



# The EU and the Global Agenda 2030: Reflection, Strategy and Legal Implementation

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# The EU and the Global Agenda 2030: Reflection, Strategy and Legal Implementation

Winfried Huck<sup>1,2</sup>

## ABSTRACT

Although the EU supports the United Nations Global Agenda 2030 and the Sustainable Development Goals (SDGs), it has failed up to now to translate the Global Agenda 2030 into a politically and legally coherent strategic format. Whether it will succeed in the future remains an open question. On the basis of systematic legal considerations, the extent to which sustainable development has so far played a role in trade policy is examined on the basis of EU Free Trade Agreements, relations with ASEAN, the Post-Cotonou Agreement with the ACP-States and the current relations between the EU and China.

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<sup>2</sup> An older version of this paper was published previously in German: “Die EU und die Globale Agenda 2030 der Vereinten Nationen: Reflexion, Strategie und rechtliche Umsetzung”, *Europäische Zeitschrift für Wirtschaftsrecht (EuZW)* 2019, 581 – 587.

# 1. INTRODUCTION

Almost five years ago, the Sustainable Development Goals (SDGs) entered the world with the UNGA Resolution 70/1. Their immense transformational potential demands to be reflected in comprehensive political and legal formats. The transfer into this necessary embedding is subject to various challenges. The major challenges that the SDGs<sup>3</sup> are calling for to be mastered cannot only be reduced to the already immense fight against climate change<sup>4</sup> or to the poverty that exists in Europe of as much as 22.5%.<sup>5</sup> Multiple dimensions of inequality, e.g. in the development of wealth and income, which leads to the decline of the middle class, also generate uncertainty and instability, and as a result are responsible for political upheavals.<sup>6</sup> To recapitulate: The 17 SDGs and the associated 169 targets were unanimously adopted by all 193 United Nations (UN) member states in New York based on the UN resolution of 25 September 2015 entitled "Transforming our world: the 2030 Agenda for Sustainable Development".<sup>7</sup> The SDGs can thus be seen as a universal response to the global pattern of political, economic and environmental development<sup>8</sup> that has gone off the rails and of which according to the UN "climate change is one of the greatest challenges of our

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<sup>3</sup> French, Kotzé (eds.), *Sustainable Development Goals, Law, Theory and Implementation*, 2018; Huck, Kurkin, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 2018, p. 375, available at SSRN in English: <https://ssrn.com/abstract=3273899>; Kamau, Chasek, O'Connor (eds.), *Transforming Multilateral Diplomacy, The Inside Story of the SDGs*, Milton Park, Abingdon, 2018; Cordonier Segger, Weeramantry (eds.), *Sustainable Development Principles in the Decisions of International Courts and Tribunals*, Milton Park, Abingdon, 2017; Dodds, Donoghue, Roesch, *Negotiating the Sustainable Development Goals: A Transformational Agenda for an Insecure World*, London, 2017; Winkler, Williams, *The Sustainable Development Goals and Human Rights: A Critical Early Review*, Milton Park, Abingdon, 2018; Liesa, Díaz Barrado, Durán y Lalaguna (eds.), *International Society and Sustainable Development Goals*, Pamplona, 2016; Shawki, *International Norms, Normative Change, and the UN Sustainable Development Goals*, Lanham, Maryland, 2016.

<sup>4</sup> EU Commission, *Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions, The European Green Deal* COM (2019) 640 final; see already in 2009: Schepelmann, Stock, Koska et. al., *Wuppertal Institute for Climate, Environment and Energy, A Green New Deal for Europe, Towards green modernization in the face of crisis*, 2009, p. 6 ff., 30.

<sup>5</sup> EU Commission, *Reflection Paper: Towards a Sustainable Europe by 2030*, COM (2019) 22 final, 30/1/2019, 2019, p. 11.

<sup>6</sup> Stiglitz, Fitoussi, Durand (OECD), *Beyond GDP: Measuring What Counts for Economic and Social Performance*, Paris, 2018, pp. 14, 28, 71 ff.; EU Reflection Paper: *Towards a Sustainable Europe by 2030*, COM (2019) 22 final, 30/1/2019, 2019, pp. 12 f.

<sup>7</sup> UN, A/RES/70/1, *Transformation of our world: Agenda 2030 for sustainable development of 25/9/2015*.

<sup>8</sup> Scholtz, Barnard, *The Environment and the Sustainable Development Goals: 'We are on a Road to Nowhere'*, in: French, Kotzé (eds.), *Sustainable Development Goals - Law, Theory and Implementation*, Cheltenham, 2018, p. 248.

time".<sup>9</sup> The criticism directed against the SDGs that the postulate of economic growth inevitably leads to a disregard and violation of planetary boundaries is proving to be neuralgic<sup>10</sup> but within the demanded transformation process<sup>11</sup> relying on scientific, technological and innovative<sup>12</sup> progress curable issue. It is hardly surprising that critical voices describe the SDGs as a "neoliberal incarnation of green capitalism".<sup>13</sup> Endless economic growth cannot be judged sustainable if it crosses biophysical boundaries and ignores the rupture of the Earth system in the Anthropocene, although this result is excluded in the SDGs and, among other things, due to a transformation process production and consumption have to change.<sup>14</sup> Nor is it right, and this is another view, to fight global poverty in 2030 at the expense of ecological destruction, species extinction, loss on biodiversity and growing injustice due to the growing world population<sup>15</sup> and the consequences of climate change.<sup>16</sup> Of course, the SDGs are the only universal response to date, which all 193 member states of the UN have agreed to. There is justified criticism, but a comparable, even more progressive, concept with a comparable acceptance does not currently exist. The SDGs are to be welcomed, but they must be brought into an equilibrium with the biophysical and planetary boundaries, which is already pre-drawn in the sense of proportionality of the underlying dimensions (social, ecological and economic).<sup>17</sup> This will require an extraordinary effort due to climate change alone and the many questions it raises, together with a growing number of people on Earth, which presupposes a comprehensive discourse in the societies within the EU.<sup>18</sup> Although the EU has made significant contributions to the SDG negotiation

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<sup>9</sup> UN A/RES/70/1 of 25/9/2015, para. 14.

<sup>10</sup> Scholtz, Barnard, *The Environment and the Sustainable Development Goals: 'We are on a Road to Nowhere'*, in: French, Kotzé (eds.), *Sustainable Development Goals - Law, Theory and Implementation*, Cheltenham, 2018, p. 224, 242; Viñuales, *Sustainable Development in International Law*, in: Rajamani, Peel (eds.), *The Oxford Handbook of International Environmental Law*, Oxford, 2nd edn., 2019 (forthcoming), pp. 21 – 23.

<sup>11</sup> UN A/RES/70/1 of 25/09/2015, preamble and paras. 7., 27. ff., 63.

<sup>12</sup> UN A/RES/70/1 of 25/09/2015, para. 28.

<sup>13</sup> Adelman, *The Sustainable Development Goals, Anthropocentrism and Neoliberalism*, in: French, Kotzé (eds.), *Sustainable Development Goals - Law, Theory and Implementation*, 2018, pp. 15 ff.

<sup>14</sup> UN A/RES/70/1 of 25/9/2015, Preamble, para. 3, 59.

<sup>15</sup> Destatis, *In 2040 the world population will be 9.21 and in 2100 about 11.18 billion*: <https://de.statista.com/statistik/daten/studie/1717/umfrage/prognose-zur-entwicklung-der-weltbevoelkerung/>.

<sup>16</sup> Kotzé, *The Sustainable Development Goals: An Existential Critique alongside three New-millennial Analytical Paradigms*, in: French, Kotzé (eds.), *Sustainable Development Goals - Law, Theory and Implementation*, Edward Elgar, 2018, p. 65.

<sup>17</sup> UN A/RES/70/1 of 25/9/2015; UN A/RES/66/288 of 27/7/2012, *The future we want*, Annex para. 1.

<sup>18</sup> EU Commission, *Reflection Paper: Towards a Sustainable Europe by 2030*, COM (2019) 22 final, 30/1/2019, 2019, p. 37, taking up SDG 17.

process<sup>19</sup>, it has not yet find a convincing answer in transforming the SDGs of the Global Agenda 2030<sup>20</sup> into a comprehensive political and legal format. Whether it will succeed in the future remains an open question. With the aim of understanding which challenges the EU has to meet in order to position itself for the future in the context of the Global Agenda 2030, this paper will focus specifically on systemic legal considerations and the sustainable design within trade, development cooperation and foreign policy of the EU. For this purpose, the relations with ASEAN, the Post-Cotonou Agreement with the ACP-States and the current relations between the EU and China will be discussed.

