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Rethinking social protection in the green transition

Implementing the Council Recommendation on fair transition

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Key points

- Social protection will be a crucial safety net for the people most affected by climate change and green transition policies, particularly for those in vulnerable situations. It is an essential component of ensuring the 'just and fair' transition promised by the European Green Deal.
- The Council Recommendation on ensuring a fair transition towards climate neutrality of June 2022 includes provisions on social protection that could guide Member States of the European Union (EU) towards reconsidering and adapting their social protection systems to challenges arising from the green transition. However, because Council Recommendations are non-binding acts, efforts to promote Member State implementation are particularly important.
- These should include the development of a monitoring framework and European Commission guidelines on the meaning of Recommendation provisions, accompanied by technical assistance, exchange of best practices and policy coordination, with the active involvement of social partners and civil society. There is also a clear need for additional funding, including from EU funds that can be leveraged to incentivise implementation.
- Legally binding EU measures specifically related to social protection systems remain unlikely, not least because, where a dedicated legal basis is available, it requires unanimity across Member States. There may be opportunities in the new European Commission mandate, however, to include social protection-related requirements in legal instruments that seek to promote just transition, building on the Council Recommendation.

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Introduction

Climate change, as well as policies to mitigate and adapt to climate change, expose people to significant social and economic risks, particularly those who find themselves in vulnerable situations (Akgüç et al. 2022). The physical effects of climate change are destroying livelihoods and displacing communities, and will continue to do so; the phase-out or transformation of industries will impact millions of jobs; and energy price increases linked to climate policies will disproportionately affect lower-income households. Amid a multitude of crises, concerns are mounting over the social effects of climate policies introduced by the European Green Deal (EGD). Against this background, many commentators are arguing that sustainable welfare policies will be essential to protect people from these risks (Bohnenberger 2023), and to ensure a just transition that 'leaves no-one behind' (Galgóczi 2021).

In this regard, social protection – one of the pillars of the International Labour Organization's 2015 Guidelines for a just transition – will be a crucial safety net for the most affected and most vulnerable citizens (ILO 2023). Given the diversity of EU Member State social protection systems and circumscribed EU competence, historically there has not been much action at the European level in this area beyond cross-border coordination of social security systems. The inclusion of a right to adequate social protection in the European Pillar of Social Rights, however, prompted the adoption of a non-legally binding Council Recommendation on access to social protection for workers and the self-employed (henceforth the 'Social Protection Recommendation' or 'SPR') in November 2019. Another non-binding Council Recommendation on ensuring a fair transition towards climate neutrality (henceforth the 'Fair Transition Recommendation' or 'FTR'), adopted in June 2022 as part of the European Commission's climate policy package, also includes provisions on social protection systems, highlighting their relevance to a just green transition.

In this policy brief, we consider the integration of social protection considerations in the EU just transition agenda, focusing on the Fair Transition Recommendation as the only just transition–related instrument in operation that engages explicitly with the role of social protection systems in addressing green transition challenges. We argue that its provisions on social protection can be interpreted in a way that builds on the Social Protection Recommendation and encourages transformative Member State policies, but that significant efforts are needed to promote implementation for the Fair Transition Recommendation to make a difference. We also reflect on whether binding EU provisions on social protection might be feasible in the future.

Social protection in the Fair Transition Recommendation

The Fair Transition Recommendation (FTR) was adopted as part of the European Commission's 'Fit for 55' package. As a Council Recommendation, it is not legally binding, but it is much broader in scope than the other main EU 'just

transition' measures (Akgüç et al. 2022). The first of these is the Just Transition Mechanism, a funding mechanism to secure 55 billion euros between 2021 and 2027 to address the socio-economic impacts of the green transition in the 'most affected regions'. The Just Transition Fund is a central pillar of this mechanism. The second is the Social Climate Fund, another 86.7 billion euros to be allocated between 2026 and 2032 to measures proposed by Member States to shield vulnerable households and businesses from the energy price effects of the new Emissions Trading Scheme for road transport and buildings. While these two instruments are narrower in focus, the FTR takes a 'whole-of-society' approach that encourages Member States to implement a wide range of policies, including on access to quality employment, education, affordable essential services and housing, and cross-cutting measures related to governance and participation. It is not, however, accompanied by dedicated funding.

