flexibility measures to avoid redundancies.

Some examples from the different countries indicate that the social partners focus in the first place on making the Green transition a fair and just process rather than promoting the Green transition through labour law instruments themselves (see as well *Klengel's* report in this book). This shows the importance of collective bargaining for “greening” Labour Law. The stronger the collective bargaining system, the higher its potential to make the Green transition a fair and just one as it happened in the Polish mining sector.

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<sup>594</sup> For a detailed overview of German law see Däubler, *Klimaschutz und Arbeitsrecht*, 2023.

<sup>595</sup> See Escribano Gutiérrez, *Labour and Environmental Sustainability, Summary of Literature Reviews*.

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