

GREEN DEAL QUESTIONNAIRE



Spain
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?

In general, in Spain there are not problems on access to administrative or judicial review of environmental decisions thanks to the Aarhus Convention, the Aarhus Law and the Laws on the administrative and judicial procedures. Thus, it cannot be said that EU Green Deal projects have improved the situation as the situation of departure was good.

There are many projects ongoing that can be labelled as GD projects in many fields particularly in the field of renewables and circular economy. In addition, many more projects that can be labelled as such will be executed in Spain as part of the recovery funds and the implementation of the Spanish Recovery, Transformation and Resilience Plan. According to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility¹ these plans must contribute to the GD in a 37% of the total allocation of the plan²:

Reflecting the European Green Deal as Europe's sustainable growth strategy and the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the UN Sustainable Development Goals, the Facility is to contribute to the mainstreaming of climate action and environmental sustainability and to the achievement of an overall target of 30 % of Union budget expenditure supporting climate objectives. To that end, the measures supported by the Facility and included in recovery and resilience plans of the individual Member States should contribute to the green transition, including biodiversity, or to addressing the challenges resulting therefrom, and should account for an amount that represents at least 37 % of the

¹ OJ L 57, 18.2.2021

² Para 23 of its preamble.

recovery and resilience plan's total allocation based on the methodology for climate tracking set out in an annex to this Regulation.

One of the horizontal axis of the Spanish Recovery, Transformation and Resilience Plan is ecological transition and among its ten driving levers are:

- **Urban and rural areas** with components in the field of sustainable mobility in urban areas, building renovation and ecological transformation for the agricultural and fisheries sectors.
- **Resilient ecosystems and infrastructures** with components in the field of conservation and restoration of ecosystems and its biodiversity, preservation of coastal areas and freshwater resources and sustainable mobility.
- **Just transition** with components referred to the deployment of renewables, electricity infrastructure and storage, renewable hydrogen and the just transition strategy.

The Minister for Ecological Transition and Demographic Challenge refers to the EGD normally in all activities related to it.

MITECO has launched several auctions in the field of renewables to increase the renewable capacity in Spain and comply with the projection provided in the Spanish NECP. The auction of 26 January 2021 was a paid by bid auction with an amount awarded exceeding 3,000 MW, of which solar pv accounted for around 2,000 MW and wind power around 1,000 MW. The weighted average price was 24.75 euros/MWh (24.47 euros/MWh for photovoltaic and 25.31 euros/MWh for onshore wind). Another auction of 3,300 MW was celebrated on 19 October 2021 and a total of 3,120 MW in the solar pv and onshore wind was adjudicated.

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?

At the moment there is quite controversy on the deployment of renewables and the impacts on biodiversity, but we are not aware of any administrative or judicial procedure against them. As said in answer to Q 1 access to justice was not a problem before the EGD.

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

As the EGD is an EU initiative, it is the European Commission that should have provided room for consultation for the EGD. However, the Spanish Government has elaborated strategies related to the EGD for which it opened consultation procedures such as the Spanish Circular Economy Strategy and its first Plan of Action, or the Strategy on Green Infrastructure and the Ecological Connectivity and Restoration. The consultation procedures took place even before the adoption of the EGD. At the same time, there were consultations for the Spanish NECP itself and as part of its SEA. How effective these public consultations are is a different matter. For example, the EC Individual Assessment to the Spanish NECP declares:

“Spain carried out a public consultation on the draft plan between 22 February and 1 April 2019. Spain has not submitted a summary of the public’s views and of how those views have been taken into account in the final energy and climate plan. Spain did carry out a strategic environmental impact assessment (SEA) on the NECP under Directive 2001/42/EC. A public consultation on the SEA, which includes the final plan, was launched on 23 January 2020 and should have ended on 25 March 2020. However, the consultation deadline was extended until 11 June 2020 due to the COVID-19 crisis. Spain indicated that it would modify the final plan if the results of the public consultation on the SEA required it. As of 1 September 2020, no modifications had been submitted by Spain” (page 4 of the assessment).

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?

All this takes place at the EU level. The EC 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)?

Definitively, Spanish citizens are more concern on climate change and environmental degradation than a few years ago. National and regional events have helped but my view is that media has contributed enormously to this.

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