

# European Climate Law(s): Assessing the Legal Path to Climate Neutrality

Beatriz Pérez de las Heras<sup>1</sup>

**Abstract:** *The European Green Deal (EGD) is the European Union's comprehensive policy framework, intended to set the vision for the first climate-neutral economy by 2050, in compliance with the Paris Agreement. Achieving this ambitious goal will require a radical transformation in European production and consumption patterns, and climate action lies at the core of this transition process. As the first legal initiative implementing the EGD, the European Climate Law makes climate neutrality a legally binding objective. It also empowers the European Commission to set the trajectory for achieving this goal by 2050. This legal act will clear the path for a more integrated climate policy. However, the current climate targets, although recently updated by the European Climate Law, are not yet in line with the goals of the Paris Agreement or the EU's ambition of becoming climate neutral in 2050. This paper looks at recent changes in EU's climate and energy law brought about by the EGD. Based on this analysis, its main objective is to assess whether the new policies constitute a suitable legal path to achieve climate neutrality by 2050.*

**Keywords:** *European Union, European Green Deal, climate neutrality, Paris Agreement, 2030 climate and energy framework, European Climate Law.*  
**JEL classification:** Q54, Q58, R11.

## Introduction

Following the 2019 European elections and the subsequent renewal of its institutions, the European Union (EU) has reactivated its commitment to combatting climate change. In December 2019, at the start of her mandate, European Commission President Ursula von der Leyen proposed a European Green Deal (EGD) – a comprehensive policy strategy intended to transform the EU into the first climate-neutral region in the world by 2050<sup>2</sup>. Clearly driven by public pressure, particularly from younger generations and figures such as Swedish activist Greta Thunberg, implementation of the EGD is one of the current European Commission's main priorities. It also stands for a new growth strategy that aims to 'transform the EU into a fair and prosperous society, with a modern resource-efficient and competitive economy'<sup>3</sup>.

The EGD includes numerous specific measures extending to almost all EU policy areas: energy; transport; industry; agriculture; finance; taxation; research, development and innovation; food etc. Of these, climate change is clearly the main focus of the EGD and it is therefore not surprising that the first key measure adopted within the new framework was the proposal for a European Climate Law, presented by the European Commission

<sup>1</sup> Beatriz Pérez de las Heras is Professor of European Union Law at the University of Deusto (Spain). She is holder of the Jean Monnet Chair on European Integration and Editor-in-Chief of the *Deusto Journal of European Studies*. E-mail: [beatriz.perez@deusto.es](mailto:beatriz.perez@deusto.es)

<sup>2</sup> European Commission, 'The European Green Deal', COM (2019) 640 final.

<sup>3</sup> *Ibid.*, 2.

in March 2020<sup>4</sup>. Adopted on 30 June 2021, this text sets a legally binding target of net zero greenhouse gas (GHG) emissions by 2050<sup>5</sup>, updating the 40% reduction goal of the current 2030 climate and energy policy framework<sup>6</sup>, which represents the EU's first Nationally Determined Contribution (NDC) under the Paris Agreement<sup>7</sup>. As the current multilateral legal instrument to address climate change, the Paris Agreement's main goal is to hold the increase in the average global temperature to 2°C above pre-industrial levels and to pursue efforts to limit the increase to 1.5°C by the second half of this century (Art. 2, Paris Agreement). Also in March 2020, the EU submitted its long-term low GHG emission strategy to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), reaffirming the EU's commitment to climate neutrality in compliance with the Paris Agreement<sup>8</sup>. To achieve this ambition, the EU plans to review every law and regulation over the coming years.

This process of legal alignment began in 2020, just as the world was beginning to feel the impact of the Covid-19 pandemic. However, the EU's response to the crisis appears to reflect a commitment to reinforcing climate ambitions and policies, at least in terms of legal implementation of the EGD<sup>9</sup>. Achieving climate neutrality will require a profound transformation in production and consumption patterns in Europe over the coming decades. Will the new legal measures and those in prospect be ambitious enough to reach this goal by 2050?

To address this question, this paper offers a comprehensive overview of the changes to EU's climate and energy law brought about by the EGD, while assessing whether the new policies constitute a suitable legal path for achieving climate neutrality by 2050. To make this assessment, the paper first examines the key elements of the EGD as the overarching policy roadmap towards sustainability and climate neutrality in the EU. In the second section, it analyses the EU's new mitigation goal and legal instruments for achieving zero GHG emissions by 2050. The general preliminary assessment is that the new policies reinforce EU climate law, particularly with regard to the degree to which it is binding on Member States, setting the EU on a pathway towards a further green transition. However, these climate objectives and policies are still not in line with the goals of the Paris Agreement and the EU's own stated ambition to become the first

---

<sup>4</sup> European Commission, 'Proposal for a Regulation of the European Parliament and the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)', COM (2020) 80 final.

<sup>5</sup> Article 1, paragraph 2 of Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJEU L243/1 of 9 July 2021.

<sup>6</sup> European Commission, '2030 climate & energy framework', 2021, [https://ec.europa.eu/clima/policies/strategies/2030\\_en](https://ec.europa.eu/clima/policies/strategies/2030_en) (accessed April 20, 2021).

<sup>7</sup> Adopted on 12 December 2015, the Paris Agreement came into force on 4 November 2016. As of 1 January 2021, it replaced the Kyoto Protocol as the main multilateral legal instrument for addressing climate change. The NDCs are the central element for implementation of this international agreement. They express the Parties' contributions in terms of GHG emission reduction and other climate related policies. The NDCs are determined voluntarily by the Parties and must be updated every five years. Subsequent contributions must be increasingly more ambitious, representing a progression over time (Arts. 3 and 4 of Paris Agreement). United Nations, 'Paris Agreement', 2015, [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf) (accessed April 20, 2021).