## 2. LEGAL SYSTEMIC CONSIDERATIONS

The Global Agenda consists of preamble, declaration and the SDGs framed by it. However, the systemic concept of the Global Agenda 2030 is not limited to these components. Rather, it contains segments with distinct role and effects at different levels. In a first overview, UN A/RES/70/1 "2030 Agenda for Sustainable Development" consists of several sections. It is structured into the declaration "Transforming our world: the 2030 Agenda for Sustainable Development" and the "Sustainable Development Goals and targets" contained therein. It can be observed that both the Agenda and the SDGs themselves contain different levels, similar to an internal system.

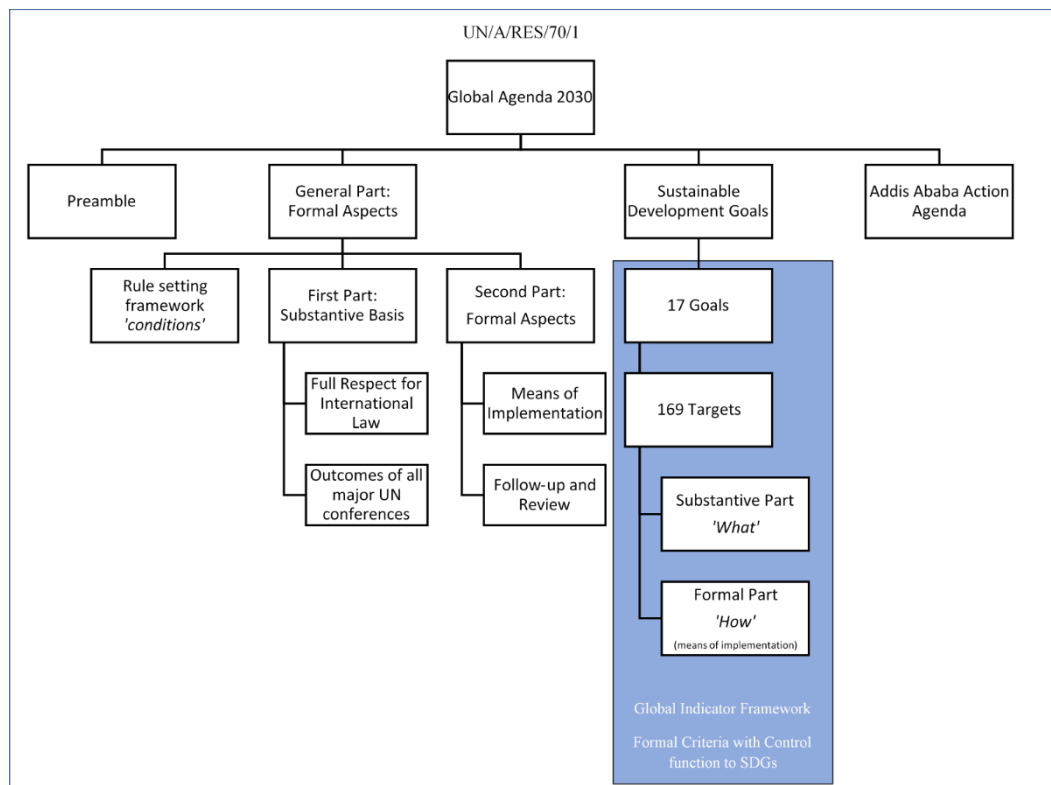
Figure 1 which is of non-exhaustive nature reveals the depth behind the Global Agenda 2030, not only in terms of content, but also in terms of structure. This systemic background must be taken into account by the implementing stakeholders and accordingly by the EU. It should be noted the interdependence between the "substantive" goals and the inherent "formal" control elements of the framework of indicators. The Global Agenda 2030 is not directly legally binding as a resolution, but nevertheless reflects a normative concept anchored in international law on the basis of existing international agreements. Many SDGs are closely linked to human rights<sup>21</sup> such as the right to food or the right to liberty and

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<sup>19</sup> Dodds, Donoghue, Roesch, *Negotiating the Sustainable Development Goals: A Transformational Agenda for an Insecure World*, London, 2017, p. 77, 110.

<sup>20</sup> UN, A/RES/70/1, *Transformation of our world: Agenda 2030 for sustainable development* of 25/9/2015.

<sup>21</sup> See in general: Weeramantry, *Sustainable justice through international law*, in: Cordonier Segger, Weeramantry (eds.), *Sustainable Development Principles in the Decisions of International Courts and Tribunals*, Milton Park, Abingdon, 2017; Safdi, Jodoin, *The principles of sustainable development in the practice of UN human rights bodies*, in: Cordonier Segger, Weeramantry (eds.), *Sustainable Development Principles in the Decisions of International Courts and Tribunals*, Milton Park,



**Figure 1: Formal and Substantive Levels of the Global Agenda 2030**

security of a person, the right to humane treatment, the right to equality before the law and to an effective remedy, the right to non-discrimination, or the right to a healthy environment.<sup>22</sup> At the same time the SDGs embody a fundamental approach to empower girls and women in particular to guarantee them a fair chance for participation and equality.<sup>23</sup> The SDGs are successively being converted into new legal formats within and outside the EU,

Abingdon, 2017, p. 447, 467; see specifically: Viñuales, Sustainable Development in International Law, Rajamani, Peel (eds.), The Oxford Handbook of International Environmental Law, Oxford, 2<sup>nd</sup> edn., 2019 (forthcoming), pp. 10 (fn. 28), 20.

<sup>22</sup> UN A/RES/70/1 of 25/09/2015, SDG 2.1, 2.2, 3.1, 3.2, 3.4, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 10.2, 10.3, 10.4, 13.1, 14.2, 16.1, 16.2, 16.3, 16.a, 16.b; See Kotzé, A Cartography of Environmental Human Rights, in: Lees/Viñuales, The Oxford Handbook of Comparative Environmental Law, pp. 1056 – 1058; Boer, Hannam, Land Degradation, in: Lees, Viñuales (eds.), The Oxford Handbook of Comparative Environmental Law, p. 443; See also: Cordonier Segger, Harrington, Environment and Sustainable Development, in: Chesterman, Malone, Villalpando, The Oxford Handbook of United Nations Treaties, pp. 203.

<sup>23</sup> UN A/RES/70/1 of 25/9/2015, Declaration para. 5, 8, 15, 20; SDG 4.1, 4.2, 5.1, 5.3, 6.2. perspective such as Collins, Sustainable Development Goals and human rights: challenges and opportunities, in: French, Kotzé (eds.), Sustainable Development Goals - Law, Theory and Implementation, 2018, pp. 66, 87 f.



e.g. in the form of modern EU free trade agreements,<sup>24</sup> but not only there.<sup>25</sup> The various activities in the vertical and horizontal transnational multi-level system thus form a denser network of a new, necessarily legal, order<sup>26</sup>, which responds worldwide to the growing concern of an out-of-balance development that not only the EU has to face. Despite various layers of international agreements on which the SDGs are based<sup>27</sup>, the SDGs lack clear legal contours and definitions. The SDGs are extensive, complicated and difficult to grasp. That makes the discussion difficult. The complex term "Rule of Law" (SDG 16.3) alone illustrates the wide range of possible discussions.<sup>28</sup> In addition, there is still a lack of a holistic strategy with which SDGs can be made legally operational within the EU and with which they can be systematically linked to external legal and regulatory systems and the multi-level system.

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<sup>24</sup> Harrison, Barbu, Campling, Richardson, Smith, Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda, *World Trade Review* 2018, pp. 1 ff; Hush, Where No Man Has Gone before: The Future of Sustainable Development in the Comprehensive Economic and Trade Agreement and New Generation Free Trade Agreements, *Journal for International Environmental Law* 2018, pp. 93 ff; Bronckers, Gruni in Prévost, Alexovičová, Hillebrand, Pohl (eds.), *Restoring Trust in Trade: Liber Amicorum in Honour of Peter Van den Bossche*, 2018. Available at SSRN: <https://ssrn.com/abstract=3255041>.

