

Sustainability as Solidarity Unbound

Labour Rights and Collective Voice in the United Nations Sustainable Development Goals and the European Union

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2.1 INTRODUCTION

This chapter begins by considering the concept of ‘solidarity’, which I argue can and should be promoted in a way that is ‘unbound’ in terms of both geography and temporality. I offer an inclusive understanding of its dimensions, including acting for and with others, involving empathy rather than merely shared identity. I also explain how operationalising solidarity can require political and social action, including collective worker representation and voice. In this context, I detect connections between solidarity and sustainability, observing that realisation of the latter entails cross-border intra- and inter-generational commitments as well as activity by civil society, including trade unions. The chapter then goes on to examine the United Nations General Assembly (UNGA) Resolution on the 2030 Agenda and the seventeen Sustainable Development Goals (SDGs) adopted in 2015,¹ scrutinising evidence of engagement with solidarity but also recognising the limitations of UN texts in this respect. The chapter continues by itemising how the European Pillar of Social Rights 2017 shares many of the aspirations set out in the 2030 Agenda, but also displays comparable tensions between economic and social objectives. This part considers how the Pillar (and indirectly the SDGs) is being translated into the European Commission’s new policy agenda for sustainability. It emerges that there is potential for unbounded solidarity between those at work to be actualised through both soft and hard EU law, and that this initiative is gaining momentum.

2.2 UNBOUNDED SOLIDARITY AND SUSTAINABILITY: CONCEPTUALISATIONS AND CONNECTIONS

Here I briefly explore the different ways in which two controversial ideas have been conceptualised: ‘solidarity’ and ‘sustainability’. I reject an exclusive or ‘bounded’

¹ Transforming Our World: The 2030 Agenda for Sustainable Development, UNGA Res. 70/1.

vision of ‘solidarity’, arguing for its inclusivity and indeed recognition of its transnational dimensions. I argue that this approach can be connected to a holistic understanding of ‘sustainability’, which suggests that it is legitimate to be concerned with an inclusive distributive justice that entails solidarity within a generously defined ‘world of work’, but also the broader community, economy and environment in which work is carried out. The intersections between economic, environmental and social pillars of sustainability can in this way be acknowledged, alongside the ways in which they extend beyond the borders of any given country. A sustainability approach also prompts attention to concerns beyond our contemporary situation, prompting us to look to the future effects (of what happens now) on people in a later time and even another place. In this context, I identify the potential significance of civil society and trade unions here as political actors. In so doing, I seek to explain why it is imperative that there be respect for labour standards, including protection and promotion of collective worker voice beyond national boundaries, thereby enabling a response to both present and future concerns at local, national, regional and international levels. This would be solidarity ‘unbound’.

2.2.1 Conceptualising Solidarity as ‘Unbound’

Solidarity can be understood in a variety of ways. An inclusive idea of solidarity does not merely cover a particular community or those who share a particular identity of ethnicity within a region, nation or federation. It can be understood in terms of empathy with others and action for them as much as for one’s personal gain. The alternative is to protect as solidarity (or fraternity) merely ‘clubs’ oriented towards self-interest. I realise that I am pushing at the boundaries of this idea, since most writing on even ‘inclusionary’ and redistributive solidarity examines how this operates at the level of the nation state (Banting and Kymlicka 2017) or a federation (Stepan 1978), or even within a regional organisation such as the European Union (EU) (Bauböck 2017; Sciarra 2018). For example, Veronica Federico (2020) talks about how solidarity has a ‘perimeter’, ostensibly at the EU border.

Banting and Kymlicka (2017: 6, 13), in their introduction to an impressive edited collection on *The Strains of Commitment: The Political Sources of Solidarity in Diverse Societies*, insist on the ‘bounded nature of solidarity’, which is ‘societal in scope’. They insist that solidarity is ‘inextricably linked to an ethic of shared social membership, and in the contemporary world of nation-states, nationhood is the default boundary of social membership’ (Banting and Kymlicka 2017: 23).

However, our ideas of ‘social membership’ no longer only operate at the level of the nation state or even of regional entities such as the EU. Society may be geographically and temporally more extensive than this. We live in a global world in which much of what is done by a government or a corporate entity in one country can affect another (Sjåfjell et al. 2020). This is evidenced by current problems of

climate change (Gear 2014), but also global supply or ‘value’ chains that can promote problematic conditions of work throughout the globe (Novitz 2019). Marx and Engels (1848) once exhorted workers of the world to ‘unite!’. While this might be hard to achieve, the ability to act in solidarity to achieve common goals, whether in one country or another, or whether formally recognised as a ‘worker’ or not, has become a matter of pressing concern (De Stefano 2017).

Solidarity unbounded need not be mere ‘humanitarianism’, as suggested by Banting and Kymlicka (2017: 6), but can be viewed instead as a collective insistence on human rights and other basic values (such as those regarding social sustainability outlined below) that have traction across national borders. Moreover, it may be inappropriate to think of society as merely temporally limited to a particular generation. What has happened to past generations shapes the society of the present, just as the decisions made now regarding work, its conditions and remuneration affect future generations. A broader view of society as less time-bound also enables a reconceptualisation of solidarity.

