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Mainstreaming Sustainable Development into EU Policy and Law: The Governance Approach of the EU in Light of its Historical Foundations

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Nazli Aghazadeh-Wegener**

Abstract

While the concept of Sustainable Development has originally evolved in the United Nations (UN), the European Union (EU) has incorporated its components step by step into its political and regulatory priorities. This process can be comprehended with a view to a series of milestones that reveal a certain governance approach. However, the approach is deficient to some extent, most importantly because of the three dimensions of Sustainable Development being acknowledged in an imbalanced manner. Efforts in the social area have not gained equal recognition compared to those in the environmental and economic areas. Moreover, the paper finds that related measures are somewhat fragmented given a lack of synergy and coordination. The reason for the EU's, hence, sectoral or partial approach is mainly to be found in its political and legal foundation which, nevertheless, bears the potential for an ideally cross-sectoral or holistic approach. Depending on whether the EU will be able to more proactively use its legal and political tools in order to address these shortcomings, it may fulfil the role of a frontrunner in global endeavours for Sustainable Development or continue to lag behind its own aspirations.

Keywords: Sustainable Development, United Nations, European Union, Governance

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I. Introduction

It seems that the European Union (EU) has taken particular, almost enthusiastic, interest in incorporating the term Sustainable Development when expressing political and regulatory priorities. Recent major projects support the impression that the EU is in a process of genuinely "mainstreaming" the notion into diverse areas of policy and law. To mention only two examples: This year the EU has (even though only partly) banned single-use plastics from the market to protect people and the environment from hazards caused by marine litter consisting of plastic items; 1 earlier the EU has built a free trade zone with Japan, where both parties shall extensively take into account their commitments to tackling climate change and ensuring labour standards.² The EU explicitly links both projects to the notion of Sustainable Development.

Taking up the expression "mainstreaming" from political rather than legal debates, here it shall reveal a strategic approach of bringing a new concept into the focus of attention to be considered as a central aspect within a determinable context. In other words, it is meant to describe the systematic incorporation of Sustainable Development concerns across all governmental institutions and policies. In this sense, the terms seems to be understood, for instance, with regard to human rights in the

¹ See European Commission – Press release 'Circular Economy: Commission welcomes Council final adoption of new rules on single-use plastics to reduce marine plastic litter', 21 May 2019, IP/19/2631, available at https://europa.eu/rapid/press-release_IP-19-2631_en.htm (last visited 10 October 2019).

² See European Commission – Press release 'EU-Japan trade agreement enters into force', 31 January 2019, IP/19/785, available at http://europa.eu/rapid/press-release_IP-19-785_en.htm (last visited 28 March 2019).

World Trade Organization₃, gender in the EU₄, or climate change adaptation into development planning and decision-making₅.

As a matter of fact, the concept of Sustainable Development had to be gradually adopted as a focal point of EU policy and law, after it had transcended from the international stage. Against the backdrop of the complexity of the concept as well as the EU's political and legal foundation, the aim of this paper is to shed light on some questions that shall allow for (further) research on the implementation of Sustainable Development or (better) governance in the area of Sustainable Development: How has the EU managed to "mainstream" the concept of Sustainable Development in view of its own progressive development? Does the historical perspective disclose a rather partial or holistic approach? In view of the illustrative examples given above, what drivers, aspirations and obstacles which shape the current EU economic, social or environmental policy and law can be identified? And what are the prospects of an enhanced approach?

For the sake of addressing these questions in a systematic way, three issues may be distinguished and shall be reflected in the three main sections of the paper: Firstly, it will be looked at the key events that build the global context of the path of Sustainable Development and its evolving conception. Secondly, it will be depicted how the EU, as a part of the international community, has coped with the concept. Mainly, milestones with regard to the implementation of the concept will be illuminated. Thirdly, the EU's implementation approach is juxtaposed with an ideal approach against the background of the EU's foundations. Here, the analysis is based on the implications from the previous section, and on the imperatives deriving from the concept itself according to (some outstanding suggestions in) academic literature. Finally, the paper concludes with a view to international trends, hence, coming back to the point at which the path of Sustainable Development has started.