<sup>8</sup> Croatian Presidency of the Council of the EU, 'Submission by Croatia and the European Commission on behalf of the European Union and its Member States. Subject: long-term low greenhouse gas emission development strategy of the European Union and its Member States', 6 March 2020, <https://unfccc.int/sites/default/files/resource/HR-03-06-2020%20EU%20Submission%20on%20Long%20term%20strategy.pdf> (accessed April 20, 2021).

<sup>9</sup> Claire Dupont, Sebastian Oberthür and Ingmar von Homeyer, 'The Covid-19 crisis: a critical juncture for EU climate policy development', *Journal of European Integration* 42, no. 8 (2020): 1096.

climate-neutral economy by 2050. In light of this assessment, the paper concludes that if the EU really wants to meet the 2050 goals, it will have to continue strengthening its climate policy throughout this decade.

### **The European Green Deal: a comprehensive roadmap to sustainable development and climate neutrality**

The EGD is an ambitious agenda, combining environmental and economic objectives with the goal of ensuring a just transition towards a more sustainable and climate-neutral economy. It clearly takes its name from the American ‘New Deal’, President Roosevelt’s programme of measures to combat the Great Depression during the period from 1933 to 1940<sup>10</sup>. Now, in different circumstances, the EGD also seeks to change Europe’s governance and economic model whilst protecting the environment. This approach is a turning point in itself, since the EU’s economic growth strategies in recent years have focused mainly on ensuring income and increasing wealth. However, in Ursula von der Leyen’s words, ‘The European Green Deal is our new growth strategy’<sup>11</sup>.

Specifically, the EGD has a twofold objective. On the one hand, it offers a guide for the transition to a resource-efficient economy with net zero GHG emissions, by decoupling economic growth from resource use. On the other, it aims to preserve and protect the EU’s natural capital and protect citizens’ health and wellbeing from environmental risks<sup>12</sup>.

With this approach, the EGD can be seen as the strategic tool that will test the EU’s ability to balance economic prosperity and social equity whilst addressing environmental challenges<sup>13</sup>. As a comprehensive policy framework, the EGD includes a broad raft of environmental and sustainability measures structured into eight broad, interlinked areas<sup>14</sup>:

1. Increasing the EU’s climate ambition for 2030 and 2050.
2. Supplying clean, affordable and secure energy.
3. Mobilising industry for a clean and circular economy.
4. Building and renovating in an energy- and resource-efficient way.
5. Accelerating the shift to sustainable and smart mobility.
6. From ‘Farm to Fork’: a fair, healthy and environmentally-friendly food system.
7. Preserving and restoring ecosystems and biodiversity.
8. A zero pollution ambition for a toxic-free environment.

Various policies have been adopted in these areas to address environmental and sustainability issues since 2020<sup>15</sup>. Amongst these, tackling climate change lies at the core of the EGD. More specifically, in this area the EGD intends to drive a shift towards a transformative climate policy by providing a more inclusive and systemic framework for all EU policies, with climate neutrality as a common cross-cutting objective<sup>16</sup>.

---

<sup>10</sup> Éloi Laurent, ‘The European Green Deal. Bring back to new’, *Observatoire Français des Conjonctures Économiques (OFCE) Policy Brief*, no. 63 (2020): 2.

<sup>11</sup> European Commission, ‘Work Programme 2020: a Union that strives for more’, COM (2020) 37 final, 2.

<sup>12</sup> European Commission, *op. cit.* (n. 2), 2.

<sup>13</sup> Aleksandra Cavoski, ‘An ambitious and climate-focused Commission agenda for post COVID-19 EU’, *Environmental Politics* 29, no. 6 (2020): 1113.

<sup>14</sup> European Commission, *op. cit.* (n. 2), 4.

<sup>15</sup> See European Commission, ‘Actions being taken by the EU’, [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu_en) (accessed April 20, 2021).

<sup>16</sup> Claire Dupont, Sebastian Oberthür and Ingmar von Homeyer, *op. cit.*, (n. 9), 1103.

In line with this target, the EGD establishes that the European Commission should propose a more ambitious 2030 mitigation target and review and revise the implementing legislation throughout 2021. The aim of the increased GHG emission target is not only to update the EU's first NDC under the Paris Agreement, but also to provide the basis for submitting the EU's second NDC in 2025, following the first global stocktake in 2023<sup>17</sup>. Indeed, in order to meet its international commitments and its own ecological ambitions, the EU will have to further review and reinforce its climate and energy law, as the next section of this paper highlights.

As a comprehensive policy framework, the EGD is also meant to enable the EU to implement the UN's 2030 Agenda for Sustainable Development and the Sustainable Development Goals<sup>18</sup>. In this regard, the objectives of environmental protection, economic growth and social equity are consistent with the UN's sustainable development approach. Nevertheless, neither the UN Agenda for Sustainable Development nor the EGD establishes specific priorities amongst these three objectives. In practice, addressing these targets will require consistent EU action in the different areas of policy, as well as a high degree of coordination between the actors involved at different levels of governance, to wit, EU institutions, national authorities, local entities and civil society<sup>19</sup>. In this respect, the European Semester currently provides the best framework of governance for coordinating the EU and Member States' EGD-related policies<sup>20</sup>.