Leaving to one side their insistence on geographical (and temporal) borders, Banting and Kymlicka (2017: 33) do provide helpful observations regarding the role of political actors and action: ‘Political agents are necessary both to carry the idea of solidarity into politics and to press for its subsequent institutionalization.’ This is not a passive but an active process. They conceive of solidarity as a political mission to represent an entire group, not rooted in class or national identity, which is also indicative of this idea’s deep connection with empathy for others who engage in a common project. My point of departure is that this empathy can be greater than Banting and Kymlicka conceive in what is a global society.

Solidarity is inherently a collective and dynamic enterprise, which means that it requires more than individual self-interest, a reason that the very idea is in disfavour among libertarians who think that ‘we *can’t have it and shouldn’t want it*’ (Levy 2017: 111; emphasis added). My concern also lies with addressing how markets and current transnational and national legal market structures (intertwined) require forms of collective action. Roberto Frega (2019: 4) considers that solidarity demands ‘collective intentionality’ and ‘social involvement’. He is concerned more with ‘acting with’ others as a social practice than ‘acting for’ but recognises the two as intertwined (Frega 2019: 18). This makes sense insofar as acting collectively involves empathetic connections, in which we seek to understand the concerns and needs of others, just as we jointly seek to pursue our own interests.

2.2.2 *Connecting Sustainability to Solidarity*

‘Sustainable development’ emerged as a global concern in the 1970s (Pieraccini and Novitz 2020). In this context, environmental and economic dimensions have tended to dominate, but the social aspect has now also been widely and increasingly recognised as a third ‘pillar’ of sustainability. The idea is to promote all three facets

of sustainable policymaking in durable ways that moderate the temptations of short-term capitalism (Clark et al. 2018; Griebler and Littig 2005). Further, each facet of sustainability (economic, environmental and social) is interrelated and co-dependent, rather than neatly severable, which also reflects workers' relational attachments not only to their social community but also to the markets in which they participate and their ecological environment (Seck 2019: 158).

For some time now, there has been recognition that action on sustainability is a legitimate subject of transnational political action, whether in the EU or through UN structures, such as the UN 1972 Stockholm Declaration of Principles for the Preservation and Enhancement of the Human Environment² or the 1992 Rio Declaration on Environment and Development.³ If solidarity is only a nationally bounded concept, then it would seem to be unlinked to sustainability, but that exclusion seems both problematic and unnecessary.

Sustainability inherently involves fraternity, empathy and collective action across spatial and temporal borders. This is because policies based on sustainability aim to meet 'the needs' of present and future generations.⁴ Present generations are to be protected through application of agreed precepts of intra-generational redistributive justice, while inter-generational justice for future generations is to be achieved through durable environmental, economic and social policies that preserve the planet and all the sustenance of life that it can provide. From this source comes the language of 'planetary boundaries' (French and Kotzé 2021; Raworth 2012, 2017). The discourse of (and evidence base for) sustainable policymaking regards the actions of actors all over the world (whether economic, environmental or social) as interconnected, having impacts across state or other territorial borders.

There are potent sustainability concerns that connect to work in terms of both intra- and inter-generational justice. The economic harms that occur when labour is paid an insufficient amount to meet the basic costs of living are obvious. For example, exclusion from the basic coverage of employment law, providing minimum wages and protection from dismissal, can have devastating personal effects on the persons concerned (which impact on human rights to food, water, housing, health and so on). This is the experience of a growing number of precarious workers (Kenner et al. 2019; McCann and Fudge 2017). Further, low wages and poor working conditions have been linked to systemic poverty and social forms of deprivation, as well as societal breakdown (Carr et al. 2018; Sissons et al. 2017).

Collective bargaining has the potential to deliver distributional justice in terms of wage levels for current workers, enabling the satisfaction of certain essential needs, such as food, housing and other aspects of social welfare and socio-economic rights.

² Declaration of the United Nations Conference on the Human Environment, UN Doc. A/Conf.48/14.

³ Rio Declaration on Environment and Development, UN Doc. A/Conf.151/26.

⁴ Report of the World Commission on Environment and Development; Item 83(e) of the Provisional Agenda, UN General Assembly, 42nd Session, A/42/427. New York, 1986.

Also, terms included in collective agreements can prevent long working hours or poor health and safety standards, affecting the ability to provide reproductive labour outside the workplace, which ensures the well-being of the elderly and children – our present and future generations (Zbyszewska 2018). A lack of active collective voice to challenge employer practices can mean that those who sell their labour, who are also often residents in the locality in which they work, lack the ability to challenge poor environmental practices, which then may go on unabated with profound consequences to them in their homes and nearby (Novitz 2020).

