

The 'sustainable' Industrial Democracy and the role of Trade Unions in the Just Transition

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1. The impact of just transition on industrial democracy. 2. Searching for traces in the framework: the international level. 3. Organised labour in eco-social Europe. What are the scenarios after the Corporate Due Diligence Directive? 4. The Italian trade unions in the 'greened' economic constitution. 5. Collective action on environmental issues. Experiences from Italy and abroad. 6. Is the collective interest changing?

Abstract

Over the past two centuries, trade unions have played an essential role in countering the power of employers, representing workers' interests and responding to emerging social issues. Trade union action has taken different forms in Western countries. As a result, labour laws in these countries have adopted various ways of regulating social power. Despite the differences, it can be argued that labour law's main problem has been reconciling the protection of workers' rights with economic freedoms, using law or bargaining to achieve this. This paradigm is now being challenged by implementing the principle of environmental protection and sustainable economic growth at different levels of the regulatory framework. Although many fundamental aspects are involved, the role of labour law in ensuring a just transition needs to be clarified. This paper aims to identify the relationship between environmental protection and labour law, adopting a multilevel system perspective and looking at the experiences of other countries. Finally, the paper will consider the role of industrial democracy in developing just transition policies.

Keywords: Labour rights; Just transition; Trade unions; Sustainable enterprise; Industrial democracy.

1. The impact of just transition on industrial democracy.

Since the 19th century, trade unions have countervailed employers' power, represented workers' interests, and responded to the emerging social question.¹ The rise of trade unions results from industrial development and is influenced by the different characteristics of industrialisation in various countries.² Moreover, it has been noted that the expansion of the

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¹ Webb S., Webb B., *Industrial Democracy*, Longmans, Green & Co., London, 1902, 3-37.

² Cole G.D.H., *Organised labour, An introduction to Trade Unionism* (1924), Routledge, Abingdon, 2020, 10-13; Clack G., *Industrialisation and industrial relations: an analytical framework*, in *South African Journal of Economics*, 32,

contents of trade unions' action has been affected by the enlargement of product markets from local to regional to national, which had different shapes in the United States and European countries.³

The heterogeneity of the trade union phenomenon is striking in several respects. The most important are the devices unions use and the purposes of organised labour.

Firstly, trade union action has taken different forms in Western countries. In some systems, such as the United States,⁴ the labour movement has maintained control over the labour supply. In Italy, on the contrary, the unions lost this kind of influence during the Fascist period, when the placement of workers became a prerogative of the public authorities.⁵ In Germany, trade unions historically participate in enterprise management,⁶ while, in other experiences, trade union action has taken only the forms of coalition and later collective bargaining.

A deep connection exists between trade unionism and national laws, order, and traditions: «Trade unionism is both universal, as the expression of workers in the conflict between capital and labour, and dependent on national specificities».⁷

Secondly, depending on the objectives pursued, it is possible to distinguish between three different models of organised labour. In this way, we could recognise the union that is essentially political and anti-systemic, the union that is conflictual in industrial relations, and the union that avoids conflict with capital and adopts a participatory approach.⁸

Another way of discerning trade unionism concerns the perspective from which its action is analysed, focusing on the historical period and the national context. In this regard, trade union action has three potential directions: towards the market, society, and class. In the first, trade unions are seen as labour market institutions that bargain with the employer to secure economic benefits for their members; in the second, trade unions focus on improving the conditions and status of workers in society, promoting social justice and equality; in the third, they are 'places' for educating workers to play a role in the class conflict between capital and labour.⁹

2, 1964, 113–127; Giugni G., *Il progresso tecnologico e la contrattazione collettiva dei rapporti di lavoro*, in Giugni G. (ed.), *Lavoro legge contratti*, Il Mulino, Bologna, 1989, 121-149. Nowadays, trade unionism seems to be more influenced by the common changes in economic systems; see Baccaro L., Howell C., *A Common Neoliberal Trajectory: The Transformation of Industrial Relations in Advanced Capitalism*, in *Politics & Society*, 39, 4, 2011, 521-563.

³ As a result, trade unions have been forced to extend their reach. The standard rules established through collective bargaining have become more inclusive in harnessing the competitive forces unleashed by dismantling traditional barriers to the free movement of goods, services, capital, and labour. See Commons J.R., *History of labour in the United States*, Macmillan, New York, 1918, 6.

⁴ Perlman S., *Ideologia e pratica dell'azione sindacale*, La Nuova Italia, Florence, 1956, 181.

⁵ Romagnoli U., Treu T., *I sindacati in Italia: storia di una strategia*, Il Mulino, Bologna, 1977, 20.

⁶ Sinzheimer H., *La concreta organizzazione dei consigli d'azienda (1919)*, in Vardaro G. – Arrigo G. (eds.), *Laboratorio Weimar, conflitti e diritto del lavoro nella Germania prenazista*, Edizioni Lavoro, Rome, 1982, 49; Ramm T., *Per una storia della costituzione del lavoro tedesca*, Giuffrè, Milan, 1989, 14.

⁷ Aguiton C., *Il mondo ci appartiene, I nuovi movimenti sociali*, Feltrinelli, Milan, 2001, 83.

⁸ Giugni G., *Sindacato*, 1997, [https://www.treccani.it/enciclopedia/sindacato_\(Enciclopedia-delle-scienze-sociali\)/](https://www.treccani.it/enciclopedia/sindacato_(Enciclopedia-delle-scienze-sociali)/), accessed 1 Oct. 2024.

⁹ Hyman R., *Understanding European trade unionism: Between market, class & society*, Sage, London, 2001, 1-66.

Other classification methods for trade unions have been proposed, including those based on their internal structure, control over their members, and the relationship between the organisation and political power.¹⁰

Because of this variety, labour laws in different countries have taken different approaches to regulating social power. Despite these differences, labour law's main problem has been reconciling the protection of workers' rights with economic freedoms and using law or bargaining to this end.¹¹

This paradigm is now being challenged by implementing the principle of environmental protection and sustainable economic growth at different levels of the regulatory framework.

Historically and theoretically, the relationship between the environment and labour has been subject to different interpretations and readings.

According to a specific vision, the goals and outcomes of the environment and labour are frequently in conflict. In the paradigm of sustainability, the protection of the environment would be prioritised over the safety of employment. This would find historical correspondence in the observation that environmentalists and labour organisations were frequently on different sides of the policy debate.¹² In this regard, the weakness of many environmentalist battles might have been that they needed to pay more attention to highlighting the potential for the ecological revolution to create new employment opportunities, thereby offering an alternative source of employment for those who may lose their jobs.¹³

From another perspective, a substantial corpus of research posits that ecological considerations represent a working-class concern that has remained a salient aspect of workers' struggles since the labour movement's inception.¹⁴

It is impossible to trace here the evolution of the debate that led to the positive affirmation of the environmental concerns and all its implications on industrial relations. Focusing on the labour field, it could be stated that the ecological issue was addressed through the lens of two concepts: the 'treadmill of production' and the 'just transition'.

¹⁰ Taylor A.J., *Trade Unions and Politics, a comparative introduction*, Routledge, 1989, 47–70; Roomkin M., *Union Structure, Internal Control, and Strike Activity*, in *Industrial and Labor Relations Review*, 29, 2, 1976, 198-217; Summers C. W., *Internal Relations between Trade Unions and Their Members*, in *International Labour Review*, 1, 172, 1965, 175 – 190.

¹¹ Kahn-Freund O., *Labour and law, third ed.*, Stevens, London, 1983, 12 – 28; Giugni G., *Diritto del lavoro (voce per un'enciclopedia)*, in G. Giugni (eds.), *Lavoro legge contratti*, Il Mulino, Bologna, 1989, 265 – 266.

¹² Doorey D. J., *Just Transitions Law: Putting Labour Law to Work on Climate Change*, in *Journal of Environmental Law and Practice*, 30, 2, 2017, 205, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2938590; Lassandari A., *Il lavoro nella crisi ambientale*, in *Lavoro e Diritto*, 1, 2022, 17-20, doi: 10.1441/103230.

¹³ Castellina L., *Attenti ai dinosauri! Spacciatori di una modernità che ci lascerebbe al XX secolo*, Manifesto Libri, Rome, 2020, 4-10; Bernstein S., *Ideas, Social Structure and the Compromise of Liberal Environmentalism*, in *European Journal of International Relations*, 6, 4, 2000, 491-500, doi: 10.1177/1354066100006004002.

¹⁴ The literature on the so-called working-class ecology can be divided into two currents. The first addresses coalition building between labour and environmental organisations. The second focuses on trade unions as environmental actors. For an overview, see Barca S., Leonardi E., *Working-class ecology and union politics: a conceptual topology*, in *Globalizations*, 15, 4, 2018, 487–491, <https://doi.org/10.1080/14747731.2018.1454672>; Bottazzi P., *Work and Social-Ecological Transitions: A Critical Review of Five Contrasting Approaches*, in *Sustainability*, 11, 14, 2019, 3852 ff.; at <https://doi.org/10.3390/su11143852>.

According to Schnaiberg's theory, Western capitalism runs on a 'treadmill': the more resources are extracted for economic development, the more environmental degradation occurs.¹⁵ Starting from this approach, some sociological studies have identified an environmental dimension in the efforts of labour movements to slow down the production process or mitigate its impact.¹⁶

Instead, the notion of just transition originated in the USA in the 1970s. It was made explicit in the 1990s through the work of two chemical sector unions in the US and Canada in response to the effects of working in the sector under exposure to hazardous chemicals. In that context, the concept of just transition led the unions to the idea of a 'workers' superfund, which would compensate and retrain those displaced from environmentally hazardous jobs.¹⁷

Then, the transition turned into a global question. Indeed, the debate among international trade unions and their involvement in international governance has significantly contributed to developing the just transition idea, which became part of global environmental claims. The participation of these international actors has broadened the concept of just transition, combining social and ecological demands. In particular, just transition has been primarily interpreted as planning and investing in changes that convert old jobs and lead to new jobs and economic opportunities, with improvements in both the environmental and social spheres.¹⁸

The International Confederation of Free Trade Unions (ICFTU), the forerunner of the International Trade Union Confederation (ITUC), included just transition in its statement to the 1997 Kyoto Conference. Furthermore, the incorporation of just transition in the preamble of the Paris Agreement and the adoption of the Silesia Declaration on Solidarity and Just Transition at COP24 were considered great successes for international trade unions.¹⁹

However, the role of international trade unions in leading the just transition should not be overestimated. The global trade union movement has proved unable to coordinate national organisations that have developed heterogeneous attitudes to environmental issues.²⁰

¹⁵ Gould K.A., Pellow D.N., Schnaiberg A., *Interrogating the treadmill of production: everything you wanted to know about the treadmill but were afraid to ask*, in *Organization & Environment*, 17, 3, 2004, 296-316.

