

# Green and Just? An Update on the ‘European Green Deal’

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## Abstract

The article discusses recent developments concerning the most important European energy and climate law initiative at the moment, the ‘European Green Deal’. Details of the initial ‘European Green Deal’ have been discussed elsewhere in this journal. At its core are two components: the green transition of European societies on the one hand and the question how this may be organized in a just way, on the other hand. The article discusses recent developments concerning these ‘green’ and ‘just’ aspects and concludes with some critical remarks on the ways in which these ‘green’ and ‘just’ aspects of the ‘European Green Deal’ are being implemented into energy and climate law.

## Keywords

European Green Deal – energy law – just transition

## 1 Introduction

The article discusses recent developments concerning the most important European energy and climate law initiative at the moment, the ‘European Green Deal’. Details of the initial ‘European Green Deal’ have been discussed

elsewhere in this journal.<sup>1</sup> At its core are two components: the green transition of European societies on the one hand and the question how this may be organized in a just way, on the other hand.

Both of these central aspects, *green* and *just*, also lie at the heart of recent developments and updates surrounding the 'European Green Deal'. On 16 September 2020 Ursula von der Leyen explained in her 'State of the Union'-speech<sup>2</sup> what the European Commission is planning to update the 'European Green Deal'. Efforts are mainly focussing on the green aspect of the Deal, but considerable updates of the justice aspect have also been proposed. After this introduction details of the new proposal to 'green' the 'European Green Deal' will, thus, be discussed in section 2. Afterwards, in section 3, we will focus on the justice aspect, zooming in on amendments to and the implementation of the so called 'Just Transition Mechanism' as part of the 'European Green Deal'. The article concludes with some critical remarks on the ways in which these green and just aspects of the 'European Green Deal' are being implemented into energy and climate law. These conclusions will be provided in section 4.

## 2 The 'Green'-Element in the 'European Green Deal'

### 2.1 Background

The European Union (EU) was and still is committed to ambitious climate targets.<sup>3</sup> Announcements concerning climate action were never short of bold claims and big plans. For the last 15 years climate goals, emission reduction

1 Ludwig Krämer 'Planning for Climate and the Environment: the EU Green Deal' Volume 17 Issue 3 (2020) *Journal for European Environmental & Planning Law* pp. 267–306 (hereinafter: Krämer 2020).

2 European Commission 'State of the Union Address by President von der Leyen at the European Parliament Plenary' available at: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655) [accessed 18/September/2020].

3 E.g. the United Nations Climate Pact of 1992, which has been transposed into clear targets in the Kyoto Protocol of 1997 (COP 3). The Kyoto Protocol is still relevant since it consists of two phases – the first was relevant for the period up to 2012 and the second covering the period 2013–2020. Under the second phase of the Kyoto Protocol, the EU as a whole needs to reach a reduction of greenhouse gas emissions of 20 per cent until 2020, compared to 1990 levels. This goal has been included into the EU's 'Climate and Energy package'. Another example is the Paris Agreement of 2015 (COP 22), ratified by 181 parties, which contains objectives to halt global warming to 2, and preferably 1.5 degrees in 2100 compared to pre-industrial levels. To reach this goal every party has to develop Nationally Determined Contributions (NDCs) every five years (article 4, paragraph 2 of the Agreement).

targets etc. have been regularly published. Most of the time they were underpinned by clear and detailed roadmaps that laid out in great detail how to achieve them.

Member States of the EU (hereinafter: Member States) are required to meet legally binding targets by 2020, 2030 and 2050, aiming to progressively reduce the emissions of greenhouse gases (hereinafter: GHG emissions). Three targets are particularly relevant in the EU. For 2020, the 20-20-20 targets of the climate and energy package of (inter alia) 20 per cent greenhouse gas reductions compared to 1990-levels. For 2030, the targets of the climate and energy framework,<sup>4</sup> which required the EU as a whole to reduce greenhouse gas emissions by 40 per cent by 2030 compared to 1990 levels<sup>5</sup> were relevant. Finally, the long-term strategic vision of the EU for 2050 to achieve 80 per cent and plus greenhouse gas reductions used to be a cornerstone.<sup>6</sup>

However, the world has changed and, given that this article is written in 2020, the first of the three, the 2020 goal is no longer relevant and the other two, the 2030 and 2050 goals have recently been sharpened. The long-term vision for 2050 is now to achieve a climate neutral European Union by 2050. That goal has been included in the 'European Green Deal'.<sup>7</sup>

Ever since then pressure mounted to also sharpen the goal for 2030, the rationale being that we cannot reach a higher long-term goal (2050), while maintaining the same (old) mid-term goal. This thought has finally come to fruition so that now a new 2030 goal has been proposed: the EU shall emit 55 % less Greenhouse Gas Emissions (GHG) in 2030, compared to 1990 levels. This is the aim of a new communication<sup>8</sup> reflecting Ursula von der Leyen's State of the Union-Speech<sup>9</sup> but also of plans by 'European Green Deal'-Commissioner

4 Communication of the Commission 'A Clean Planet for all A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy' (Communication) COM/2018/773 final.