Likewise, the implementation of the EGD will have important implications for third countries. First, the EGD provides the replacement of fossil fuels (oil, natural gas, gas) by renewable energies in 2050. This shift in the EU energy system will have a significant impact on major oil and gas suppliers (Russia, Algeria, Middle East Countries, among others). The transition to clean energy will also affect the EU's international competitiveness, in particular, if other countries do not apply strict climate policies like the EU's. The European Commission's proposal for a border carbon adjustment intends to prevent this loss of competitiveness. Specifically, a carbon tariff on imports aims to dissuade European companies from relocating their activity to countries with less stringent climate legislation ('carbon leakage')<sup>21</sup>. At the same time, it intends to encourage third countries to initiate the green transition towards climate neutrality. Consequently, the external repercussions of the EGD require great cooperation with third countries for its full achievement. The EU is already taking steps to externalise the EGD through different policies areas, such as trade, foreign and development. With an approach that combines collaboration, coercion and diplomacy, the EU aims to reduce the potential negative impact of its own transition in third countries and ensure that the green transformation is beneficial and achievable globally<sup>22</sup>.

---

<sup>17</sup> According to Article 14 of the Paris Agreement, the first global stocktake of implementation will take place in 2023 and every five years thereafter. It will assess collective progress towards achieving the long-term goals of the Paris Agreement.

<sup>18</sup> European Commission, *op. cit.*, (n. 2), 3.

<sup>19</sup> Sebastino Sabato and Boris Fronteddu, 'A socially just transition through the European Green Deal?', *ETUI Working Paper* (2020): 13-14.

<sup>20</sup> The European Semester is an annual process that offers Member States recommendations on macroeconomic and social policies. According to the European Commission's 2020 Work Programme, the EU 'will refocus the European Semester by integrating the Sustainable Development Goals and put forward (its) approach to the overall governance and implementation of the goals'. See Céline Charveriat and Eloise Bodin, 'Delivering the Green Deal. The role of a reformed European semester with a new sustainable economy strategy', *IEEP-An EU Green Deal Series*, no. 2 (2020): 1-26.

<sup>21</sup> Mark Leonard et al., 'The Geopolitics of the European Green Deal', *RCFR Policy Contribution*, no. 4 (2021): 1-23.

<sup>22</sup> Cloe Teevan, Alfonso Medinilla and Katjia Sergejeff, 'The Green Deal in EU foreign and development policy', *ECDPM Briefing Note*, no. 131 (2021): 1.

As for the involvement of civil society, interaction with citizens is also key to the success of the EGD and acceptance of the profound economic and social adjustments that the green transition will entail. On 16 December 2020, the European Commission launched the European Climate Pact to encourage active public participation and create a channel of dialogue. Through this digital platform, individuals, civil society organizations and communities are currently exchanging ideas, solutions and proposals on the different climate and environmental issues covered by the Pact<sup>23</sup>. At national level, increasing numbers of similar initiatives for public involvement are now emerging. One example is the *Convention Citoyenne pour le Climat* in France, a forum of 150 randomly-selected members of the public. Its role extends beyond mere representation and consultation; its primary mandate is to debate and propose legal measures to combat climate change and thus contribute to the EU's climate neutrality goal<sup>24</sup>. Along similar lines, the Climate Action Network (CAN) Europe is a large coalition of civil society organizations, whose aim is to influence in the design and implementation of climate policies in the EU and other non-EU European states<sup>25</sup>. These social initiatives reflect a growing public concern and demand for effective policies, which provides essential support for advancing climate action at EU level.

Another relevant dimension of the EGD is the enormous financial and investment effort that its implementation will require from EU institutions and national authorities, as well as from private actors. With this in mind, alongside its EGD, the European Commission presented a Sustainable Europe Investment Plan. As announced in January 2020, the Plan aimed to mobilise €1 trillion of private and public investment over the coming decade. As an integral part of this investment framework, a Just Transition Mechanism with a specific fund was included, the so-called 'Just Transition Fund'. This financial instrument is particularly intended to facilitate the green transition in the carbon-intensive economies of Central and Eastern European countries<sup>26</sup>.

Presentation of the investment and financial framework coincided with the outbreak of the Covid-19 pandemic in Europe. From the very beginning of the crisis, voices were raised arguing that implementation of the EGD should be secondary to economic recovery. Political leaders in some Member States, including the Czech Republic and Poland, called for the EGD to be scrapped or postponed<sup>27</sup>. Some business organisations, too, such as the European Automobile Manufacturers Association and BusinessEurope, requested a delay in adoption and enforcement of EU climate legal initiatives<sup>28</sup>. Countering these attacks, however, representatives of other business sectors, political authorities in most Member States and EU institutions all called for the EGD to be transformed into the centrepiece of all post-pandemic recovery plans<sup>29</sup>. Building on this consensus, the European Commission put sustainability and climate transition at the heart of the key recovery instruments it proposed in May 2020, namely, the Next

<sup>23</sup> [https://europa.eu/climate-pact/index\\_en](https://europa.eu/climate-pact/index_en) (accessed April 20, 2021).

<sup>24</sup> <https://www.conventioncitoyennepourleclimat.fr/en/> (accessed April 20, 2021).

<sup>25</sup> <https://caneurope.org/about-us/> (accessed April 20, 2021).

<sup>26</sup> See European Commission, 'The European Green Deal Investment Plan and Just Transition Mechanism explained', [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_24](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24) (accessed April 20, 2021).

<sup>27</sup> Milan Elkerbout et al., 'The European Green Deal after Corona: implications for the EU climate policy', *CEPS Policy Insights*, no. 2020-06 (2020): 2.

<sup>28</sup> Anton Lazarus, '5 ways opportunistic lobbyists are using coronavirus to attack EU environmental laws', 16 April 2020, <https://meta.eeb.org/2020/04/16/5-ways-opportunistic-lobbyists-are-using-coronavirus-to-attack-eu-environmental-laws/> (accessed April 20, 2021).

<sup>29</sup> Frédéric Simon, 'EU leaders back green transition in pandemic recovery plan', 27 March 2020, <https://www.euractiv.com/section/energy-environment/news/eu-leaders-back-green-transition-in-pandemic-recovery-plan/> (accessed April 20, 2021).