¹⁶ See Obach B., *New labor: Slowing the treadmill of production?*, in *Organization & Environment*, 17, 3, 2004, 337-354; Tomassetti P., *From Treadmill of Production to Just Transition and Beyond*, in *European Journal of Industrial Relations*, 26, 4, 2020, 439-457; Keil A. K., Kreinin, H., *Slowing the treadmill for a good life for All? German trade union narratives and social-ecological transformation*, in *Journal of Industrial Relations*, 64, 4, 2022, 564-584, at: <https://doi.org/10.1177/00221856221087413>.

¹⁷ Mah A., *The Labour Movement Origins of "Just Transition"*, 2023, at <https://ourtimes.ca/article/the-labour-movement-origins-of-just-transition>, accessed 1 Oct. 2024.

¹⁸ Barbera M., *Giusta transizione ecologica e disuguaglianze: il ruolo del diritto*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2022, 3, 343.

¹⁹ Galgóczi B., *Just transition on the ground: Challenges and opportunities for social dialogue*, in *European Journal of Industrial Relations*, 26, 4, 2020, 367-382, doi: 10.1177/0959680120951704.

²⁰ Ramsay H., *Solidarity at Last? International Trade Unionism Approaching the Millennium*, in *Economic and Industrial Democracy*, 18, 4, 1997, 508.

Even nationally, trade unions have different environmental priorities than their members²¹. Italy is an example of a country where these divisions have frequently taken the form of disagreements between the territorial and upper structures over the choice between maintaining employment levels and closing hazardous plants.²²

The ecological issues became particularly urgent in a distinctive historical context in which trade unions have largely lost their capacity to represent workers.²³ Consequently, their involvement in the transition is significantly influenced by the "tyranny of the present".²⁴ Currently, unions are more focused on protecting the interests of their members than on pursuing working-class interests. However, this assertion cannot be regarded as representative of a general truth.

Firstly, union members seem more inclined to prioritise environmental protection over economic growth and job creation than non-members.²⁵

Secondly, it was observed that the stance of individual trade unions and their representatives at various levels towards the environmental issue varies. This is attributed to the simultaneous material and ideological pressures exerted by the market, the state and class.²⁶

In this regard, it was argued that «there is not just one way, and especially not just one successful way, in which unionists can persevere in putting the environment on the trade union agenda» but «a range of possibilities, and they vary according to time, place, individual capabilities and organisational capacity».²⁷

On the other hand, the environmental issue presents a new opportunity for trade unions. Indeed, the transition challenge could enhance trade unions' appeal to younger individuals

²¹ Gärdebo J., *Transitioning unions: what constitutes a just transition for Swedish trade unions?*, in *Oxford Open Climate Change*, 3, 1, 2022, 2, at <https://doi.org/10.1093/oxfclm/kgac006>; Rätzl N., Uzzell, D., *Environmental policies and the reproduction of business as usual: how does it work?*, in *Capitalism Nature Socialism*, 30, 1, 2019, 133.

²² Turone S., *Il sindacato nell'Italia del benessere*, Laterza, Rome-Bari, 1989, 198.

²³ Batut C., Lojkine U., Santini P., "Which side are you on?" *A historical study of union membership composition in seven Western countries*, in *Industrial Relations*, 2024, 63, 205–287, doi: <https://doi.org/10.1111/irel.12342>; Umbers L.M., *Workplace Domination and Labor Unions*, in *Perspectives on Politics*, 21, 4, 2023, 1417-1418.

²⁴ See Fasano L., *Fare sindacato in una società individualizzata e disintermediata*, 2023, at: <https://fondazionefeltrinelli.it/scopri/fare-sindacato-in-una-societa-individualizzata-e-disintermediata/>, accessed 24 Nov. 2024; Regini M., *I mutamenti nella regolazione del lavoro e il resistibile declino dei sindacati europei*, in *Stato e Mercato*, 1, 2003, 83-108; Capra F., Mattei U., *Ecologia del Diritto, Scienza, Politica, Beni Comuni*, Aboca, Sansepolcro, 2017, 157-159.

²⁵ Ringqvist J., *Union membership and the willingness to prioritize environmental protection above growth and jobs: A multi-level analysis covering 22 European countries*, in *British Journal of Industrial Relations*, 60, 2022, 662–682, at <https://doi.org/10.1111/bjir.12654>.

²⁶ Even though trade unionists engaged in climate activism at the workplace nowadays did not typically espouse neoliberal modes of discourse, they were nevertheless subject to the pressures of the neoliberal political economy. In this context, modernist ecological conceptions and a minority of class-related socialist ideas are considered the more prevalent. See Hampton P., *Workers and Trade Unions for Climate Solidarity Tackling climate change in a neoliberal world*, Routledge, London-New York, 2015, 57-204.

²⁷ Rätzl N., Stevis D., and Uzzell D., *Introduction: Trade Union Environmentalists as Organic Intellectuals in the USA, the UK, and Spain*, in Id. (eds.), *The Palgrave Handbook of Environmental Labour Studies*, Palgrave Macmillan, Cham, 2021, 585.

because they mainly engage with climate change and may be more receptive to the union's message.²⁸

The union's role in ecological transition is primarily a theoretical-political question whose implications depend on the meaning of environmental justice and its relation to social justice. This problem has consequences for the legal framework, which depends on the solutions chosen by the regulatory authorities and trade unions in exercising their collective autonomy.

It would be a mistake to underestimate the significance of these changes. They concern the epistemological foundations of labour law, which have already been eroded by the inclination of legal scholars, particularly in the context of globalisation and the technological revolutions that accompany it, to regard the traditional values of this discipline as inadequate for addressing the profound changes in the production system.²⁹

It is, therefore, necessary to identify what guidance can be drawn from existing law and practice.

2. Searching for traces in the framework: the international level.

It is not a recent development that the urgency of environmental problems has been debated by the International Labour Organisation (ILO).

As early as the 57th session (1972) of the International Labour Conference, the Director-General's report entitled "Technology for Freedom: Man in his Environment" spoke of a "global ecological crisis" which coexisted with global crises in the structure of society, individual freedom, human values and trust between and within nations. Nevertheless, despite the dramatic and urgent tone with which the tripartite constituents of the Organisation were called upon to act, this Conference has not had any impact on the activities of the ILO. The opportunity to make an early institutional start on resolving the problem was not immediately taken.³⁰

A first form of ILO intervention on environmental issues could be recognised in adopting instruments to protect the working environment and occupational health and safety from specific risk factors³¹. However, environmental protection is only partially and reflexively considered in these standards.³² This is because in the ILO's approach, «occupational health

²⁸ For example, consider the following: Etuc, *Boosting unions' participation to guarantee quality transitions and employment to young people in Europe*, Final Report, Brussels, 2018, 30-41, and Id., *Recommendations for engaging young people in Trade Unions*, 2021, 4, at https://www.etuc.org/sites/default/files/publication/file/2021-03/ETUC-Youth%20guide_EN.pdf, accessed 24 Nov. 2024.

²⁹ Garilli A., *Le trasformazioni del diritto del lavoro tra ragioni dell'economia e dignità della persona*, in WP CSDLE "Massimo D'Antona".IT, 412, 2020, 2; Supiot A., *La sovranità del limite. Giustizia, Lavoro e Ambiente nell'orizzonte della mondializzazione*, Mimesis, Sesto San Giovanni, 2020, 158.

³⁰ ILO, *Work in a changing climate: the Green Initiative*, Report of the Director-General, I, Geneva, 2017, 2.

³¹ It is not possible here to analyse each of the instruments adopted by the ILO according to this approach; see Servais J.M., *International labour law*, Seventh ed., Wolters Kluwer, Alphen aan den Rijn, 2022, 207-216.

³² The Convention and Recommendation on the Protection of Workers against Occupational Hazards in the Working Environment due to Air Pollution, Noise and Vibration (ILO Conv. no. 148/1977 and Rec. no. 156/1977) is emblematic. According to this instrument, national laws or regulations shall provide for adopting measures to prevent, control, and protect against occupational hazards due to air pollution, noise, and vibration. These hazards shall be eliminated by technical measures applied to new installations or processes at the design

seems to be a discipline by its own and makes a link with the improvement of the environment».³³

Only recently has the ILO broadened its scope to include the ecological problem as a whole and outlined the role of the social partners in managing the phenomenon. To this end, it has used the concept of just transition.

The ILO's conceptualisation of just transition comprises two principal dimensions. The initial side is outcome-oriented, emphasising the necessity of meaningful ecological transformations while upholding the fundamental principle of decent work. The second pertains to the transition process, delineating the pathways through which transition can be achieved per the prevailing socio-economic context.³⁴

The concept of just transition was first debated as a concrete theme at the ILC's 102nd meeting (June 2013), where the ILO's constituents adopted a resolution and a series of conclusions. In this context, they recognised that climate change and just transition are general trends that, more than any other driver of change, will mark the ILO's future responsibilities and activities from those of the past.³⁵

The adoption of "Guidelines for a just transition to environmentally sustainable economies and societies for all" was more resonant in November 2015. Indeed, the Guidelines exert considerable influence at the international level, particularly in the context of the work undertaken by the United Nations Framework Convention on Climate Change³⁶.

The Guidelines identify nine key policy areas and institutional arrangements to achieve environmental, economic, and social sustainability. For this analysis, it is interesting to note what the instrument states about social dialogue and tripartism.