5 43 per cent reduction in sectors covered by the EU Emission Trading Scheme (hereinafter: EU ETS) and 30 per cent reduction in non-EU ETS sector.

6 Council Conclusions on EU position for the Copenhagen Climate Conference (7–18 December 2009) 2968th ENVIRONMENT Council meeting Luxembourg, 21 October 2009: [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/envir/110634.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/110634.pdf) [accessed 18/September/2020].

7 Krämer 2020 p. 267/268.

8 European Commission Communication 'Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people' (Communication) com (2020) 562 final (hereinafter: Communication 2030 climate ambition).

9 European Commission 'State of the Union Address by President von der Leyen at the European Parliament Plenary' available at: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655) [accessed 18/September/2020].

Frans Timmermans.<sup>10</sup> Given considerable issues with details of the plan, question marks are, however, looming over the implementation and even the achievability of that new 2030 goal, as will be discussed below.

With a view to legal-techniques, the increase of the 2030 GHG-emission target from 40% reduction compared to 1990 levels to 55% reduction compared to 1990 levels shall be included in an amendment to the proposed Climate Law. This change shall facilitate two long-term obligations: achieving a climate-neutral Europe by 2050 and improving Europe's contribution to the Paris Agreement. In that respect, the Commission invited the European Parliament and the Council to confirm the 55%-reduction-by-2030 aim to be the EU's new Nationally Determined Contribution (NDC) to the Paris Agreement.<sup>11</sup>

The step is underpinned by an action plan that was prepared for months under the responsibility of Commissioner Frans Timmermans earlier this year. Until June 2021 the new target shall be implemented into EU legislation via the following: revising and expanding the EU Emissions Trading System; adapting the Effort Sharing Regulation and the framework for land use emissions; reinforcing energy efficiency and renewable energy policies; and strengthening CO<sub>2</sub> standards for road vehicles.<sup>12</sup>

## 2.2 *Proposed Measures*

So, where exactly shall the additional emission reductions by 2030 come from? Details were published on 17 September 2020 in a 26-page long Communication.<sup>13</sup> According to this document spending money will be a key component. At least 30 % of the EU's multiannual budget shall be dedicated to 'climate relevant spending',<sup>14</sup> meaning that spending will have to effectively contribute to the green and the digital transitions or to addressing the challenges resulting from them.

10 European Commission 'A European Green Deal – Actions Taken' available at: [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en) [accessed 18/September/2020].

11 European Commission 'State of the Union: Commission raises climate ambition and proposes 55% cut in emissions by 2030' available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1599](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1599) [accessed 18/September/2020].

12 Ibid.

13 European Commission Communication 'Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people' (Communication) COM (2020) 562 final (hereinafter: Communication 2030 climate ambition).

14 Idem, p. 4.



According to the Communication, buildings and power generation can make the largest and most cost-efficient emissions reductions, in the order of 60% and more compared to 2015, to reach the 55% greenhouse gas emissions reduction target.<sup>15</sup> With a view to power generation and consumption substantial steps are proposed. The building and transport sectors shall be integrated into the European Emission Trading Scheme.<sup>16</sup>

With a particular view to the transport sector, the Commission assesses that 'the transport sector had the lowest share of renewable energy in 2015, with only 6%. By 2030, the number needs to go up to around 24% through further development and deployment of electric vehicles, advanced biofuels and other renewable and low carbon fuels as part of a holistic and integrated approach'.<sup>17</sup>

An interesting aspect here is that the EU wishes to include ships and airplanes more strictly under the EU-ETS, despite acknowledging some technical challenges with this. The Communication states: 'For both sectors, in accordance with its international commitment to economy-wide action under the Paris Agreement, the EU should continue to regulate at least intra-EU aviation emissions in the EU ETS and include at least intra-EU maritime transport in the EU ETS'.<sup>18</sup> For aviation, the Commission will propose to reduce the free allocation of allowances, increasing the effectiveness of the carbon price signal in this sector, while taking into account other policy measures such as energy taxation and the ReFuelEU initiatives'.<sup>18</sup>

In the fossil fuel dominated heating and cooling sector, the Commission intends to assess the nature and the level of the existing, indicative heating and cooling target, including the target for district heating and cooling.<sup>19</sup> In July 2020 the European Commission published a communication on energy system integration from which emerges that the Commission is viewing legal and technical system integration (combining for instance electricity production with heating) is viewed as one of the best ways to decarbonise the heating and cooling sector.<sup>20</sup>

Improving energy efficiency legislation is a further cornerstone. The EU is already on its way under measures that were included in the 'Clean Energy for

<sup>15</sup> Idem, p. 8.

