

GREEN DEAL QUESTIONNAIRE



Bulgaria
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 implementation of the Green Deal at national level through the national instruments like National Recovery and Resilience Plan (NRRP) or territorial just transition plans (TJTP) is at an early stage in Bulgaria¹. The NRRP is not yet approved by the EC and the TJTPs for three regions are not even drafted, so there is no good basis for assessment of the level and tendencies of access to justice related to Green Deal projects. It could be stated that there is not enough implementation practice to be assessed. There are objective reasons for this situation. There has not been a regular government and permanently working parliament since April 2021, three rounds of parliamentary elections have been carried out and Bulgaria has been governed in the meanwhile by caretaker governments with limited powers.

The Bulgarian Recovery and Resilience Plan was submitted to the EC quite late compared to other EU countries - on October 15, 2021. As stated at the website of the EC², once submitted, the Commission assesses Member States' recovery and resilience plans within two months after submission and translates their content into legally binding acts. Based on a proposal by the Commission, the Council has as a rule four weeks to adopt the Commission proposal, so it could be expected only in January for Bulgaria.

The NRRP is structured around four pillars: Innovative Bulgaria, Green Bulgaria, Connected Bulgaria and Fair Bulgaria. The plan includes measures in areas such as decarbonisation of the economy, education and skills, research and innovation, smart industry, energy efficiency, sustainable agriculture, digital connectivity, social inclusion and healthcare.

¹ <https://csd.bg/bg/publications/publication/territorial-just-transition-plans/>
<https://just-transitions-plan.wwf.eu/bg/resources>

² https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility/recovery-and-resilience-plan-bulgaria_en

The TJTP should identify the eligible territories that are expected to be the most negatively impacted by the climate transition. For Bulgaria, the plans for three regions - Stara Zagora, Kyustendil and Pernik are in their final drafting stage and could be finalized by the end of the year. There is ongoing procedure for providing support to the Government of Bulgaria/ Ministry of Energy in the preparation of plans for a fair transition in eight regions - Varna, Haskovo, Burgas, Lovech, Gabrovo, Targovishte, Sliven and Yambol, which are expected to be among the most affected by the transition to a climate-neutral economy in relation to the Green Deal. The project is implemented in the period of 05.02.2021 - 05.09.2022³. The drafting of the new programme for regional development 2021-2027 is directly linked to the territorial plans for just transition which are the main strategic documents which determine the measures to be financed by the Just Transition fund.

Concerning the National Energy and Climate Plans (NECP), the [Green Deal Communication](#) (though adopted one year later than Regulation 2018/1999 on the Governance of the Energy Union and Climate Action that requires drafting of NECPs) makes them part into the whole architecture of the Green Deal.

Member States will present their revised energy and climate plans by the end of 2019. In line with the Regulation on the Governance of the Energy Union and Climate Action, these plans should set out ambitious national contributions to EU-wide targets. The Commission will assess the ambition of the plans, and the need for additional measures if the level of ambition is not sufficient. This will feed into the process of increasing climate ambition for 2030, for which the Commission will review and propose to revise, where necessary, the relevant energy legislation by June 2021. When Member States begin updating their national energy and climate plans in 2023, they should reflect the new climate ambition. The Commission will continue to ensure that all relevant legislation is rigorously enforced.

*In addition to the Climate Pact, the Commission and Member States should work to ensure that all available planning tools for the European Green Deal are used coherently. The most important of these are the **national energy and climate plans** and the proposed strategic national plans to implement the common agricultural policy.*

However, the NECP in Bulgaria is still undergoing SEA and the procedure is not finalized.

There is no implementation practice available concerning this plan, too.

But, in general, we could say that, in Bulgaria there are not significant problems with access to justice in administrative or judicial review of environmental decisions due to the direct legal effect of the provisions of the Aarhus Convention, the Environmental Protection Act and Administrative Procedure Code. It remains to be seen whether the new parliament and government will strengthen or weaken these rules, but the initial expectation based on the political programmes of the parties promise stronger application of the rule of law and public

³ https://www.me.government.bg/bg/pages/project_8_oblasti-150.html

participation. Once the NRRP, TJTPs and other national instruments and measures will be enforced, we could assess whether the EU Green Deal projects would make it easier for citizens to access administrative or judicial review of environmental decisions, but we do not expect special legal rules to be introduced. There is room for improvement in the administrative stage of the decision-making and there we expect improvements.

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?

As stated above, there is not enough implementation practice at national level to assess the tendency for increase in the number of administrative and judicial proceedings fighting potentially illegal environmental decisions related to the Green Deal project in the courts. On one hand, if the new government will reform the administrative systems for managing these projects, the maladministration will decrease. On the other hand, because of the urgency and need to implement these projects and spend the EU grants might impose pressure on the administration to fast-track the procedures testing the access-to-justice rules.

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

The process of consultations with EC and drafting of national instruments has been run mostly at administrative level by the competent ministries - e.g., the Ministry of Energy for the NECP and the TJTP and drafting the plans done by selected consultancies. For one of the TJTP employers' organizations, the Thracian University, the managements of the three thermal power plants, Maritsa East complex, the trade unions have been involved. A wider public participation was planned in the discussion of the draft plans⁴ but no information is available about NGOs participation.

The SEA of the NECP is still on-going but is in its final stage. The SEA report was published recently, and the assessment is negative. The latest entry in the public register of SEAs⁵ is that the revised SEA report (with the comments of MoEW reflected) has been submitted on 28.10.2021. Now the Minister of Energy as an assignor of the plan will organize consultations of the SEA report with the public and a public hearing. Then based on the SEA report and the report on the consultations the Minister of Environment and Waters should issue a decision that

⁴ <https://bnr.bg/starazagora/post/101483674/predstoi-obsajdane-na-teritorialnia-plan-za-spravedliv-prehod-za-stara-zagora>

⁵ <http://registers.moew.government.bg/eo/lot/29307>

approves or does not approve the NECP. Then the decision will be published, and it could be challenged in the court.

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?

There is no information about it besides the on-going processes at the EU level. The EC has opened a digital space for the public to comment on the EU Climate Law.

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)?

No direct link between active sharing of information by the authorities and public understanding of the threat and the challenge of climate change and environmental degradation. Awareness raising and advocacy on these issues have been driven by the NGOs⁶. The lack of accessible and official information about the work of consultants, as well as about the input from the industry has been identified as another problem⁷.

Contact information

Association Justice and Environment, z.s.

European Network of Environmental Law Organizations

33 Udolní, 602 00 Brno, Czech Republic

Birgit Schmidhuber, Csaba Kiss

Co-leaders / Aarhus Convention Topic Team

e-mail: info@justiceandenvironment.org

web: www.justiceandenvironment.org



The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.

⁶ <https://www.bluelink.net/en/dokumenti/legal-analysis-of-the-bulgarian-climate-law.html> In the legal analysis of the Bulgarian Climate Law was assessed the need for amendments are to be introduced in the national legislation in order to effectively implement the European Climate Law.

⁷ <https://bankwatch.org/publication/status-of-the-territorial-just-transition-plans-in-central-and-eastern-europe-3-march-update>