According to the guidelines, social partners should: a) carry out training and information activities on just transition for their members; b) play an active role in the formulation, implementation, and monitoring of national sustainable development policies, articulating

or installation stage, by modifications to existing installations or processes, or, where this is not possible, by additional organisational measures (article 9). Only when these measures fail to achieve the desired result does the Convention require workers to be provided with personal protective equipment (article 10). What is more important for this study is that, according to the convention, the competent authority must consult qualified experts appointed by the most representative organisations of the employers and workers concerned to establish criteria for the determination of exposure risks from air pollution, noise and vibration in the working environment and, where appropriate, exposure limit values (articles 5). Other forms of involvement of trade unions or workers' representatives are set out in Articles 7 and 8. To put the instruments into context, see de Givry J., *The ILO and the quality of working life. A new international programme: PACT*, in *International Labour Review*, 117, 3, 1978, 266.

³³ Lerouge L., *Conceptualising a Sustainable Labour Law in Order to Assimilate the Blurring of Boundaries Between Occupational Health, Public Health and Environmental Health*, in Ales E., Addabbo T., Curzi Y., Fabbri T., Senatori I. (eds.), *Green Transition and the Quality of Work. Implications, Linkages and Perspectives*, Palgrave Macmillan, Cham, 2024, 246. See also Consiglio A., *Climate change, environment and corporate sustainability: further insights on the Ilva case*, in *Labour & Law Issues*, 8, 2, 2022, 47-50.

³⁴ Novitz T., *Trade, labour and sustainable development, Leaving No One in the World of Work Behind*, Elgar, Cheltenham, 2024, 128; Galgóczi B., nt. (19), 369.

³⁵ ILO, *Achieving a just transition towards environmentally sustainable economies and societies for all*, ILC.111/Report VI, Geneva, 2023, 10.

³⁶ Ghaleigh N.S., *Just Transitions for Workers: When Climate Change Met Labour Justice*, Edinburgh School of Law Research Paper, no. 30, 2019, 18, at <https://www.research.ed.ac.uk/en/publications/just-transitions-for-workers-when-climate-change-met-labour-justice>, accessed 2 Oct. 2024.

the critical role of employers' and workers' organisations in achieving social, economic and environmental sustainability with decent work and social inclusion; c) promote the active participation of their members in social dialogue at all the levels to assess opportunities and resolve challenges posed by the transition; d) foster the inclusion of specific environmental provisions through collective bargaining and collective agreements at all levels, where appropriate, as a concrete way of facilitating cooperation between employers' and workers' organisations and encouraging enterprises to comply with environmental requirements.³⁷

On the other hand, governments should actively promote and engage in social dialogue at all stages and levels, following applicable international labour standards most relevant to the just transition framework, to build consensus on pathways towards environmental sustainability with decent work. Governments should also promote, develop, and formalise dialogue mechanisms and structures at all levels to better discuss how to achieve national social, economic, and environmental objectives.³⁸

The ILO's Centenary Declaration on the Future of Work also included the environment. Adopted in 2019, it identifies climate and environmental change as drivers of transformation in working life. It focuses ILO efforts on "ensuring a just transition to a future of work that contributes to sustainable development in its economic, social, and environmental dimensions".

The approach outlined in the ILO guidelines was also endorsed in the "Resolution concerning a just transition towards environmentally sustainable economies and societies for all" (30 June 2023), adopted by the International Labor Conference during the 111th Session. This instrument emphasises the significance of tripartism and social dialogue in pursuing a just transition. The resolution also identified a role for the social partners in training and retraining and in promoting a culture of lifelong learning for workers of all ages. It called for bipartite social dialogue, including cooperation at the workplace, to develop and implement sustainable transition plans at the company and sectoral levels.

The Organization's initiatives are full of symbolic value but have yet to lead to the adoption of binding instruments for the States. In general, the approach followed by the ILO quotes an affirmative vision of environmental justice instead of a transformative one.³⁹ According to the organisation's agenda, this vision would be pursued through the shared solutions approach, emphasising dialogue and mutual understanding.⁴⁰

³⁷ ILO, *Guidelines for a Just Transition towards Environmentally Sustainable Economy and Society for All*, Geneva, 2015, 9, at <https://www.ilo.org/media/435091/download>.

³⁸ ILO, *Ibid.*

³⁹ The former denotes visions of justice that "seek to limit the impacts of environmental burdens on the weak via policies that neither aim at changing social relations nor extend axiological and ontological standing to nature". In contrast, the latter seeks "to reorganize the political economy to empower the weak, and while it recognizes human obligations towards nature, it does not extend ontological and axiological standing to it"; Stevis D., Felli R., *Global labour unions and just transition to a green economy*, in *International Environmental Agreements: Politics, Law and Economics*, 2015, 36, doi: <https://doi.org/10.1007/s10784-014-9266-1>.

⁴⁰ Beyond standard setting, the ILO's activity on environmental issues has taken the form of 'technical cooperation' and 'capacity building'. This issue relates to the ILO's policymaking rather than its normative function and is, therefore, beyond the scope of this research. On this subject, see ILO, *Trade Union Actions to Promote Environmentally Sustainable Development*, Geneva, 1999; more recently, ILO, *Trade unions actions towards climate change and a just transition*, Geneva, 2024.

3. Organised labour in eco-social Europe. What are the scenarios after the Corporate Due Diligence Directive?

The regulatory level of the European Union has also undergone several changes due to a series of interventions openly aimed at embracing the logic of the transition.

The European Green Deal (EGD) represents the cornerstone of the EU institutions' profound intervention in this field.⁴¹ The principal aims of the EGD are the attainment of a net carbon-neutral European Union by the year 2050 and the achievement of a decoupling of economic growth and resource use. The EGD is not a binding legal instrument as it represents an overarching policy strategy, delineating aspirations and objectives within diverse policy domains.⁴²

Despite the large-scale plan, the institutional and regulatory framework for the transition is still fragmented and follows a specific approach. Moreover, it cannot be said that the principle of just transition has been codified in a legal-binding act, nor has EU law reached a holistic approach to the relationship between labour and the environment.⁴³

Indeed, the comprehensive definition of the just transition paradigm remains confined to policy documents, and its legal expression is manifested in targeted interventions on specific elements of the European regulatory framework, limited in «scope, scale, timeframe or legally binding effects».⁴⁴

These considerations remain pertinent despite the Council's Recommendation “on ensuring a fair transition towards climate neutrality”.⁴⁵ The general instrument urges Member States to implement comprehensive policy packages that facilitate a just transition towards climate neutrality. In formulating these packages, the Commission suggests an inclusive approach involving social partners,⁴⁶ civil society, regional and local authorities, and other stakeholders based on the most reliable data and evidence. Member States are also encouraged to utilise private and public funding at the EU and national levels to their fullest potential. However, it is a recommendation and has no binding effect;⁴⁷ this instrument does not identify standards or rules; instead, it sets forth a coordinated framework of actions, the implementation of which is at the discretion of the individual states.

⁴¹ On the relationship between labour and environmental EU law before the European Green Deal, see Tomassetti P., Bugada A., *From a Siloed Regulation to a Holistic Approach? Labour and Environmental Sustainability under the EU Law*, in *The Italian Law Journal*, 8, 2, 2022, 691-694.

⁴² Fetting C., *The European Green Deal*, ESDN Report, Vienna, 2020, 5, at https://www.esdn.eu/fileadmin/ESDN_Reports/ESDN_Report_2_2020.pdf, accessed 2 Oct. 2024; Arabadjieva K., Bogojević S., *The European Green Deal: climate action, social impacts and just transition safeguards*, in *Yearbook of European Law*, 2024, 1-22, at <https://doi.org/10.1093/yel/yeae004>.

⁴³ See Tomassetti P., Bugada A, nt. (41), 694-713.

⁴⁴ Arabadjieva K., *A just transition for the EU: what role for legislation?*, 2024, at <https://www.etui.org/news/just-transition-eu-what-role-legislation>, accessed 24 Nov. 2024; Sabato S. and Vanhille J., *The European Green Deal and the 'Leave No One Behind' principle State of the art, gaps and ways forward*, OSE Paper Series, No. 63, Brussels, 2023, 4.

⁴⁵ See Council Recommendation of 16 June 2022 on ensuring a fair transition towards climate neutrality (2022/C 243/04). For an overview, see Sabato S., Büchs M. and Vanhille J., *A just transition towards climate neutrality for the EU: debates, key issues and ways forward*, OSE Paper Series, No. 52, Brussels, 2023, 24-26.

⁴⁶ See par. 4 (g), par. 5, par. 8 (c), of the Recommendation.

⁴⁷ Article 288 of the Treaty on the Functioning of the European Union.

In the scope of this paper, it is necessary to examine which regulatory innovations within this context have the most substantial impact on the role of trade unions in the transition.

Looking at the use of financial instruments in cohesion policy, the EU has a Just Transition Fund,⁴⁸ mainly dedicated to helping coal regions cope with the social and employment impacts of phasing out coal.⁴⁹ This is very important, but it only reaches a small fraction of the people concerned about decarbonisation. Instead, the Social Climate Fund⁵⁰ aims to avert the harmful distributional effects of a new emissions trading system for buildings and transport.⁵¹

In their respective recitals, both instruments refer to tripartite dialogue as a preliminary step in the decision-making process that ultimately led to the state's plan for the designated transition, financed by European funds.⁵² However, this concept must be incorporated into legally binding provisions with specific remedies. Indeed, article 26 of the latter regulation (“Social climate dialogue”) does not mention the role of social parties, referring only to the EU institutions.

On the contrary, regarding the regulatory framework concerning public action for climate neutrality, it should be noted that the so-called ‘climate law’⁵³ provides, in the context of the public participation procedure (Article 9), for the involvement of the social partners, together with the scientific community, business, citizens and society, for the exchange of good practices and the identification of actions that contribute to the green transition.⁵⁴

If we shift to private law, European regulatory interventions introduced a series of procedural and substantive obligations for medium and large enterprises to facilitate a shift towards a more environmentally friendly market economy. It is important to note that these measures have not altered the fundamental pillars of the single market and economic freedoms. Sustainability remains an external constraint on business activities in the European framework.⁵⁵

The procedural prescriptions created a space for the involvement of collective autonomy in entrepreneurial decisions with an environmental impact.