<sup>16</sup> Idem, p. 14 and 9.

<sup>17</sup> Idem, p. 8.

<sup>18</sup> Idem, p. 16.

<sup>19</sup> Idem, p. 19.

<sup>20</sup> Communication from the Commission 'Powering a climate-neutral economy: An EU Strategy for Energy System Integration' (Communication) com (2020) 299, final at p. 1.

All Europeans' – package<sup>21</sup> and the 'European Green Deal'.<sup>22</sup> A further measure that shall now be taken to 'green' the 'European Green Deal' in terms of energy efficiency is the forthcoming Sustainable Product Legislative initiative of the EU, which will look into widening the Ecodesign approach to other product categories.<sup>23</sup>

### 2.3 Critique

But all of this taken together only results in around 45% emission reductions compared to 1990 levels, as the Commission itself admits in its Communication.<sup>24</sup> A further 2% shall be achieved via changes in land use, such as improved and enforced forest protection and more sustainable forest management as well as sustainable re- and afforestation and improved soil management including through the restoration of wetlands, peatlands and degraded land.<sup>25</sup> Moreover, via a shift towards growing woody biomass on cropland in a sustainable manner, including as a feedstock for advanced biogas and biofuels.<sup>26</sup>

The criticism of this may be two-fold. First, even if it works this would bring total emission reductions up to 47%,<sup>27</sup> which is still not 55% overall reduction by 2030, as announced by Von der Leyen. Second, in the old aim of 40% emission reductions by 2030 land use was not part of the calculation. The question is, hence, whether this is an additional effort or simply an arithmetic trick.

The European Commission partly admits these points<sup>28</sup> and, in particular concerning the gap between the 47% and 55% emission reduction targets, has a rather surprising solution to offer. It argues: 'However, (...) this would not be sufficient to achieve a 55% greenhouse gas emissions reduction target. To achieve this, both the climate legislation as well as the energy policies need to be reviewed to deliver this ambition increase'.<sup>29</sup>

In other words: we do not know where exactly the additional 8% emission reductions are supposed to come from, but we will find something somewhere

21 For details see Silke Goldberg and Barbara McNulty 'Overview of the legal and regulatory framework in the European Union' pp. 3–31 at 5–10 in Herbert Smith Freehills 'European Energy Handbook 2019–2020' (Herbert Smith Freehills, London 2020).

22 For details see Krämer 2020 pp. 271 and 279.

23 Communication 2030 climate ambition p. 20.

24 Idem, p. 13.

25 Communication 2030 climate ambition p. 12.

26 Ibid.

27 Communication 2030 climate ambition p. 13.

28 Ibid.

29 Ibid.

in our laws, don't worry. This is quite a remarkable approach that is bound to shatter trust in the respectability of the plan. It means that not even all promised emission reductions are accounted for in the current Communication. Whether announcing big aims without having them sufficiently underpinned by detailed action plans on how they can be achieved could be considered a questionable approach.

### 3 The 'Justice'-Element in the 'European Green Deal'

#### 3.1 *Background of the 'Just Transition Mechanism'*

The financial part of the 'European Green Deal' is the European Green Deal Investment Plan (EGDIP), revealed on 14 January 2020.<sup>30</sup> This programme should mobilise 'at least €1 trillion of sustainable investments' until 2030.<sup>31</sup> Figure 1 below shows the split, as presented in January 2020, in terms of origin of the money for such investments with half of it to come directly from the EU budget, over a quarter from public and private investments guaranteed by InvestEU, over 10% from national co-financing, a reduced part from the EU ETS and, in the middle of this vast sum of money, the Just Transition Mechanism (JTM).

The Just Transition Mechanism (hereinafter: JTM) is the tool with the help of which the European Commission aims for "a fair and just green transition [...] to support workers and citizens of the regions most impacted by the transition." To do so, this mechanism will mobilise at least €100 billion in investments over the period 2021–2027.<sup>32</sup>