Generation EU and the Multiannual Financial Framework (MFF) 2021-2027 (both approved by the European Council in July 2020)<sup>30</sup>.

As a result of inclusion of these recovery mechanisms, the initial figure of €1 trillion was raised to €1.8 trillion and the share of climate expenditure in the MFF 2021-2027 was raised from 25% to 30%. The new amount represents a significant boost in funding for the green transition in the EU. However, the Just Transition Fund will have an allocation of €17.5 billion, far below the €40 billion initially proposed by the European Commission — although still higher than the €10 billion proposed in the original MFF proposal. Apart from the EU budget, the green transition envisaged by the EGD will also benefit in coming years from co-financing from Member States and other instruments. These financial sources include the European Investment Bank and the InvestEU Fund, the latter of which is expected to leverage around €279 billion of private and public climate and environment-related investments over the next decade<sup>31</sup>.

All these mechanisms shape an unprecedented financial framework at the EU level. However, it can only bring its results if the post-pandemic recovery measures are truly aligned with the goal of climate neutrality. In the Annual Sustainable Growth Strategy 2020, the European Commission underlined the necessary link between the post-covid recovery plans and the green and digital transition in line with the EGD<sup>32</sup>. Indeed, the pursuit of both a green and a digital transition is seen as ensuring the success of Europe's recovery and increasing cohesion among Member States. Along these lines, the Annual Sustainable Growth Strategy 2021 specifies that 'each recovery and resilience plan will have to include a minimum level of 37% of expenditure related to climate and 20% to digital'<sup>33</sup>. Most of the national recovery and resilience plans submitted to the European Commission in 2021 include huge investment volumes to promote the green and digital transitions<sup>34</sup>.

Therefore, if properly implemented and aligned with the EU's climate neutrality goal, the post Covid-19 recovery projects and funding could act as a catalyst for implementing the EGD and a profound transformation in EU climate law<sup>35</sup>.

### **The 2030 climate and energy policy framework and European Climate Law: flexibility and hard law in the green transition**

EU climate policy has been guided by the Union's successive commitments at international climate negotiations. At present, the 2030 climate and energy policy framework represents the EU's first NDC under the Paris Agreement and legal acts implementing this policy framework reflect the flexible regime established in the international instrument. The new European Climate Law is also in line with the adaptable framework of the Paris Agreement, but it also seeks to embed the EU's climate neutrality

---

<sup>30</sup> European 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 EU budget powering the recovery plan for Europe', COM (2020) 442 final; European Council, 'Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020). Conclusions', EUCO 10/20.

<sup>31</sup> See Manfred Hafner and Pier Paolo Raimondi, 'Priorities and challenges of the EU energy transition: from the European Green Package to the new Green Deal', *Russian Journal of Economics*, no. 6 (2020): 385-387.

<sup>32</sup> Alicja Sikora, 'European Green Deal-legal and financial challenges of the climate change', *ERA Forum*, no.21 (2021): 691.

<sup>33</sup> European Commission, 'Annual Sustainable Growth Strategy 2021', COM (2020) 575 final, 5 & 7.

<sup>34</sup> See detailed information about these plans at [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility/recovery-and-resilience-plans-assessments\\_en](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility/recovery-and-resilience-plans-assessments_en) (accessed August 27, 2021).

<sup>35</sup> Tensay Hadush Meles, Lisa Ryan and Joe Wheatley, 'COVID-19 and EU Climate Targets: Can We Now Go Further?' *Environmental and Resource Economics*, no. 76 (2020): 779-787.

target for 2050 into EU legislation, setting an explicit binding goal of zero emissions by 2050, and empowering the European Commission to adopt legislative proposals to establish the EU's GHG mitigation progress for the period from 2030 to 2050.

*The EU's mitigation targets for 2030: in line with the flexible system of the Paris Agreement, but without its long-term goal*

In contrast with the top-down approach of the Kyoto Protocol (1997), the Paris Agreement is based on a bottom-up system, in which each Party submits an NDC, updated every five years. As discussed, the NDCs must set out the measures the Parties will take to attain the global temperature limitation goals established in Article 2 of the Paris Agreement and subsequent updated NDCs will have to reflect a progression on these measures<sup>36</sup>.

Adopted by the European Council in October 2014<sup>37</sup>, the 2030 climate and energy policy framework –submitted in March 2015– constitutes the EU's initial NDC to the Paris Agreement<sup>38</sup>. It builds on and maintains the target structure of the EU's former 2020 climate and energy framework<sup>39</sup>. Initially, three EU-wide targets were established: a 40% reduction in GHG emissions by 2030 compared to 1990; a 27% increase in renewable energy and a 27% increase in energy efficiency. In 2018, however, the original targets for renewable energy and energy efficiency were increased to 32% and 32.5%, respectively, as the result of the strategic long-term vision for a sustainable and neutral-climate economy by 2050 presented by the European Commission that same year<sup>40</sup>. The document reflects the EU's ambition to lead the global transition to a carbon-neutral economy and contribute to achieving the goals of the Paris Agreement in line with the UN's Sustainable Development Goals. Review of the energy targets also led to the amendment of certain key legal acts implementing the 2030 framework, as well as the adoption of some new instruments.

More specifically, the directives on the Emissions Trading System (ETS)<sup>41</sup>, Renewable Energy<sup>42</sup> and Energy Efficiency<sup>43</sup> were all amended in 2018, while the Decision on Effort Sharing was replaced by a Regulation<sup>44</sup>. The new legal acts that also currently form part of the 2030 framework are the Regulation on the Governance of the Energy Union and Climate Action ('Governance Regulation')<sup>45</sup> and the Regulation on the inclusion of greenhouse gas emissions and removals from land use, land-use change

<sup>36</sup> Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope?', *The American Journal of International Law* 110, no.2 (2016): 290-291.