Firstly, some instruments promote knowledge of the environmental impact of companies' economic activities.

In this regard, Regulation (EU) 2020/852 “on a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088” sets out criteria for determining

⁴⁸ Reg. no. 2021/1056 “establishing the Just Transition Fund”.

⁴⁹ Crespy A., Munta M., *Lost in transition? Social justice and the politics of the EU green transition*, in *European Review of Labour and Research*, 29, 2, 2023, 235-251, at <https://doi.org/10.1177/10242589231173072>.

⁵⁰ Reg. no. 2023/955 “establishing a Social Climate Fund and amending Regulation (EU) 2021/1060”.

⁵¹ Akgüç M., Arabadjieva K., Galgóczi B., *Why the EU's patchy just transition framework is not up to meeting its climate ambitions*, *Etui policy brief*, 2022, 6, at <https://www.etui.org/publications/why-eus-patchy-just-transition-framework-not-meeting-its-climate-ambitions>, accessed 2 Oct. 2024.

⁵² See recitals no. 18 Reg. no. 2021/1056 and 18 Reg. no. 2023/955.

⁵³ Reg. no. 2021/1119 “establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (“European Climate Law”)”.

⁵⁴ See Honkonen T., *Do climate acts of EU countries enable the most vulnerable to participate in climate policymaking?*, in *npj Climate Action*, 3, 62, 2024, 3, at <https://doi.org/10.1038/s44168-024-00141-1>.

⁵⁵ Onza M., “Attività funzionale” ed “interessi degli altri” nella gestione dell'impresa (entificata): annotazioni dalla direttiva (UE) 2022/2464, in *Banca borsa e titoli di credito*, 76, 5, 2023, 757-768.

whether an economic activity is environmentally sustainable in the light of the "do no significant harm" principle.⁵⁶ This instrument applies to measures adopted by Member States of the Union, which impose requirements on financial market operators or corporate issuers regarding financial instruments or corporate bonds that they consider 'environmentally friendly'.⁵⁷ The Taxonomy Regulation suffers from a discrepancy between its stated intention in the preamble (recital no. 35) to assess compliance with minimum labour standards as an indispensable element for economic activity to be considered sustainable and its actual content, which pays little attention to sustainability's social and governance aspects.⁵⁸

Besides, there is no mention of trade union involvement here. Nevertheless, the directive provides trade unions with a valuable tool for assessing the sustainability of companies' activities based on impartial criteria.

On the other hand, in Directive 2022/2464,⁵⁹ the European legislator explicitly considered trade unions' interest in being informed about the company's environmental choices. This reform aims to enhance the reporting of large companies on ecological sustainability.⁶⁰ Companies subject to the directive must provide information on the alignment of the company's strategy with the Paris Agreement, the role of the supervisory board in sustainability matters, and the access of supervisory board members to information. Additionally, companies must clarify whether the remuneration of the management board members is linked to sustainability goals.⁶¹

The preamble to the proposal states that the ultimate beneficiaries of better corporate sustainability reporting would be individual citizens and savers, including trade unions and employee representatives, who would be better informed and thus better able to engage in social dialogue (recital no. 9). Conversely, the lack of sustainability information from companies also limits the ability of stakeholders, including civil society actors, trade unions and workers' representatives, to engage in dialogue with companies on sustainability issues (recital no. 14).

After all, information is a prerequisite for any collective action: disclosure could enable Unions to negotiate or strengthen «the interest of the individual worker in the prospects of the undertaking».⁶² Moreover, «since being informed implies listening, and one cannot listen without expressing an opinion, trade union information procedures also imply consultation».⁶³

⁵⁶ Treu T., *Politiche europee e nazionali per la transizione verde*, in *Biblioteca '20 maggio'*, 1, 2024, 21, at https://www.csdle.lex.unict.it/sites/default/files/Documenti/Articoli/1-2024_Treu.pdf, accessed 2 Oct. 2024.

⁵⁷ For an overview of this Regulation, see Malzani F., *Tassonomia UE e vincoli per l'impresa sostenibile nella prospettiva prevenzionistica*, in *Giornale di Diritto del lavoro e di relazioni industriali*, 1/2, 2023, 75-97.

⁵⁸ Tomassetti P., *Between stakeholders and shareholders: Pension funds and labour solidarity in the age of sustainability*, in *European Labour Law Journal*, 14,1, 2023, 83, doi: 10.1177/20319525221140422.

⁵⁹ Amending "Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting".

⁶⁰ Däubler W., *Protezione del clima e diritto del lavoro*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 4, 2023, 543.

⁶¹ Amendments to article 19a par. 2 Dir. Ue 2013/34/EU.

⁶² Kahn-Freund O., nt. (11), 107.

⁶³ Mengoni L., *Diritto e valori*, Il Mulino, Bologna, 1985, 326.

The new European Directive on Corporate Due Diligence (CSDDD)⁶⁴ provides another innovation regarding trade unions' role. The directive is founded upon the assumption that the objective of sustainable development necessitates the involvement of the private sector, which should be encouraged to adopt environmentally and socially responsible practices, whether on a mandatory or voluntary basis.⁶⁵

The Directive introduces obligations for large companies to address their activities' adverse human rights and environmental impacts along their supply chain. Businesses under the CSDDD should conduct due diligence on their human rights and environmental impacts. The instrument defines 'adverse human rights impacts' as impacts resulting from abuses of selected human rights and other human rights in a list of international instruments. Likewise, an adverse environmental effect is defined as an effect resulting from a violation of a list of international environmental obligations described in the annexed. It also covers measurable ecological degradation when it affects specific human rights.⁶⁶

The provisions of Articles 13 and 14 are interesting from the trade union perspective.

Article 13 provides an obligation to consult with relevant stakeholders at various stages of the due diligence process. The provision is based on a risk-based approach and reinforces the company's responsibility to adopt safeguards to prevent breaches.⁶⁷ Indeed, the consultation is primarily intended to facilitate the collection of helpful information for identifying, assessing, and prioritising adverse impacts (Article 13(3), a). Additionally, consultation is necessary to develop prevention and corrective action plans (Article 13(3), b and d).⁶⁸

In this context, it is evident that the trade unions and the worker's representative are not to be equated with the other potentially involved subjects, as inferred by paragraph 6. This rule specifies that utilising industry and multi-stakeholder initiatives is insufficient to fulfil the obligation to consult with the company's employees and their representatives. Thus, trade unions and workers' representatives are more privileged than other stakeholders, as they must be heard also separately.⁶⁹

⁶⁴ Dir. 2024/1760 “on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859”.

⁶⁵ Dempere J., Udjo E., Mattos P., *The Entrepreneurial Impact of the European Directive on Corporate Sustainability Due Diligence*, in *Administrative Sciences*, 14, 10, 2024, 266, at <https://doi.org/10.3390/admsci14100266>; Camoletto S., Corazza L., Pizzi S., Santini E., *Corporate Social Responsibility due diligence among European companies: The results of an interventionist research project with accountability and political implications*, in *Corporate Social Responsibility and Environmental Management*, 29, 5, 2022, 1122–1133, at <https://doi.org/10.1002/csr.2258>.

⁶⁶ Bueno N., Bernaz N., Holly G., Martin-Ortega O., *The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise*, in *Business and Human Rights Journal*, 2024, 1–7, doi:10.1017/bhj.2024.10; Ventura L., *Corporate Sustainability Due Diligence and the New Boundaries of the Firms in the European Union*, in *European Business Law Review*, 34, 2, 2023, 257–258.

⁶⁷ Brino V., *The Multilevel Juridical System: A “Galaxy” of Norms Focused on a Sustainable Corporate Governance*, in Ales E., Addabbo T., Curzi Y., Fabbri T., Senatori I. (eds.), *Green Transition and the Quality of Work. Implications, Linkages and Perspectives*, Palgrave Macmillan, Cham, 2024, 40

⁶⁸ See also art. 13 (3), c. In that case, consultation could be preventive or remedial.

⁶⁹ Compare with Giovannone M., *The European directive on ‘corporate sustainability due diligence’: the potential for social dialogue, workers’ information and participation rights*, in *Italian Labour Law e-Journal*, 1, 17, 2024, 239–240, <https://doi.org/10.6092/issn.1561-8048/19692>.

When consultation with stakeholders is not feasible, companies must seek expert advice to obtain reliable insights into actual or potential adverse impacts (Article 3, 4). In this case, it was suggested that it may be possible to replace participation mechanisms with the involvement of external experts in a discretionary manner.⁷⁰ This choice could not be considered voluntary, being subject, as will be seen, to the control of the supervisory authorities and, in the case of potential civil liability, to the scrutiny of the national courts.

The Directive does not explicitly delineate the precise form of involvement of trade unions and workers' representatives in the transition plan for climate change mitigation.⁷¹ Nevertheless, consultation is also to be regarded as mandatory in this case, should it be determined that the transition plan for climate change mitigation is subsumed within the context of Article 13 (3) c insofar as it pertains to the prevention of risks arising from the undertaking of polluting activities.

Instead, article 14 requires Member States to ensure that companies provide for the possibility of making complaints to the enterprise in the event of legitimate concerns about these potential or actual adverse effects, including in the enterprise's value chain.

Companies must provide this to persons affected or reasonably concerned that they may be affected by adverse impacts, as well as trade unions and other workers' representatives representing persons working in the relevant value chain and civil society organisations active in the field.

The Directive, therefore, guarantees the position of trade unions in the social dialogue on environmental and human rights compliance and gives organised workers the right to monitor and report violations.

The choice made by the European legislator is appropriate. It is not possible to ensure the proper functioning of the social dialogue on issues such as the ecological transition, which involve fundamental choices for the company, without providing the trade union with the necessary information and an instrument that forces the entrepreneur to address the environmental issue if he is not willing to engage in dialogue.

This raises the question of how the states will implement the provision and what measures they will introduce to guarantee that companies implement the complaints procedure.