Trade unions are known for promoting gradual ‘just transition’ to reconcile economic, environmental and social concerns when they might seem to conflict, offering negotiated pathways to effective and durable change (Doorey 2017). They have prompted state and employer funding to assist workers affected by changes to the structure of production and delivery of services, which respond to environmental or other needs. Indeed, ‘the imperatives of a just transition of the workforce and the creation of decent work’ were acknowledged in the preamble to the 2015 Paris Agreement.⁵ On a broader scale, just transition also requires careful consideration of distribution of investment and influence between actors in the global North and the global South, including collaboration between trade unions in these locations (Stavis and Felli 2015). Notably, the International Labour Organization (ILO) has produced its own ‘Guidelines for a Just Transition’, which makes particular provision for social dialogue and collective bargaining in processes of adjustment.⁶ Moreover, in the context of global inequalities and the need for global solidarity, which has been powerfully exposed by the COVID-19 pandemic, the International Labour Office (the ILO secretariat) has stressed the importance in the longer term of promoting labour standards, including access to collective worker voice in the ‘world of work’.⁷ Notably, this is a term that has been devised to offer far-reaching protections potentially including ‘persons working irrespective of their contractual status’, and coverage of ‘all sectors, whether private or public, in both the formal and informal economy, and whether in urban or rural areas’. An example of this broader extension of solidarity can be found in Article 2 of the ILO Convention No. 190 on Violence and Harassment recently adopted in 2019, which also envisages collective bargaining for these persons.

Sustainability then seems an important emergent species of international dynamic political solidarity amongst those called (and those who labour but are not called) ‘workers’ for the greater social, environmental and economic benefit of all. Intra-generational justice is called for, which entails not only empathy beyond

⁵ For the text of the UN Paris Agreement, see https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁶ ILO, *Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All* (Geneva: ILO, 2015), available at: www.ilo.org/wcmsp5/groups/public/-ed_emp/-emp_ent/documents/publication/wcms_432859.pdf.

⁷ See www.ilo.org/global/topics/coronavirus/lang-en/index.htm.

those working at the national level but recognition of the ways that different labour markets globally interconnect. A sustainability perspective also prompts concern with the experiences of all those in a broader ‘world of work’. Inter-generational justice encourages attention to be paid to the future implications of contemporary working practices, whether social, economic or environmental, or most probably, a combination of all three. Moreover, collective action in the sense of enabling representative worker voice and collaboration across national borders (given the transnational activities of employers and their global effects) becomes vital in this dynamic vision of sustainability. The connections between sustainability and ‘solidarity unbound’ are readily apparent.

2.3 UN SDGS AND THE CALL FOR SOLIDARITY

A call for broader solidarity emerges from the UN 2030 Agenda, being evident in the preamble and the seventeen SDGs but also the accompanying targets and indicators. The preamble makes clear that the economic, environmental and social pillars are to be regarded as ‘integrated and indivisible’ and that ‘no one will be left behind’, thereby stressing simultaneously the importance of a holistic approach to sustainability and the necessity of inclusivity. The preamble commits to ‘respect, protect and promote’ universal human rights established under international law,⁸ with particular reference to gender equality and the treatment of migrants.⁹ It is harder to detect a strong commitment to collective worker representation and action, but certainly the notion of a ‘global partnership’ encourages solidarity that is not to be limited by national borders. The difficulty may be that the emphasis placed by Agenda 2030 on economic growth may limit the potential efficacy of such solidarity.

2.3.1 Evidence of an Unbounded Solidarity Approach in the SDGs

Reference is made repeatedly throughout the 2030 Agenda to ‘just and inclusive societies’, the concept of inclusion being repeated throughout. The aim seems to be the broad welfare of ‘people’ globally. For example, SDG 1 is to ‘end poverty in all its forms *everywhere*’ (my emphasis). Although this does not include in the target or indicators reference to people’s working lives, as was the case in the amended First Millennium Development Goal, SDG 1 speaks of a need for redistributive justice across the world, including that of work. This is reflected in the fact that the ILO plays a key role in assessing SDG indicators 1.3.1 and 1.a.2 (Frey & Naughton 2016: 5–6).

Also promising in terms of inclusivity is SDG 5, which seeks to ‘achieve gender equality and empower all women and girls’, SDG target 8.5 addresses discrimination

⁸ UN 2030 Agenda n. 1, for example, paras 8 and 19.

⁹ *Ibid.*, paras 20 and 29.

and target 8.7 seeks to prevent forced and child labour. SDG target 8.8 makes provision for protection of the most vulnerable workers ('all workers'), including migrant, female migrant and precarious workers. The vulnerability of young workers is recognised in target 8.6. More broadly, SDG 8 can be linked to ILO norms regarding foundational aspects of 'decent work', as is reflected in its title.¹⁰

Target 8.10 envisages strengthening 'the capacity of domestic financial institutions', while target 8.a envisages aid for trade and technical assistance for trade for developing (especially the least developed) countries. In broader global redistributive terms (aiming at intra-generational justice), SDG 10 addresses reduction of inequality within and between countries and refers to social and economic inclusion and outcomes, including wages in target 10.4 and labour share of GDP in the attached indicator. These ambitions can also be linked to other social objectives, such as the need to end hunger (SDG 2), promote health (SDG 3) and provide education (SDG 4).

Notable environment objectives include protection of the 'planet' by goals and targets set concerning agriculture (SDG 2), water (SDG 6), energy (SDG 7), climate change (SDG 13), oceans and seas (SDG 14), as well as ecosystems and biodiversity on land (SDG 15). 'Prosperity' can also be sought through economic growth and employment (also under SDG 8), industry, innovation and infrastructure (SDG 9); as well as working towards sustainable cities and communities (SDG 11), and responsible consumption and production (SDG 12).