II. The Establishment of the Concept of Sustainable Development within the UN

At the United Nations (UN) Stockholm Conference in 1972, the international community has already introduced the idea of Sustainable Development, even though

³ E.g. E.-U. Petersmann, 'From "Negative" to "Positive" Integration in the WTO: Time for "Mainstreaming Human Rights" into WTO Law?", 37 *Common Market Law Review* (2000) 1363, 1377.

⁴ E.g. M. A. Pollack & E. Hafner-Burton, 'Mainstreaming Gender in the European Union', 7 *Journal of European Public Policy* (2000) 3, 432, 434.

⁵ E.g. J. M. Ayers *et al.*, 'Mainstreaming Climate Change Adaptation into Development in Bangladesh', 6 *Climate and Development* (2014) 4, 293, 296.

the specific term was not mentioned yet.⁶ On the one hand, the States recognised the need of preserving the environment in efforts for economic and social development.⁷ On the other hand, they stressed economic and social development to be a prerequisite for environmental conservation,⁸ and thereby linked development and environment.⁹ Practically, the latter part of the recognised interrelation implied for the developing countries to receive greater financial and technical aid.¹⁰ This compromise permitted raising environmental concerns while developing countries were still predominantly concerned with their economic and social development.¹¹

In light of continuous environmental challenges and confidence in achieving a further consensus based on linking development and environment, the international community convened the Rio Earth Summit in 1992 to elaborate measures.¹² This time, the term Sustainable Development was expressly mentioned.¹³ Particularly, developing countries endorsed this term as an alternative to "environment and development", making sure that only a due emphasis is put on environmental issues in relation to socio-economic issues.¹⁴ Thus, the outcome documents of the summit – besides the fundamental *Rio Declaration* most importantly the *Agenda 21*¹⁵ as a comprehensive action programme – convey the impression that the initial unidimensional focus on environmental matters has changed to a broader focus extending also to socio-economic matters.¹⁶ In comparison to "environment and development", moreover, Sustainable Development had the incontestable meaning previously (in 1987) given by the so-called Brundtland Commission of a kind of

9 Vogler, supra note 6, 434.

10 Stockholm Declaration, supra note 7, 4 (principle 9); Cf. Schrijver, supra note 8, 45.

11 Cf. Ibid., 42.

12 Cf. Ibid., 66.

13 Report of the United Nations Conference on Environment and Development, UN Doc A/CONF.151/26 (Vol. I), 1 January 1993, Annex I (Rio Declaration), 3 (principle 1); Vogler, *supra* note 6, 437.

14 Schrijver, supra note 8, 69.

16 Cf. Vogler, *supra* note 6, 437.

⁶ J. Vogler, 'Chapter 26: The International Politics of Sustainable Development' in G. Atkinson *et al.* (eds), *Handbook of Sustainable Development* (2007), 432, 434.

⁷ Cf. *Declaration of the United Nations Conference on the Human Environment* (Stockholm Declaration), UN Doc A/CONF.48/14/Rev.1, 16 June 1972, 3; J. D. Sachs, The Age of Sustainable Development, 2015, 4.

⁸ Stockholm Declaration, *supra* note 7, 4 (principle 8); N. J. Schrijver, The Evolution of Sustainable Development in International Law: Inception, Meaning and Status, 2009, 44-45.

¹⁵ See *Report of the United Nations Conference on Environment and Development*, UN Doc A/CONF.151/26 (Vol. I), 1 January 1993, Annex II (Agenda 21), 12-479.

development that meets the aims of intergenerational equity.17 Probably for the same reason the concept has served, from then on, as a common point of reference within as well as beyond the UN.18

Predictably, the following Johannesburg Summit in 2002 dealt with the question on how to better implement the concept of Sustainable Development.¹⁹ In the States' efforts to find a more practicable conception, the general acknowledgment of the aims of intergenerational equity was concretised into three specific aspects of Sustainable Development: economic development, social development, and environmental protection.²⁰ Given the more and more fragmented structure of international policy and law, these three components could not be considered separately, but only through an integrative approach.²¹

Based on this three-dimensional framework,²² the States decided at Rio+20 in 2012 to develop even more practicable Sustainable Development Goals (SDGs) in order to enable governments to improve their compliance with the concept of Sustainable Development.²³ Indeed, in 2015 seventeen SDGs, each subdivided into 169 specific targets, were declared in the 2030 Agenda, conceptualising Sustainable Development as differentiated as never before.²⁴ This approach helped operationalising the concept to a certain extent, despite its still persisting vagueness.

