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The EU as a Global Trendsetter in the Fight Against Climate Change: Is a Climate-Neutral Europe by 2050 Feasible?

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On 11 December 2019, the European Commission published the Communication on the European Green Deal, preparing the ground for a new growth policy based on the ambitious climate and environmental objective of achieving a climate-neutral Europe by 2050. To that end, the European Green Deal has proposed the establishment of the Just Transition Mechanism, a robust funding scheme aiming to complement actions closely intertwined with the transition towards a low-carbon and climate-resilient future. Although of European provenance, the new growth strategy builds closely on the principles of the Paris Agreement – a landmark international legal act to combat climate change in the context of sustainable development and efforts to eradicate poverty.

This paper examines the legal specificities of the green and just transition in the EU through the prism of the European Green Deal. The emphasis is on the role of the Just Transition Fund (JTF), the principal pillar of the Just Transition Mechanism, established and implemented under Cohesion policy rules to help the European economy and society become environmentally sustainable and conscious. In particular, the focus is on the possibilities offered by the new instrument in financing the diversification of local economy and mitigating negative impacts on employment, both alone and in conjunction with other instruments, mechanisms and facilities of the forthcoming financial period 2021 – 2027. In order to illustrate the manifold challenges of reshaping Cohesion policy in the course of the green transition, the paper also summarises the critical elements of the EU green reform at the time of the unprecedented COVID-19 crisis.

Keywords: European Green Deal, just transition, Just Transition Fund, international and European environmental law

1. Introduction

> *"For the generation of my children, Europe is a unique aspiration. It is an aspiration of living in a natural and healthy continent. Of living in a society where you can be who you are, live where you like, love who you want and aim as high as you want. It is an aspiration of a world full of new technologies and age-old values. Of a Europe that takes the global lead on the major challenges of our times."*
>
> *Ursula von der Leyen, President of the European Commission*

Tackling environmental and climate-related challenges is one of the most pressing priorities of our modern times. It is estimated that human activities have caused a significant increase in global warming (from 0.8°C to 1.2°C) compared to pre-industrial levels and prospects for the next few decades are gloomy if global temperatures continue to rise at their current pace. The likely increase by 1.5°C between 2030 and 2050 could severely impact both terrestrial and marine ecosystems, leading to sea level rise, hot extremes, heavy precipitation, drought, increases in ocean acidity, decreases in ocean oxygen as well as to related perils to species, health, livelihoods, food security, water supply, human security, and economic growth.[1] The whole of Europe has, without exception, experienced some extreme changes in weather and climate events in recent times too,[2] and the EU has been ranked as one of the three biggest polluters responsible for the majority of the current global emissions of greenhouse gases (alongside China and the USA).[3]

Despite its infamous title of one of the world's biggest polluters, the EU has remarkably progressed in its efforts to respond effectively to the threat of climate change and nowadays, it is rightfully considered as the global climate leader.[4] The main reason behind this success is primarily the EU's exceptional legislative framework on climate action, which is the most comprehensive and ambitious climate agenda in the world, coupled by effective delivery on the ground[5] and strong support

[1] See: Global Warming of 1.5°C – An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty, Intergovernmental Panel on Climate Change (IPCC), Geneva, 2018, pp. 4, 7-10.

[2] See: Climate Change 2014 – Synthesis Report, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Intergovernmental Panel on Climate Change (IPCC), Geneva, 2014, pp. 7, 14, 49-50, 53, 65; Climate Change 2013 – The Physical Science Basis, Working Group I Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, 2013, pp. 5, 50.

[3] A. Averchenkova, S. Bassi, K. Benes, F. Green, A. Lagarde, I. Neuweg & G. Zachmann, *Climate policy in China, the European Union and the United States: Main Drivers and Prospects for the Future – In-depth Country Analyses*, Policy Paper, ESRC Centre for Climate Change Economics and Policy & Grantham Research Institute on Climate Change and the Environment, London, 2016, p. 6. In 2018, Germany emitted the highest percentage of greenhouse gas emissions in the EU (22.8% of the EU-27 total emissions), followed by France and Italy (11.9% and 11.3% respectively). See: Greenhouse Gas Emission Statistics – Emission Inventories, Statistics Explained, EUROSTAT, 2020, p. 2.