A universal right to access to justice is highlighted in SDG 16, which is supplemented by targets concerned with representation and participation in institutions. SDG target 16.6 aims to '[d]evelop effective, accountable and transparent institutions at all levels', while target 16.7 seeks to '[e]nsure responsive, inclusive, participatory and representative decision-making at all levels'. SDG 16.10 requires protection of fundamental rights.

This chimes with SDG 17, which seeks to promote a 'Global Partnership for Development' and 'Policy Coherence'. All countries have a role to play at a national level in implementing the SDGs and to assist each other. There is an expectation that this will entail collaborative efforts by states, such that they will be aided by international organisations (like the ILO) and regional institutions (like the EU) to ensure policy coordination, with particular attention to the needs of developing countries.¹¹ Further, SDG targets 17.16 and 17.17 recognise that various private

¹⁰ ILO Declaration on Social Justice for a Fair Globalization, International Labour Conference, 97th Session, Geneva, 2008.

¹¹ For example, altogether the ILO is custodian for 14 SDG indicators; see <https://ilostat.ilo.org/topics/sdg/#:~:text=%20As%20custodian%20for%2014%20SDG%20indicators%2C%20the,producing%20high-quality%20data%20on%20SDG%20labour...%20More%20>. See also ILO Centenary Declaration 2019, Article IV(F). For the EU current strategy, see Commission Staff Working Document, *Delivering on the UN's Sustainable Development Goals – A Comprehensive Approach*, Brussels, 18 November 2020, SWD (2020) 400 final.

‘stakeholders’ can and should act as partners in this process, including civil society, such as the representatives of those at work, presumably including non-governmental organisations (NGOs) and trade unions (as recognised in 16.10.1). This is again an inclusive approach, which speaks of the potential for global solidarity and action of various kinds, around work and other issues.

2.3.2 *Challenges to Inclusive Solidarity in the Sphere of Labour Rights*

Nevertheless, the capacity of the SDGs to promote inclusivity of the kind advocated here is limited in various respects. For example, SDG 8 places considerable emphasis on growth and innovation, while omitting any express endorsement of collective worker representation or action that might constrain employers’ profitability. This may reflect the dominance of business interests in procedures established for drafting and adoption of the SDGs (Pingeot 2014).

SDG 8 begins by seeking to ‘promote sustained, inclusive and sustainable economic growth’ and only after that, ‘full and productive employment’ and finally ‘decent work for all’. The all-encompassing aspect of the final aspect of the goal (being ‘for all’) is encouraging, but the priority given to concerns other than ‘decent work’ may be a matter for concern.

Economic objectives are emphasised in target SDG 8.1: ‘sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries’. Target 8.2 seeks to achieve ‘higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors’. The accompanying indicator SDG 8.2.1 attempts measurement of the ‘[a]nnual growth rate of real GDP per employed person’, which looks suspiciously like the commodification of labour,¹² placing an implicit constraint on collective action that might constrain employer profits. Notably, the problematic aspects of this kind of target for economic growth was flagged in the *UN Sustainable Development Outlook 2019*,¹³ which observed that ‘highly unequal societies tend to have lower union density and coverage and former employment protections ... which could be linked to the argument that the high concentration of political power allows the rich to impose their public policy preference on the rest of society’. Recovery from the pandemic and the pressing need to attend to environmental objectives might also call the feasibility of a 7 per cent growth rate into question (Wells et al. 2020: 33–34 citing Kallis 2011).

¹² The first ILO Constitution to be found in Part XIII of the Treaty of Versailles 1919 stated in Section II (Article 427) that ‘labour should not be regarded merely as a commodity or article of commerce’; repeated in Article I(a) of the ILO Declaration of Philadelphia 1944.

¹³ UN Department of Economic and Social Affairs, *Sustainable Development Outlook 2019: Gathering Storms and Silver Linings* (Geneva, UN: 2019) at 25.

The other matter for concern may be that there is no explicit mention of a right to strike in any of the SDGs or accompanying targets. There is only reference to trade unions and collective bargaining in indicators, adopted subsequently.¹⁴ The UN Special Rapporteur Report in 2018 was adamant that a right to strike as a facet of freedom of association must be understood to be included in ‘fundamental freedoms’ referred to in SDG 16.10.¹⁵ That would certainly be consistent with a recent statement of the UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights, which states that the right to strike is ‘corollary to the effective exercise of the right to form and join trade unions’.¹⁶ This raises questions as to whether the SDGs envisage (as part of any global partnership) effective cross-border collective bargaining. Such bargaining should also entail a right to engage in solidarity strikes, which have been advocated as vital to regulation of the current global market economy (Bogg and Ewing 2014; De Stefano 2017: 202–205).