III. The Gradual Adoption of the Concept by the EU

In the EU, there have been major and minor development steps regarding the implementation of Sustainable Development. While major ones shaped different phases of this process, minor ones marked a series of milestones on the way. These milestones are perceived as such either in view of the general development of the EU

18 Cf. Vogler, supra note 6, 437.

19 Ibid., 439.

²⁰ Cf. *Report of the World Summit on Sustainable Development*, UN Doc A/CONF.199/20, 1 January 2002, Resolution 1 Annex (Johannesburg Declaration), 1, para. 5; Sachs, *supra* note 7, 5.

²¹ Cf. *Report of the World Summit on Sustainable Development*, UN Doc A/CONF.199/20, 1 January 2002, Resolution 2 Annex (Johannesburg Plan of Implementation), 65, para 140 (a); Schrijver, *supra* note 8, 94.

22 Sachs, supra note 7, 6.

23 Cf. *The Future We Want*, UN Doc A/RES/66/288, 11 September 2012, Annex (Rio+20 outcome document), paras. 246 and 247; Vogler, *supra* note 6, 440.

24 See UN Doc A/RES/70/1, 21 October 2015, 6 and 15-27.

¹⁷ Cf. World Commission on Environment and Development, Our Common Future, 1987, 43; Sachs, *supra* note 7, 5.

itself or, more specifically, in view of the progression of the EU's conception of Sustainable Development.

In the first phase covering the period between 1992 and 2001, environmental protection was introduced to economic policies. The *Treaty of Maastricht* (1992) reflects the EU's initial and fundamental focus on economic relations. Yet, an awareness of the environmental limits of economic growth had increased (Art. 2 of the Treaty establishing the European Community – TEC),25 and arising challenges induced action with the *Fifth Environmental Action Programme* (1993).26 However, environmental concerns still represented marginal aspects in the EU's activities that majorly focused on the economy. Thus, the *Treaty of Amsterdam* (1997) represented a crucial step forward by legally enshrining the duty to integrate environmental issues into policies (Art. 3c TEC).27

In the second phase reaching from 2001 to 2006, all policies were to be integrated according to the three-pillar-notion of Sustainable Development. This much more progressive conception, bringing the economy, society, and the environment into equilibrium, was adopted in the *Sustainable Development Strategy* (2001).₂₈ The strategy may, therefore, be seen as one of the, if not *the*, most crucial political milestone(s) in the EU's history of adopting the concept of Sustainable Development. It formed a part of the so-called Lisbon process,²⁹ which highlighted and linked social concerns to economic policy.³⁰ The strategy added the concept of Sustainable Development to the process, entailing back then predominantly environmental concerns.³¹ Coherence between the respective policy areas was identified to be critical for attaining the balance.³² However, given that the EU refrained from anchoring the three-pillar-notion of Sustainable Development in the *Treaty of Nice* (2001),³³ the strategy's impulse and innovative capacity have not led to the acknowledgement of the implementation of this conception as a constitutional matter yet.

²⁷ See Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Amsterdam on 2 October 1997, OJ 1997 C 340/1, 25.

28 See Commission Communication of 15 May 2001, COM (2001) 264 final, 2.

29 See ibid.

30 Cf. Ibid., 16-17.

31 Cf. Ibid., 2.

32 See *ibid.*, 6 and 14.

³³ See Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Nice on 26 February 2001, OJ 2001 C 80/1.

²⁵ See Treaty on European Union, signed at Maastricht on 7 February 1992, OJ 1992 C 191/1, 5.

²⁶ See Council Resolution of 1 February 1993, OJ 1993 C 138/1, 21.