In this regard, articles 24, 25 and 26 also provide a monitoring and control system to facilitate the enforcement of due diligence obligations. The responsibility for ensuring vigilance must be borne by national administrative authorities and a European authority, which has established *ad hoc* to enforce due diligence from an independent position.⁷² An investigation may be instigated at the discretion of the authorities or because of substantiated concerns conveyed to them if they determine that they possess sufficient information

⁷⁰ Giovannone M., nt. (69), 238.

⁷¹ Article 22 requires companies of a certain size to adopt a climate change mitigation plan. This plan must ensure the business model and corporate strategies are compatible with the transition to a sustainable economy and climate neutrality by 2050. On that instrument, see Feigerlová M., *Moving from Pledges to Commitments: Analysing Climate Transition Plans in the EU Proposal for a Corporate Sustainability Due Diligence Directive*, in *Carbon & Climate Law Review*, 18, 1, 2024, 17 – 30, at <https://doi.org/10.21552/cclr/2024/1/5>.

⁷² Brino V., *Governance societaria sostenibile e due diligence: nuovi orizzonti regolativi*, in *Lavoro Diritti Europa*, 2, 2022, 14; Razzolini O., *Il lavoro povero nella catena contrattuale degli appalti. Spunti di riflessione*, in *Lavoro Diritti Europa*, 1, 2022, 2.

indicating a potential infringement of the obligations outlined in the Directive (Article 25 par. 2). In the event of a breach with national provisions adopted by implementing this Directive, the authorities shall grant the company concerned an appropriate period to take remedial action, should such action be feasible (Article 25 par. 4).

While brief, the compliance system allows trade unions to exercise self-defence in case of a breach of articles 13 and 14.

Indeed, following articles 27 and 29, implementing remedial action does not preclude the imposition of penalties or triggering civil liability (Article 25 par. 4). Therefore, it can be concluded that the EU's approach to corporate due diligence in environmental sustainability does not allow companies to exercise discretion in determining whether or not to engage with trade unions in these processes⁷³. This is important because most due diligence «laws do not require entities to engage workers in their HRDD processes, despite these actors being the intended beneficiaries of the laws».⁷⁴

In the Italian framework, for example, the European provision could be implemented thanks to Article 28 of the Act 300/1970 (so-called Workers' Statute), or the legislator would opt for a separate regulation to sanction violations of this provision. In this respect, the Italian legislature tends to safeguard specific manifestations of the collective interest by implementing tailored measures beyond the repression of anti-union conduct.

However, this observation does not diminish the fact that Article 28 of the Workers' Statute has frequently been invoked to impose penalties on employer conduct that seeks to impede or obstruct the realisation of circumstances falling within the purview of particular statutes.⁷⁵

4. The Italian trade unions in the 'greened' economic constitution.

Like other frameworks⁷⁶, the Italian one now has constitutional provisions directly concerning the environment. The Constitutional Act no. 11 February 2022, n. 1, modified articles 9 and 41 of the Italian Constitution and recognised the guarantee of environmental protection in the fundamental principles and the so-called 'economic constitution'.

The recently introduced third paragraph of Article 9 delineates the role of public authorities in safeguarding the environment, biodiversity, and ecosystems to ensure the well-

⁷³ See Cordella C., *The Slow Approval Process of the Due Diligence Directive and the Different Paths for the Involvement of Trade Unions*, in *Italian Labour Law e-Journal*, 2, 16, 2023, 23, at <https://doi.org/10.6092/issn.1561-8048/18383>.

⁷⁴ Marshall S., Landau I., Shamir H., Barkay T., Fudge J., van Heerden A., *Mandatory Human Rights Due Diligence: Risks and Opportunities for Workers and Unions*, 2023, 14, at https://media.business-humanrights.org/media/documents/TraffLabReport_March23.pdf, accessed 18 Nov. 2024; Rohan Dominic M., *Trade unions, labour governance and economic upgradation in value chains: Framing intervention amidst emerging human rights due diligence frameworks*, ILO Working Paper, No. 127, Geneva, 2024, 17-34, at <https://doi.org/10.54394/XTNW2213>.

⁷⁵ De Marco C., *L'art. 28 dello Statuto dei lavoratori tra storia e attualità*, Edizioni Scientifiche Italiane, Naples, 2019, 100 – 101, 195 – 196.

⁷⁶ Sartoretti C., *La tutela dell'ambiente nel diritto comparato: modelli costituzionali a confronto*, in R. Ferrara, M.A. Sandulli (eds.), *Trattato di diritto dell'ambiente*, Giuffrè, Milan, I, 2014, 337.

being of future generations. Furthermore, it establishes the competence of central legislation in defining the means of protecting animals.

Moreover, the reform amended the second and third paragraphs of Article 41 concerning private economic initiatives. The limit set out in Article 41.2 is fundamentally negative, as it delineates the threshold beyond which economic activity is deemed illegitimate. In its nascent stages, these boundaries were initially outlined within the realms of personality protection, encompassing security, freedom, and dignity.⁷⁷ Thus, the reform introduced a heterogeneity element comprising two parameters – health and the environment – representing the transposition of two general interests at the level of the economic relationship.

According to the new version of paragraph 2, private economic initiatives may not be carried out in a manner that is contrary to social utility or in a way that may adversely affect, beyond the precedents, health or the environment. By paragraph 3, the legislation establishes the requisite programs and controls for public and private economic activity, which are to be directed and coordinated for the advancement of social as well as environmental objectives.

Different scholars have interpreted the consequences of constitutional reform in various ways.⁷⁸ Some authors posit that Article 9 of the Constitution already encompassed a principle of environmental protection derived from the concept of 'heritage' and the consequent obligation to preserve it to protect future generations. Consequently, revising Articles 9 and 41 would be superfluous to the existing constitutional order.⁷⁹ Another interpretation is based on the idea that - thanks to the amendment - the environment should be regarded as a paramount constitutional value, given its placement among the fundamental principles and preceding all other limitations to economic initiative as identified in Article 41.2⁸⁰. This position is subject to criticism from those who believe that a hierarchy of constitutional values is untenable and that environmental protection must be balanced with other interests.⁸¹ It was ultimately noted that, even when considering the last interpretation, the reform would necessitate balancing the interests at stake in the fundamental economic and social choices to orient them differently from those of the past.⁸²

What is certain is that, according to constitutional reform, environmental protection must be an objective of public action. However, it is also a matter of private law. In this respect, the amended provision's approach to intersubjective relations is peculiar. Contrary

⁷⁷ Natoli U., *Limiti costituzionali dell'autonomia privata nel rapporto di lavoro*, Giuffrè, Milan, 1955, 85 – 127.

⁷⁸ This does not imply that the environment was not previously regarded as a constitutional value. Instead, the notion of environmental protection emerged gradually through the interpretation of the principles of landscape preservation and, from another perspective, the fundamental right to health. Furthermore, the necessity for balancing economic freedom and environmental protection was discussed before the reform; see Tomassetti P., *Diritto del lavoro e ambiente*, ADAPT University Press, Ancora, 2018, 74 – 101.

⁷⁹ Bin R., *Il disegno costituzionale*, in *Lavoro e Diritto*, 2022, 1, 122 – 124, doi: 10.1441/103235.

⁸⁰ Speciale V., *Impresa e transizione ecologica: alcuni profili lavoristici*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2, 2023, 278-286; 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, 533.

⁸¹ Cecchetti M., *Virtù e limiti della modifica degli articoli 9 e 41 della Costituzione*, in *Corti Supreme e Salute*, 1, 2022, 130; Bifulco R., *La legge costituzionale 1/2022: problemi e prospettive*, in *Analisi Giuridica dell'Economia*, 1, 2022, 16.

⁸² Caruso B., Del Punta R., Treu T., *Il diritto del lavoro nella giusta transizione, Un contributo oltre il manifesto*, 2023, 16, https://csdle.lex.unict.it/sites/default/files/Documenti/OurUsers/Manifesto_Caruso_Del_Punta_Treu_2023.pdf, accessed 2 Oct. 2024.

to other systems where environmental protection is presented as a human right,⁸³ the Italian Constitution adopts a perspective that considers the environment as a constraint on economic freedom.

Because it is a fundamental aspect of the enterprise's existence, the work organisation is addressed under Article 41.2. Consequently, the provision has an evident impact on the individual employment relationship, limiting the employer's power.⁸⁴ In the field of employment law, therefore, the entrepreneur's power to organise is no longer restricted solely by a specific interest which directly affects the workers. It must be exercised within the limits imposed by the need to protect values whose importance goes over the boundaries of the undertaking.⁸⁵

Conversely, the potential impact of this reform on the industrial relations system requires further investigation. In this regard, the analysis should focus on the new Article 9 of the Constitution and its impact on Constitutional provisions concerning industrial democracy. The trade union activity falls outside the scope of Article 41. Indeed, collective autonomy differs from private economic initiatives due to its nature and ends. Moreover, it is regulated by other specific constitutional norms.⁸⁶ Furthermore, the fact that trade unions have played a decisive role in protecting the values of security, freedom and dignity does not alter this finding. Indeed, this circumstance does not affect the subjective scope of the latter provision, as described above. On the contrary, the involvement of trade unions in defence of the limits established by Article 41 is a consequence of the very nature of these social formations, which were created to represent the interests of workers, and it is precisely for this purpose that the legal framework grants them special protection.

It is widely acknowledged that Constitutional provisions concerning industrial democracy have only been partially implemented, thereby allowing Italian trade union law to evolve significantly through extra-legislative means.⁸⁷

In essence, the constitutional recognition of collective autonomy and the right to strike (Articles 39.1 and 40) establishes collective conflict between the social partners as a mechanism for regulating the employment relationship. Thus, the latter is not controlled solely through the intervention of Parliament, which is directly or indirectly influenced by the position of the trade unions. Indeed, the constitutional framework validates the role of trade unions as proponents of an autonomous economic and social policy on this matter.

⁸³ Senato della Repubblica, *Modifiche agli articoli 9 e 41 della Costituzione in materia di tutela dell'ambiente*, 7 febbraio 2022, at <https://www.senato.it/service/PDF/PDFServer/BGT/01331845.pdf>, accessed 2 Oct. 2024.