<sup>25</sup> Cordonier Segger, Sustainable Development in Regional Trade Agreements in: Bartels, Ortino (ed.), *Regional Trade Agreements and the WTO Legal System*, Oxford 2006, pp. 313 ff; Huck, The Integration of Sustainable Development Goals (SDGs) into the Raw Materials Sector (April 10, 2018). *Europäische Zeitschrift für Wirtschaftsrecht (EuZW)*, Vol. 7, 2018, pp. 266 . Available at SSRN: <https://ssrn.com/abstract=3274602>.

<sup>26</sup> Huck, Kurkin, The UN Sustainable Development Goals (SDGs) in the Transnational Multilevel System (January 26, 2018). *Heidelberg Journal of International Law (HJIL)/ Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)*, Vol. 2, 2018, pp. 375, 394. Available at SSRN: <https://ssrn.com/abstract=3273899>.

<sup>27</sup> The Danish Institute for Human Rights, Human Rights Guide to the SDGs <http://sdg.humanrights.dk/en/node/10> and the SDG-Human Rights Data Explorer, <https://www.humanrights.dk/sdg-human-rights-data-explorer>: The database lets you explore a total of 145,000 recommendations from 67 mechanisms under the international human rights system. 59% of these recommendations are directly linked to a SDG target, and hence immediately relevant for national SDG implementation; see further Kaltenborn, Krajewski, Kuhn, *Sustainable Development Goals and Human Rights*, Springer 2020 (Open Access).

<sup>28</sup> FU Berlin, Understandings of the Rule of Law in various Legal Orders of the World: <https://wikis.fu-berlin.de/display/SBprojectrol/Home>; World Justice Project, *Rule of Law Index 2017–2018*, Washington, 2018; Khan, *How Can the Rule of Law Advance Sustainable Development in a Troubled and Turbulent World*, *McGill Journal for Sustainable Development Law* 2017, pp. 213 f; Lautenbach, *The Concept of the Rule of Law and the European Court of Human Rights*, Oxford 2013, pp. 37 ff.

### 3. INDICATORS AS A FORMAL CONTROL ELEMENT OF THE SUBSTANTIVE CONTENT OF THE SDGS

A formal control instrument to monitor progress has also been included into the system of the substantive SDGs.<sup>29</sup> Within the system of the Global Agenda 2030 and the SDGs, this instrument allows for a targeted review of SDG implementation. The state of their implementation by the Member States is measured by indicators.<sup>30</sup> Although the use of the Global Indicator framework developed by the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs) as well as the follow-up and review processes at all levels are based on the principle of voluntariness<sup>31</sup>, the provision serves as an "accessory to the content of the SDGs" and thus both for their interpretation and for the orientation of the respective implementation levels. Indicators are tools of statistics, economics and management, known there as Key Performance Indicators (KPIs)<sup>32</sup>, and have also been the starting point for considerable legal research over a certain period of time.<sup>33</sup> The process of creation and the applicability of indicators is anything but free of criticism<sup>34</sup> and difficulties.<sup>35</sup>

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<sup>29</sup> UN A/RES/70/1 of 25/9/2015, paras. 61, 83.

<sup>30</sup> *Ibid.*, para. 48, 61, 75, 83; Huck, *Measuring Sustainable Development Goals (SDGs) with Indicators: Is Legitimacy Lacking?*, January 31, 2019, available at SSRN: <https://ssrn.com/abstract=3360935>; Engle Merry, Davis, Kingsbury, *The Quiet Power of Indicators, Measuring Governance, Corruption, and the Rule of Law*, 2015, pp. 1 ff.

<sup>31</sup> UN A/RES/70/1 of 25/9/2015, para. 74a.

<sup>32</sup> Federal Government of Germany, *German Sustainability Strategy - Update 2018*, BT-Drs. 19/5700, 53 "Key Indicators".

<sup>33</sup> Morse, *Analysing the Use of Sustainability Indicators*, *The Palgrave Handbook of Indicators in Global Governance*, 2018; Siems, Nelken, *Global social indicators and the concept of legitimacy*, *International Journal of Law in Context*, 2017, 436 ff; Nelken, Siems, *Introduction: Global social indicators: Constructing transnational legitimacy*. *International Journal of Law in Context*, 2017, 434 ff; Frydman, *From accuracy to accountability: subjecting global indicators to the rule of law*, *International Journal of Law in Context* 2017, 461 f; Infantino, *Global indicators*, Cassese (ed.), *Research Handbook on Global Administrative Law*, 2017, 348 ff.; Merry, Davis, Kingsbury (eds.), *The Quiet Power of Indicators, Measuring Governance, Corruption, and the Rule of Law*, 2015, 1 ff.

<sup>34</sup> von Bogdandy, Goldmann, *Taming and Framing Indicators: A Legal Reconstruction of the OECD's Programme for International Student Assessment (PISA)*, in: *Governance by Indicators*, 2015, 52, 54, 85: "PISA thus needs to be framed by public law – more precisely, by international law – in order to ensure its legitimacy and address any conflicts and contestations."

<sup>35</sup> UN A/RES/70/1 of 25/9/2015, para. 57; Stiglitz, Fitoussi, Durand (OECD), *Beyond GDP, Measuring What Counts for Economic and Social Performance*, 2018, pp. 60 ff.

A measurement is ideally based on aggregable data, which is sometimes lacking<sup>36</sup>, and which is a problem the EU as well as its Member States are also facing.<sup>37</sup> In addition, measurement results can be incorrect for various reasons, such as because the definition of indicators and their replenishment with value-bound components has been unobjectively influenced by bias, either because indicators have been insufficiently developed or simply because indicators are not available.<sup>38</sup> Overall, it can be predicted that a purely political implementation of the SDGs within the EU will not be sufficient to fulfil the Global Agenda, without the appropriate legal instruments for at least two reasons: on the one hand, the transformational process is too deep and far-reaching in view of planetary and biophysical limits of resilience, and on the other hand, the Global Agenda ends in 2030, although there is likely to be a new agenda thereafter, since it is assumed that not all goals will be achieved.<sup>39</sup>

## 4. INTEGRATION OF THE SDGS BY THE EU

The principle of sustainable development is enshrined in Art. 3 para. 3 sentence 2, Art. 3 para. 5 sentence 2 Treaty on European Union (TEU) and is again emphasized in Art. 11 Treaty on the functioning of the European Union (TFEU) for the cross-sectional subject of the environment. What exactly is to be understood by the term Sustainable Development can be answered differently due to different value hierarchies and systematic references within EU law. Properly, the term should be interpreted in a future-oriented openness<sup>40</sup>, adapted to the needs of relevant societal development, so that current and future resolutions and international agreements adopted by the UN can be synchronised consistently within the EU

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<sup>36</sup> UN A/RES/70/1 of 25/9/2015, para. 57.

<sup>37</sup> Eurostat, Sustainable development in the European Union Monitoring report on progress towards the SDGs in an EU context 2019 edition, pp. 13, 15, 21; European Commission, EU SDG Indicator set 2020, Result of the review in preparation of the 2020 edition of the EU SDG monitoring report, Final version of 16/01/2020, p. 5, 27 f.

<sup>38</sup> Huck, Measuring Sustainable Development Goals (SDGs) with Indicators: Is Legitimacy Lacking?, January 31, 2019, pp. 13, 15, available at SSRN: <https://ssrn.com/abstract=3360935>.

<sup>39</sup> Independent Group of Scientists appointed by the Secretary-General, The Future Is Now, Science For Achieving Sustainable Development, Global Sustainable Development Report 2019, p. 10, 12.

<sup>40</sup> This assumption of equity as one of the essential columns of justice, originating by the ideas of Aristotle, is also reflected in the concept of sustainability as adopted in the Global Agenda and the SDGs. It is to be understood as a balanced system that assumes proportionality as an inner ideal state which results in an continuous external equilibrium; see Sen, Elements of a Theory of Human Rights, Philosophy & Public Affairs 2004, pp. 324, 336; Nussbaum, Capabilities as fundamental entitlements: Sen and social justice, Feminist Economics 2003, 33-59.

and its member states. Against the background of the Global Agenda 2030, it should be stressed that the concept is based on the economic, ecological and social dimensions as an indivisible foundation.<sup>41</sup> A reduction to environmental protection denies the three principles of sustainability having been recognised as indivisible<sup>42</sup> not only since the SDGs came into effect on 1 January 2016.<sup>43</sup> The term "sustainable development", which is open to the future, is currently defined in European law primarily by the Global Agenda 2030 and the SDGs it covers, and the term's content is filled out in the interest of maximum convergence. This is no longer just a matter of theoretical considerations. Over time, the EU has condensed the environment, labour protection and human rights into special chapters in modern Free Trade Agreements (FTAs), so called Trade and sustainable development (TSD) chapter<sup>44</sup>, which must undergo extensive analysis through Sustainable Impact Assessments (SIAs)<sup>45</sup> or ex-post evaluations.<sup>46</sup> It therefore seems only logical that the Commission announced very early on that it would implement the Global Agenda 2030 in its internal and external policies.<sup>47</sup> On 14 October 2015, immediately after the resolution on the SDGs, the EU announced substantial changes to its common commercial policy which is becoming increasingly concrete, in accordance with Art. 207 TFEU, under the name Trade for All.<sup>48</sup> These include the 'Trade-Sustainable Development' Chapters, part of a younger generation of EU free trade agreements, such as those found in the EU's trade agreements with Canada (CETA)<sup>49</sup>,

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<sup>41</sup> Calliess, TFEU Art. 11, in: Calliess, Ruffert, 5<sup>th</sup> edition 2016, mn. 12, 13.