[4] See: The European Union Continues to Lead the Global Fight Against Climate Change, European Commission – Press release, IP/19/5534, Brussels, 11 September 2019.

[5] The most recent data on EU's greenhouse gas emissions (June 2020) confirm that already in 2018, the EU surpassed its 2020 target, which was to reduce greenhouse gas emissions by 20% by 2020. See: Greenhouse Gas Emission Statistics – Emission Inventories, *op. cit.*, p. 1.

from the EU Member States and their citizens.[6]

This paper outlines the most recent phase of the codification of EU law in the domain of the green transition, i.e. transitioning to a decarbonised and climate-friendly society,[7] which started less than a year ago and is currently in full swing. Namely, on 11 December 2019, the European Commission published a far-reaching Communication on the European Green Deal,[8] paving the way to a legal framework that would enable Europe to achieve climate neutrality by 2050 and to become the world's first climate-neutral continent.[9] The following chapters give an insight into the focal elements of the European Green Deal, notably the Just Transition Fund as the most important link in the chain of the manifold Just Transition Mechanism.

There is an abundance of scholarly writing analysing and deconstructing the essence of international and European environmental law,[10] so this paper offers a somewhat different approach to the greening of the legal framework by focusing on the access to green funding and on the latest trends in mitigating the socio-economic effects of a green transition. The concept of the green and just transition, i.e. transitioning towards the green economy in a fair way which leaves no one behind,[11] is not new and it was earlier employed, notably by the United Nations, International Labour Organization and civil society.[12] However, since the European Green Deal introduces a novel, financial perspective of the green and just transition, not previously seen in the EU, the paper provides a fresh outlook on this intrinsic specificity of the EU's transitioning identity. Another added value of the analysis is the evaluation of the existing and emerging just transition provisions within the context of the COVID-19 crisis which has evolved in parallel with the creation of the legal framework of the European Green Deal.

2. European Green Deal – the EU's Just Transition Masterplan

2.1. From Political Guidelines to a New Growth Strategy

At the root of the European Green Deal is a visionary political agenda of then candidate and now President of the European Commission Ursula von der Leyen, which first came out in July 2019

[6] See: The European Union Continues to Lead the Global Fight Against Climate Change, *loc. cit.*, n. 4.

[7] See: Broader Approach – Cutting-edge Fusion Energy Research Activities (hereinafter: Broader Approach), European Commission, Publications Office of the European Union, Luxembourg, 2020, p. 1.

[8] 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 European Green Deal (hereinafter: Communication on the European Green Deal), COM(2019) 640 final, Brussels, 11 December 2019.

[9] See: Greenhouse Gas Emission Statistics – Emission Inventories, *op. cit.*, p. 5.

[10] See, *e.g.*: P.-M. Dupuy & J. E. Viñuales, *International Environmental Law*, 2nd edn., Cambridge University Press, Cambridge, 2018; S. Bell, D. McGillivray, O. W. Pedersen, E. Lees & E. Stokes, *Environmental Law*, 9th edn., Oxford University Press, Oxford, 2017; D. Langlet & S. Mahmoudi, *EU Environmental Law and Policy*, 1st edn., Oxford University Press, Oxford, 2016; N. Mazur-Kumrić & A. Komanovics, *European Regional Perspectives on Environment and Human Rights*, in M. Župan & M. Vinković (Eds.), Law-Regions-Development, Faculty of Law of the University in Pécs & Faculty of Law of the J. J. Strossmayer University in Osijek, Pécs & Osijek, 2013; H. Vedder, *The Treaty of Lisbon and European Environmental Law and Policy*, Journal of Environmental Law, Vol. 22, No. 2, 2010, pp. 285-299.

[11] See: Communication on the European Green Deal, *op. cit.*, p. 16.