<sup>37</sup> European Council, 'Conclusions (24 October 2014)', EUCO 169/14.

<sup>38</sup> 'Submission by Latvia and the European Commission on behalf of the European Union and its Member States, Intended Nationally Determined Contribution by the European Union and its Member States', 6 March 2015, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Austria%20First/LV-03-06-EU%20INDC.pdf> (accessed April 20, 2021).

<sup>39</sup> The 2020 framework represented the EU's commitments under the second period of Kyoto Protocol. See Sebastian Oberthür and Marc Pallemaerts (eds.), *The new climate policies of the European Union: internal legislation and climate diplomacy* (Brussels: VUB University Press, 2010).

<sup>40</sup> European Commission, 'A clean planet for all: a European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy', COM (2018) 773 final.

<sup>41</sup> Directive (EU) 2018/40 amending Directive 2003/87/EC on the EU emissions trading system, OJEU L76/3 of 19 March 2018.

<sup>42</sup> Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (recast), OJEU L328/82 of 21 December 2018.

<sup>43</sup> Directive (EU) 2018/2002 amending Directive 2012/27/EU on energy efficiency, OJEU L328/210 of 21 December 2018.

<sup>44</sup> Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, OJEU L156/26 of 19 June 2018.

<sup>45</sup> Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action, OJEU L328/1 of 21 December 2018.

and forestry in the climate and energy framework (the ‘LULUCF Regulation’)<sup>46</sup>. All these legal acts provide for review mechanisms to introduce additional efforts and policies for achieving the Paris goals.

Thus, the ETS Amending Directive provides that sectors included in the system will cut emissions by 43% from 2005 levels by 2030<sup>47</sup>. To achieve this, the ETS emission cap will have to be lowered by 2.2% annually from 2021 to 2030, as compared to the 1.74% figure that has been in force since 2013 (Art. 10 Amending Directive). This will not be the only change to the ETS before 2030; Article 30 of the Amending Directive envisages new reviews if required to achieve Paris targets. In particular, following the first global stocktake, due in 2023, the Commission will have to report to the European Parliament and the Council on the need for a review of the Directive to introduce additional or more stringent measures.

For sectors not included in the ETS, the new Effort Sharing Regulation sets a target of a 30% reduction in GHG emissions by 2030, compared to 2005 levels. This binding target applies to emissions in transport, waste, buildings, agriculture and industrial sectors not included in the ETS (Art. 1 of Regulation). This collective target is distributed in binding national targets for each Member State, differentiated according to their respective gross domestic product, as specified in the Annex to the Regulation<sup>48</sup>. However, Article 15 of the Regulation also provides for its potential review, in particular after the first global stocktake of 2023, in order to ensure compliance with the goals of the Paris Agreement.

Similar mechanisms are found in the new Directives on Renewable Energy and Energy Efficiency, although the review dates differ. The Renewable Energy Directive, for example, provides that the current Union-wide binding target of a 32% share of renewables by 2030 can be increased in 2023, in the event of substantial reductions in the production costs of renewable energy (Art. 3.1 of Directive). In any case, based on experience in implementation of the Directive, a review of the act is planned for 2026 to promote renewable energy use for the post-2030 period (Art. 33.3 of Directive). The Energy Efficiency Directive, which sets a collective energy efficiency target of 32.5%, provides a five-year period, starting in 2024, for evaluating implementation, to further align the EU’s energy efficiency policy with Paris Agreement targets (Art. 24 of the Directive).

The LULUCF Regulation is a new legal act in the 2030 framework. Along with the ETS and the Effort Sharing Regulation, it is seen as being a key pillar of EU climate policy<sup>49</sup>. As stated in Recital 3 of the Regulation, it forms part of implementation of the EU’s commitments under the Paris Agreement. It also contains a review clause in Article 17.2, whereby the European Commission must submit a report to the European Parliament and the Council on the Regulation’s contribution to the EU’s 2030 emission

---

<sup>46</sup> Regulation (EU) 2018/841 on the inclusion of greenhouse gas emissions and removals from land use, land-use change and forestry in the 2030 climate and energy framework, OJEU L156/1 of 19 June 2018.

<sup>47</sup> The ETS has been one of the key mitigation instruments since 2005. It covers approximately 45% of EU emissions, which are produced mainly by power generation and manufacturing industries across Member States. See Kati Kulovesi and Sebastian Oberthür, ‘Assessing the EU’s 2030 climate and energy policy framework: incremental change toward radical transformation?’, *Review of European, Comparative & International Environmental Law (RECIEL)* 29, no. 2 (2020): 156.

<sup>48</sup> Under this differentiation, countries are classed in a range from 0% (Bulgaria) to 40% (Sweden, Luxembourg). See Marjan Peeters and Natassa Athanasiadou, ‘The continued effort-sharing approach in EU climate law: binding targets, challenging enforcement?’, *RECIEL* 29, no. 2 (2020): 201-211.

<sup>49</sup> Annalisa Savaresi and Lucia Perugini, ‘The land sector in the 2030 EU climate change policy framework: a look at the future’, *Journal for European and Environmental and Planning Law* 16, no. 2 (2019): 11.



reduction targets and the goals of the Paris Agreement within six months of each global stocktake.