<sup>42</sup> UN, A/RES/70/1, Preamble to the SDGs: "They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental"; disputed see in detail: Streinz, Kahl, 3<sup>rd</sup> edition 2018, TFEU Art. 11 mn. 19 ff.

<sup>43</sup> UN, A/RES/70/1, para. 21.

<sup>44</sup> EU Commission, Implementation of the Trade and sustainable development (TSD) chapter in trade agreements - TSD committees and civil society meetings, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1870>; see Harrison, Barbu, Campling, Richardson, Smith, Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters, *Journal of Common Market Studies* 2019, p. 260-277; Gött, Linkages of Trade, Investment and Labour in Preferential Trade Agreements: Between Untapped Potential and Structural Insufficiencies, *European Yearbook of International Economic Law* 2019, 2020, p. 133- 165.

<sup>45</sup> Gehring, Stephenson, Cordonier Segger, Sustainability Impact Assessments as Inputs and as Interpretative Aids in International Investment Law, *World Trade Journal* 2017, pp. 165 ff.

<sup>46</sup> Ex-post evaluations look for unintended impacts not expected at the time of impact assessment or SIA and for evidence of causality, Commission: <http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/ex-post-evaluations/>.

<sup>47</sup> EU Commission - Fact Sheet Sustainable Development Goals and the Agenda 2030, Brussels, 25/09/2015, available at: [http://europa.eu/rapid/press-release MEMO-15-5709\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5709_de.htm).

<sup>48</sup> EU Commission, [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf).

<sup>49</sup> Schroeder, *Zeitschrift Europarecht (EuR)* 2018, 119; BVerfG, *NJW* 2016, p. 3583.

Colombia, Peru and Ecuador<sup>50</sup>, Japan (JEFTA)<sup>51</sup>, Mexico<sup>52</sup> and Vietnam.<sup>53</sup> It is obvious that not all SDG sustainability issues can be addressed in new EU FTAs, as it is also obvious that trade policy cannot be the sole EU vehicle in European law for addressing SDGs.<sup>54</sup> Another result of the implementation of the SDGs is the New European Consensus (NEC).<sup>55</sup> The NEC establishes a common framework for the new European development policy, providing a common approach to development policy for all EU institutions and Member States. The SDGs will also have a significant influence on negotiations with China on trade agreements and other issues, as can be seen from the recently published joint statement.<sup>56</sup> In addition, trade and development relations that have existed for many years are subject to disruptive processes in the EU and are being revised in the context of sustainability, such as the Post-Cotonou Agreement with the ACP States.<sup>57</sup>

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<sup>50</sup> Huck, Kurkin, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)*, 2018, 375, 399 f.

<sup>51</sup> *Ibid.*, 375, 402.

<sup>52</sup> EU Commission, Guide to the new EU-Mexico Trade Agreement, April 2018, available at: [http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc\\_156888.pdf](http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156888.pdf).

<sup>53</sup> EU Commission, Commission welcomes European Parliament's approval of EU-Vietnam trade and investment agreements, 12.2.2020, available at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2114>.

<sup>54</sup> EU Commission, Non-paper of the Commission services, Trade and Sustainable Development (TSD), chapters in EU Free Trade Agreements (FTAs), 11/7/2017: [http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf); European Commission, COM (2020) 21 final, Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, Sustainable Europe Investment Plan, European Green Deal Investment Plan, 14/01/2020; see also: European Commission, European Commission and International Monetary Fund strengthen cooperation to support sustainable development, 28/01/2020: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_126](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_126).

<sup>55</sup> Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission OJ C 210, 30/6/2017, pp. 1-24.

<sup>56</sup> EU Council, EU-China Summit, 09/04/2019, <https://www.consilium.europa.eu/de/meetings/international-summit/2019/04/09>; Joint Statement on the Implementation of the EU-China Cooperation on Energy, Brussels, Belgium, 19/04/2019; Appel de Pékin sur la Conservation de la Biodiversité et le Changement Climatique, 06/11/2019, <https://www.elysee.fr/front/pdf/elysee-module-14678-fr.pdf>.

<sup>57</sup> EU Commission, JOIN (2015) 33 final, Joint Consultation Paper, Towards a new partnership between the European Union and the African, Caribbean and Pacific countries after 2020, 6/10/2015, pp. 1 – 11.

## 5. EU TRADE POLICY AND SDGS

The EU's trade policy generally aims to ensure that economic development goes hand in hand with social justice, respect for human rights, high labour standards and high environmental standards.<sup>58</sup> Even if this is at least a partial continuation of the workers' rights of the Havana Charter of 1948<sup>59</sup>, which did not enter into force, and even though for various reasons human rights, environmental regulations and occupational health and safety have formed different temporal layers in the EU's trade policy, they are now linked to the SDGs and being further developed against the background of the Global Agenda. However, the 'Trade-Sustainable Development' Chapters of trade and investment treaties are also subject of justified criticism.<sup>60</sup> The Commission has taken up this criticism in a Non paper comprising 15 points and makes it clear that it sees room for improvement in principle<sup>61</sup>, whereby there is no consensus for a sanctions model in the event of human rights violations by trading partners.<sup>62</sup> This criticism was also recently addressed in the European Green Deal, which is devoted to the sustainable reorientation of the EU economy in whole.<sup>63</sup> This deal is particularly dedicated to the fight against climate change and takes account of the shift to clean energy, to a circular economy and the preservation of planetary boundaries. In this respect, the focus is on green finance and investment and ensuring a just transition<sup>64</sup> for which the EU strives

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<sup>58</sup> EU Commission: <http://ec.europa.eu/trade/policy/policy-making/sustainable-development/>.

<sup>59</sup> Art. 7 of the Havana Charter (1948).

<sup>60</sup> Harrison, Barbu, Campling, Richardson, Smith, Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters, *Journal of Common Market Studies* 2019, pp. 260 ff; Marx, Ebert, Hachez, Wouters, Dispute Settlement in the Trade and Sustainable Development Chapters of EU Trade Agreements, KU Leuven, 2017; Bartels, A Model Human Rights Clause for the EU's International Trade Agreements, Berlin, 2014.

<sup>61</sup> EU Commission, Non Paper: Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements, 26/2/2018, [http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf).

<sup>62</sup> *Ibid.*, p. 3.

<sup>63</sup> European Commission, COM (2019) 640 final, Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions, The European Green Deal, 11.12.2019, p. 2 f.

<sup>64</sup> European Commission, COM (2019) 640 final, Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions, The European Green Deal, 11.12.2019, p. 15 – 17, 19.

to take the global lead.<sup>65</sup> Overall, it is striking that the wording is similar to the Non paper mentioned above. In principle, ways must be sought *de lege ferenda* how individuals or groups can be granted rights of action on the basis of modern 'Trade-Sustainable Development' Chapters still to be formulated or parallel agreements.<sup>66</sup>

## 6. A FUTURE EU STRATEGY FOR TRANSLATING SDGS INTO INTERNAL AND EXTERNAL POLICIES

Compared to the subjective assessment of the Commission, the process of integrating the SDGs into European policy fields and implementing them in legal acts is not very coherent. There is a lack of a coherent overarching strategic approach including the SDGs that would indicate a harmonious and systematic integration of the EU's internal and external policies<sup>67</sup> in an overall context. In a diction hardly to be surpassed in clarity, the Council, in its conclusions on the implementation of the UN Agenda 2030, gives the Commission at best a mediocre grade.<sup>68</sup> Although the Council repeatedly called on the Commission, four years after the adoption of the SDGs, the Commission has failed to give a holistic response to the complex challenges of the SDGs in a comprehensive strategy that permeated all EU policy areas as a cross-cutting task.<sup>69</sup> In December 2019 the Council softened its previous critics towards the Commission and adopted a set of conclusions on the implementation by the EU

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<sup>65</sup> European Commission, COM (2019) 640 final, Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions, The European Green Deal, 11.12.2019, p. 2.