[12] See: F. Colli, *The EU's Just Transition: Three Challenges and How to Overcome Them*, European Policy Brief, EGMONT – Royal Institute for International Relations, Brussels, No. 59, March 2020, p. 1.

in the form of her political guidelines for the next European Commission 2019 – 2024.[13] One of von der Leyen's opening sentences – "*Europe must lead the transition to a healthy planet and a new digital world*"[14] has become the leitmotif of all the principal EU's policies and actions in the meantime. Out of the six headline ambitions for Europe, outlined in political guidelines, the European Green Deal was listed first.[15] While explaining the ratio of the new green strategy, von der Leyen singled out several key ambitions which later were all embedded into the European Green Deal, such as turning Europe into the first climate-neutral continent, enshrining the 2050 climate neutrality target into law, meeting Paris Agreement goals and 2030 targets, establishing a new Just Transition Fund within Cohesion policy, developing a Sustainable Europe Investment Plan as a strategy for green financing, etc.[16] These ambitions were additionally confirmed in the von der Leyen's speech in the European Parliament Plenary Session of 27 November 2019 in her capacity of the President-elect of the European Commission. The European Green Deal was defined as the EU's new growth strategy and a must for the health of our planet and people, which is expected to help cut emissions and create jobs.[17]

The Communication on the European Green Deal was adopted by the European Commission soon afterwards, on 11 December 2019, setting out a detailed roadmap of the key policies and measures necessary to achieve climate neutrality by 2050.[18] Thus, the European Green Deal has become the EU's first just transition masterplan which introduces eight new mutually reinforcing and intertwined measures for transforming the EU's economy for a sustainable future. The measures are as follows: 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': designing a fair, healthy and environmentally-friendly food system; 7) preserving and restoring ecosystems and biodiversity; and 8) a zero pollution ambition for a toxic-free environment.[19]

The first measure related to the 2030 and 2050 climate targets is particularly important for our analysis because these targets shall be incorporated in all the legislative acts falling under the Multiannual Financial Framework 2021 – 2027, including the Proposal for a Regulation on establishing the Just Transition Fund (hereinafter: the JTF Proposal), comprehensively elaborated further in the text.[20] The EU's 2030 target for climate is set out in Article 2 paragraph 11 of Regulation (EU) 2018/1999, which stipulates that "*the Union's 2030 targets for energy and climate means the Union-wide binding target of at least 40% domestic reduction in economy-wide greenhouse gas emissions as compared to 1990 to be achieved by 2030, the Union-level binding target of at least 32% for the share of renewable energy consumed in the Union in 2030, the Union-level headline target of at least 32.5% for improving energy efficiency in 2030, and the 15% electricity interconnection target for 2030 or any subsequent targets in this regard agreed by the European Council or by the European Parliament and by the Council for 2030*".[21] When it comes to the 2050 target, the

[13] See: A Union that Strives for More – My Agenda for Europe, by candidate for President of the European Commission Ursula von der Leyen, Political Guidelines for the Next European Commission 2019-2024, Brussels, July 2019.

[14] *Ibid.*, p. 3.

[15] *Ibid.*, p. 4.

[16] *Ibid.*, pp. 5-7.

[17] See: Speech in the European Parliament Plenary Session by Ursula von der Leyen, President-elect of the European Commission, European Parliament, Strasbourg, 27 November 2019, pp. 7-8.

[18] See: Communication on the European Green Deal, *op. cit.*, p. 2.

[19] *Ibid.*, pp. 4-15.

[20] See: Chapter 3 of the paper.

[21] Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Gover-

European Commission defined it in its Communication titled 'A Clean Planet for All' as "*achieving net-zero greenhouse gas emissions by 2050 through a socially-fair transition in a cost-efficient manner*".[22]

Another key reference included in both the European Green Deal and sectoral legislation as the backbone of the EU's just transition is the Paris Agreement. The Paris Agreement is one of the central international treaties for tackling climate change, adopted by the United Nations in 2015.[23] The purpose of the treaty is to enhance the implementation of the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.[24] To that end, the Paris Agreement "*aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty*" (Article 2).[25] This includes three particular forms of action: "*1) holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; 2) increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and 3) making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development*".[26] Although the Paris Agreement is a fundamental part of the EU's just transition scheme, it needs to be noted that it does not explicitly refer to climate neutrality but sets the general climate basis on which the EU builds its climate objectives and principles.