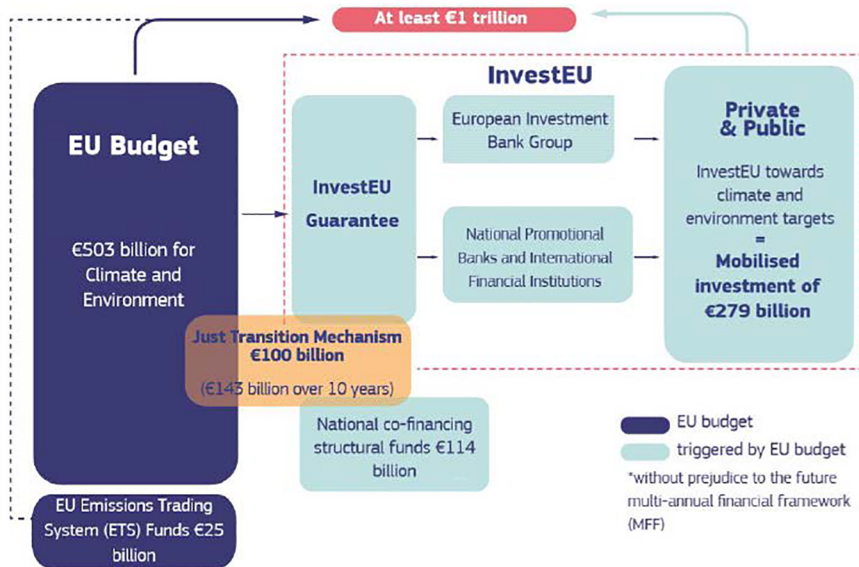
In a nutshell, the European Commission acknowledges that the transition towards a climate-neutral economy will have economic and social justice impacts, especially in regions that rely on fossil fuels extraction and treatment (e.g. refineries) or in highly carbon-intensive industries (such as cement plants or smelters). These regions will or strongly risk to lose at some point their

30 European Commission 'Sustainable Europe Investment Plan, European Green Deal Investment Plan' (Communication) com(2020) 21 final.

31 European Commission 'Financing the green transition: The European Green Deal Investment Plan and Just Transition Mechanism' available at: [https://ec.europa.eu/regional\\_policy/en/newsroom/news/2020/01/14-01-2020-financing-the-green-transition-the-european-green-deal-investment-plan-and-just-transition-mechanism](https://ec.europa.eu/regional_policy/en/newsroom/news/2020/01/14-01-2020-financing-the-green-transition-the-european-green-deal-investment-plan-and-just-transition-mechanism) [accessed 29/September/2020].

32 European Commission 'The European Green Deal Investment Plan and Just Transition Mechanism explained' p. 1 available at: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_24](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24) [accessed 29/September/2020] (hereinafter: Commission EGDIP and JTM explained).

## WHERE WILL THE MONEY COME FROM?



\*The numbers shown here are net of any overlaps between climate, environmental and Just Transition Mechanism objectives.

FIGURE 1 SOURCE: THE EUROPEAN GREEN DEAL INVESTMENT PLAN AND JUST TRANSITION MECHANISM EXPLAINED, EC, BRUSSELS, 14 JANUARY 2020, P. 1.

industries and the workers their jobs. The JTM endeavours to smoothen these socio-economic turbulences and to “leave no one behind”, which is the motto used by the Sustainable Development Goals (SDGs) as well.

### 3.2 Measures & Function

As Figure 2 below shows, the JTM is actually composed of 3 pillars: The Just Transition Fund (JTF), the Just Transition Scheme (JTS) and the public sector loan facility. The following figures are the ones proposed by the European Commission in January 2020. The various amendments proposed by the Commission, the European Council or the European Parliament are elaborated upon in section 3.4). The overall structure of the JTM shall remain untouched, despite the recently proposed amendments.

- The JTF composes the 1st pillar. The fund will be allocated with €7.5 Bn, but for each € of investment from this fund, EU Member States have to add contributions via their share of the European Regional Development Fund (ERDF) or European Social Fund Plus (ESF+), or via co-financing.<sup>33</sup> In total,

33 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Just Transition Fund, Brussels, 14.1.2020, COM(2020) 22 final, 2020/0006 (COD), EC, Explanatory memorandum, pp. 2–3.

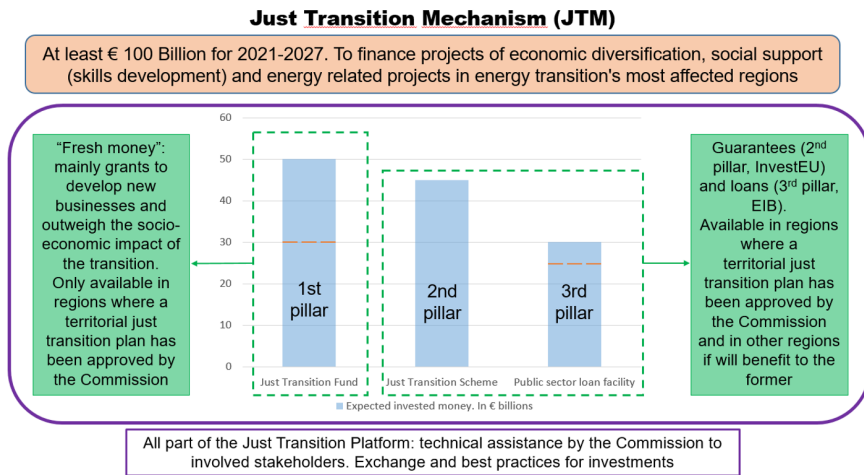


FIGURE 2 SOURCE: ROMAIN MAUGER.

it is expected to lead to €30 to 50 Bn of investments. This fund will directly allocate money, typically as grants. On 14 January 2020, a proposal of regulation establishing the Just Transition Fund was published, detailing the rules that should apply to it.<sup>34</sup>

- The JTS composes the 2nd pillar. The scheme is part of the InvestEU programme and should attract private investments for up to €45 Bn by providing an EU budget guarantee. These investments will have to go into the just transition.
- The public sector loan facility composes the 3rd pillar. The facility consists of concessional loans to the public sector and should trigger between €25 and 30 Bn of investments. It will rely on €1.5 Bn from the EU budget and on a European Investment Bank lending of €10 Bn.

