

GREEN DEAL QUESTIONNAIRE



Austria
Justice and Environment 2021

Introduction

The European Green Deal is an EU initiative named after the American New Deal of 1933. Like its namesake, the Green Deal intends to spark a full economic transition, this time in the interest of promoting economic growth while reducing net emissions to zero. It was presented by the European Commission President Ursula von der Leyen in December of 2019 and since then its goals have been expressed into the proposed European Climate Law, which aims to make Europe's economy carbon-neutral by 2050. Although the Green Deal proposal itself is nonbinding, all European Council members save Poland backed the plan when it was first introduced. The European Parliament also voted to support the Green Deal in January 2020.

Text Analysis

Rule of law and public participation are discussed in the following portions of the EU Green Deal proposal and EU Climate Law proposal.

From the "Communication from the Commission to the European Parliament, The European Council, The Council, The European Council and Social Committee and the Committee of the Regions on The European Green Deal," we found:

- page 2, paragraph 3: "Since it will bring substantial change, active public participation and confidence in the transition is paramount if policies are to work and be accepted. A new pact is needed to bring together citizens in all their diversity, with national, regional, local authorities, civil society and industry working closely with the EU's institutions and consultative bodies."
- page 19 paragraph 5: "To support its work to identify and remedy inconsistencies in current legislation, the Commission invites stakeholders to use the available platforms to simplify legislation and identify problematic cases. The Commission will consider these suggestions when preparing evaluations, impact assessments and legislative proposals for the European Green Deal."
- page 22 paragraph 5: " The Commission will launch a European Climate Pact by March 2020 to focus on three ways to engage with the public on climate action. First, it will encourage information sharing, inspiration, and foster public understanding of the threat and the challenge of climate change and environmental degradation and on how to counter it... Second, there should be both real and virtual spaces for people to express their ideas and creativity and work together on ambitious action, both at individual and collective level. ... Third, the Commission will work on building capacity to facilitate grassroots initiatives on climate change and environmental protection."

- page 23, paragraph 6: "The Commission will consider revising the Aarhus Regulation to improve access to administrative and judicial review at EU level for citizens and NGOs who have concerns about the legality of decisions with effects on the environment. The Commission will also take action to improve their access to justice before national courts in all Member States. The Commission will also promote action by the EU, its Member States and the international community to step up efforts against environmental crime."

From the Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), these are relevant sections:

- page 13 paragraph 3: "The Commission should therefore engage with all parts of society to enable and empower them to take action towards a climate-neutral and climate-resilient society, including through launching a European Climate Pact."
- page 17 article 8: "The Commission shall engage with all parts of society to enable and empower them to take action towards a climate-neutral and climate-resilient society. The Commission shall facilitate an inclusive and accessible process at all levels, including at national, regional and local level and with social partners, citizens and civil society, for the exchange of best practice and to identify actions to contribute to the achievement of the objectives of this Regulation. In addition, the Commission may also draw on the multilevel climate and energy dialogues as set up by Member States in accordance with Article 11 of Regulation (EU) 2018/1999."
- page 19, article 11: "Each Member State shall establish a multilevel climate and energy dialogue pursuant to national rules, in which local authorities, civil society organisations, business community, investors and other relevant stakeholders and the general public are able actively to engage and discuss the achievement of the Union's climate-neutrality objective set out in Article 2 of the Regulation."

Status of Implementation

Following the presentation of the EU Green Deal, the European Commission presented its Green Deal Investment Plan and Just Transition mechanisms in January of 2020, with the aim of mobilising funding for the economic transition. In March of the same year, the European Commission also proposed the European Climate Law, which aimed for a climate neutral EU by 2050, a target which was adopted by the EU Parliament and the Council of the EU in June of 2021.

In the summer of 2020, EU ministers discussed and welcomed Green Deal strategies focusing on innovative energy, farm to fork agriculture and biodiversity. In May of 2021, the aforementioned Just Transition mechanism was approved, with an increased budget, by

Council and Parliament. In July of 2021, the European Commission unveiled a 'Fit for 55' package aiming to cut EU carbon emissions by 55% by 2030.