In the third phase from 2006 to 2016, the EU concretised its conception and extended its scope of action. Following the Renewed Sustainable Development Strategy (2006), the interrelation between the three components was adjusted to the EU context, for instance, by assigning the role of a trailblazer for the social and environmental transition to the economy.34 Moreover, due to a reflection on the global nature of the concern, global cooperation was strengthened,35 and under the Lisbon Treaty (2007) an external dimension of EU action on Sustainable Development was added (Art. 2 (5) of the Treaty on the European Union – TEU).36 Also, the formal recognition of the EU Charter of Fundamental Rights (CFREU)37 introduced the concept to the sphere of fundamental rights (Art. 37 CFREU).38 However, these expansions are confined to the environmental component (Art. 10 A (2) (f) TEU and Art. 37 CFREU).39 Apart from that, the basic three-pillar-notion was now enshrined in primary law (Art. 2 (3) subpara. 1 TEU).40 The Lisbon Treaty, therefore, has been an enormously significant milestone from a legal perspective. At the policy level, the Europe 2020 Strategy (2010) called for policy coherence between the EU and the Member States with a stronger focus on the economy, essentially because of the needed internal strength after the economic and financial crisis.41

In the current phase since 2016, the EU has focused efforts on enhancing internal procedures in order to increase credibility while it has been expanding both geographically and in policy reach.⁴² So far, the *Better Regulation Agenda* (2016) has reinforced *ex-ante* assessments of the EU's and the Member States' policies.⁴³ Furthermore, the *Strategy implementing the SDGs*⁴⁴ (2016) has introduced new tools of *ex-post* evaluation.⁴⁵

- 37 See ibid., 13 (Art. 6 (1) subpara. 1 TEU).
- 38 See Charter of Fundamental Rights of the European Union, OJ 2007 C 303/1, 10.
- 39 See *ibid*.; cf. *Supra* note 36, 24.
- 40 See supra note 36.
- 41 See Commission Communication of 3 March 2010, COM (2010) 2020 final, 7-10.
- 42 Cf. Commission Communication of 5 June 2002, COM (2002) 278 final, 3.
- 43 See Interinstitutional Agreement of 13 April 2016, OJ 2016 L 123/1, 4.
- 44 See supra note 24.

³⁴ See Council Note of 26 June 2006, EU Doc 10917/06, 3 and 6.

³⁵ See *ibid.*, 3.

³⁶ See Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007, OJ 2007 C 306/1, 11.

⁴⁵ See Commission Communication of 22 November 2016, COM (2016) 739 final, 16-17.

IV. The Implementation Approach, its Deficiencies and Limitations

The observation reveals that the EU has implemented the concept of Sustainable Development in a somewhat sectoral or partial manner due to an ultimately imbalanced consideration of the three dimensions and a fragmented structure of measures within the three areas. While the economy remains the predominantly addressed pillar, followed by the environmental area, the social dimension is still insufficiently noticed. This disparity becomes visible when looking at the legal provisions relating to Sustainable Development in particular, as they are very explicit about economic growth and similarly explicit about environmental matters. However, social issues have only lately been linked to the other two dimensions, which becomes even more evident with a view to the inclusion of an external dimension that neglects social matters (see above). Moreover, the objectives and policy tools in the economic, environmental, and social areas are often strongly disintegrated, given that synergies and coordination between different sectors are not clearly determined. For a good reason, policy coherence has become the most critical issue in the institutional context of the EU.46 To sum up, responses to the challenges arising have mainly been elaborated in particular sectors, indicating the EU's specialisation and, yet, in fact, a partial approach.47

This contrasts the EU's own vision of applying a rather cross-sectoral or holistic approach,⁴⁸ which has become visible in its initial proceeding as regards the incorporation of the three dimensions and adoption of related measures: Starting from only one fundamental focal point (economy), pressing aspects beyond this focus have been *considered* ("respecting the environment"), then *integrated* into policies ("environmental protection into…"), later *balanced* with related aspects (society) (see above). In a similarly systematic manner, respective objectives have been prioritised by taking into account the particular European context, on the one hand, in a factual

⁴⁶ See e.g. the Sustainable Development Strategy, *supra* note 28, 6; the Strategy implementing the SDGs, *supra* note 45, 14.