The Just Transition Fund may be used to support social inclusion activities, and the Social Climate Fund specifies that up to 37.5 per cent of funds allocated to a Member State may be used for temporary direct income support. Beyond this, they do not engage with social protection. The FTR is the only instrument connected to the green transition that contains substantive provisions on social protection. The main relevant provision is Recommendation 6, which encourages Member States to implement measures to 'ensure the continued fairness of tax-benefit systems and social protection systems, including social inclusion policies' in the green transition, taking into account, where applicable, the Social Protection Recommendation (SPR) of 2019. Recommendation 6 is divided into four sections, on: (a) taxation, which also addresses the financing of social protection; (b) assessing or adapting the content of social protection schemes to address issues resulting from green transition policies; (c) temporary income support; and (d) risk-awareness, risk reduction and risk transfer. As objectives of such measures, it mentions not only labour market transitions, but also preventing and reducing energy poverty and mitigating the regressive effects of climate policy measures.

While these FTR provisions are open to interpretation, a closer look at the text of Recommendation 6, read in the broader policy context, would suggest that it builds on the SPR in important and innovative ways. Most interestingly, it (i) explicitly requires the 'continued fairness' of social protection systems; (ii) covers a wider group of beneficiaries beyond workers and the self-employed and a wider range of social benefits; (iii) suggests that additional funding for social protection should be made available; and (iv) implies that social protection systems should not incentivise environmentally unsustainable behaviour. Table 1 explains these points in further detail.

Such an interpretation of Recommendation 6 FTR respects and promotes principles of sustainable development, social fairness, solidarity and 'leaving no-one behind,' in line with the objectives of the European Green Deal and the aims of the EU stated in the Treaties. Its provisions could encourage far-reaching and transformative Member State policies that integrate social, climate and environmental concerns. This is, of course, subject to limitations. One is that the FTR is limited to the 'green transition', and it is not entirely clear whether this

includes challenges posed by climate change or only climate policies. Another limitation is the lack of binding legal effect, discussed below.

Table 1 **How does the Fair Transition Recommendation build on the Social Protection Recommendation?**

Novel aspect suggested by Recommendation 6 of the Fair Transition Recommendation	Comparison with the Social Protection Recommendation
(i) 'Continued fairness' of social protection systems	The reference to the 'continued fairness' of social protection systems in the FTR does not feature in the SPR. The SPR includes provisions on formal coverage of all persons performing work, effective access to benefits, adequate level of protection to maintain a decent standard of living, and transparency of rules and conditions for social protection. Climate change and the green transition, however, pose additional risks in terms of unemployment, poverty and social exclusion that current social protection systems might not be suitable to address, leading to 'unfair' outcomes in terms of burden sharing. The recommendation of '*continued* fairness' could be understood as urging Member States to rethink social protection systems to take into account new risks and needs. This is reflected in Recommendation 6(b), which encourages Member States to 'review and, where applicable, adapt social protection systems, including social inclusion policies.'
(ii) Wider group of beneficiaries and wider range of social benefits (broader personal and material scope)	Unlike the SPR, the FTR is not limited to 'workers and the self-employed' but identifies 'people and households most affected by the green transition' as the beneficiaries of relevant policies, including of Recommendation 6. This presumably covers the benefits listed in the SPR (for example, unemployment, sickness, health care and so on), but it also covers two matters explicitly excluded from the SPR: minimum income (also covered by the Council Recommendation on minimum income schemes of 2023) and other forms of social assistance, given its reference to social inclusion policies. The matter of targeted and temporary direct income support, covered by Recommendation 6(c), also adds to the SPR.
(iii) Additional funding for social protection, including from taxation	The SPR identifies the financial sustainability of social protection systems as essential, but does not mention their funding. Read alongside the requirement of 'continued fairness', Recommendation 6(a) FTR on safeguarding the financing of social protection systems could be understood as suggesting that additional funding should be made available for social protection to remain adequate, given new challenges. The fact that this statement is included in a provision also referring to taxation (in particular, the need to 'assess and, where necessary, adapt taxation systems … by shifting the tax burden away from labour and reducing the tax wedge for low- and middle-income groups') points towards a preference for ensuring additional funding via taxation. This would be significant for Member States that traditionally have financed their social insurance schemes exclusively (or almost exclusively) via social security contributions. Recommendation 6(c) on direct income support also points in this direction, referring to additional funding and budgetary resources from energy and environmental taxes.
(iv) Environmental sustainability of social protection systems	The SPR does not mention environmental sustainability. Yet, social protection schemes can incentivise environmentally sustainable behaviour by beneficiaries, but also behaviour with a bigger ecological footprint (ILO 2023). Recital 20 to the FTR preamble states that the composition of social protection systems must reflect 'the need that accompanying policies do not introduce subsidies to fossil fuels consumption, do not lock in consumers to a specific technology, do not decrease incentives for building renovations and thermal energy system substitutions and do not decrease incentives within general energy efficiency measures.' Furthermore, the objective of the FTR is to ensure a transition towards a climate-neutral and environmentally sustainable economy, which implies that social protection systems should not incentivise environmentally unsustainable behaviour.