For each pillar, the range of projects that can be financed varies. Concerning the JTF, recital 5 of the proposed regulation<sup>35</sup> states that actions supported by the JTF should directly contribute to alleviate the impact of the transition by financing the diversification and modernisation of the local economy and by mitigating the negative repercussions on employment. This is further detailed in article 4 (2) of the same document, which provides that the JTF shall exclusively support a limited list of activities. These include economic diversification by investments in small and medium-sized enterprises (SMEs), in new firms, in research and innovation, in decontamination

<sup>34</sup> Ibid.

<sup>35</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Just Transition Fund, Brussels, 14.1.2020, COM(2020) 22 final, 2020/0006 (COD).

of sites, in the circular economy or on workers training and in job-seeking assistance.

The focus is therefore mostly, as expected, on socio-economic development or alleviation. However, the energy aspect is not excluded, as JTF's investments can also be channelled towards the deployment of technologies and infrastructures for affordable clean energy, greenhouse gas emission (GHG) reduction, energy efficiency and renewable energy sources. Interestingly, article 5 of the proposed regulation sets a list of activities that the JTF shall not support and it includes the decommissioning or construction of nuclear power stations.

Concerning the JTS, investments can be guaranteed if they help the affected regions to find new sources of growth, and these could include projects for decarbonisation, economic diversification of the regions, energy, transport and social infrastructure,<sup>36</sup> in essence a very broad scope.

Finally, the logic of the public sector loan facility is to lend money to local authorities to finance "projects which do not generate revenue and would otherwise not get financed."<sup>37</sup> Typically, infrastructures would fit within this range, with examples such as energy and transport infrastructure, district heating networks, and renovation or insulation of buildings.

The projects to be financed by the JTM will not be located everywhere as the purpose of this mechanism is to relieve the most affected regions inside of each Member State. To identify these regions, the European Commission proposes to the Member States to adopt territorial just transition plans.

Article 7 of the proposed regulation on JTF sets the legal regime for these plans. They should be prepared "together with the relevant authorities of the territories concerned", meaning that the local authorities will have a say and that it will not only be a plan crafted by the respective national government. The identified territories shall be those most negatively affected based on the economic and social impacts resulting from the transition, in particular with regard to expected job losses in fossil fuel production and use and the transformation needs of the production processes of industrial facilities with the highest greenhouse gas intensity. These plans must contain some specific elements such as the type of operations to be financed or a description of the transition process at national and at local level towards climate neutrality which has to be on par with the Member State's National Energy and Climate Plan (NECP), a key element of the 2030 GHG reduction targets for the EU as part of the Clean Energy Package. This point means that if a Member State does not seriously aim to reach climate neutrality by 2050, its plan will not be validated by the

<sup>36</sup> Commission EGDIP and JTM explained p. 4.

<sup>37</sup> *Idem*, p. 6.

Commission and therefore no project will be financed by any of the JTM's 3 pillars. Poland, which should by far be the first beneficiary of the JTM according to the Commission's calculations,<sup>38</sup> will therefore have to revise its climate ambitions upwards to access the money set aside for it.

In a nutshell, these plans are drafted by the Member States with their local authorities, validated by the Commission and the JTF can only finance projects inside of the most affected regions which have a valid plan. The investments under pillars 2 and 3 can take place either in the identified regions with an approved plan or in projects located elsewhere but directly benefiting those regions. The geographical scope is therefore larger for pillars 2 and 3.

The JTM, according to the Commission itself, is not only about money.<sup>39</sup> The Commission intends to provide technical support to the Member States to prepare their territorial plans and to implement them. In this regard, as stated by recital 14 of the proposed regulation on JTF, "the Commission should set up a Just Transition Platform [...] to enable bilateral and multilateral exchanges of experience on lessons learnt and best practices across all affected sectors." The aim is also to generate a pipeline of projects for the most affected regions,<sup>40</sup> building on what is being done in other regions which would have similar characteristics. The Commission is also committed to "make it easier to invest in the transition by making sure that the regulatory framework provides the right incentives."<sup>41</sup> This is further developed in the proposed regulation for the JTF, where it is stated that sectoral state aid rules could be eased to finance projects complying with the just transition goals in the most affected regions.<sup>42</sup>

### 3.3 *Critique*

Despite the very positive development of an EU legal framework for regional justice by identifying the transition's most affected regions, planning and financing actions and projects, some critique can be formulated. The main point of critique concerns the restrictive interpretation of the concept of just transition that the European Commission is promoting, while gaining momentum among academics and NGOs. In the political discourse, the vocabulary

38 See sheet 'Just Transition Mechanism allocation' available at <https://ec.europa.eu/commission/presscorner/api/files/attachment/860491/JTM%20and%20JTF%20Allocation%20Table.pdf>. [accessed 18/September/2020].