One of the most pertinent features of the just transition system created within the concept of the European Green Deal is inclusiveness. That system implies that the transition to a sustainable and carbon-neutral Europe will be carried out in a fair and inclusive manner that leaves no one behind.[27] For the fact that the EU comprises many regions that differ significantly in terms of their economic development, the principle of inclusiveness means that in the process of a just transition, special attention is to be paid to the most vulnerable areas, especially those where the effects of climate

nance of the Energy Union and Climate Action, amending Regulations (EC) No. 663/2009 and (EC) No. 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No. 525/2013 of the European Parliament and of the Council, OJ L 328, 21 December 2018, p. 14.

[22] A Clean Planet for All – A European Strategic Long-term Vision for a Prosperous, Modern, Competitive and Climate Neutral Economy, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, COM(2018) 773 final, Brussels, 28 November 2018, p. 3.

[23] The Paris Agreement came into force in 2016 and to this date, it was ratified by 189 countries, including all the EU Member States and the EU itself. See: 2015 Paris Agreement, UNFCCC, COP Report No. 21, Add., at 21, U.N. Doc. FCCC/CP/2015/10/Add, 1, 29 January 2016; Paris Agreement – Status of Ratifications, https://unfccc.int/process/the-paris-agreement/status-of-ratification (3 September 2020).

[24] See: United Nations Framework Convention on Climate Change, Resolution adopted by the General Assembly [on the report of the Second Committee (A/48/725)], A/RES/48/189, 20 January 1994.

[25] Paris Agreement, *loc. cit.*, n. 23.

[26] *Ibid.*

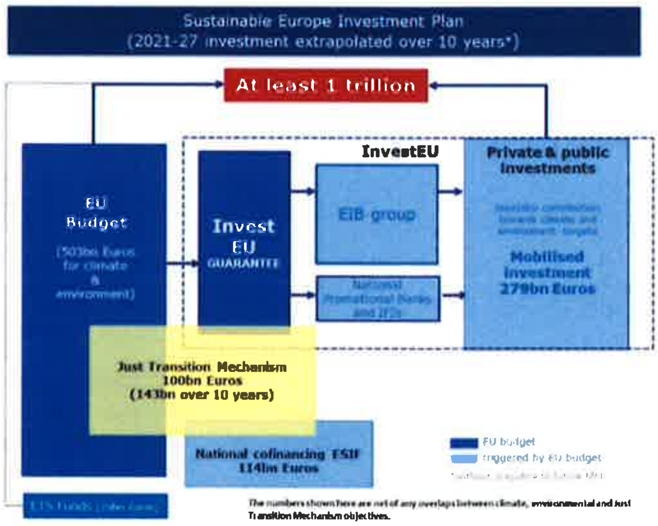
[27] On the occasion of the adoption of the Communication of the European Commission on the European Green Deal on 11 December 2019, president of the European Commission Ursula von der Leyen emphasised: "*I am convinced that the old growth-model that is based on fossil-fuels and pollution is out of date, and it is out of touch with our planet. (...) We want to be the frontrunners in climate friendly industries, in clean technologies, in green financing. But we also have to be sure that no one is left behind.*" Press Remarks by President von der Leyen on the Occasion of the Adoption of the European Green Deal Communication, Brussels, 11 December 2020, https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6749 (21 September 2020).

change are particularly evident.