2.4 SUSTAINABILITY AND SOLIDARITY IN THE EU: THE PILLAR, LEGISLATIVE CHOICES AND POLICY PLANS

Subsequently, an intertwined sustainability and unbound solidarity agenda, evident in part in the SDGs, has seemingly shaped the content of the European Pillar of Social Rights, as well as subsequent Commission policy-making and legislative initiatives. It is suggested here that EU developments indicate some acceptance of ‘action for’ the vulnerable as well as ‘action with’ others to secure inter- and intra-generational justice. However, these initiatives reveal a conflicted approach, which is still subject to the market pressures evident in SDG 8. Nevertheless, recent steps taken to promote solidarity as sustainability indicate a possible shift from a soft-law to a hard-law paradigm in the EU context, despite the challenges that this may present.

2.4.1 *The European Pillar of Social Rights: Encouraging Inclusive Solidarity and Collective Voice?*

The preamble to the Interinstitutional Proclamation of the European Pillar of Social Rights¹⁷ refers in its first paragraph to Art. 3 of the Treaty on the European Union (TEU), which states that ‘the aims of the Union are inter alia to promote the

¹⁴ See indicators SDG 8.8.2 and SDG 16.10.1 adopted in 2017.

¹⁵ *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*. Item 74(b) of the provisional agenda, General Assembly, 73rd Session, A/73/279. New York, paras 6 and 58, and see also paras 87–89.

¹⁶ ‘Freedom of Association, Including the Right to Form and Join Trade Unions’, Joint Statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, 23 October 2019, E/C.12/2019/3-CCPR/C/2019/1.

¹⁷ Interinstitutional Proclamation on the European Pillar of Social Rights 2017/C 428/09, 13.12.2017, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017C1213\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017C1213(01)&from=EN).

well-being of its peoples and to work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment' (in other words, all three pillars recognised as key facets of sustainability, discussed above). The term 'sustainable' is repeated again in paragraphs 7 and 11 of the preamble, with the latter setting out the ambition to 'build a more inclusive and *sustainable* growth model by improving Europe's competitiveness' (my emphasis).

So, the rhetoric of sustainability is present in the Pillar, but is this conceived in terms of solidarity that is 'bounded' or 'unbounded'? One promising sign is paragraph 15 of the preamble, which indicates an inclusive approach to the scope of coverage of employment law. This states that, 'Where a principle refers to workers, it concerns all persons in employment, regardless of their employment status, modality and duration.' Similarly, Chapter 1 of the Pillar, engaging with 'Equal opportunities and access to the labour market', reflects concerns with gender and racial equality evident in SDGs 5 and 8. In Chapter 2 concerning 'Fair working conditions', Principle 5 states that, 'Regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training.' There is still arguably here a requirement to be a 'worker', not necessarily a more wide-ranging inclusion of protection for all those in the 'world of work', as envisaged in ILO Convention No. 190 on Violence and Harassment.¹⁸ However, this phrasing is suggestive at least of the extension of protection to a wider range of different forms of 'work' and 'employment'.

Also evident in the text of the Pillar is the importance of collective voice and action, which as we have seen above is not as prominent in the UN 2030 Agenda. For example, paragraph 20 of the preamble states that 'social partners at all levels have a crucial role to play in pursuing and implementing the European Pillar of Social Rights, in accordance with their autonomy in negotiating and concluding agreements and the right to collective bargaining and collective action. Principle 8 of the Pillar likewise recognises 'social dialogue and involvement of workers', seeking to promote access to information and consultation of collective representatives at the European and national levels, as well as collective bargaining and collective action.

However, just as there are potential conflicts evident from SDG 8 between decent work objectives and those relating to economic growth, so too there are statements in Principle 5 that detract from inclusive protection of workers and mechanisms for voice otherwise acknowledged in the Pillar. For example, flexibility is protected in paragraph (b) to enable 'employers to adapt swiftly to changes in the economic

¹⁸ Available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.

context' and under paragraph (c), '[e]ntrepreneurship and self-employment shall be encouraged'. This does not seem likely to tame the explosion of use of precarious work (Kenner et al. 2019), which has further expanded in the pandemic (Adams-Prassl et al. 2020).

However, while the Pillar was initially intended as a vehicle for managing social policy for those EU Member States who have adopted the Euro (Garben 2019: 110), it has become a key reference point more generally, gaining what could be regarded as traction in hard law. Various commentators have linked its terms and its influence to promotion of a broader social sustainability agenda in the EU (Bednarowicz 2019: 623; Polomarkakis 2019). An example was the adoption of the 2019 Directive on Transparent and Predictable Working Conditions,¹⁹ the Commission in its initial Proposal for the Directive having relied explicitly on Principles 5 and 7 of the Pillar.²⁰ In this sense, the Pillar has gone beyond a mere soft-law statement to the instantiation of sustainability (and solidarity) objectives in hard law. However, those initiatives have, so far, been limited in their scale and scope.

For example, despite a more ambitious ambit stated in recital (8) of the preamble, Article 1(2) of the 2019 Transparency Directive limits its application to the situation where there is 'an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice'. In other words, the Directive does not cover all those 'in the world of work', such that those who are the most vulnerable may remain outliers unprotected in the EU labour market (Bednarowicz 2019; Novitz 2021).