39 Commission EGDIP and JTM explained p. 5.

40 *Idem*, p. 3.

41 *Idem*, p. 5.

42 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Just Transition Fund, Brussels COM(2020) 22 final, 2020/0006 (COD) Explanatory memorandum, p. 2.



tends to be very inclusive, with the goal of “letting no one behind”, the consideration of the “most vulnerable” and “most exposed to the harmful effects of climate change and environmental degradation”.<sup>43</sup> In addition, notions of solidarity, fairness and justice feature regularly with an overall focus on people and citizens.<sup>44</sup>

However, when analysing the proposed legislation, the main focus is clearly on particular groups like workers and jobless citizens, rather than the people in a particular region as a whole. In addition, the solidarity under the JTM will only apply within the identified regions, while there are plenty of justice issues in the energy transition to climate neutrality in all regions of the EU and around the globe. The fact that, for example, the territorial just transition plans are being redacted by Member States and the local authorities, without obligatory involvement of local inhabitants underlines this restricted vision of a just transition. As a consequence, the JTM can be considered as a ‘Status quo’ or ‘Managerial reform’, at best, according to Pinker’s classification,<sup>45</sup> or as an ambitious programme at the start, losing strength with each concentric circle it extends to on figure 3 below, fading away before reaching the largest one.

### 3.4 *Current Developments and Implementation*

After the COVID-19 pandemic struck the world and the European Union, a major economic meltdown was taking shape. The European Commission reacted in May 2020 by proposing an economic recovery package which would significantly increase the JTF’s budget. Indeed, as shown in Figure 4 below, the JTF’s budget would be increased to € 40 Bn of ‘fresh money’, consisting of € 10 Bn from the EU budget (instead of 7.5 before) and € 30 Bn directly from

43 Idem, pp. 1 and 11.

44 European Commission ‘Financing the green transition: The European Green Deal Investment Plan and Just Transition Mechanism’ available at: [https://ec.europa.eu/regional\\_policy/en/newsroom/news/2020/01/14-01-2020-financing-the-green-transition-the-european-green-deal-investment-plan-and-just-transition-mechanism](https://ec.europa.eu/regional_policy/en/newsroom/news/2020/01/14-01-2020-financing-the-green-transition-the-european-green-deal-investment-plan-and-just-transition-mechanism) [accessed 29/September/2020].

45 Annabel Pinker ‘Just Transitions: a comparative perspective, A Report prepared for the Just Transition Commission’ p. 15 available at: <http://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2020/08/transitions-comparative-perspective2/documents/transitions-comparative-perspective/transitions-comparative-perspective/govscot%3Adocument/transitions-comparative-perspective.pdf>. [accessed 29/September/2020].



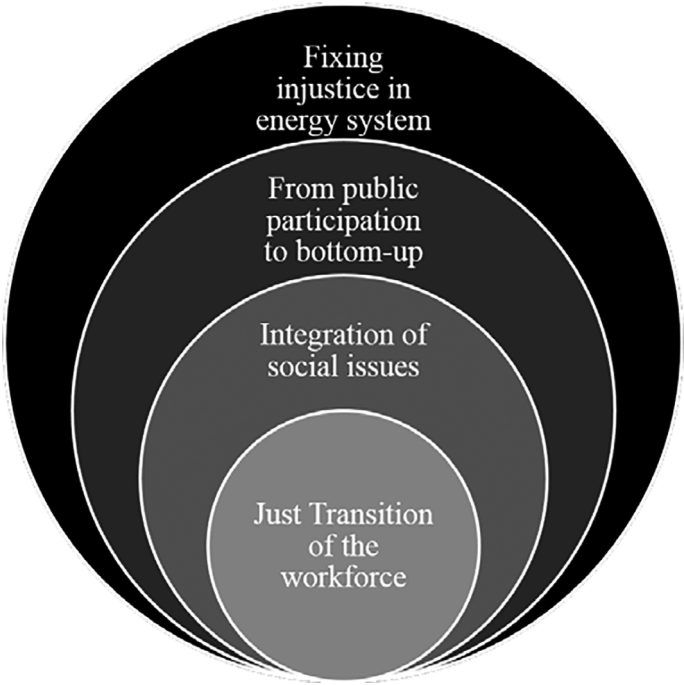


FIGURE 3 Concentric understanding of the Just Transition concept.<sup>46</sup>



FIGURE 4 SOURCE: EUROPEAN COMMISSION, AN INTRODUCTION TO THE JUST TRANSITION MECHANISM, 30 JUNE 2020.