2.2. Just Transition Mechanism (JTM) at the Core of the EU's Just Transition

The intrinsic features of the European Green Deal, which make it unique in comparison with all the other EU's climate initiatives, refer, on the one hand, to its complex structure composed of many mutually well-interwoven legal, economic, social and environmental elements and, on the other hand, to its strong focus on financial resources. In order to secure an effective financial framework, the European Green Deal has announced the launch of the Sustainable Europe Investment Plan, a green financing strategy for green investments in sustainable projects.[28] On 14 January 2020, the European Commission adopted the Communication on the Sustainable Europe Investment Plan (also interchangeably called the European Green Deal Investment Plan) the purpose of which is "*to mobilise through the EU budget and the associated instruments at least EUR 1 trillion of private and public sustainable investments over the upcoming decade*".[29] The mobilisation of these investments is one of the three dimensions across which the Plan should enable the transition to a climate-neutral economy; the other two being the creation of an enabling framework for private investors and the public sector, and tailored support to public administrations and project promoters in identifying, structuring and executing sustainable projects.[30]

The following figure shows the structure of the Sustainable Europe Investment Plan with its estimated financing elements[31]:



In the focus of this paper is the Just Transition Fund as part of the Just Transition Mechanism (highlighted in yellow), a robust funding scheme aiming to complement actions closely intertwined with the transition towards a low-carbon and climate-resilient future. The European Green Deal has

[28] See: Communication on the European Green Deal, *op. cit.*, p. 15.

[29] See: Sustainable Europe Investment Plan (European Green Deal Investment Plan), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (hereinafter: Communication on the Sustainable Europe Investment Plan), COM/2020/21 final, Brussels, 14 January 2020, p. 1.

[30] *Ibid.*, p. 2.

[31] *Ibid.*, p. 5. The estimated financial resources shown in the figure were relevant at the time of the publication of the Communication on the Sustainable Investment Plan and the updated amounts will be known once the new Multiannual Financial Framework 2021 – 2027 comes into force.

announced the introduction of the Just Transition Mechanism as a financial framework designed to support the regions, sectors and workers that are most affected by the transition and to ensure that the transition is conducted in a fair and inclusive way.[32] Unlike the European Green Deal, the Communication on the Sustainable Europe Investment Plan elaborates the structure and objectives of the Just Transition Mechanism in greater detail.[33]

It is foreseen that the Just Transition Mechanism comprises three pillars:

- a Just Transition Fund (JTF),
- a dedicated just transition scheme under the InvestEU Fund and
- a public sector loan facility with the European Investment Bank Group.[34]

The European Commission's proposal for the establishment of the first pillar (JTF) was adopted on the same day as the Communication on the Sustainable Europe Investment Plan, i.e. on 14 January 2020. Due to its pivotal role in reaching the EU's climate-neutrality target by 2050, the JTF is closely analysed in the following chapter of this paper.

The InvestEU Fund is designed to mobilise public and private investment through guarantees from the EU budget, including those supporting the green transition within the second pillar of the Just Transition Mechanism.[35] According to the Proposal for a Regulation establishing the InvestEU Programme, the respective Programme is expected to contribute with 30% of its overall financial envelope to climate objectives.[36] The potential amount of the InvestEU resources earmarked for the just transition should be viewed in the light of the Conclusions of the European Council of 21 July 2020, according to which a total of EUR 8.4 billion should be allocated to the InvestEU Fund.[37] If that would be the case, the expected amount available for the just transition could total EUR 2.8 billion. The final envelope for the dedicated just transition scheme under the InvestEU Fund will depend on the outcome of the current negotiations on the Multiannual Financial Framework 2021 – 2027. The green resources of the InvestEU Fund are expected to support a wide range of investments in four policy areas: 1) sustainable infrastructure (e.g. sustainable energy, digital connectivity, transport, circular economy, water and waste infrastructure); 2) research, innovation and digitalisation (e.g. taking research results to the market, digitisation of industry, scaling up larger innovative companies and artificial intelligence); 3) small businesses (e.g. small and medium-sized companies (SMEs) and small mid-cap companies); and 4) social investment and skills (e.g. education, training, social housing, hospitals, social innovation, healthcare, microfinance, and integration of migrants, refugees and vulnerable people).[38] Thus, its scope of support is supposed to be wider than that of the Just Transition Fund. The final amount of InvestEU funds directed to

[32] See: Communication on the European Green Deal, *op. cit.*, p. 16.

[33] See: Communication on the Sustainable Europe Investment Plan, *op. cit.*, pp. 17-22.