Template

When monitoring the progress of the Green Deal, we would like input from across Europe as to how successful the goals of the Green Deal have been in the service of transparency, participation, justice and accountability. To that end, we would like to hear your expert opinion on the following questions:

1. Have EU Green Deal projects made it easier for citizens to access administrative or judicial review of environmental decisions? Are there projects in your Member State that are labelled as Green Deal project? Is there a coverage of the Green Deal in the Government's communication? Has your country launched special schemes/tenders (e.g., solar) and/or renewable energy initiatives?

The Austrian Recovery and Resilience Plan

Following a positive assessment by the European Commission on 21 June 2021, the corresponding implementing act was adopted at the Council of EU Finance Ministers on 13 July 2021 and the national recovery and resilience plan was thus officially approved. Now the first funds can flow, within the framework of the pre-financing of 13% of the total volume of the plan. Austria is entitled to grants from the Recovery and Resilience Facility (RRF) amounting to around 3 billion euros. 46% of the funds are meant to support Climate Projects.¹

The Draft National RRF was subject to an open consultation in February 2021. The consultation addressed local and regional authorities, social partners, civil society organisations, youth organisations and other relevant stakeholders.² A summary of the public consultation and how the consultation influenced the preparation of the national RRF was included in the Plan itself.³ The competent Federal Minister additionally held a series of consultation meetings in February 2021 with representatives of the federal states, cities, municipalities, social partners, NGOs and the public. ÖKOBÜRO - Alliance of the Austrian Environmental Movement claimed in its statement transparency and participation in the RRF-planning process.⁴ The plan was not

¹ https://www.ots.at/presseaussendung/OTS_20210420_OTS0124/waitzvana-zu-eu-coronahilfen-46-der-aufbaugelder-fuer-klimafreundliche-projekte-in-oesterreich

² Questionnaire for the public consultation: [file:///C:/Users/BSBA8A~1.OEK/AppData/Local/Temp/\(PDF\)_Oeffentliche_Konsultation_zum_nationalen_Aufbau-und_Resilienzplan.pdf](file:///C:/Users/BSBA8A~1.OEK/AppData/Local/Temp/(PDF)_Oeffentliche_Konsultation_zum_nationalen_Aufbau-und_Resilienzplan.pdf)

³ <file:///C:/Users/BSBA8A~1.OEK/AppData/Local/Temp/%C3%96sterreichischer%20Aufbau-%20und%20Resilienzplan%202020-2026.pdf> (Point 4.6).

⁴ https://oekobuero.at/files/543/positionspapier_rrf_2021.pdf

subject to an SEA and the consideration of the results of public participation in the plan itself can only partly be retraced.

The Austrian Energy and Climate Plan⁵

The Federal Government involved national stakeholders and the general public in the development phase of the National Energy and Climate Plan (NECP). A public consultation was carried out in April/May 2018. The consultation was subdivided into an **online consultation** for the broader public (500 comments received)⁶, several **"roundtable" events** with stakeholder participation to deepen the discussion on specific topics, as well as an "Parliamentary Enquete" in the Austrian Parliament. For the mobility sector, the competent Ministries, together with the federal provinces and several experts, carried out a separate stakeholder process "Mobilitätswende 2030". Almost 300 measures were incorporated in the plan, an impact assessment was carried out, investment needs were identified and feedback from the European Commission was incorporated. The Plan was not subject to a strategic environmental assessment (SEA). The current plan is quite discussable regarding its content.⁷

The Austrian Government is currently negotiating a new **Climate Protection Act**. The current Act is outdated, lacks binding measures and legal consequences. Environmental Groups claim for the new law and scientific monitoring of the Austrian climate protection measures, access to justice and consequences set out if targets are not met.⁸ Whether and how the new Climate Protection Act will fulfil these expectations has yet to be seen.

Citizens Council on Climate Protection (Klimarat der Bürgerinnen und Bürger)

In Resolution 160/E XXVII GP of 26 March 2021, the Austrian Parliament requested the Federal Government to further advance its ambitions on the path to climate neutrality and to implement a number of measures based on the **climate referendum**.