2.4.2 *A New Explicit Sustainable Policy Strategy in 2020?*

On appointment as President of the European Commission, Ursula von der Leyen made clear her commitment to a multifaceted sustainability agenda, setting out her stall for a 'just transition to a "future-ready economy"' (von der Leyen 2019: 5). The Commission proposal for 'The European Green Deal', published in December 2019, makes reference to 'social dialogue' (but not collective bargaining and action) as a means to facilitate such changes. This is arguably partially but not wholly compliant with the ILO 2015 Guidelines on Just Transitions,²¹ as observed by Sebastian Sabato and Boris Fronteddu at the European Trade Union Institute (2020). That statement of intent from the Commission was followed in January 2020 by a Commission Communication on 'A Strong Social Europe for Just

¹⁹ Directive 2019/1152/EU on transparent and predictable working conditions in the European Union OJ L 186/105.

²⁰ COM (2017) 797, 2.

²¹ Commission Communication, 'The European Green Deal' COM (2019) 640 final 11.12.19, 16 and 23.

Transitions’,²² an interesting choice of language which conjures up visions of past collective worker voice engagement with environmental and other sustainability objectives.

However, the Communication’s content is more restrictive than its title might suggest. It begins with recognition of the UN SDGs and a commitment to their integration in the EU social model and social policy.²³ However, Europe is still to be ‘a vibrant hub of innovation and competitive entrepreneurship’. In other words, economic growth remains a priority, as was envisaged under SDG8 and Principle 5 of the Pillar. The motivations for ‘just transitions’ are not only said to be environmental (although climate is understandably a key factor) and may be triggered by digitalisation and demographic change.²⁴ The Commission does recognise that sustainability is not only economic and environmental but is also social and important for the world of work. With an emphasis on inclusive labour markets, support is planned for: (1) training; (2) professional mobility and ‘economic reconversion’; (3) job creation; (4) fostering equality as part of a Sustainable Europe Investment Plan for Green New Deal; (5) fair working conditions; and (6) social protection.

This is neither a straightforward ILO ‘decent work’ plan, nor does it easily fit with the more inclusive and bold aspects of the UN SDGs. Migration is avoided as an issue, for instance, and so this policy proposal suffers with reference to SDG targets 8.7 and 8.8. Moreover, social dialogue and collective bargaining only receive a brief and late mention under ‘fair working conditions’.²⁵ This is curious, given the long tradition of an active role for trade unions in just transition negotiations around green adjustments and their recognition in the ILO ‘Just Transition’ Guidelines.²⁶ This Communication has arguably become more notable on the subject of proposals it envisaged for digital workers and minimum wage standard-setting than a touchstone for sustainability and solidarity.²⁷ Nevertheless, it is interesting that these initiatives are still pursued, as anticipated in the Communication, despite the effects of COVID on the EU economy and working conditions.²⁸

At the end of June 2020 consultation was launched in respect of collective bargaining for the self-employed in the platform economy, as part of the wider Digital Services Act Package.²⁹ On 9 December 2021, the Commission published a *Proposal for a Directive on improving working conditions in platform work*,³⁰ together

²² Commission Communication, ‘A Strong Social Europe for Just Transitions’ COM (2020) 14 final 14.1.20.

²³ *Ibid.*, 3.

²⁴ *Ibid.*, 2.

²⁵ *Ibid.*, 9.

²⁶ See n. 6 above.

²⁷ Commission Communication nn. 22, 8–9.

²⁸ Cf. Commission Communication, ‘Coordinated Economic Response to the COVID-19 Outbreak’ COM (2020) 112 final, 13.3.20.

²⁹ See https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1237.

³⁰ COM(2021) 762 final, 9 December 2021.

with ‘Guidelines on the application of EU competition law to collective agreements regarding the working conditions of self-employed persons’. Those Guidelines may enable collective bargaining for those who are ‘solo-self-employed’, including platform workers, although certain definitional issues and thresholds still have to be addressed.

Also promising may be the more concrete and controversial Commission proposal for a Directive on adequate minimum wages published in October 2020.³¹ This proposal seems to have been formulated in response to opposition to EU intervention on this issue by Scandinavian and Nordic unions that see statutory regulation as problematic, when collective bargaining is their way of ensuring adequate wage-setting.³² The Commission has sought to be sensitive to competence constraints in Art. 153(5) of the TFEU, which excludes from social policy competence, ‘pay, the right of association, the right to strike or the right to impose lock-outs’. The proposal is based on Art. 153(1) of the TFEU on ‘working conditions’ (‘within the boundaries of subsidiarity and proportionality’).³³ The idea is that, as the proposed directive does not set pay and only promotes collective bargaining, competence issues are evaded. There is a positive duty on member states to promote collective bargaining in what would be Article 4, although this is limited to wage-setting.

The proposed Directive looks to promote capacity (including collective capabilities) and to encourage ‘constructive, meaningful and informed negotiations’. Where collective bargaining coverage is less than 70 per cent, the member state is to establish an ‘action plan’ to encourage collective bargaining (either by law after consultation with the social partners or by agreement with them). Public procurement could be based on compliance with wages set out in collective agreements for the relevant sector and geographical area under Article 9, bypassing what were the apparent limitations of *RegioPost*,³⁴ as discussed by contributors to Albert Sanchez-Graells’ edited collection (2018).