[34] *Ibid.*, pp. 17.

[35] See: EU Budget for the Future – What is the InvestEU Programme?, European Commission, Brussels, 19 March 2019.

[36] See: Proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU Programme, COM/2018/439 final - 2018/0229 (COD), Brussels, 6 June 2018, p. 17. This percentage was additionally confirmed in Fiche no. 84 of the European Commission on the Multiannual Financial Framework 2021 – 2027 of 27 August 2020. See: Working Document of the Commission Services, Multiannual Financial Framework 2021 – 2027, Fiche no. 84 (hereinafter: Fiche no. 84), European Commission, Brussels, 27 August 2020, p. 2.

[37] See: Conclusions – Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020), EUCO 10/20 (hereinafter: Conclusions – Special meeting of the European Council), Brussels, 21 July 2020, pp. 5, 19.

[38] See: InvestEU: What will it Finance?, EU Budget for the Future, European Commission, Brussels, 6 June 2018.

the just transition will depend on demand, the project pipeline and the absorption capacity of the eligible regions.[39]

In financing its just transition, the EU also plans to co-operate with the European Investment Bank Group (EIB), other international financial institutions as well as with national development banks. The Conclusions of the European Council of 21 July 2020 emphasise the EIB's commitment to provide the necessary capital to implement EU's policies, including the fight against climate change.[40] This is fully in line with the ambition of the EIB Group, confirmed by its Board in November 2019, to commit at least 50% of its finance to climate action and environmental sustainability by 2025. This increase in the EIB's climate and environment financing to 50% of its total lending will result in supporting EUR 1 trillion of green investments in the next decade.[41] As the third pillar of the Just Transition Mechanism, the public sector loan facility with the European Investment Bank Group is expected to support public sector investments in regions undergoing a climate transition in the form of concessional loans to the public sector. This support includes investments in energy and transport infrastructure, district heating networks, energy efficiency measures as well as social infrastructure and other sectors.[42] It is estimated that the public sector loan facility could mobilise between EUR 25 and 30 billion public investments over the forthcoming financial period 2021 – 2027, with the contribution from the EU budget of EUR 1.5 billion and the EIB lending of EUR 10 billion at its own risk.[43]

The three pillars of the Just Transition Mechanism are expected to provide different types of funding. The Just Transition Fund should primarily contribute with grants, while the InvestEU should crowd in private investments, and the EIB's public sector loan facility should leverage public financing.[44] Synergies and complementarities between three pillars are supposed to be ensured in territorial just transition plans – the centrepiece documents of the Just Transition Mechanism, which identify the development needs of the areas hardest hit by the just transition and form a basis for obtaining funding from three pillars.[45]

Colli argues that the Just Transition Mechanism faces three main challenges: overcoming the focus on the first pillar and national allocations (i.e. too much focus on the Just Transition Fund), expanding the transition from energy to other sectors (i.e. too much focus on energy) and including the private sector and civil society in the transition (too little focus on private sector and civil society).[46] Although they are rightfully perceived as challenges, it would be helpful to have a look at the other side of the coin.

National budgets are under great pressure because they are supposed to play the key role in the transition process.[47] In such circumstances, the Member States are interested in swift, timely and practical solutions that would fit their needs as well as possible. Out of the three pillars of the Just Transition Mechanism, the Just Transition Fund meets the three criteria best, and it is no coincidence that the European Commission denoted it as the first pillar. Being fully dedicated to the just

[39] See: The European Green Deal Investment Plan and Just Transition Mechanism Explained, European Commission, Brussels, 14 January 2020, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24 (10 September 2020).

[40] See: Conclusions – Special meeting of the European Council, *op. cit.*, p. 11.

[41] See: 2019 Sustainability Report, European Investment Bank Group, Luxembourg, 2020, pp. 10, 31.

[42] See: Communication on the Sustainable Europe Investment Plan, *op. cit.*, pp. 21-22.

[43] *Ibid.*, p. 22.

[44] *Ibid.*, p. 18.