⁴⁷ Cf. also *Domorenok* who has exposed that due to the principle of environmental integration, environmental issues have been considered in particular and who has identified deficits with regard to the integration of particular objectives and linkages of policies. E. Domorenok, *Governing Sustainability in the EU: From Political Discourse to Policy Practices*, 2019, 35 and 39; *Pallemaerts* who argues that sustainable development has merely served as a modern label for environmental policy. According to his assessment, the concept and its reflection in the EU approach has not served as a comprehensive paradigm integrating economic, social and environmental objectives. M. Pallemaerts, 'Developing More Sustainably?', in A. Jordan & C. Adelle (eds), *Environmental Policy in the EU*, 3rd ed. (2013), 346, 363; *Selin* who has pointed out that even environmental policy integration has not been realised comprehensively. Instead, the EU has strongly focused on specific sectors, and policies have been coordinated insufficiently. H. Selin & S. D. VanDeveer, *European Union and Environmental Governance*, 2015, 150.

⁴⁸ See *supra* note 45, 14.

sense (significance or urgency at regional level), on the other hand, in a legal sense (the division of powers between the EU and the Member States).⁴⁹ Accordingly, policy tools to attain these objectives have been identified.⁵⁰ In this way, the overall strategies have involved various sectors to a certain extent. However, this inclusion does not equate to genuine integration of the respective measures, as explained.

The EU's intention coincides with the call for a holistic approach in academia, which is deemed necessary to enable the realisation of Sustainable Development, although there are various opinions on what such an approach should exactly entail.

In this sense, it is perceived as necessary by Bosselmann, for instance, to pursue a "governance for sustainability", which he understands as an approach following from a holistic awareness, being imaginative, and proactive. He differentiates this approach from the conventional environmental governance, which he characterises as having a problem-solving focus, being expert-based, and reactive.51 In't Veld argues for "transgovernance" as a new form of governance for sustainability. With this specific term, he refers to an approach that crosses limits of governance forms and disciplinary perspectives on those, state borders and borders set by other institutions, lines of measuring progress and their methodology, barriers of innovation and the consideration of these, thresholds of cultural integration and one-sided reflection in this regard.52 Kemp et al. refer to a "model of transition management", which the authors have co-developed for the Dutch government. It comprises four features being regarded as essential in terms of governance for sustainability: policy integration, denoting a dynamic interaction between institutions; common objectives and criteria as firm foundations for decision-making processes; internalisation of external costs, in the sense of prices actually reflecting costs with respect to the three pillars of sustainable development and, thereby, setting market-based incentives; programmes for system innovation, that enable institutions to discover and support technological niches as well as to include their inventions.53

The question arises whether these general, virtually ideal approaches appear feasible when considering the specific legal and political context in the EU. In this respect, it must be noted that the ideas brought forward would not entirely prove compatible

⁴⁹ See e.g. the Fifth Environmental Action Programme, *supra* note 26, 13-14 and 25; the Sustainable Development Strategy, *supra* note 28, 3-4 and 12.

⁵⁰ See the same programme, *supra* note 26, 67-78; the strategy, *supra* note 28, 13.

⁵¹ See K. Bosselmann, The Principle of Sustainability: Transforming Law and Governance, 2nd ed. (2017), 205.

⁵² See R. J. In't Veld, 'Transgovernance: The Quest for Governance of Sustainable Development' in L. Meuleman (ed), *Transgovernance* (2013), 275, 288.

⁵³ See R. Kemp *et al.*, 'Governance for Sustainable Development: Moving from Theory to Practice', 8 *International Journal of Sustainable Development* (2005) 1/2, 12, 19-25.

with the fundamental structure of the EU, but rather a differentiated view on the suggested aspects seems appropriate:

Many of those are compatible or even a consequence of the existing legal as well as political conditions in the EU. Proactive initiatives are in line with the precautionary principle that is deeply rooted in EU law (e.g. Art. 191 TFEU). Particular consideration of innovations may be seen as an application and/or consequence of the policy guiding principle to use best available knowledge. Policy coherence is already an essential component of a range of existing policies and legal instruments (see above). Thus, it seems close at hand to say that conditions for advocating the realisation of a more progressive approach in the EU are widely given.