<sup>66</sup> Marx, Bright, Wouters et. al., Access to legal remedies for victims of corporate human rights abuses in third countries, in: European Parliament, Study requested by the DROI committee, 2019, pp. 107, 117 ff.

<sup>67</sup> Council of the EU of 9/4/2019, 8286/19, Towards an ever more sustainable Union by 2030 - Council conclusions: <https://www.consilium.europa.eu/media/39019/st08286-en19.pdf>, paras. 4, 7; European Parliament, Draft Report, 2018/2279 (INI), 23/1/2019.

<sup>68</sup> Council of the EU of 9/4/2019, 8286/19, Towards an ever more sustainable Union by 2030 - Council conclusions: <https://www.consilium.europa.eu/media/39019/st08286-en19.pdf>.

<sup>69</sup> *Ibid.*, No. 8 ff.

of the United Nations' 2030 Agenda on Sustainable Development and its 17 SDGs.<sup>70</sup> The Council welcomes the 2019 edition of Eurostat's 'Monitoring report on progress towards the SDGs in an EU context' as a key document for measuring the EU's progress towards the achievement of the SDGs. The member states were encouraged to implement the 2030 agenda into national planning instruments, policies, strategies and financial frameworks.<sup>71</sup>

The "Reflection Paper on a Sustainable Europe by 2030"<sup>72</sup> presented by the Commission in January 2019 presents 3 scenarios for further implementation to be discussed between all stakeholders.<sup>73</sup> The three scenarios comprise different ideas for the reorientation of Europe towards a sustainable future. They are not exhaustively formulated, and their elements may be combined. They read as follows: 1. An overarching EU SDGs strategy guiding the actions of the EU and its Member States; 2. A continued mainstreaming of the SDGs in all relevant EU policies by the Commission, but not enforcing Member States' action; 3. An enhanced focus on external action while consolidating current sustainability ambition at EU level.<sup>74</sup> Fundamental issues should be discussed, such as patterns of production and consumption, global warming, closed cycle management<sup>75</sup>, loss of ecosystems and biodiversity, exploitation and depletion of natural resources from drinking water to fertile soil<sup>76</sup>, poverty and social exclusion of about 22.5% of the EU population<sup>77</sup>, income inequalities and excessive wealth concentrations.<sup>78</sup> The scenarios are neither restrictive nor normative, they (only) aim to stimulate discussion.<sup>79</sup> Despite the fact that the

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<sup>70</sup> Council of the EU, Press release, 10/12/2019, Sustainable Europe by 2030: Council adopts conclusions, <https://www.consilium.europa.eu/en/press/press-releases/2019/12/10/sustainable-europe-by-2030-council-adopts-conclusions/>.

<sup>71</sup> Council of the EU of 10/12/2019, 14835/19, Building a sustainable Europe by 2030 – Progress thus far and next steps - Council conclusions (10 December 2019), <https://www.consilium.europa.eu/media/41693/se-st14835-en19.pdf>.

<sup>72</sup> EU Commission, Reflection Paper: Towards a sustainable Europe by 2030, COM (2019) 22 final, 30/1/2019; additional material: EU Commission, press release, 30/1/2019, IP/19/701.

<sup>73</sup> Falke, Zeitschrift für Umweltrecht (ZUR) 2019, Neue Entwicklungen im Europäischen Umweltrecht (Berichtszeitraum: 8.1.2019 – 4.3.2019), p. 312.

<sup>74</sup> EU Commission, COM (2019) 22 final, Reflection Paper: Towards a Sustainable Europe by 2030, COM (2019) 22 final, 30/1/2019, pp. 40 – 44; EU Commission, press release, 30/1/2019, IP/19/701.

<sup>75</sup> EU Commission, Reflection Paper: Towards a Sustainable Europe by 2030, COM (2019) 22 final, 30/1/2019, p. 16.

<sup>76</sup> Ibid., p. 10.

<sup>77</sup> Ibid., p. 11.

<sup>78</sup> Ibid.

<sup>79</sup> EU Commission, Reflection Paper: Towards a Sustainable Europe by 2030, COM (2019) 22 final, 30/1/2019, p. 16.



European Green Deal now takes up these issues and seeks to implement the Global Agenda and the SDGs, this has so far not led to coherence within the EU's approach.

## 7. AMBIGUOUS CONSIDERATION OF SDGS IN THE EXTERNAL POLICIES OF THE EU

The SDGs – insofar as they concern workers' rights and environmental protection regulations – are at least partly to be found in modern trade agreements of the EU and, in addition, in other contexts, which are illustrated here using ASEAN, ACP-States and the 21st summit meeting between the EU and China in 2019 as examples.

### 7.1. Association of Southeast Asian Nations (ASEAN)

The global commitment to Agenda 2030 and the SDGs influences other regional organisations, such as the Association of Southeast Asian Nations (ASEAN).<sup>80</sup> With the ASEAN Plan 2025, ASEAN has designed a roadmap for the future. The key elements of the ASEAN 2025 Plan are based on three pillars: the ASEAN Economic Community, the political security community and the socio-cultural community.<sup>81</sup> The ASEAN Vision 2025 emphasizes that the Global Agenda 2030 and the SDGs complement the efforts of the ASEAN community to raise people's living standards.<sup>82</sup> ASEAN is committed to two parallel but interrelated processes: the ASEAN Community Vision 2025 and the Global Agenda 2030.<sup>83</sup> Only five (5) priorities of the 17 objectives and 169 targets have been identified so far: Poverty reduction, infrastructure and networking, sustainable management of natural resources, sustainable production and consumption, as well as resilience.<sup>84</sup> All processes and goals of the ASEAN

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<sup>80</sup> EU-ASEAN Blue Book 2018 of 8/8/2018, available at:

[https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/48898/eu-asean-blue-book-2018\\_en](https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/48898/eu-asean-blue-book-2018_en); EU-

ASEAN Blue Book 2019 of 10/5/2019, available at: [https://eeas.europa.eu/sites/eeas/files/eu-asean\\_blue\\_book\\_2019.pdf](https://eeas.europa.eu/sites/eeas/files/eu-asean_blue_book_2019.pdf).

<sup>81</sup> ASEAN, <https://asean.org/asean-community-vision-2025-2/>.

<sup>82</sup> ASEAN Secretariat, ASEAN 2025: Forging Ahead Together Jakarta, November 2015, p. 13.

<sup>83</sup> UN Economic and Social Commission for Asia and the Pacific (ESCAP), Complementarities between the ASEAN Community Vision 2025 and the United Nations 2030 Agenda for Sustainable Development: A Framework for Action, 2017, p. 10.

<sup>84</sup> UN Economic and Social Commission for Asia and the Pacific (ESCAP), Complementarities between the ASEAN Community Vision 2025 and the United Nations 2030 Agenda for Sustainable Development: A Framework for Action, 2017, p. 11.