These measures also include the establishment of a **citizens' climate council**. According to the resolution of the National Council, the Climate Council is to be established as a *"participatory process for the discussion of, and elaboration of, concrete proposals for the climate protection measures necessary to achieve the goal on the way to climate neutrality in 2040. These will be forwarded to the Climate Cabinet and the Federal Government respectively"*.

⁵ https://www.bmk.gv.at/themen/klima_umwelt/klimaschutz/nat_klimapolitik/energie_klimaplan.html

⁶ Statement from ÖKOBÜRO on the draft plan: <https://www.oekobuero.at/de/news/2019/11/1-nationaler-energie-und-klimaplan-nekp-in-begutachtung/>

⁷ E.g. Position of the Renewable Energy Association on the Plan: https://www.ots.at/presseaussendung/OTS_20191104_OTS0078/aktualisierter-entwurf-des-nationalen-energie-und-klimaplanes-nekp-bringt-unzureichende-kosmetik; Press Statement of the Environmental Spokesperson of the Social Democrats: https://www.ots.at/presseaussendung/OTS_20210107_OTS0037/herr-gewessler-bleibt-ueberarbeitung-des-nationalen-energie-und-klimaplan-schuldig

⁸ ÖKOBÜRO Study on an effective Climate Protection Act: <https://www.oekobuero.at/de/news/2021/04/anforderungen-an-ein-effektives-klimaschutzgesetz/>; PR Fridays for Future and Climate Initiative Austria: https://www.ots.at/presseaussendung/OTS_20211104_OTS0103/haelt-die-regierung-wort-klimaschutzgesetz-muss-versprechen-der-pariser-klimaziele-jetzt-auf-den-boden-bringen

The proposals of the climate referendum and the climate protection measures and targets contained in the government programme are to form the basis for the discussions in the Climate Council.⁹

Nevertheless, there is no obligation for the Austrian Government to take the suggestions brought forward by the Climate Council into account when designing Austrian Climate Policies.

National CAP Strategic Plan

The development of the Austrian Strategic Plan on the Common Agricultural Policy was accompanied by a Stakeholder Process (14 Expert Groups working from 2019 till now, possibility to submit written Statements published on the Ministries' Web). The National Strategic Plan was not subject to an SEA.¹⁰ The CAP Strategic Plan is of non-binding nature - Unfortunately, the Austrian Minister for Agriculture has recently cancelled her plans to enact a comprehensive legal framework for the implementation of the CAP Strategic Plan from 2023 onwards (GAP Grundsatzgesetz).¹¹

Generally, the EU Green Deal and its projects did not make it easier for citizens to access administrative or judicial review of environmental decisions. Most of the initiatives do lack a certain legal quality or binding nature to be contestable under Aarhus. For the rest access to justice is not implemented yet in Austria - because we are talking about regulations where participation and access to justice does not exist yet.

The European Commission is still conducting an infringement procedure against Austria (2014/4111) beneath others the missing a2j regarding regulations (Verordnungen) is part of the procedures.

In general, the Austrian Government or the Regional Governments do not label projects as "Green Deal Project" in their communication. The Government Communication in sectorial areas (Climate, Biodiversity, Agriculture...) does refer to the GD very seldomly. If anything, the Federal Chancellery communicates on the EGD and its content/measures on its web and via media.¹²

The Environmental Funding System¹³ (Umweltförderung) provides funds for environmental projects, including renewable energy initiatives.¹⁴ Funding is provided e.g., for connection to

⁹ https://www.bmk.gv.at/themen/klima_umwelt/klimaschutz/nat_klimapolitik/klimarat.html

¹⁰ https://info.bmlrt.gv.at/themen/landwirtschaft/eu-agrarpolitik-foerderungen/nationaler-strategieplan/beteiligungsprozess/stellungnahme_fachentw%C3%BCrfe_interventionen.html

¹¹ https://www.ots.at/presseaussendung/OTS_20211204_OTS0011/global-2000-ambitioniertes-grundsatzgesetz-zu-agrarfoerderungen-noetig

¹² <https://www.bundeskanzleramt.gv.at/themen/europa-aktuell/eu-parlament-stimmt-europaeischem-klimagesetz-zu-rechtliche-verankerung-der-eu-klimaziele.html>

¹³ <https://www.umweltfoerderung.at/>

¹⁴ https://www.ots.at/presseaussendung/OTS_20210304_OTS0152/klimaschutzministerium-144-innovative-projekte-der-umweltfoerderung-genehmigt

district heating, heat pumps, individual biomass systems and microgrids, geothermal energy use and solar thermal systems.