Reporting obligations would also arise under the proposed Article 10, for example on the rate of collective bargaining coverage. Moreover, implementation may be undertaken by the social partners under Article 13. This proposed instrument is not stuck in a consultative ‘social dialogue’ frame, which was all that seemed to be envisaged on a bare reading of the Commission Communication on ‘A Strong

³¹ Commission Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union COM (2020) 682 final, 28.10.20.

³² Although it should be noted that they remain unconvinced by the terms of the proposal, as is evident in their joint statement 23.11.2020, EU minimum wage directive undercuts Scandinavian model (euobserver.com).

³³ See n. 31, 6.

³⁴ Case C-115/14 *RegioPost GmbH & Co. KG v. Stadt Landau in der Pfalz (RegioPost)*, judgment of 17 November 2015.

Social Europe for Just Transitions’, but arguably reverts to the stronger norms set out in Principle 8 of the European Pillar of Social Rights.

The proposal might also be applauded for acknowledging the benefits of having wage-agreements tailored to ‘the needs and conditions of particular sectors and occupations’.³⁵ Also, as Torsten Muller and Thorsten Schulten have observed, this is a model where strong collective bargaining is ‘no longer viewed as impediments to “flexibility” and competitiveness’.³⁶ This is certainly an improvement on the Commission Communication on the ‘New Industrial Strategy for Europe’, which failed to mention social dialogue, collective bargaining or trade unions.³⁷

However, what is missing in the proposed Directive is any reference to the prospect of lawful industrial action, which should be present for meaningful negotiations (as opposed to ‘collective begging’). Collective bargaining across national borders, and related solidarity action, is not contemplated at all in the Commission proposal. This seems out of touch with the ways in which European business works, both across EU Member State national boundaries and globally. In that sense, the profitability of EU commerce is still implicitly prioritised (cf. Sjøfjell et al. 2020). Nevertheless, the Council has now endorsed the key aspects of this Proposal,³⁸ and shows no sign of a desire to address this omission.

In November 2020, a Commission Staff Working Document has set out in a more detailed way how the EU intends to deliver on the SDGs, offering ‘a comprehensive approach’.³⁹ This is interesting insofar as it makes an explicit direct link between the Pillar and a sustainability agenda, stating for example that: ‘the European Pillar of Social Rights is the EU’s social strategy to make sure that the transitions to climate-neutrality, digitalisation and demographic change are socially fair and just’; and that ‘[t]he objectives set by the SDGs . . . are being pursued through the implementation of the Pillar’.⁴⁰ It is evident that reports on SDGs are to be incorporated into country reports in the European Semester and that they will also be linked to the targets of EU funding programmes both within the EU and externally.⁴¹ There is also recognition in this document of the need for ‘a holistic and cross-sector policy approach’,⁴² with the Commission appreciating that it also has a global role in promoting sustainability objectives in international organisations and through its

³⁵ <https://uklabourlawblog.com/2020/11/12/the-eu-minimum-wage-directive-a-missed-opportunity-by-zoe-adams/>.

³⁶ www.socialeurope.eu/minimum-wage-directive-yes-but.

³⁷ Commission Communication, ‘A New Industrial Strategy for Europe’ COM (2020) 102 final, 10.3.2020.

³⁸ Employment, Social Policy, Health and Consumer Affairs Council, 6–7 December 2021: Main results, www.consilium.europa.eu/en/meetings/epsco/2021/12/06-07/.

³⁹ Commission Staff Working Document, ‘Delivering on the UN’s Sustainable Development Goals – A Comprehensive Approach’ SWD (2020) 400 final 18.11.2020.

⁴⁰ *Ibid.*, 6 and 7.

⁴¹ *Ibid.*, 7–9.

⁴² *Ibid.*, 11.

trade and aid connections.⁴³ In this, the Communication builds on the Commission's earlier EU Action Plan on Human Rights and Democracy, which had also seized on the UN SDGs as an opportunity, seeing 'the commitment to leave no one behind' as 'a call to enhance the human rights of all, without discrimination on any grounds' as vital for EU internal market and external relations policies.⁴⁴ Moreover, '[i]mplementation of SDGs is not only a matter for public authorities but requires the full participation of civil society', and the 2020 Working Document makes clear that this involves the 'social partners', namely employers and trade unions.⁴⁵

2.4.3 *The 2021 Action Plan and 'Porto Social Commitment'*

The aspirations set out in Commission Communications during 2020 have now been incorporated, albeit in a modest way, into the European Pillar of Social Rights Action Plan issued on 4 March 2021. The Plan begins by stating the Commission's commitment to sustainability and implementation of the UN SDGs, which are to be reflected in various social measures and their funding.⁴⁶ The Plan further contains sparse but arguably still significant commitments to promote collective bargaining, both from the EU (in relation to the proposed Directive on an adequate minimum wage) and from Member States and social partners.⁴⁷ In particular, an initiative to consider collective bargaining for 'self-employed workers' planned for the final quarter of 2021 is a potentially important innovation in terms of the inclusive expansion of solidarity.⁴⁸

In the process of recovery from the economic and social crisis presented by the pandemic, it is said that 'dialogue between social partners is of essence to foster socially responsible restructuring',⁴⁹ offering appreciation of the role that can be played by collective worker voice, but again it is difficult to know how this commitment will be operationalised. What is evident from the Action Plan is that social dialogue is regarded as appropriate both at the national and European levels to navigate change, as is bargaining at the national level in order to secure EU-level collective agreements.⁵⁰ An initiative for social dialogue was planned for 2022, and it has since emerged that this may concern reform of sectoral dialogue and project

⁴³ *Ibid.*, 12–17.