Another new piece of legislation within the 2030 framework is the Governance Regulation. This requires Member States to submit 10-year integrated national energy and climate plans (NECPs) to the European Commission, addressing the five dimensions of the Energy Union<sup>50</sup>. Specifically, Member States were required to submit their first NECPs by 31 December 2019, under the provisions of Article 3 of the Regulation. On the basis of these submissions, the Commission can issue recommendations to Member States to strengthen their NECPs, as it did in June 2019 in regard to all countries<sup>51</sup>. The recommendations are not binding, but Member States are required to explain how they have addressed them in the biennial report that the European Commission must submit assessing progress towards the 2030 climate and energy targets and Paris Agreement long-term goals, starting in October 2021 (Art. 29 of the Governance Regulation).

Hence, all legal acts implementing the current 2030 climate and energy framework enable the EU to review emissions reduction targets and strengthen the policies that support them, thereby providing flexibility in line with the Paris Agreement<sup>52</sup>. However, as the EU's NDC, the 2030 framework falls short of the ambition required of limiting warming to 2°C, let alone to 1.5°C. In general, all the initial NDCs submitted by the Parties are considered to be insufficient to achieve the Paris Agreement's global temperature goals<sup>53</sup>. According to some analysis on equitable mitigation efforts, an EU contribution compatible with the Paris Agreement long-term goals would require an 86% GHG reduction by 2030 and the achievement of zero emissions between 2036 and 2040<sup>54</sup>. However, the EU aims to reach this target in 2050. To this end, on 11 December 2020 the European Council agreed to increase the 40% GHG target to 55% by 2030<sup>55</sup>. Following this decision, on 17 December 2020 the EU submitted its updated NDC, including the new 55% target, to the UNFCCC<sup>56</sup>. The new mitigation goal is also enshrined in the new European Climate Law, which also sets climate neutrality as a binding objective to be achieved in 2050. Its final adoption on 30 June 2021 will entail a new review of the legal acts implementing the 2030 framework, as well as the first NECPs, all of which are based on a 40% target.

<sup>50</sup> The five dimensions are identified in recital 2 of the Governance Regulation: energy security; internal energy market; energy efficiency; decarbonisation; and research, innovation and competitiveness.

<sup>51</sup> The European Commission's recommendations are available in OJEU C297 of 3 September 2019, pp. 4401-4428.

<sup>52</sup> Diamuid Torney and Roderic O'Gorman, 'Adaptability versus certainty in a carbon emissions reduction regime: an assessment of the EU's 2030 Climate and Energy Policy Framework', *RECIEL* 29, no. 2 (2020): 170.

<sup>53</sup> United Nations Environment Programme (UNEP), 'Emissions Gap Report, 2019', <https://www.unep.org/resources/emissions-gap-report-2019> (accessed May 20, 2021). The second or updated NDCs communicated by 75 Parties in December 2020 are not very promising either. Their collective contribution in terms of emission reduction would be very small: -1% in 2030 compared to 2010. The Intergovernmental Panel on Climate Change (IPCC) has indicated that the emission reduction should be around -45% in order to achieve the 1.5°C temperature goal. See United Nation Framework Convention on Climate Change (UNFCCC), 'Nationally Determined Contributions under the Paris Agreement. Synthesis report by the secretariat', 26 February 2021, <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/nationally-determined-contributions-ndcs/ndc-synthesis-report> (accessed April 20, 2021).

<sup>54</sup> Niklas Höhne et al., 'A possible 2050 climate target for the EU', *NewClimate Institute Report* (2019): 6; Climate Action Tracker, 'Country Summary', 2021, <https://climateactiontracker.org/countries/eu/> (accessed April 20, 2021).

<sup>55</sup> European Council, 'European Council meeting (10 and 11 December 2020)-Conclusions', EUCO 22/20.

<sup>56</sup> Submission by Germany and the European Commission on behalf of the EU and its Member States, 17 December 2020, [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Spain%20First/EU\\_NDC\\_Submission\\_December%202020.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Spain%20First/EU_NDC_Submission_December%202020.pdf) (accessed April 20, 2021).

*The European Climate Law: towards a directly applicable regime on binding decarbonisation*

As stated, in March 2020 the European Commission presented a proposal for a European Climate Law. The proposed legal act is a regulation of the European Parliament and the Council, which is a relevant tool for developing EU climate law in the area of environment policy, which is one of shared competence. According to Article 288 of Treaty on the Functioning of the European Union (TFEU), the regulation is binding in its entirety and directly applicable in all Member States. The European Climate Law Regulation is explicitly linked to the Paris Agreement and the EU's commitment to achieve climate neutrality by 2050. In this regard, Article 1, paragraph 2 of this Regulation sets climate neutrality as a binding objective to be achieved by EU institutions and Member States by 2050 'in pursuit of the long-term temperature goal set out in point (a) of Article 2 (1) of the Paris Agreement'. In its March proposal, the European Commission also announced that it would explore options for a new 2030 target of 50–55% emission reduction by September 2020 (Art. 2. 3 of the March proposal). This provision was a clear indication that the 40% mitigation target was not in line with Paris Agreement goals or the EU's own ambition to achieve climate neutrality<sup>57</sup>.

On the basis of this provision, in September 2020 the European Commission submitted an amended proposal for a new European Climate Law<sup>58</sup>, adding a binding EU net GHG emission reduction target for 2030 to Article 1, paragraph 2 of the current Regulation. In addition, it introduced a new version of Article 4, which specifies currently that 'the binding Union 2030 climate target shall be a domestic reduction of net greenhouse gas emissions (emissions after deduction of removals) by at least 55% compared to 1990 levels by 2030'. Article 4 also sets a deadline of June 2021 for the European Commission to assess how the relevant EU legislation will need to be amended in order to achieve the 55% mitigation target in 2030 and the climate neutrality objective in 2050<sup>59</sup>. Without doubt, a considerable number of legal acts will again have to be amended to align them with the new 55% target for 2030, *inter alia* the ETS Directive, the Effort Sharing Regulation and the Directives on Renewable Energy and Energy Efficiency. The NECPs for the period 2021-2030 will also have to be adjusted to the revised goal for 2030, since all of them were based on the 40% target<sup>60</sup>.