46 Romain Mauger 'Cast away? How EU Energy law provides for a Just Transition for EU islands', *Oil, Gas and Energy Law Journal* 1 (2021) 164-180.

the economic recovery instrument 'Next Generation EU'.<sup>47</sup> With the diverse co-financing options (ERDF, ESF+ and directly by Member States), the total expected mobilised investment amounts to € 89–107 Bn. Pillars 2 and 3 would remain untouched but the JTM would increase in total to at least € 150 Bn in investments for a just transition.

However, the European Council decided in July 2020 to severely cut through the JTF's budget, scaling it down to € 17.5 Bn (7.5 from EU budget and 10 from Next Generation EU) of available funds.<sup>48</sup> The European Parliament, voting on the 17th of September 2020 adopted yet a different budget, setting it at € 25 Bn.<sup>49</sup> After negotiations, the EU law-making institutions reached an agreement in early December 2020. The JTF's budget will amount to € 17.5 Bn, as proposed by the Council, and co-financing from other funds will only be voluntary, not mandatory.<sup>50</sup>

Moreover, the budget is not the only part of the JTF that is debated in the legislative process for the adoption of the corresponding regulation. The EU Parliament included several important modifications to the draft regulation. Some of these would actually address parts of the critique that was formulated earlier in this paper, especially on the fact that not only fossil fuel- or carbon-intensive regions may socially suffer from the transition to renewable energy sources. The Parliament proposes to dedicate 1% of the total budget to islands, and 1% to the outermost regions.<sup>51</sup> It also proposes to incentivise Member States to go faster and farther into their decarbonisation by dedicating 18% of the budget to a Green Rewarding Mechanism.<sup>52</sup> In terms of beneficiaries of the investments, although still focusing on workers and job-seekers,

47 Figures are in 2018€. In the amended proposals, the figures are updated taking into account inflation and therefore higher. Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Just Transition Fund, Brussels, 28.5.2020, COM(2020) 460 final, 2020/0006 (COD), EC, Explanatory memorandum, p. 1.

48 European Council Conclusions Brussels, 21 July 2020 EUCO 10/20 CO EUR 8 CONCL 4, pp. 5 and 47 available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/07/21/european-council-conclusions-17-21-july-2020/> [accessed 29/September/2020].

49 Pg. TA-PROV(2020)0223 Just Transition Fund \*\*\*I Amendments adopted by the European Parliament on 17 September 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the Just Transition Fund available at: <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-just-transition-fund>. [accessed 29/September/2020] (hereinafter: Parliament Just Transition Fund proposal).

50 European Commission 'Commission welcomes the political agreement on the Just Transition Fund' available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_2354](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2354) [accessed 9/January/2021].

51 Parliament Just Transition Fund proposal, amendment 23.

52 Idem, amendment 22.

the Parliament proposals turn more attention to other groups such as women, disabled persons and vulnerable people.<sup>53</sup> Regarding the types of projects than can be funded, the proposals of the Parliament broaden the scope, including the creation and development of social and public services of general interest or investments in culture, education and community building.<sup>54</sup>

Probably much more controversial will be another amendment. The Parliament proposes to allow natural gas infrastructure projects to be funded by the JTF, under certain conditions.<sup>55</sup> This measure, although limited in scope (mainly to facilitate the rapid closing of more polluting infrastructures such as coal plants)<sup>56</sup> would necessarily diminish the money available for other, more sustainable projects. With a shrunk budget in comparison to the post-COVID 19 version, a broader range of possible investments and the inclusion of a type of fossil fuel, the JTF would end up being diluted.<sup>57</sup> In this version, nuclear energy, however, would still be excluded from the list of authorised activities to be funded.

On 28 May 2020 the Commission proposed a regulation on the public sector loan facility (the 3rd pillar of the JTM). Its total amount has not changed, it will be composed of € 1.5 Bn in grants from the Commission and € 10 Bn in loans from the EIB, to be combined and proposed to the public authorities requesting it. Its geographical scope is broad, with projects to be funded anywhere, as long as they benefit the regions with an adopted territorial just transition plan. The range of projects to be funded is also defined rather broad.<sup>58</sup>

On 24 July 2020, the European Parliament's Committee on Budgets and Committee on Economic and Monetary Affairs released their draft report on the proposed regulation.<sup>59</sup> This version develops further and complements the

53 Idem, amendment 37.

54 Idem, amendments 33 and 34 respectively.

55 Idem, amendment 45.

56 Frédéric Simon, 'Parliament votes to allow gas projects in the Just Transition Fund', EURACTIV.com, 16 September 2020, available at: <https://www.euractiv.com/section/energy/news/parliament-votes-to-allow-gas-projects-in-the-just-transition-fund/> [accessed 26 September 2020].