⁴⁴ Commission Joint Communication, 'EU Action Plan on Human Rights and Democracy 2020–2024', JOIN (2020) 5 final, 25.3.20, 3.

⁴⁵ See n. 38 above, 18; although trade unions are not specifically mentioned at any point in the Working Document.

⁴⁶ European Commission Employment and Social Affairs DG, 'European Pillar of Social Rights Action Plan', 4 March 2021, 5–10.

⁴⁷ *Ibid.*, 19 and 36–37.

⁴⁸ *Ibid.*, 42.

⁴⁹ *Ibid.*, 16.

⁵⁰ *Ibid.*, 36–37.

funding to encourage information and consultation, participation and support for social dialogue.⁵¹ There is no mention in the main body of the Action Plan of ‘collective action’ or a right to strike, although this is to be respected under ‘The Pillar Principles Proclaimed at the 2017 Gothenburg Summit’, which are appended to the document.⁵² In this way, it does seem that there is a trajectory towards taking the social dimension of sustainability at work much more seriously, enabling something that looks more like solidarity ‘unbound’.

That assessment is perhaps given further (at least rhetorical) force by the Porto Social Commitment. That Commitment is significant as a declaration of intent made, not just by EU institutions (in particular, the Commission and the Parliament), but also the social partners and the NGO Platform.⁵³ It sets out their ‘shared ambition for a transition towards a green, socially just and digital economy’, while appreciating the far-reaching changes that COVID-19 has wrought. In this context, the Commitment is made to intra-generational justice, addressing ‘inequalities’ and integrating the vulnerable in the labour market. The Pillar is to be regarded as ‘a compass to guide us towards a strong, sustainable, inclusive recovery and towards upward economic and social convergence’, and the Action Plan made two months’ earlier welcomed. Notably reference is made to the broader ‘world of work’, as well as the circumstances of those ‘with a migration background’ and who otherwise suffer disadvantage and exclusion. Social dialogue is to be promoted at ‘the European, national, regional, sectoral and company levels, with special attention on ensuring an enabling framework for collective bargaining’. Once again, there is no specific mention of collective action or a right to strike, but the statements in the Porto Commitment seem ever closer to a generous unbounded notion of solidarity. It is, however, a Commitment made only in respect of what goes on inside Europe, as opposed to the EU’s role as a global actor. While some will suspect that these assertions amount merely to rhetorical flourish, they arguably give some flavour of the extent to which sustainability and the inclusiveness it prompts could become an entrenched and effective aspect of EU social policy. This could yet be the EU direction of travel.

2.5 CONCLUSION

Recognition of social sustainability in international and EU instruments has the potential to enhance inclusive employment law protections for a wider range of

⁵¹ *Ibid.*, 42.

⁵² *Ibid.*, 44–45. Plans regarding sectoral dialogue are set out at <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10123&furtherNews=yes>; and regarding calls for proposals on information, consultation and participation and support for social dialogue, see <https://ec.europa.eu/social/main.jsp?catId=629>.

⁵³ Porto Social Summit, Porto Social Commitment, 7 May 2021 available at www.2021portugal.eu/en/porto-social-summit/porto-social-commitment/.

people in ‘the world of work’, as well as collective voice and action regionally and globally. However, it is difficult to detect full political commitment to this transformative vision in the UN SDGs, which suggests an uneasy journey of compromise between economic growth and environmental and social justice objectives. We seem likely to witness further battles ahead regarding distribution of income within and between countries and those who work within them, given the failure in Agenda 2030 to explicitly recognise the need for solidarity between workers hired in diverse ways and across borders and the legitimacy of their collective action.

While harder EU legislative proposals are being devised and presented to the political institutions, it is the softer policy documentation, political commitments and Commission practices that chime with a bolder sustainability agenda. There now seems to be at least some appreciation of the economic, environmental and social consequences of the regulation of work in documents like the Porto Social Commitment and the Commission’s own Working Document on how to deliver the SDGs. They offer a vision of a more inclusive and participatory approach to improving working and broader social conditions, which will have implications for environmental and other transitions expected in the years to come. The trajectory is encouraging, but what may now be needed is a more tangible appreciation of the interconnectedness of labour markets across the borders of different countries and the importance of a collective voice that traverses these.

Building on UN and EU policy initiatives to date, transformative change may be possible, and the direction of travel is promising. More may still be achieved with reference to the underlying principles on which the ideals of sustainability are based, namely intra- and inter-generational justice, which prompt inclusive solidarity across national and temporal boundaries – that is to say, ‘solidarity unbound’.

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