Besides the review of the 2030 mitigation target, one of the most significant aspects of the European Climate Law Regulation is the power it attributes to the European Commission to take the necessary measures, including the adoption of legislative proposals, to amend this Regulation in order to achieve the climate-neutrality objective. More specifically, Article 4.3 of this Regulation provides that 'a Union-wide climate target for 2040 shall be set'. To that end, within six months of the first global stocktake scheduled for 2023 under the Paris Agreement, the European Commission will make a legislative proposal, based on a detailed impact assessment, to amend this Regulation to include

<sup>57</sup> Ludwig Krämer, 'Planning for climate and the environment: the EU Green Deal', *Journal for European Environmental & Planning Law* no. 17 (2020): 270.

<sup>58</sup> European Commission, 'Amended proposal for a Regulation of the European Parliament and of the Council on establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999', COM (2020) 563 final.

<sup>59</sup> Cristina D. Tvarno, 'The new generation of climate regulation- in a Danish and EU perspective', *Copenhagen Business School Law Research Paper*, no. 20-37 (2020): 12-14.

<sup>60</sup> Ludwig Krämer, *op. cit.* (n. 57), 274. The amendment process of these legal instruments started on 14 July 2021 when the European Commission presented a series of legislative proposals that aim to achieve climate neutrality in the EU by 2050, as well as the intermediate target of 55% net reduction in GHG emissions by 2030. See detailed information available at [https://ec.europa.eu/clima/policies/eu-climate-action/delivering\\_en](https://ec.europa.eu/clima/policies/eu-climate-action/delivering_en) (accessed August 27, 2021).

the Union 2040 climate target. When setting the 2040 climate target, the European Commission will have to take into account the elements set out in points a) to m) of Article 4.5 of Regulation (cost-effectiveness and economic efficiency, competitiveness of the Union's economy, etc).

The European Climate Law Regulation thus provides the legal basis for the European Commission to propose future climate legislation in order to achieve the 2050 climate-neutrality. As stated above, that will undoubtedly be necessary, since the current EU 2030 target, even as recently updated, is still not in line with the global temperature goals of the Paris Agreement or the EU's climate neutrality 2050 ambition. Further measures will have to be adopted to accelerate the green transition in the EU and comply with international commitments. To that end, the European Climate Law Regulation can provide significant support for the development of European climate law in coming years. It will also stand as an example of binding secondary climate law.

### **Conclusions**

The EU is determined to lead the current green transition and aims to become the world's first climate-neutral region by 2050. Achieving this ambition will require a radical transformation of the European economy and society. Over the last fifteen years, the EU has been setting climate and energy targets, reflecting its commitment to address climate change and its devastating effects. The EGD is currently the comprehensive and strategic framework whose implementation is intended to lead the EU towards climate neutrality. Successful achievement of this goal will largely depend on how the ongoing Covid-19 crisis plays out at both EU and global level. For the moment, however, the prospect of the recovery plans to address the enormous economic and social consequences of the pandemic seems to be encouraging the development of EU climate policy, at least in terms of legal acts.

Nonetheless, the current targets and policies of the 2030 framework, although recently updated, fall short of meeting the ultimate goal of restricting temperature rise to 1.5 °C, as established in the Paris Agreement and the EU's own ambition of climate neutrality by 2050. The European Climate Law Regulation, adopted within the framework of the EGD, strengthens the 2030 GHG emission reduction target, while establishing the climate neutrality target in law and upgrading the governance system. It represents a fundamental step towards a more integrated climate policy. The Regulation empowers the European Commission to set a trajectory for the EU's GHG emission reduction in 2030–2050 through legislative proposals, in order to achieve climate neutrality in 2050. The trajectory will be reviewed every five years, in line with the global stocktakes under the Paris Agreement. Without a doubt, the European Climate Law will add more certainty and stability to the EU's climate and energy policy framework, by setting a binding medium-term perspective and a compulsory climate neutrality goal for 2050.

For the moment, the EGD and, in particular, the increased 2030 GHG reduction target incorporated into the European Climate Law Regulation, has provided a sound basis for the EU to update its first NDC under the Paris Agreement, as it did in December 2020. Beyond that, after the first global stocktake in 2023, the EU will have to submit its second NDC in 2025, which will extend beyond 2030. This will require further strengthening of the EU's climate and energy policy to meet the ultimate goal of the Paris Agreement.

It remains to be seen whether the EU's Covid-19 recovery plans, along with implementation of the EGD, will actually push forward the development of EU climate and energy policy. However, if the recovery plans are properly implemented, economic and social recovery can boost the green transition. To this extent, it may be concluded that the current crisis provides the EU and its Member States with an opportunity to achieve the EGD's ambition of economic modernisation and transformation in keeping with the decarbonisation goal of the Paris Agreement.