Community Vision 2025 are subject to accountability, although they are organised on the basis of reviews and global indicators<sup>85</sup>, as in this case, in the form of related Key Performance Indicators (KPIs).<sup>86</sup> An AESAN-EU Dialogue on Sustainable Development was initiated between the EU and ASEAN on 17 November 2017, which focuses on the question of how SDGs<sup>87</sup> can be implemented effectively.<sup>88</sup> Important issues are the promotion of gender equality and in particular the empowerment of women and girls as the key to change; the promotion of green growth and recycling, including the environment: sustainable and climate resilient cities, sustainable consumption and production and the fight against climate change.<sup>89</sup> This includes finding effective ways of involving the private sector, civil society and science to promote sustainable development.<sup>90</sup> In this respect, the further cooperation with the Joint Statement of 29 January 2019 was upgraded to a strategic partnership<sup>91</sup>, which has since been developed into a new program to improve ASEAN's capacity to respond to natural disasters and humanitarian crises. In this way climate change mitigation efforts are to be enhanced. Moreover, efforts in the common trade policy to conclude a Free Trade Agreement between ASEAN in its entirety and the EU are to be intensified. Cooperation between the EU and ASEAN has a long history. Up to now, ASEAN member states have concluded independent free trade agreements with the EU. Following the ECJ ruling on EU competence (Singapore)<sup>92</sup>, the EU has concluded a Free Trade Agreement and an Investment Protection Agreement (IPA) with Vietnam, for which the Member States have shared

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<sup>85</sup> Infantino, Global indicators, in: Cassese (ed.), *Research Handbook on Global Administrative Law*, Cheltenham, 2017, p. 348; Siems, Nelken, Global social indicators and the concept of legitimacy, *International Journal of Law in Context* 2017, pp. 436-449; Huck, Measuring Sustainable Development Goals (SDGs) with Indicators: Is Legitimacy Lacking?, January 31, 2019, available at SSRN: <https://ssrn.com/abstract=3360935>; Merry, Davis, Kingsbury (eds.), *The Quiet Power of Indicators, Measuring Governance, Corruption, and the Rule of Law*, 2015, Cambridge, pp. 1 ff.

<sup>86</sup> ASEAN Secretariat, *ASEAN 2025: Forging Ahead Together* Jakarta, November 2015, pp. 55, 121, 122 (Key Performance Indicators); to KPIs, see in particular: Amariles, *Supping with the Devil? Indicators and the rise of managerial rationality in law*, *International Journal of Law in Context* 2017, 468.

<sup>87</sup> Huck, Kurkin, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 2018, 375 ff.

<sup>88</sup> EU-ASEAN Blue Book 2018, p. 14; EU-ASEAN Blue Book 2019, p. 10.

<sup>89</sup> SDG 5.1, 5a, SDG 8.4., SDG 12.3. and 12.4, for the environment see Kheng-Lian/Robinson/Lin-Heng, *ASEAN Environmental Legal Integration, Sustainable Goals?*, 2016 Cambridge, 13 ff, SDG 11.3,11.6,11.b., SDG 12a., SDG 2.4, 8.4, 12.3., SDG 13.

<sup>90</sup> EU-ASEAN Blue Book 2018, p.14; EU-ASEAN Blue Book 2019, p. 10.

<sup>91</sup> Council of the EU, *Joint statement of the 22nd EU-ASEAN ministerial meeting*, press release 21/01/2019.

<sup>92</sup> ECJ, expert opinion of 16/05/2017 - *Avis 2/15*, BeckRS 2017, 126872: with *Avis 2/15* the division of competences between the EU and its member states of the difficult to assess responsibilities within Free Trade and Investment Agreements was differentiated for the first time. The ECJ in this respect assumed an inconsistency if trade liberalisation measures were classified under the CCP, but a sustainability regulation applicable to them was not.

competences<sup>93</sup> and which will shortly be signed and could provisionally enter into force depending on the vote in the full parliament at its February 2020 session.<sup>94</sup> This agreement will translate European values, and in particular the notion of sustainability and the objectives of the SDGs<sup>95</sup> into specific actions for Community trade, thus taking a further step towards the effective involvement of the private sector, civil society and science in promoting sustainable development.

## 7.2. Post-Cotonou Agreement with the Group of African, Caribbean and Pacific States (ACP)

The Cotonou Agreement provides the legal framework for relations between the EU and the ACP and is also one of the oldest and most comprehensive agreements for cooperation between the EU and third countries.<sup>96</sup> The cooperation dates back to the foundation of the EEC and agreements with the former colonies in 1957.<sup>97</sup> The Cotonou Partnership Agreement, signed in 2000 for a period of 20 years, brings together more than 100 countries (EU Member States + 79 ACP-States) and represents more than 1.5 billion people. The ACP is an international organisation with legal personality established by the Georgetown Agreement of 1975<sup>98</sup> (Art. 1 No. 5 of the Georgetown Agreement).<sup>99</sup> The 79 ACP-States are made up of 48 African countries, 16 Caribbean countries and 15 Pacific countries.<sup>100</sup> With the exception

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<sup>93</sup> EU Commission on Vietnam: <http://ec.europa.eu/trade/policy/in-focus/eu-vietnam-agreement/>.

<sup>94</sup> EU Council, Background, Foreign Affairs Council - Trade Issues, Brussels, 27 May 2019; European Parliament, EU-Vietnam free trade deal gets green light in trade committee, Press Releases, 21/01/2020, <https://www.europarl.europa.eu/news/en/press-room/20200121IPR70703/eu-vietnam-free-trade-deal-gets-green-light-in-trade-committee>.

<sup>95</sup> Text of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, Chapter 13 (text at the end of the negotiation conducted by the European Commission, solely for information purposes), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437>.

<sup>96</sup> Cotonou Agreement, summary of the document and good overview: <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=LEGISSUM:r12101>; see Huck, Hardy, Elias-Roberts (eds.), *EU and CARICOM: Dilemmas versus Opportunities on Development, Law and Economics*, Routledge 2020, forthcoming.

<sup>97</sup> [African, Caribbean, and Pacific Group of States, Beginning of ACP-EU Cooperation, see: https://ec.europa.eu/europeaid/historical-overview-eu-cooperation-and-aid\\_en](https://ec.europa.eu/europeaid/historical-overview-eu-cooperation-and-aid_en).

<sup>98</sup> Georgetown Agreement on the Organisation of African, Caribbean and Pacific States (ACP), original text of the Agreement available at: [www.files.ethz.ch/isn/125455/1399\\_Georgetown\\_Agreement.pdf](http://www.files.ethz.ch/isn/125455/1399_Georgetown_Agreement.pdf).

<sup>99</sup> doubting the legal status as an International Organization Zimmermann, TFEU Art. 209, in: von der Groeben, Schwarze, Hatje (eds.), *Kommentar zum AEUV und EUV*, Nomos-Verlag, 7<sup>th</sup> ed., 2015, mn. 47-51.

<sup>100</sup> African, Caribbean and Pacific Group of States, see: [www.acp.int/content/secretariat-acp](http://www.acp.int/content/secretariat-acp).

of Cuba<sup>101</sup>, all ACP-States have signed the Cotonou Agreement, which links them to the EU.<sup>102</sup> Pursuant to Article 1, para. 3 sentence 3 TEU, the Union is the successor in title to the EC. The Cotonou Agreement of 23 June 2000<sup>103</sup> (in force since 1 April 2003) was concluded as a mixed agreement on the basis of the provisions of Art. 217 TFEU.<sup>104</sup> The Cotonou Agreement replaces the fourth Lomé Convention in order to ensure conformity with WTO law.<sup>105</sup> The agreement, which expires on 29 February 2020<sup>106</sup>, provides for the opening of negotiations on a future partnership in August 2018.<sup>107</sup> Numerous global challenges, such as climate change, inequality, gender equality and sustainable trade demand a review and, if necessary, an adaption of the core objectives of the partnership. As a result, the EU is seeking a comprehensive political agreement taking into account the Global Agenda 2030 and the inextricably linked Addis Ababa Action Agenda (AAAA)<sup>108</sup>, the Paris Climate Agreement, the New European Consensus on Development and the European Green Deal.<sup>109</sup> On 22 June 2018, the EU Council adopted the negotiating mandate for the future agreement between the EU and the ACP-States. The economic and geopolitical situation has changed considerably since the signing of the first Lomé Convention between nine EEC countries and 46 African,

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<sup>101</sup> Huck, *Europäische Zeitschrift für Wirtschaftsrecht (EuZW)* 2017, 249; Zimmermann, TFEU Art. 209, in: von der Groeben, Schwarze, Hatje (eds.), *Kommentar zum AEUV und EUV*, Nomos-Verlag, 7<sup>th</sup> ed., 2015, mn. 93-97.

<sup>102</sup> Vöneky, *Beilage-Haarmann*, TFEU Art. 217, in: Grabitz, Hilf, Nettesheim, Vöneky, *Beilage-Haarmann*, 66<sup>th</sup> EL February 2019, mn. 32.

<sup>103</sup> Kenner, (2011), *Labor Clauses in EU Preferential Trade Agreements - An Analysis of the Cotonou Partnership Agreement*, in: Bagwell, Mavroidis (eds.), *Preferential Trade Agreements: A Law and Economics Analysis*, Cambridge, pp. 180-209, Kingah, *The Revisited Cotonou Agreement between the European Community and the African, Caribbean and Pacific States: Innovations on Security, Political Dialogue, Transparency, Money and Social Responsibility*, *Journal of African Law*, 2006, 50(1), 59-71.