According to the Federal Budget, higher disbursements are planned for mobility in 2022. On the one hand, these result from new measures such as the climate ticket and higher subsidies for emission-free mobility. Funding for zero-emission mobility increases by € 137.2 million, partly covered by payments from the Recovery and Resilience Facility (RRF).¹⁵

2. Has there been an increase in the number of administrative and judicial proceedings fighting potentially illegal environmental decisions in the national courts? Has the promise of the Green Deal (“The Commission will also take action to improve their access to justice before national courts in all Member States.”) resulted in any tangible change? Are there any administrative or legal rules introduced to enable such changes?

According to our knowledge the number of administrative and judicial proceedings fighting potentially illegal environmental decisions has increased from 2019 onwards.

The increase was not triggered by the EGD but by the EU infringement proceedings on Aarhus and the ACCC-Case on A2J against Austria.

The Austrian regions have implemented certain Aarhus Rights into the Nature Protection Acts, the Hunting and Fishing Acts, the Water Management Act, The Waste Management Act From 2019 onwards - consequently the public (in our case solely NGOs) have exercised these rights which led to an increase of cases.

The procedural rights of NGOs are structured very differently by the federal government and the regions, and an attempt was made - although inadequately - to guarantee access to justice only for areas determined by EU law. There has been no implementation in other areas with environmental relevance (apart from air, waste, water), such as the Forest Act, the Federal Air Pollution Control Act, the Genetic Engineering Act, the Animal Protection Act, the Criminal Code and the Plant Protection Products Act 2011.

3. Have citizens been consulted to assess or provide feedback for the EU Green Deal? Have NGOs been consulted for this purpose?

The Green Deal - including the Fit-for-55 package - is discussed on the Climate Ministry’s website.¹⁶ The Ministry points out the importance of a broad stakeholder engagement in the run-up to and during negotiations at EU level. Relevant stakeholders have been consulted by the Ministry on the legislative proposals in the Fit-for-55 package. Several opinions and

¹⁵ https://www.ots.at/presseaussendung/OTS_20211110_OTS0203/umweltschutz-auf-schiene-klimaticket-und-bahnausbau-dominieren-mobilitaetsbudget

¹⁶ https://www.bmk.gv.at/themen/klima_umwelt/eu_international/euop_greendeal.html

statements are published on its website¹⁷. Beneath them, statements of the Chamber of workers, the Chamber of Commerce, Mobility Clubs, Chamber of Agriculture, Austrian Railway Company (ÖBB), Energy Associations.

Environmental NGOs have been directly approached by the Government and asked for statements on the Fit-for-55 package (e.g., on the Regulation on the Climate- and Social Fund). For the Climate and Social Fund an Ad-hoc working group in the Ministry was established to deal with the proposed act itself and the incoming stakeholder views.

4. Have virtual and non-virtual spaces been set up to facilitate public feedback for the EU Green Deal and EU Climate Law? Have these spaces been effective in facilitating dialogue? Have these spaces had an influence on the text of new proposals and revisions?

See above on point 3.

5. Has information sharing inspired and fostered public understanding of the threat and the challenge of climate change and environmental degradation (e.g., via multiple channels and tools, including national/regional-level events by the model of the Commission's on-going citizens' dialogues)?

Mainly civil society actors, the climate referendum, the Fridays-for-Future initiative and maybe targeted projects on regional/municipal level have led to fostered public understanding on the threat and challenge of climate change in Austria. These initiatives and organizations communicate via multiple channels and tools and set up projects in a different way, than in the last decades (crowdfunding etc.).

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¹⁷ https://www.bmk.gv.at/themen/klima_umwelt/eu_international/euop_greendeal.html