⁸⁴ D'Antona M., *La reintegrazione nel posto di lavoro, Art. 18 dello Statuto dei Lavoratori*, Cedam, Padova, 1979, 75-78, now in Id., *L'art. 41 della Costituzione: tendenze interpretative*, in *lavoro-confronto*, 2014, 2, at <https://www.lavoro-confronto.it/archivio/numero-3/lart-41-della-costituzione-tendenze-interpretative-di-massimo-dantona>, accessed 2 Oct. 2024; Liso F., *La mobilità del lavoratore in azienda: un quadro legale*, Franco Angeli, Milan, 1982, 15-140.

⁸⁵ See Giovannone M., *New (work) environments in the wake of the reform of Articles 9 and 41 of the Italian Constitution: what prospects for the employers' preventive obligations?*, in *Italian Labour Law e-Journal*, 2, 16, 2023, 77-99, at <https://doi.org/10.6092/issn.1561-8048/18333>.

⁸⁶ Smuraglia C., *La Costituzione ed il sistema del diritto del lavoro, Lineamenti di una teoria generale*, Milano University Press, Milan, 2024, 172.

⁸⁷ Mancini F., *Costituzione e movimento operaio*, Il Mulino, Bologna, 1976, 133 – 162; Tarello G., *Teorie e ideologie nel diritto sindacale*, Edizioni di Comunità, Milan, 1972, 83-88; D'Antona M., *Opere, vol. II, Scritti sul diritto sindacale*, Giuffrè, Milan, 2000, 399-438.

Despite this policy can only be pursued through the instruments of private law, due to the lack of implementation of the second part of Article 39, trade unions are called to compete with public authorities in determining it.⁸⁸

These conclusions are supported by a systematic analysis of these provisions⁸⁹ in conjunction with Article 3.2 of the Constitution.⁹⁰ Following these principles, political and producer democracy coexist. Consequently, the right of citizens to engage in political activities is directly correlated with the individual's role in the production process. In particular, workers' right to participate in the country's political choices is emphasised when interacting with public authorities. Conversely, their right to be involved in the economic organisation is questioned when interacting with employers.⁹¹

Evaluating the constitutional framework in which organised labour effectively operated, the definition of the trade union's role in the just transition may depend on the precise interpretation of the reform.

Suppose the environment is regarded as a meta-principle that precedes other constitutional interests. In that case, trade unions, like all other subjects within the constitutional framework, must also direct their actions towards protecting the environment. To be more exact, the environment should be regarded as a criterion for evaluating the legitimacy of trade unions' actions.

The same conclusions are reached when the environment is considered in the context of the mandatory political and socio-economic solidarity duties enshrined by Article 2 of the Italian Constitution. In this context, even trade unions must integrate environmental protection through their actions.

Considering the environment as a constitutional interest of equal rank to others has different implications, namely that it deserves balancing. Indeed, trade union freedoms, like all human rights, have a limit in the need to protect the rights of others.⁹²

In this regard, a comprehensive examination of the relationship between trade union autonomy and environmental stewardship reveals that trade unions are entitled to pursue collective action to achieve a just transition. This entitlement is not contingent on the direct relation of their claims to the working conditions of a particular plant or employment levels in a specific sector. Conversely, there is no indication of the approach workers' organisations should adopt among the traditional way of defending workers' rights despite the transition and the integrated protection of workers and nature. Consequently, trade unions may

⁸⁸ Mengoni L., nt. (63), 177-208.

⁸⁹ Articles 39.1 and 40 of the Italian Constitution.

⁹⁰ "È compito della Repubblica rimuovere gli ostacoli di ordine economico e sociale, che, limitando di fatto la libertà e l'uguaglianza dei cittadini, impediscono il pieno sviluppo della persona umana e l'effettiva partecipazione di tutti i lavoratori all'organizzazione politica, economica e sociale del Paese".

⁹¹ Galgano F., *Art. 41*, in Branca G. (eds.), *Commentario alla Costituzione, Rapporti economici*, Zanichelli, Bologna, 1982, 25-46; Mancini F., nt. (87), 163-167. Collective autonomy is closely linked to the fundamental elements of the State structure established by the Constitution. Therefore, the trade union initiative is considered one of the possible mechanisms, along with State intervention, to remove the political and socio-economic obstacles described in Article 3.2; see Mortati C., *Il lavoro nella Costituzione*, in *Diritto del Lavoro*, 1954, 189-212.

⁹² Giugni G., *Art. 39*, in Branca G. (a cura di), *Commentario della Costituzione, Rapporti Economici*, Zanichelli, Bologna, 1979, 279.

continue to prioritise the interests of workers without adequately addressing environmental concerns.

This latter interpretation is more aligned with the historical pluralism of the Italian industrial relations system.⁹³ Furthermore, this solution is consistent with the idea that trade unions' freedom of organisation enables workers to safeguard their interests in the socioeconomic relationship and ensure the satisfaction of collective, rather than general, interests.⁹⁴ Indeed, the satisfaction of the general interests, including the protection of the environment, remains in the domain of public authorities. Given the significant impact of ecological transitions on workers, it can be reasonably inferred that this group has only a particular interest in guaranteeing that the consequences of such transitions do not adversely affect them.

Nevertheless, the last interpretation limits the reform's potential for change.

5. Collective action on environmental issues. Experiences from Italy and abroad.

Compared to the evolution of other industrial relations systems, the Italian one has approached environmental issues in a 'karstic' manner and with a notable delay. However, the issue has been under discussion by trade unions since at least the 1970s⁹⁵. This discrepancy between the Italian experience and that of other European countries may be attributed to the distinctive characteristics of the Italian industrial relations system.

Indeed, the most pertinent considerations about environmental impact in the corporate decision-making process concern the enterprises' economic address and organisational structures. The first topic is typically not subject to collective bargaining in Italy, while the second is only indirectly and partially addressed through regulating working conditions.

The limited involvement of trade unions in enterprise management can be attributed to the lack of implementation of Article 46 of the Italian Constitution.⁹⁶ Nowadays, the lack of participation no longer aligns with modern industrial relations needs and requires a rethink to address the challenges posed by their ongoing crisis.⁹⁷

⁹³ Rescigno P., *Persona e comunità, Saggi di diritto privato*, Vol. III, Cedam, Padua, 1999, 3 - 20.

⁹⁴ Smuraglia C., nt. (86), 174.

⁹⁵ To analyse the earliest reactions of Italian trade unionism to the emergence of the ecological question, see Tomassetti, nt. (16), 444-446. Trade unions played a relatively marginal role in the most significant Italian case of conflict between employment needs, economic freedoms and the protection of health and the environment - the events surrounding the Ilva plant in Taranto. This was mainly due to the intervention of the criminal judiciary and the government. The seizure of part of the plant gave rise to a series of legal disputes, which ultimately led to the involvement of the Constitutional Court (see Laforgia S., *Se Taranto è l'Italia: il caso Ilva*, in *Lavoro e Diritto*, 1, 2022, 29 - 51, doi: 10.1441/103231) and later the Court of Justice of the European Union (CJEU, Case C-626/22 C. Z. Et al. v. Ilva SpA in Amministrazione Straordinaria Et al. [2024] ECLI:EU:C:2024:542).

⁹⁶ "Ai fini della elevazione economica e sociale del lavoro e in armonia con le esigenze della produzione, la Repubblica riconosce il diritto dei lavoratori a collaborare, nei modi e nei limiti stabiliti dalle leggi, alla gestione delle aziende".

⁹⁷ Bellavista A., *A proposito di alcuni progetti di legge sindacale*, in *Rivista Giuridica del Lavoro*, Quaderno, 1, 2016, 129 - 140; Ales E., *Libertà sindacale vs partecipazione? Assenze, presenze e possibilità nello statuto dei lavoratori*, in *Rivista Giuridica del Lavoro*, 1, 2020, 129-147; Perulli A., Speziale V., *Dieci tesi sul diritto del lavoro*, Il Mulino, Bologna, 2022, 91-100.

It is not merely a matter of chance that disparate outcomes have been observed in countries such as Germany, where a dual system and workers' representatives' involvement in enterprises' direction exist.⁹⁸ A similar observation can be made concerning countries where the legislature exerts considerable influence over collective and individual labour relations, as evidenced by France.⁹⁹

Works councils have been striving to take a proactive stance on corporate environmental policies in Germany since the 1970s. The attribution of a function to these bodies in this matter, which initially occurred only through case law, was subsequently enshrined in legislation in 2001.¹⁰⁰ However, the mandate of the works council is constrained to the company's internal processes and takes the form of the prerogative to be informed and consulted by the entrepreneur.¹⁰¹ Conversely, there is no power of co-determination on environmental matters despite influential proposals to the contrary.¹⁰²

The worker's representative in France is now equipped with the competence of just transition because of the law of 22 August 2021.¹⁰³ The employee representation body in France, the so-called Social and Economic Committee (CSE), is composed of elected members (elections are held every four years, in principle) in companies with a minimum of 11 employees. In companies with 50 or more employees, the board has even more rights: the employer must inform and consult the board on issues and projects concerning the organisation, management and general running of the business (e.g. restructuring projects). Consultation must occur before implementing the employer's decision.¹⁰⁴ The role of the social and economic committee is "to ensure that employees can express their views collectively, so that their interests are constantly taken into account in decisions relating to the management and economic and financial development of the company, the organisation of work, vocational training and production techniques, particularly concerning the environmental consequences of these decisions".¹⁰⁵ Due to the reform, CSE must be informed and consulted about the environmental consequences of the company's actions or proposals.¹⁰⁶

⁹⁸ Mückenberger U., *Workers' Representation at the Plant and Enterprise Level*, in Hepple B. – Veneziani B. (eds.), *The Transformation of Labour Law in Europe. A Comparative Study of 15 Countries, 1945-2004*, Bloomsbury Publishing, Oxford, 2009, 246 – 247.

⁹⁹ Proseretti U., *Contratto collettivo di lavoro all'estero*, in Azara A., Eula E. (a cura di), *Novissimo Digesto Italiano*, IV, Utet, Torino, 1959, 625; G. Camerlynck, *Il contratto di lavoro nel diritto francese*, in G. Boldt et al. (eds.), *Il contratto di lavoro nei paesi membri della C.E.C.A.*, Giuffrè, Milan, 1965, 314-318; Gamet L., *L'autonomia collettiva*, in *Lavoro Diritti Europa*, 2, 2024, 1-7.