[45] *Ibid.*, p. 20. On territorial just transition plans see more: Chapter 3 subchapter 3 of the paper.

[46] See: Colli 2020, *op. cit.*, pp. 2-5.

[47] See: Communication on the European Green Deal, *op. cit.*, p. 17.

transition only, having a precise allocation for each Member State and providing support in the form of grants are all advantages that are difficult to compete with. The other two pillars are more of a complementary nature and the Member States could turn thereto either if the Just Transition Fund's money is already spent or if they want to invest in an activity not covered by the Just Transition Fund. The shaping of the green legal framework of the two other pillars are well under way and it will certainly give them more visibility in the future. However, it is expected that in most cases the Just Transition Fund will remain the principal funding choice for the just transition during the financial period 2021 – 2027.

In order to deliver on the European Green Deal as planned, it is important to reconsider interlinkages between policies for clean energy supply across the economy, industry, production and consumption, large-scale infrastructure, transport, food and agriculture, construction, taxation and social benefits. Namely, the production and use of energy across economic sectors account for more than 75% of the EU's greenhouse gas emissions, so it is highly necessary to prioritise energy efficiency. The next seven years of the forthcoming financial period 2021 – 2027 could be crucial, having in mind that it takes 25 years to transform an industrial sector and its value chains. Decisions and actions taken today might critically influence the climate situation in 2050.[48] It is expected that the end result of the process of negotiations for the JTF Proposal could soften the energy aspects of the act as both the Council and the European Parliament insist on widening the scope of support to include activities such as local mobility, training and social infrastructure.

The European Green Deal confirms that active involvement of citizens in creating just transition policies is crucial for the success thereof.[49] First, only with full participation, citizens will be able to fully understand the essence of the just transition, and second, the application of the bottom-up principle could enrich the process with invaluable on-the-ground experience.[50] Looking at the current negotiations between the Council and the European Parliament on the JTF Proposal, there is some room for the inclusion of civil society and private sector in the Just Transition Fund's provisions on the specific objective and territorial just transition plans. Yet, given the dynamic and complex character of negotiations, nothing is agreed until everything is agreed.

2.3. The Effect of the COVID-19 Crisis on the Just Transition

The unprecedented crisis caused by the COVID-19 pandemic has significantly impacted all aspects of life: health, economic, social, but also environmental.[51] The effects of the outbreak on the environment have been manifested differently both in positive and negative ways. First, the decline in economic activity and the reduction in traffic congestion have led to a significant decrease in pollution.[52] On the other hand, the newly created perception of hygiene, including food hygiene, has potentiated the unreasonable use of plastic-wrapped food and disposable plastic in general. In addition, at the beginning of the pandemic in March 2020, uncertainty and fear prompted people to

[48] *Ibid.*, pp. 4, 6, 7.

[49] *Ibid.*, p. 22.

[50] *Ibid.*

[51] See, *e.g.*: A. Sumner, Ch. Hoy & E. Ortiz-Juarez, *Estimates of the Impact of COVID-19 on Global Poverty*, WIDER Working Paper 2020/43, United Nations University World Institute for Development Economics Research, Helsinki, April 2020; P.G.T. Walker *et al.*, *The Global Impact of COVID-19 and Strategies for Mitigation and Suppression*, Imperial College, London, March 2020; W. McKibbin & R. Fernando, *The Global Macroeconomic Impacts of COVID-19: Seven Scenarios*, CAMA Working Paper 19/2020, Australian National University, Canberra, February 2020.

[52] See: H. Eroğlu, *Efects of Covid19 Outbreak on Environment and Renewable Energy Sector*, Environment, Development and Sustainability, Springer, 2020.

exaggerate with food stocks and to create unnecessary waste.[53]