Source: authors' own elaboration.

Strengthening implementation

Like the SPR, the FTR is a non-legally binding instrument. The form of Council Recommendation was chosen in part because of the difficulty of passing EU legislation in the areas it covers. For example, while the EU has competence to act in the field of social security and social protection of workers (Article 153(1)(c) of the Treaty on the Functioning of the EU, 'TFEU'), legislation in this field

requires a unanimous vote in the Council of the EU. Interestingly, the FTR is based on Article 166 TFEU on vocational policy, which requires a qualified majority in the Council for legislation, and Article 149 TFEU, which foresees cooperation on action in the field of employment, but the FTR also covers policies across other areas in which EU legislative action would be challenging. A non-binding instrument has been chosen as a more politically feasible option, though its impact may be more limited.

Looking back at the SPR, it has served to promote the emergence of spaces for discussion on social protection for non-standard workers, primarily via ad hoc 'mutual learning' workshops and European Semester country reports, and one set of national implementation plans (NIPs) in 2021. But implementation has been limited by a lack of clarity on key concepts, such as 'worker', 'self-employed' and 'social protection' and wide variation in the level of detail and quality of NIPs. The 2023 Commission report on the implementation of the SPR notes that 'overall ambition varies significantly among the NIPs, notably in terms of scope, number and timing of the measures', and that 'most of them do not aim to address all coverage gaps identified in the monitoring framework or... the European Semester' (European Commission 2023: 26). The first review on the implementation of the FTR in late 2023 by the Social Protection Committee and the Employment Committee – advisory committees to the Ministers in the Employment and Social Affairs Council – similarly reveals challenges in the interpretation of 'fair transition policies', and significant differences across Member States in policies implemented and overall progress (Council of the EU 2023). The review notes that only a few countries explicitly address how measures to improve social protection systems respond to the challenges of the green transition.

For the FTR to make a tangible difference, significant efforts will be required to promote Member State implementation. A monitoring framework and Commission guidelines – developed with the social partners and other stakeholders – that provide further details on the meaning and objectives of the different provisions could help Member States to design appropriate measures, particularly if accompanied by technical assistance. The 2023 review notes the need for the exchange of best practices and coordination of policies facilitated by the Commission, which could take the form of 'mutual learning' workshops, as under the SPR (Council of the EU 2023). As the review points out, policy coordination at the national level is also needed, with the active involvement of social partners and civil society. In terms of monitoring progress, the creation of a new committee on the implementation of fair transition policies would be desirable, with a requirement for Member States to regularly submit NIPs. Another option would be for NIPs to be reviewed by the Commission or existing committees – including the Social Protection Committee – ensuring that the conclusions of this review feed into the European Semester process. Indeed, the Semester could be an avenue for scrutinising implementation of the FTR, and for progress on eco-social indicators (Sabato and Vanhille 2024).

In the specific context of social protection, Commission guidelines should also identify what the FTR requires on top of the SPR, as discussed above, and the particular challenges raised by the green transition. The FTR social

protection provisions could be addressed within the monitoring process of the SPR to ensure consistency and integration of social and green objectives, though without diverting resources from the monitoring of compliance with SPR requirements. Indeed, ensuring 'continued fairness' of social protection under the FTR must proceed alongside strengthening social protection systems more generally, in accordance with the objectives of formal and effective coverage, adequacy and transparency.

The financing of adequate social protection measures, however, remains a major obstacle to implementation. This is primarily a matter for Member States, which are likely to need additional resources to implement FTR (and SPR) provisions and may need to rethink the financing of their systems – as already mentioned, one possibility for additional funding could be national environmental taxes. The recently agreed EU economic governance rules will, however, reduce the fiscal space available to Member States (Theodoropoulou 2024). Some funding could be available to Member States through the 'robust allocation and effective use of EU funds' (Council of the EU 2023), such as the European Social Fund Plus, the Recovery and Resilience Facility, the Just Transition Fund and the Social Climate Fund, though these are limited in size and most are available only for a certain period and purpose. A 'NextGenerationEU 2.0' or a permanent European-level solidarity mechanism similar to the temporary Support to Mitigate Unemployment Risks in an Emergency (SURE) appears unlikely at this stage, but in her new political guidelines Ursula von der Leyen committed to significantly increase 'funding for a just transition across the next long-term budget' (von der Leyen 2024). While it is not yet clear what form this will take, a future just transition funding mechanism (or mechanisms) could be an opportunity to reinforce social protection systems by providing that some of the available funds 'must' – rather than 'may' – be dedicated to social protection and targeted inclusion policies in line with Recommendation 6 FTR. More generally, a condition of such funding could be that it supports the implementation of the FTR as a whole.