¹⁰⁰ Under § 80, Subsection 1, No. 9, of the Works Constitution Act (*Betriebsverfassungsgesetz - BetrVG*), works councils must promote occupational health and safety and environmental protection in the workplace.

¹⁰¹ According to Section 106 of *BetrVG*, the finance committee - set up by the works council in all companies that generally have more than 100 permanent employees - must "consult with the employer on financial matters and report to the works council", including on "issues concerning the establishment's environmental policy".

¹⁰² Däubler W., nt. (60), 527-537.

¹⁰³ So-called "Climate and Resilience Act".

¹⁰⁴ Despax M., Laborde J.P., Rojot J., *Labour law in France*, Wolters Kluwer, Alphen aan den Rijn, 2023, 283-294.

¹⁰⁵ L2312-8 I of the French Labour Code.

¹⁰⁶ See L2312-8 II and III and L2312-17 of the French Labour Code.

It could be argued that workers need more than information and consultation to address the environmental choices of enterprises where employers have no incentive to implement such policies.¹⁰⁷

In this regard, it was also asserted that a more substantial involvement of trade unions or workers' representatives in the management decision-making process on ecological sustainability could foster the acceptability of these decisions, even when they result in short-term adverse effects for employees.¹⁰⁸

The involvement of workers in environmental matters within enterprises can facilitate the acceptance of decisions that significantly impact working conditions if they occur in the form of co-determination. 'Strong' industrial democracy can only lead to a fair distribution of burdens between social parties, as it allows for incorporating workers' perspectives into decision-making processes. Indeed, more than mere instruments, concrete industrial policy solutions introduced to solve specific adverse effects seem essential in determining the acceptability of the transition.

Moreover, this approach could influence collective action on environmental issues, prompting a shift in the primary entity it addresses, from employers to the state.

Despite the issues above, the potential for direct involvement of workers' representatives or trade unions remains intact. Workers' participation would facilitate the acquisition of green management skills, and knowledge exchange between workers and trade unions would enable the latter to organise direct and indirect action on these issues more effectively.

Trade unions in Italy have sought to engage in just transition through various avenues, including the formulation of general documents, collective bargaining, and even direct action.¹⁰⁹

Some advancements have been made in specific sectors and at the confederal level by formulating general documents. The document entitled 'For a model of sustainable development'¹¹⁰ represents the most significant of these. Signed on 26 September 2019 by CGIL, CISL and UIL, the document delineates a unified framework of objectives, identifying collective bargaining as the most productive instrument to precipitate a profound transformation in the developmental paradigm, harmonising the aim of environmental conservation with labour protection. It identifies the subjects that must be subjected to negotiation at the confederal and sectoral levels to facilitate the green transition¹¹¹. This was also a significant initiative from a symbolic standpoint, but with no direct consequence on

¹⁰⁷ On the importance of participation, see Chacartegui C., *Workers' Participation and Green Governance*, in *Comparative Labor Law & Policy Journal*, 40, 1, 2018, 89-108; Landa Zapirain J.P., *What Implications for Collective Bargaining in the Management of "just Transitions" at the Workplace in Front of the Role of Work Councils?*, in Ales E., Addabbo T., Curzi Y., Fabbri T., Senatori I. (eds.), *Green Transition and the Quality of Work. Implications, Linkages and Perspectives*, Palgrave Macmillan, Cham, 2024, 69-88.

¹⁰⁸ Weiss M., *The fight against climate change: implication for labour law and industrial relations*, in Treu T., Perulli A. (eds.), *Labour Law and Climate Change: Towards a Just Transition*, Wolters Kluwer, Alphen, aan den Rijn, 2023, 54-55.

¹⁰⁹ The case of GKN in Florence is particularly significant in the latter sense. In this dispute, workers occupied the factory, declared it an independent and socially integrated company and transformed its production into sustainable products. 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, 53-72.

¹¹⁰ "Per un modello di sviluppo sostenibile".

¹¹¹ Speciale V., nt. (80), 291-293.

the industrial relations system, as no commitment on the part of the companies was forthcoming as a result.

Collective bargaining on environmental issues occurs at the sectoral and workplace levels. There have been instances where bargaining practices that originated at the workplace level were subsequently incorporated into sectoral bargaining¹¹². A paradigmatic example is the sectoral collective bargaining intervention on extending occupational health and safety representatives' remit to include environmental issues. In some sectors, so-called RLSSA (or RLSA) are now entitled to receive information, be consulted on the environmental policies of the enterprise, and participate in training activities related to these matters.¹¹³

Additionally, sectoral bargaining has been the source of further developments by itself. This can be attributed to the traditional anti-competitive function of sectoral agreements.¹¹⁴ The coordination achieved by the sectoral bargaining machinery could prevent enterprises' introduction of environmental initiatives from causing detriment to the companies most interested in a just transition.

In response to the just transition challenges, social partners introduced some "ecological" clauses in the national collective agreements of energy-oil and chemical-pharmaceutical sectors. These sectors have been identified as "hard to abate" due to their heightened exposure to transition dynamics, including transformation and requalification of production and employment.¹¹⁵

The national collective agreement for the energy and oil sector has tasked a joint observatory with investigating issues concerning the industry at the sectoral and territorial levels. These include, but are not limited to, those related to the environment.

The observatory's mandate covers various topics, such as economic and energy scenarios, organisational and structural changes, employment trends, training initiatives, and investment plans. This approach aims to facilitate comprehensive information exchange and consultation between social partners on environmental matters. The renewal agreement reached in July 2022 emphasises expanding the observatories' scope to foster constructive dialogue. This will require the active involvement of all levels of union representation, starting with trade union delegates. The renewal acknowledges the necessity for the contents of contractual norms to be adapted to reflect the evolving organisational and digital settings. The renewal emphasises establishing a dedicated Observatory on industrial energy policies. This is a principal channel for cooperation with the Ministry of Economic Development.

¹¹² In sectors where the environmental risk is most significant, ecological protection has found its place in collective agreements due to the prominence given to environmental issues in information and consultation procedures in practice; Tomassetti P., nt. (78), 254.

¹¹³ See Ccnl Energia e Petrolio, 21.7.2022, section C, available at www.cnel.it; Ccnl Chimica-Aziende industriali, 13 June 2022, article 65, available at www.cnel.it; Ccnl elettricità, 18 July 2022, art. 10, available at www.cnel.it; Ccnl gomma e plastica, 26 January 2023, V, section A, available at www.cnel.it.

¹¹⁴ On that concept, see Miracolini M., *La funzione anticoncorrenziale della contrattazione collettiva nazionale di categoria. Nodi critici e prospettive*, in *Variazioni su Temi di Diritto del Lavoro*, 1, 2021, 355-384; Villa E., *Crisi della funzione anticoncorrenziale del contratto collettivo nazionale*, in Lassandari A. - Martelloni F. - Tullini P.- Zoli C. (eds.), *La contrattazione collettiva nello spazio economico globale*, Bononia University Press, Bologna, 2017, 73 ss.

¹¹⁵ Prosdocimi S., *Collective Bargaining in the Energy-Oil and Chemical-Pharmaceutical Sectors in the Context of Ecological Transition*, in *Italian Labour Law e-Journal*, 1, 17, 2024, 1-14.

This consequently requires the extension and joint administration of the transition through the implementation of novel and more comprehensive industrial relations models.¹¹⁶

A comparable observation can be made about the chemical-pharmaceutical agreement, which encompasses the establishment of an observatory with a mandate that extends to environmental concerns.¹¹⁷

Joint bodies and observatories at the sectoral level could facilitate the development of shared standards for the category. These could subsequently be incorporated into the renewal of the collective agreements as collective clauses. However, more than this may be required, given the need for action plans tailored to the specific circumstances of the different enterprises. Moreover, in these two highly polluting sectors, environmental clauses—which only concern the procedural obligations of the social partners—are in danger of becoming mere 'greenwashing'.

Due to the lack of concrete commitments, claims regarding workers' retraining and lifelong learning may be nothing more than statements of principle in energy-oil and chemical agreements.¹¹⁸ This is regrettable because this goal is crucial for the transition.

The negotiation of retraining, outplacement and early retirement programs to mitigate the impact of job losses exemplifies an unconventional industrial relations model, along with collective bargaining measures to enhance the responsiveness of job classification systems to the green jobs labour market. Even though plant closures and job losses are an inevitable consequence of economic transition, trade unions' support can mitigate workers' vulnerability, empowering them to navigate environmental stressors. Establishing effective transitional labour markets, which mature industrial relations institutions govern, can reduce societal and labour vulnerabilities while increasing workers' independence in high-intensity industrial activities.¹¹⁹

In this regard, bilateral institutions may play a pivotal role. These entities are being called upon to assume a more direct and supplementary role with respect to public authorities and, if necessary, a substitute role to facilitate the renewal of the contents and structures of vocational training and active labour policies.¹²⁰

The national collective bargaining agreement for metalworkers outlines a more significant commitment.¹²¹ Article 9 of this agreement stipulates that the management of companies with at least 50 employees shall provide the Unitary Trade Union Representatives and the

¹¹⁶ *Ibid*;

¹¹⁷ Compare Ccnl Chimica-Aziende industriali, II, X, premise, and Ccnl Energia e Petrolio, 21.7.2022, section C. See also Ccnl elettricità, 18 July 2022, article 2.

¹¹⁸ Ccnl Chimica-Aziende industriali, article 63, and Ccnl Energia e Petrolio, 21.7.2022, section B.

¹¹⁹ Tomassetti P., *Just Transition and Industrial Relations: The Italian Patterns*, in *E-Journal of International and Comparative Labour Studies*, 1, 2021, 61.