<sup>104</sup> Vöneky, *Beilage-Haarmann*, TFEU Art. 217, in: Grabitz, Hilf, Nettesheim, Vöneky, *Beilage-Haarmann*, 66<sup>th</sup> EL February 2019, mn. 113 et seq.

<sup>105</sup> Grabitz, Hilf, Nettesheim, White, 66<sup>th</sup> EL February 2019, TFEU Art. 207 marginal 248-250.

<sup>106</sup> Resolutions, *Joint Parliamentary Assembly Of The Partnership Agreement Concluded Between The Members Of The African, Caribbean And Pacific Group Of States, Of The One Part, And The European Union And Its Member States, Of The Other Part*, *Official Journal of the European Union C 415/1 of 15/11/2018*; EU Commission, Strasbourg, 6.10.2015, JOIN (2015) 33 final, *Joint Consultation Paper, Towards a new partnership between the European Union and the African, Caribbean and Pacific countries after 2020*, p. 2.

<sup>107</sup> EU Commission, *Factsheet: European Commission ready to start negotiations for a new ambitious partnership with 79 countries in Africa, the Caribbean and the Pacific*, Memo 17/5225, 22/6/2018.

<sup>108</sup> UN A/RES/70/1 of 25/9/2015 para. 40 and there fn. 10; [https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf).

<sup>109</sup> EU Commission, MEMO/18/5903 of 3/5/2019; European Commission, COM (2019) 640 final, *Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions, The European Green Deal*, 11.12.2019.

Caribbean and Pacific countries.<sup>110</sup> Moreover, the EU must face the effects of Brexit, which will have an impact on the ACP's future trade relations with the UK outside the EU regime, in particular for ACP importers and exporters.<sup>111</sup> The ACP countries are more engaged with emerging world powers such as China, among others due to the belt and road initiative<sup>112</sup> also with a view to a desired better and faster development.<sup>113</sup> The EU must face competition from China, which announced at the China-Africa Summit on 3 September 2018 that it would invest US-\$ 60 billion in Africa, mainly in support of the belt and road initiative. In the Port Moresby Declaration, ACP Heads of State and Government recognised that SDGs are crucial for poverty eradication, inequality reduction, growth and sustainable development.<sup>114</sup> The position of the ACP-States on relations with the EU after 2020 regarding the Post-Cotonou Agreement<sup>115</sup> is highlighted with three key messages in the Waigani Communiqué of the Papua New Guinea Summit.<sup>116</sup> The specific objectives that should underpin a Cotonou partnership agreement with the EU from the ACP perspective include, in particular, the adaptation to the Agenda 2030 as the overarching development framework<sup>117</sup>, explicitly incorporating, amongst others, the United Nations Declaration on the Right to Development and continental and regional agendas such as Agenda 2063<sup>118</sup> in Africa as well as the deepening and broadening of regional integration in the Caribbean and the Pacific.<sup>119</sup> At its annual meeting on 23 and 24 May 2019, the EU Council of Ministers for Africa, the Caribbean

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<sup>110</sup> ACP Group, Mandate, adopted on 30 May 2018 by the 107th Session of the ACP Council of Ministers, held in Lomé, Togo, No 2.

<sup>111</sup> Ibid., No 4.

<sup>112</sup> Heng Wang, China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability, *Journal of International Economic Law* 2019, pp. 49 ff; Chaisse, Matsushita, China's 'Belt and Road' Initiative -- Mapping the World's Normative and Strategic Implications (February 1, 2018), in: *Journal of World Trade*, 52, Issue 1, 2018, pp. 163 – 185, available at: <https://ssrn.com/abstract=3134429>.

<sup>113</sup> ACP Group, Mandate, No. 5.

<sup>114</sup> Ibid., No. 136.

<sup>115</sup> Bartels, Keijzer, *Assessing the Legal and Political Implications of the Post-Cotonou Negotiations for the Economic Partnership Agreements*, Bonn, 2017, pp. 4 ff.

<sup>116</sup> Full text available at: <http://www.acp.int/content/waigani-communication-future-perspectives-acp-group-states>; on this also European Parliament, Parliamentary questions, Ref. E-007675/2017, 19/2/2018, answer given by Mr Mimica on behalf of the Commission.

<sup>117</sup> See Maaß, *Die Normativität der Sustainable Development Goals in den internen und externen Politiken Europas*, in: Huck (ed.), *Schriften zum Internationalen Wirtschaftsrecht*, Vol. 8, Hamburg 2020 (forthcoming), p. 97.

<sup>118</sup> The African Union Commission, *Agenda 2063, The Africa we want, A Shared Strategic Framework for Inclusive Growth and Sustainable Development, First Ten-Year Implementation Plan 2014 – 2023*, September 2015, available at: <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-first10yearimplementation.pdf>.

<sup>119</sup> ACP Group, Mandate, No. 21.

and the Pacific decided<sup>120</sup> to delegate its powers to the ACP-EU Committee of Ambassadors to adopt transitional measures pending the entry into force of a new ACP-EU Partnership Agreement. This may be necessary if no new agreement can be reached before the expiry of the existing Cotonou Agreement on 29 February 2020.<sup>121</sup> Recently on 14 January 2020 the parties reaffirmed the importance of ensuring the proper implementation of the agreement in order to stimulate trade as well as support and implement the SDGs.<sup>122</sup> Against the background of the long term, albeit unsatisfactory, partnership and the international tendency of reorientation, specifically of the African partner states towards China, the consideration and implementation of the SDGs and their concept of enhancing cohesive development is of profound importance. This importance is currently being further confirmed by the EU, whose primary interest is a strong partnership with the ACP countries.<sup>123</sup>

### 7.3. EU and China

The EU and China are two of the world's largest economies and trading partners. China is currently the EU's second largest trading partner after the United States, while the EU is China's largest trading partner.<sup>124</sup> The EU's 2016 China Strategy remains the cornerstone of the EU's relations with China.<sup>125</sup> Regular topics include the question of restrictions on market access for European companies, the protection of intellectual property which is not fully

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<sup>120</sup> European Council, Cotonou Agreement, available at: <https://www.consilium.europa.eu/en/policies/cotonou-agreement/>.

<sup>121</sup> Council, Meeting information Brussels 23-24/05/2019 [https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2019/05/23-24/?utm\\_source=dsms-auto&utm\\_medium=email&utm\\_campaign=ACP-EU+Council+of+ministers%2c+23-24%2f05%2f2019](https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2019/05/23-24/?utm_source=dsms-auto&utm_medium=email&utm_campaign=ACP-EU+Council+of+ministers%2c+23-24%2f05%2f2019;); EU Commission, Strasbourg, 6.10.2015, JOIN (2015) 33 final, Joint Consultation Paper, Towards a new partnership between the European Union and the African, Caribbean and Pacific countries after 2020, p. 2.

<sup>122</sup> Groupe des Etats d'Afrique, des Caraïbes et du Pacifique, Joint Communiqué, ESA-EU Interim-EPA, 8th meeting, <http://www.acp.int/fr/content/communique-conjoint-ape-interimaire-afca-ue-8e-reunion>.

<sup>123</sup> European Parliament, Parliamentary questions, 10/2/2020, Ref. E-003856/2019, answer given by Ms Urpilainen on behalf of the European Commission.

<sup>124</sup> EU Commission, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>.

<sup>125</sup> EU Commission and High Representative for Foreign Affairs and Security Policy, Strasbourg, 12/3/2019

JOIN(2019) 5 final, Joint Communication To The European Parliament, The European Council And The Council, EU-China – A strategic outlook [https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook\\_de.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook_de.pdf).

guaranteed<sup>126</sup>, the exploitation of markets in the sense of a political strategy to achieve world market leadership in future technologies ("Made in China 2025")<sup>127</sup> and investments in so-called "critical infrastructure"<sup>128</sup> as well as the Belt and Road Initiative<sup>129</sup>, which is not wrongly seen as "geolegal"<sup>130</sup> expansion.<sup>131</sup> There are answers to the complex events, but also in this context there is justified criticism that coherence at European and Member State level is lacking.<sup>132</sup> While the EU and China reaffirmed their willingness to grant each other broader, non-discriminatory market access and intend to address a number of key market access barriers as soon as possible before the next EU-China Summit, the intentions will be limited and insufficient to allow reciprocal market access.<sup>133</sup> Due to urgent issues such as ecological crises, high energy consumption, questions of social justice and population growth, sustainability issues in China are addressed and the implementation of resulting measures can be observed throughout. These circumstances, however, provide important impulses for the implementation of the SDGs.<sup>134</sup> China's technological ambitions, intelligent urban

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<sup>126</sup> United States Trade Representative (USTR), Special 301 Report, 2019, p. 42: "China continued to be the world's leading source of counterfeit goods"; EU Commission, COMMISSION STAFF WORKING DOCUMENT Report on the protection and enforcement of intellectual property rights in third countries, Brussels, 21/2/2018 SWD(2018) 47 final, p. 4: "The OECD-EUIPO study Mapping the economic impact of trade in counterfeit and pirated goods shows that India and China are the biggest producers of counterfeit pharmaceuticals".