However, the scope of possibilities for such an approach also appears to be confined by certain conditions: The aforementioned governance components may only be pursued in compliance with the principles of conferral powers, subsidiarity, and proportionality (Art. 4 (1) and Art. 5 TEU). While for policy integration this means that immediate accomplishment will be difficult and will need more sophisticated instruments, it also implies that the comprehensive realisation of "transgovernance" in the sense proposed by some authors will not be possible at all.

Nevertheless, while respecting the limits deriving from the EU's foundation, available (legal and political) tools may or must be better exploited as e.g. the precautionary principle and the principle to use best available knowledge strongly benefit progress towards an ideal approach of governance for Sustainable Development.

V. Conclusion

The present paper delivers the following findings: In section II, the origins of the path of Sustainable Development at the UN level have been retraced from Stockholm 1972 to Rio+20 2012. After acknowledging the need for a balance between environmental and socio-economic development, the notion of considering concerns intergenerational aims that comprise all three aspects with an equal position has found general acceptance. This notion has been specified subsequently to allow for better tracking of implementation processes while emphasizing the imperative for an integrative approach. Section III has shown that in the course of these global developments, the EU has set milestones in political and legal terms, thereby paving a clearly visible way that appears comprehensible in light of the EU's own historical context (e.g. the Lisbon process). Four phases can be distinguished with regard to the adoption of the concept in the EU: An initial phase introducing environmental protection to economic policies (1992-2001), then the integration of policies within the three-pillar-notion (2001-2006), and the concretisation and extension in scope of action (2006-2016), finally enhancing internal procedures (since 2016). Following the guidance of the milestones, pathways for the three dimensions of Sustainable Development have been built in the sense of the EU institutions being genuinely engaged with the relevant issues.

However, section IV has exposed that those have been rather bifurcated with the result of bearing the risk of getting lost in all too narrow streets. With a particular view on (primary) law, it has become apparent that the approach taken does consider the three pillars in an imbalanced way. Efforts in the social area internally and all the more externally have not gained equal recognition compared to those in the environmental area beside the initial focus on the economic area, probably because of highly controversial conceptions of a social market economy. Furthermore, policies contain a strongly fragmented structure due to factual (e.g., urgency) as well legal circumstances (e.g., the principle of subsidiarity and proportionality). This leads us to presume that the EU governance has, so far, reflected a sectoral and partial approach rather than a cross-sectoral and holistic approach as the EU itself aspires and is suggested in academia. While some features of an ideal approach appear suitable for the EU (e.g., those corresponding to the precautionary principle), others are limited by its legal and political foundation (e.g., the principle of conferral powers).

Turning to the UN level, where the path of Sustainable Development began, a recent follow-up summit in New York on the implementation of the *Agenda 2030* and the SDGs⁵⁴ brought more attention to the interconnectedness of the global problems and, therefore, integrative solutions. In addition to the main finding that the progress in implementing the SDGs has been slow,⁵⁵ the international community acknowledged that past efforts have been fragmented and lacked concertation within the institutional contexts.⁵⁶ In response, the political outcome *inter alia* calls for a whole-of-government approach that requires all governmental branches to be engaged in the regulatory process when relevant issues are concerned.⁵⁷

In conclusion, it has again been proven that the most challenging task is balancing (global) overarching notions and necessary adjustment to specific contexts. The EU has indeed performed a "mainstreaming" of Sustainable Development in the sense of a systematic incorporation of related concerns across the laws and policies.

⁵⁴ See *supra* note 24.

⁵⁵ See Political declaration of the high-level political forum on sustainable development convened under the auspices of the General Assembly, UN Doc A/RES/74/4, 21 October 2019, Annex (Political Declaration of the SDG Summit), para. 20.

⁵⁶ Ibid., paras. 23-24.

⁵⁷ Ibid., para. 27 (d).

Nevertheless, in future, it will be essential to pursue a policy approach aligning legislation with the strategy to more progressively apply the available instruments in order to approximate a holistic approach. How the EU manages this internal challenge will also be decisive for exploiting the EU's potential to take or maintain a frontrunner role in global governance for Sustainable Development.

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