57 Claire Stam, 'EU institutions caught in crossfire over Just Transition Fund', EURACTIV France, 16 September 2020, available at: <https://www.euractiv.com/section/climate-environment/news/eu-institutions-caught-in-crossfire-over-just-transition-fund/> [accessed 26 September 2020].

58 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the public sector loan facility under the Just Transition Mechanism, Brussels, 28.5.2020, COM(2020) 453 final, 2020/0100 (COD), EC, art. 8.

59 Draft report on the proposal for a regulation of the European Parliament and of the Council on the public sector loan facility under the Just Transition Mechanism (COM(2020)0453 – C9-0153/2020 – 2020/0100(COD)), Committee on Budgets Committee on Economic and Monetary Affairs.

original draft. The main additions realised are the extension of the possible investments to be funded via this facility to “clean technology and infrastructure including renewable energy and the decarbonisation of the transport, green and sustainable mobility, investments in research and innovation activities, the transfer of advanced and market-ready technologies and investments in digitalisation”, and the clarification that the projects excluded from the JTF’s scope cannot be funded by this system either.<sup>60</sup> As of January 2021, this proposal was still being negotiated by EU law-makers.<sup>61</sup>

Finally, on 29 June 2020, the Just Transition Platform has been launched. According to its short presentation in early 2020 it aims to assist EU countries and regions to unlock the support available through the JTM via a single access point for support and knowledge related to the just transition.<sup>62</sup>

#### 4 Conclusions

Is the updated version of the ‘European Green Deal’ green and just? Doubts are justified. There are two main issues. The first is the gap between green aims on the one hand and plans for implementation on the other. The second issue concerns the conceptualization of a just transition and who exactly may benefit from it.

For the green aspect at least about 8% of emission reductions in current plans are unaccounted for. Just compare this to an economic stimulus plan. A considerable number of countries in the world put those into place during the Covid-19 crisis. If a given finance minister of a given country would be asked where the money for the programmes should be coming from and he would reply ‘well, we will raise parts of the money by looking at our laws and then changing them, but I am not providing any detail on which, how and when,’ you would probably be slightly concerned about implementation of this plan. Why should this be any different with emission reductions aims?

60 Ibid. See pp. 22–23 for the focus of the amendments.

61 European Parliament, Legislative Train 12 2020, PROPOSAL FOR A REGULATION ON THE PUBLIC SECTOR LOAN FACILITY UNDER THE JOINT TRANSITION MECHANISM (JTM), available at: <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-public-sector-loan-facility-under-the-just-transition-mechanism> [accessed 9 January 2021].

62 European Commission ‘Just Transition Platform’ available at: [https://ec.europa.eu/info/strategy/priorities-2019–2024/european-green-deal/actions-being-taken-eu/just-transition-mechanism/just-transition-platform\\_en#about-the-just-transition-platform](https://ec.europa.eu/info/strategy/priorities-2019–2024/european-green-deal/actions-being-taken-eu/just-transition-mechanism/just-transition-platform_en#about-the-just-transition-platform) [accessed 26 September 2020].

At least all promised emission reductions should be accounted for in the current Communication, which they are not. This does not shine a good light on the Commission concerning the green aspect of the 'European Green Deal' and it will now be up to the further legislative process and other EU institutions to transform this piecemeal into a solid document.

With a view to the justice aspect, it has to be acknowledged as a very positive development that an EU legal framework for identifying the transition's most affected regions, planning and financing actions and projects shall come into being. However, critique concerns the restrictive interpretation of the concept of just transition that the European Union institutions are promoting. In the political discourse just transition invokes notions of solidarity, fairness and justice with an overall focus on all people and citizens. However, in reality, the main focus is clearly placed on particular sections of society such as workers and jobless citizens, rather than on all people living in an affected region.

Furthermore, solidarity under the JTM will only be exercised with the defined groups of the identified regions, depending on the final version adopted after the trilogue, while there are plenty of justice issues in the energy transition to climate neutrality in all regions of the EU and around the globe.

Overall, the development by the European Commission of a dedicated legal framework for a just and green transition and its commitment to provide support for the regions that will be most severely impacted is to be applauded. This is much-needed and Ursula von der Leyen is right when mentioning that this transition will only work if it is just – and if it works for all. However, there seems to be a gap, particularly with a view to the discourses on the JTM and the reality of the proposals. While sizable sums of money are being activated now, the initial conceptual vision of the 'European Green Deal' could have created expectations for a legal framework towards an all-encompassing just transition that might not be reflected in the final laws that will be the result of this process.