### References

- Bodansky, Daniel, 'The Paris Climate Change Agreement: A New Hope?', *The American Journal of International Law* 110, no.2 (2016).
- Cavoski, Aleksandra 'An ambitious and climate-focused Commission agenda for post COVID-19 EU', *Environmental Politics* 29, no. 6 (2020).
- Charveriat, Céline and Eloïse Bodin, 'Delivering the Green Deal. The role of a reformed European semester with a new sustainable economy strategy', *IEEP-An EU Green Deal Series*, no 2 (2020).
- Climate Action Tracker, 'Country Summary', 2021, <https://climateactiontracker.org/countries/eu/> (accessed May 20, 2021).
- Dupont, Claire, Sebastian Oberthür and Ingmar von Homeyer, 'The Covid-19 crisis: a critical juncture for EU climate policy development', *Journal of European Integration* 42, no. 8 (2020).
- Elkerbout, Milan et al., 'The European Green Deal after Corona: implications for the EU climate policy', *CEPS Policy Insights*, no. 2020-06 (2020).
- European Commission, 'A clean planet for all: a European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy', COM (2018) 773 final.
- \_\_\_\_\_, 'The European Green Deal', COM (2019) 640 final.
- \_\_\_\_\_, 'The European Green Deal Investment Plan and Just Transition Mechanism explained', [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_24](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24) (accessed May 20, 2021).
- \_\_\_\_\_, 'Actions being taken by the EU', [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu_en) (accessed May 20, 2021).
- \_\_\_\_\_, 'Work Programme 2020: a Union that strives for more', COM (2020) 37 final.
- \_\_\_\_\_, '2030 climate & energy framework', 2021, [https://ec.europa.eu/clima/policies/strategies/2030\\_en](https://ec.europa.eu/clima/policies/strategies/2030_en) (accessed May 20, 2021).
- \_\_\_\_\_, '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 EU budget powering the recovery plan for Europe', COM (2020) 442 final.
- \_\_\_\_\_, 'Proposal for a Regulation of the European Parliament and the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)', COM (2020) 80 final.
- \_\_\_\_\_, 'Amended proposal for a Regulation of the European Parliament and of the Council on establishing the framework for achieving climate neutrality and mending the Regulation (EU) 2018/1999', COM (2020) 563 final.

- \_\_\_\_\_, 'Annual Sustainable Growth Strategy 2021', COM (2020) 575 final.
- European Council, 'Conclusions (24 October 2014)', EUCO 169/14.
- \_\_\_\_\_, 'Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020). Conclusions', EUCO 10/20.
- \_\_\_\_\_, 'European Council meeting (10 and 11 December 2020)-Conclusions', EUCO 22/20.
- Hafner, Malfred and Pier Paolo Raimondi, 'Priorities and challenges of the EU energy transition: from the European Green Package to the new Green Deal', *Russian Journal of Economics*, no. 6 (2020).
- Höhne, Niklas et al., 'A possible 2050 climate target for the EU', *NewClimate Institute Report* (2019).
- Krämer, Ludwig 'Planning for climate and the environment: the EU Green Deal', *Journal for European Environmental & Planning Law* no. 17 (2020).
- Kulovesi, Kati and Sebastian Oberthür, 'Assessing the EU's 2030 climate and energy policy framework: incremental change toward radical transformation?', *Review of European, Comparative & International Environmental Law* 29, no. 2 (2020).
- Laurent, Éloi, 'The European Green Deal. Bring back to new', *Observatoire Français des Conjonctures Économiques* (OFCE) Policy Brief, no. 63 (2020).
- Lazarus, Anton '5 ways opportunistic lobbyists are using coronavirus to attack EU environmental laws', 16 April 2020, <https://meta.eeb.org/2020/04/16/5-ways-opportunistic-lobbyists-are-using-coronavirus-to-attack-eu-environmental-laws/> (accessed May 20, 2021).
- Leonard, Mark et al., 'The Geopolitics of the European Green Deal', *RCFR Policy Contribution*, no. 4 (2021).
- Meles, Tensay Hadush, Lisa Ryan and Joe Wheatley, 'COVID-19 and EU climate targets: can we go now go further?', *Environmental and Resource Economics*, no. 76 (2020).
- Oberthür, Sebastian and Marc Pallemarts (eds.), *The new climate policies of the European Union: internal legislation and climate diplomacy* (Brussels: VUB University Press, 2010).
- Peeters, Marjan and Natassa Athanasiadou, 'The continued effort sharing approach in EU climate law: binding targets, challenging enforcement?', *Review of European, Comparative & International Environmental Law* 29, no. 2 (2020).
- Sabato, Sebastino and Boris Fronteddu, 'A socially just transition through the European Green Deal?', *ETUI Working Paper* (2020).
- Savaresi, Annalisa and Lucia Perugini, 'The land sector in the 2030 EU climate change policy framework: a look at the future', *Journal for European and Environmental and Planning Law* 16, no. 2 (2019).
- Sikora, Alicja 'European Green Deal-legal and financial challenges of the climate change', *ERA Forum*, no.21 (2021).
- Simon, Frédéric, 'EU leaders back green transition in pandemic recovery plan', 27 March 2020, <https://www.euractiv.com/section/energy-environment/news/eu-leaders-back-green-transition-in-pandemic-recovery-plan/> (accessed May 20, 2021).
- Teevan, Cloe, Alfonso Medinilla and Katjia Sergejeff, 'The Green Deal in EU foreign and development policy', *ECDPM Briefing Note*, no. 131 (2021).

- Torney, Diamuid and Roderic O’Gorman, ‘Adaptability versus certainty in a carbon emissions reduction regime: an assessment of the EU’s 2030 Climate and Energy Policy Framework’, *RECIEL* 29, no. 2 (2020).
- Tvarno, Cristina D., ‘The new generation of climate regulation- in a Danish and EU perspective’, *Copenhagen Business School Law Research Paper*, no. 20-37 (2020).
- United Nations, ‘Paris Agreement’, 2015, [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf) (accessed May 20, 2021).
- United Nations Environment Programme (UNEP), ‘Emissions Gap Report’, 2019, <https://www.unep.org/resources/emissions-gap-report-2019> (accessed May 20, 2021)
- United Nations Framework Convention on Climate Change (UNFCCC), ‘Nationally Determined Contributions under the Paris Agreement. Synthesis report by the secretariat’, 26 February 2021, <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/nationally-determined-contributions-ndcs/ndc-synthesis-report> (accessed May 20, 2021).