Prospects for binding measures

In light of these challenges, we may doubt whether the non-binding Fair Transition Recommendation and Social Protection Recommendation will sufficiently incentivise Member States to adapt and strengthen their social protection systems in the face of new social and economic risks, although at the moment this may be the best we have at the EU level. Commentators have already highlighted the need for follow-up of the SPR though further binding legal instruments, including a potential directive on minimum requirements for social protection (Schoukens et al. 2024). The prospect of binding EU regulation on social protection is limited by a circumscribed legal basis, however, and, more significantly, difficulties in reaching consensus among the Member States.

As already mentioned, there is a legal basis in the Treaties on social security and social protection *for workers*, though this requires the consent of all Member States. The EU may also act on combatting social exclusion (Article 153(1)(j) TFEU) and the modernisation of social protection systems

(Article 153(1)(k) TFEU), but this is limited to measures to encourage cooperation between the Member States and excludes harmonisation of national laws. A residual competence is found in Article 352 TFEU, which states that the Council may act even if there is no legal basis in the treaties, where EU action proves necessary to obtain a Treaty objective. This was used for the adoption of Regulation 883/2004 on the coordination of social security systems. This basis, however, also requires unanimity in the Council and can be difficult to use in practice. Indeed, a proposed revision of Regulation 883/2004 has been stuck in the legislative process since 2016.

A more feasible, indirect route to EU-level binding social protection provisions could be to include them in legislation that pursues mainly an objective linked to another legal basis that does not require unanimity in the Council. According to the 'centre of gravity test' developed by the Court of Justice of the EU, where a measure pursues two or more objectives, but only one of them is the *main or predominant purpose*, then a single legal basis is sufficient (for example, AG Pitruzella Opinion in C 180/20 *Commission v Council* 2021, para 31). For example, the 2022 Directive on Adequate Minimum Wages, based on the competence on 'working conditions' (Article 153(1)(b) TFEU), also includes a provision on promoting collective bargaining on wage setting as a means to ensure adequate minimum wage protection, even though collective bargaining as such falls under another competence (Article 153(1)(f)), requiring unanimity). The proposal for a Platform Work Directive mentioned social protection repeatedly in its preamble and included some provisions related to social protection authorities, although they were not included in the final compromise.

In both cases, collective bargaining and social protection were *incidental* to the main purpose of the legislation, as a means of promoting that purpose. Legislation in the social field based on another legal basis – such as Article 153(1)(h) on integration of persons excluded from the labour market, or Article 175 TFEU on economic, territorial and social cohesion (Aranguiz 2022) – could thus incorporate social protection elements to achieve its objectives. Space to develop some social protection provisions could open up in the context of legislation proposed to implement the EU 2040 climate targets, expected in the new Commission cycle. A Just Transition Framework Directive, one of the main demands of the European Trade Union Confederation in the just transition context, could prove one such opportunity (ETUC 2024).

Conclusion

The challenges of the green transition and the backlash against its social repercussions are casting a shadow over the EU's ambitions to become climate neutral by 2050. The failure to protect citizens from the negative effects of this transition will mean deepening inequalities and divisions that undermine confidence not only in the European Green Deal, but in the EU as a whole. Policy solutions that give people reassurance that they will not be left behind are needed urgently. While the European Green Deal narrative appears to be shifting towards the goal of 'sustainable competitiveness' (see, for example, von

der Leyen 2024), a comprehensive and effective just transition policy framework remains essential in achieving climate objectives.

Strengthening and adapting social protection systems to new challenges should be a key element of any just transition policy framework. The Fair Transition Recommendation and the Social Protection Recommendation encourage Member States to take steps in this direction. While non-binding, the FTR is the first instrument that explicitly integrates social protection and green transition objectives, adding to the SPR in several respects: it requires that continued fairness, broad coverage, additional funding and environmental sustainability of social protection systems be ensured. Significant effort and resources are needed, however, to bring it about that both recommendations are implemented by Member States, from guidelines on the meaning of their provisions to additional funding. There may be opportunities to support implementation by leveraging EU funding, or by including certain social protection measures in just transition–related legislation. Looking to the future, full implementation of the FTR and the SPR could also lay the foundations for binding EU measures on social protection, a significant step towards an 'Eco-Social Europe'.

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