<sup>127</sup> Congressional Research Service, The Made in China 2025 Initiative: Economic Implications for the United States, 12 April 2019: <https://fas.org/sgp/crs/row/IF10964.pdf>; Ifo Schnelldienst, Munich vol. 71, 14<sup>th</sup> edition, 2018, »Made in China 2025«: Technologietransfer und Investitionen in ausländische Hochtechnologiefirmen, pp. 3 – 20; US Chamber of Commerce, Made in China 2025: Global Ambitions built on local protection, 2017 [https://www.uschamber.com/sites/default/files/final\\_made\\_in\\_china\\_2025\\_report\\_full.pdf](https://www.uschamber.com/sites/default/files/final_made_in_china_2025_report_full.pdf).

<sup>128</sup> Bungenberg, Hazarika, Chinese Foreign Investments in the European Union Energy Sector: The Regulation of Security Concern, The Journal of World Investment & Trades 2019, pp. 376, 383 ff; European Parliament, EU framework for FDI screening, February 2019.

<sup>129</sup> See Merics: <https://www.merics.org/de/themen/neue-seidenstrasse>.

<sup>130</sup> Jorgensen, Equilibrium & Fragmentation in the International Rule of Law: The Rising Chinese Geolegal Order, KFG Working Paper Series 2018, No. 21, Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?", p. 22.

<sup>131</sup> EU Commission and High Representative for Foreign Affairs and Security Policy, Strasbourg, 12/3/2019 JOIN(2019) 5 final, Joint Communication To The European Parliament, The European Council And The Council, EU-China – A strategic outlook [https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook\\_de.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook_de.pdf).

<sup>132</sup> Bund Deutscher Industrie (BDI), Grundsatzpapier, China, Partner and systemic competitor - How do we deal with China's state-controlled economy?, 2019.

<sup>133</sup> EU Commission, EU-China Summit: Towards a more balanced strategic partnership, press release 9/4/2019, IP/19/2055.

<sup>134</sup> Kuhn, China's Commitment to the Sustainable Development Goals: An Analysis of Push and Pull Factors and Implementation Challenges, Chinese Political Science Revue 2018, pp. 367 ff.

development (SDG 11) and international cooperation are important factors in promoting sustainable development.<sup>135</sup> Discursive contributions relating to sustainability are also published by the party and the government.<sup>136</sup> To combat climate change more effectively, the EU calls on China to reach its emission peak before 2030, in line with the objectives of the Paris Agreement.<sup>137</sup> However, the concept of sustainability was used particularly frequently in the Joint Declaration to the EU-China Summit on 9 April 2019, exactly 15 times. The measures to be initiated basically include the general advancement of the Global Agenda 2030 in the area of International Development Cooperation. More specifically, joint measures are to be developed that will align international economic and financial cooperation towards sustainable growth and, in particular, lead to an environmentally sustainable economy (green finance). Furthermore, climate action is to be enhanced and further global environmental challenges are addressed.<sup>138</sup> The focus will include combating illegal trade in wildlife and wild products, sustainable forest management, halting biodiversity loss, partnership for the oceans, cooperation to promote sustainable fisheries, combating illegal fishing, and sustainable investments in the Oceans (Sustainable Blue Economy Finance Principles). In addition, the importance of a sustainable realignment, notably of investment liberalisation with a focus on environmental and labour policy issues, was discussed at the 22nd round of the EU-China investment agreement negotiations with the aim of further elaborating these at the climate summit in September 2019.<sup>139</sup> However, whether concrete measures will be derived from this remains questionable and will be left to future developments. In this respect, the results of the next EU-China Summit, to be held in April 2020, remain to be seen. In any case, the EU and China intend to strengthen their

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<sup>135</sup> Ibid.

<sup>136</sup> Ibid., p. 385.

<sup>137</sup> EU Commission and High Representative for Foreign Affairs and Security Policy, Strasbourg, 12/3/2019

JOIN(2019) 5 final, Joint Communication To The European Parliament, The European Council And The Council, EU-China – A strategic outlook, pp. 2 f., [https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook\\_de.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook_de.pdf).

<sup>138</sup> EU Council, EU-China Summit, 09/04/2019, <https://www.consilium.europa.eu/media/39020/euchina-joint-statement-9april2019.pdf>; <https://www.consilium.europa.eu/de/meetings/international-summit/2019/04/09/>.

<sup>139</sup> Ibid., No 16 of the Declaration, 09/04/2019: <https://www.consilium.europa.eu/de/meetings/international-summit/2019/04/09/>; European Commission, Directorate-General for Trade, Directorate B - Services and Investment, Intellectual Property and Public Procurement, Investment, 22/7/2019, TRADE.B2/, Not to the file: [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158274.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158274.pdf).



commitment to the implementation of the 2030 sustainable development agenda.<sup>140</sup> The issue of sustainable development and the Global Agenda will also play an increasingly important role in the negotiations between the EU and China<sup>141</sup> to conclude an investment protection agreement, which have been ongoing since 2013.<sup>142</sup>

## 8. CONCLUSION AND OUTLOOK

The Commission responds to the challenges of the SDGs with reflections that may generate a social discourse in the future that may lead to the adoption of legal measures. In response to the SDGs adopted four years ago, the submission of a reflection paper seems quite a bit too poor in terms of content and, above all, too late in terms of time. The EU lacks a holistic, inclusive strategy that coherently links the EU's internal and external policies and amalgamate them to a thorough answer to the Global Agenda 2030. Important steps for the implementation of the SDGs in Europe so far have been the "Trade for All" policy and the partial inclusion of the SDGs in - albeit controversial - 'Trade-Sustainable Development' Chapters of modern free trade agreements, the New European Consensus in development cooperation and the start of negotiations on the Post-Cotonou Agreement with the 79 ACP-States. Although in some areas of external policy, such as trade policy, the SDGs have in any case been partially included, a focalized and coherent approach which links the various measures that have been initiated is not discernible overall. Even the recently adopted European Green Deal cannot remedy this shortcoming. The aforementioned criticism and the corresponding evaluation of the European Council should therefore be unchanged. The SDGs are often interwoven with each other and can hardly be convincingly implemented separately as "stand-alone solutions". The approach adopted so far without a coherent European model risks the weakening of the interconnected themes of the Global Agenda. By now, the focus has been on trade, development cooperation and foreign policy, but there is a need for new answers not only in these fields that require internal and external coherence

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<sup>140</sup> EU Council, EU-China Summit, No 9 of the Declaration, 09/04/2019, <https://www.consilium.europa.eu/media/39020/euchina-joint-statement-9april2019.pdf>; <https://www.consilium.europa.eu/de/meetings/international-summit/2019/04/09/>.

<sup>141</sup> EU Commission and High Representative Of The Union For Foreign Affairs And Security Policy, Strasbourg, 12/3/2019, JOIN (2019), Joint Communication To The European Parliament, The European Council And The Council, EU-China – A strategic outlook, pp. 2 – 5, <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>.

<sup>142</sup> EU Commission, DG Trade, Report of the 20th round of negotiations for the EU-China Investment Agreement, 1/3/2019, TRADE.B2.

like a regulative principle that embraces and reflects the different levels of the Global Agenda in its internal and external systematics and processes them continuously. Due to the absence of reliable sanctions models, one focus for the further development of the 'Trade-Sustainable Development' Chapters in other trade agreements will be on strengthening or could create in the future new elements in order to optimize the individual rights of the people covered from the Global Agenda so that to the spirit of equity could lead to accountable and resilient implementation. Therefore, an accompanying legal network remain indispensable in order to give content, form and wording to the Global Agenda.