¹²⁰ Treu T., *Just transition: indicazioni europee e responsabilità italiane*, in *Rivista del Diritto della Sicurezza Sociale*, 3, 2023, 451; The advent of this novel role of bilateral institutions is made possible in the recent years by the introduction of innovative legislative measures; see Varesi P.A., *Una nuova stagione per le politiche attive del lavoro. Le prospettive tra azioni dell'Unione europea e riforme nazionali*, in *Diritto delle Relazioni Industriali*, 1, 2022, 76-113. For example, bilateral institutions are regulated in Ccnl Chimica-Aziende industriali, article 63, Ccnl elettricità, 18.7.2022, article 10. Bilaterality is also a general criterion for the organization of training in Ccnl Energia e Petrolio, 21.7.2022, section B.

¹²¹ Ccnl lavoratori addetti all'industria metalmeccanica privata e alla installazione di impianti, 5.2.2021, available at www.cnel.it.

territorial trade union organisations of the contracting trade unions, upon request, with information on a range of matters, including the initiatives carried out and the implementation of projects aimed at protecting and improving the internal and external environment. The above considerations regarding the implications of the duty to provide information and the impossibility of conceiving the same outside consultation dynamics are equally applicable in this context.

Furthermore, introducing a clear obligation to inform the trade union has significant implications for the legal framework. Following the Court of Cassation doctrine, an employer's failure to fulfil the obligation to inform, whether mandated by law or collective agreement, is regarded as anti-union conduct under Article 28 of the Workers' Statute¹²².

Significant developments have been made at the workplace level, where different collective agreements have been formulated with specific consideration of the enterprise's environmental sustainability.¹²³

Regarding instrumental bargaining, two recent agreements have involved bilateral bodies in analysing environmental issues and health and safety matters.¹²⁴

The number of agreements incorporating environmental provisions at the enterprise level is also rising. Frequently, performance bonuses are tied to specific goals related to the transition to a greener economy. These goals often include waste reduction, proper waste management protocols, reporting environmental irregularities, development and use of renewable energy sources, improvements in energy efficiency, and a reduction in the company's ecological footprint. Certain agreements also outline projects for generating energy from renewable sources, recovering heat, and transitioning company vehicles to sustainable energy. Plans are in place for waste management facilities that produce energy and incentives to promote sustainable commuting. Provisions on corporate social responsibility often integrate environmental considerations. Additionally, flexible working arrangements are increasingly recognised as a mechanism for reducing environmental impact and advancing social, economic, and ecological sustainability.¹²⁵

In addition to clauses promoting environmental protection, company bargaining has been demonstrated to be an effective means of encouraging the active involvement of workers in 'green restructuring'. It is of the utmost importance that trade unions are involved in these processes, as they are inherently conflictual and pertain to the productive organisation of enterprises. They entail significant changes to value chains, the outsourcing or relocation of

¹²² Cass. 17 April 2004, no. 7347, in *GD*, 2004, 21, 91.

¹²³ The legislator 'invested' in the role of workplace bargaining in the management of employment transitions through the experimental provision of the so-called 'contratto collettivo di espansione'. It allowed the companies, together with the trade unions, to define and regulate a series of interventions which, as mentioned above, could include a programme of new hires, a plan for the reduction of working hours with the implementation of the training and retraining project and access to the forms of wage supplements, the plan for the dismissal of pensionable workers. See Carchio C., *Le misure di esodo anticipato dopo la fine della sperimentazione del contratto di espansione*, in *Bollettino ADAPT*, 6, 2024, at <https://www.bollettinoadapt.it/>, accessed 24 Nov 2024. ENI s.p.a. has used this tool to manage the energy transition process. See Battista L., *Innovazione tecnologica, riorganizzazioni industriali e occupazione: il contratto di espansione*, in *Lavoro Diritti Europa*, 1, 2022, 18-19.

¹²⁴ Granarolo 12 October 2023; Luxottica 30 November 2023; see ADAPT, *La Contrattazione Collettiva In Italia (2023)*, X *Rapporto Adapt*, ADAPT University Press, Modena, 2024, 149.

¹²⁵ These considerations are based on ADAPT, nt. (124), 149-153.

activities, substantial job transitions, the acquisition of new skills and the implementation of training programs.¹²⁶

Enel S.p.A., a major energy distribution company, adopted this model in Italy. In line with its commitment to decarbonisation by 2050, the company has engaged with unions, local authorities and communities intending to facilitate a just transition. The 'Futur-e' programme aimed to repurpose 23 plants, though some projects encountered resource and time-related challenges. Enel prioritised worker reallocation through re-skilling, redeployment, early retirement, and relocating employees while maintaining wages and limiting disruptions. The involvement of trade unions in the process, achieved through collective agreement, was of great importance, and thus, the programme may be considered an exemplar of transition practices.¹²⁷

It is important to note that these represent a limited number of experiments conducted by large companies, most of which are situated in the most economically developed part of the country.

The experience of other European industrial relations systems has shown that the scarcity of collective bargaining on environmental issues is more than just an Italian problem.

Using environmental clauses in collective bargaining is a relatively uncommon phenomenon. There is a shortage of collective agreements that address ecological degradation meaningfully or seek to reduce the environmental impact of business activity. In instances where collective agreements include environmental clauses, they are somewhat generic. These agreements acknowledge the necessity to address the ecological crisis, yet they need the requisite mechanisms to achieve this goal. There is also a certain reluctance to establish bodies that challenge the company's authority. There is a general discrepancy between the evolving stance of trade union organisations towards the environmental crisis and the continued reluctance to incorporate clauses addressing it into collective bargaining. This may be attributed to the company's perception of environmental management within its exclusive domain.¹²⁸

Instead, an illustrative example of ecological change by bargaining can be observed in the Canadian framework.¹²⁹ In this industrial relations system, since 2010, there has been a proliferation of green clauses concerning the role of bargaining machinery, the assignment of a consultation and investigative role to the health and safety committee on enterprises' impact on the external environment, and also substantial clauses related to the institution of

¹²⁶ For an overview of this kind of agreement in the European industrial relations systems, see Galgóczi B., *Trade unions, collective bargaining and the green transition in the next EU legislative period*, 2024, at <https://eu.boell.org/en/2024/04/16/trade-unions-collective-bargaining-green-transition>, accessed 20 Nov. 2024.

¹²⁷ Rugiero S., *Decarbonisation in the Italian energy sector: the role of social dialogue in achieving a just transition – the case of Enel*, in Galgóczi B. (eds.), *Towards a just transition: coal, cars and the world of work*, Etui, Brussels, 2019, 109-133; Tomassetti P., nt. (16), 448-450; WRI, *Italy: Enel's Just Transition Framework and Futur-e project*, 2021, at <https://www.wri.org/update/italy-enels-just-transition-framework-and-futur-e-project>, accessed 20 Nov. 2024.

¹²⁸ These considerations are based on Escribano Gutiérrez J., *Labour and Environmental Sustainability Comparative Report*, ADAPT University Press, 2020, 50, at <https://agreement.adapt.it/>, accessed 3 Oct. 2024.

¹²⁹ The collective agreements in question are available for consultation at: www.zotero.org/green_agreements/items/3AZ5Z6WB/library, accessed 3 Oct. 2024.

fund for training (also) on environmental issues, the right to refuse polluting task,¹³⁰ recycling in the workplace, green mobility of workers, green procurement and social responsibility.

Some clauses relate to work time, salary perceptions in case of environmental disasters, and remote work.¹³¹

The rationale behind these latter clauses is protective and incentivising. Considering the impact of climate change on work organisation, employees are protected from adverse consequences on production activities. They are also encouraged to adopt sustainable practices in their work routines.

Nevertheless, this does not entail any intervention in enterprise production choices.

In any event, bargaining for environmental purposes may entail certain risks, shifting the burden of transition to the workers through forged voluntaristic solutions.

A paradigmatic example is the introduction of so-called eco-cheques, or eco-vouchers, in collective bargaining in Belgium, which commenced with the interprofessional agreement from 2009-2010. In this manner, employers can reimburse some of their employees' salaries with vouchers, which can be used to purchase specified goods or services. These services and products are delineated within the parameters of the collective bargaining agreement and are intended to facilitate disseminating sustainable practices among the workforce. From the employer's perspective, these represent the most convenient method of remunerating the worker, given that they are subject to a more favourable tax and social security regime.¹³² However, it is questionable whether they constitute a form of truck system or 'tommy shop', which would be contrary to the ILO Convention no. 95/1949, "Protection of Wage Convention", implemented in Belgian law. Indeed, the Convention expressly prohibits the conditioning of how workers spend their wages.¹³³

6. Is the collective interest changing?

It is widely acknowledged that collective interest becomes a legally relevant fact either through the legislator's intervention or as an expression of the collective autonomy of organised groups. This phenomenon reveals that the ecological transition has become

¹³⁰ Unifor. Local 4050 and Cascade Carriers LP. (Alberta), Collective Agreement (2013-2014), article 10.7: "No Dependent Contractor shall be discharged, penalized, coerced, intimidated or disciplined for refusing to work on a job or in any workplace or to operate any equipment where the Dependent Contractor believes that it would be unsafe or unhealthy to the environment".

¹³¹ According to article 8.04 of the Construction Workers Union and Canadian Utility Construction Collective Agreement (2019-2022): "For remote work, when work is suspended due to inclement weather, and employees are not able to return home, such employees shall be paid a minimum of four (4) hours per day and will also receive their full accommodation allowance if and when applicable".

¹³² Van Gyes G., *Social partners give the green light to 'ecocheques'*, 2009, at <https://www.eurofound.europa.eu/>, accessed 24 Nov. 2024; Hendrickx F., *Climate Change and Labour Law: Redefining the Collective Interest*, in Treu T., Perulli A. (eds.), *Labour Law and Climate Change: Towards a Just Transition*, Wolters Kluwer, Alphen, aan den Rijn, 2023, 137–138.

¹³³ See Hendrickx F., nt. (132), 138.

integral to the trade unions' value system. Nevertheless, this resulted in a notable alteration of their demand platform in only a few cases in response to the transition processes of some larger companies. In contrast, there is a prominent absence of a long-term strategy in higher-level bargaining, where intervention in environmental matters is functional in introducing a consultation and control mandate for the representations and bodies and generic training commitments. Thus, it remains to be seen to what extent trade unions are willing to relinquish their current position to assume a more prominent role in the ecological transformation of the economic system. This issue will remain unresolved unless collective autonomy is generally exercised with a focus on the perennial problem of productivity.

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