Will the current crisis affect the dynamics of achieving the goals of the European Green Deal? At the time of uncertainty, when it is challenging to predict how long the crisis will last and with what effect, it is likely that the Member States will rethink their investment priorities. It is also believed that the pandemic will intensify the mismatch in economic thinking between rich and poor Member States in the post-pandemic era.[54] However, the process of the codification of legal acts supporting the climate targets of the European Green Deal is well under way and the EU insists on keeping the green and just transition as one of its top priorities. As explained in Chapter 4 of the paper, the EU has been mainstreaming climate targets in all the principal legal texts under the upcoming Multiannual Financial Framework 2021 – 2027. This means that a certain percentage of each funding instrument shall be directed into green projects, which, from the legal and funding point of view, means that activities related to the European Green Deal objectives will continue and no major disturbances are expected. Another reason for optimism lies in the fact that the just transition is also advocated in legal acts adopted in the midst of the COVID-19 crisis for the purpose of generating financial resources for recovery and resilience. For example, building on the Coronavirus Response Investment Initiative[55] and the Coronavirus Response Investment Initiative Plus[56], the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) should add fresh additional resources to the existing Cohesion policy programmes not only for crisis response and crisis repair measures across economic sectors (investment to support job maintenance, job creation and youth employment measures, to health care systems and small and medium-sized enterprises), but also as a means to achieve the green and digital transition.[57] In other words, the EU perceives a simultaneous green, digital and resilient recovery of its economy as a necessary package. This is also evident in relation to the Next Generation EU (NGEU), the EU recovery instrument for the period of 2021 – 2023, embedded within the long-term EU budget for 2021 – 2027. It was created to boost the EU budget with new resources directed towards investing in a green, digital and resilient Europe. The purpose of the NGEU financing is to repair the immediate economic and social damage caused by the COVID-19 pandemic, help the recovery and prepare for a better future for the next generation. It is repeatedly emphasised that the Just Transition Mechanism and Cohesion policy will be instrumental in achieving these goals.[58] To that end, all the legislation under the NGEU is obliged to mainstream climate targets, as demonstrated in Chapter 5 hereof.

Currently, health is the world's principal priority. However, when the health crisis finally ends, all the other issues, including environmental ones, are going to be back on the regular agenda. Speaking of which, now is the time to prepare. The EU has effectively done everything to set legal prerequisites for its just transition, which leaves enough room for optimism that the EU will deliver

[53] See: M. Munta, *The European Green Deal: A Game Changer or Simply a Buzzword?*, Friedrich Ebert Stiftung, Zagreb, May 2020, p. 12.

[54] *Ibid.*

[55] Regulation (EU) 2020/460 of the European Parliament and of the Council of 30 March 2020 amending Regulations (EU) No. 1301/2013, (EU) No. 1303/2013 and (EU) No. 508/2014 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative), OJ L 99, 31 March 2020.

[56] Regulation (EU) 2020/558 of the European Parliament and of the Council of 23 April 2020 amending Regulations (EU) No. 1301/2013 and (EU) No. 1303/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak, OJ L 130, 24 April 2020.

[57] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No. 1303/2013 as regards exceptional additional resources and implementing arrangements under the Investment for growth and jobs goal to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy (REACT-EU), COM/2020/451 final, Brussels, Brussels, 28 May 2020.

[58] See: The EU Budget Powering the Recovery Plan for Europe, European Commission, Brussels, 27 May 2020.

its just transition objectives in the coming financial period 2021 – 2027.

3. Just Transition Fund (JTF) – the First Fully Green EU Fund

3.1. JTF as Part of Cohesion Policy

In order to boost and accelerate a costly process of the just transition across the EU, the European Commission proposed the establishment of the Just Transition Fund on 14 January 2020.[59] Being designed solely for the purpose of the socio-economic transition of the EU towards climate neutrality, the JTF has become the first EU fund in its entirety devoted to green objectives. The specific aim of the JTF is to alleviate the negative effects of the climate transition on the most affected territories and people by financing the diversification and modernisation of local economies and employment arrangements. This way, the JTF is intended to add to the coherent and even development of the sustainable and climate-resilient economies of all the Member States as well as to eliminating their regional disparities. In an effort to successfully fulfil the wider purpose of turning the EU into a climate-neutral continent by 2050, the JTF was embedded into the robust green scheme of the Just Transition Mechanism as its pivotal, first pillar.[60]

The legal basis for the establishment of the JTF lies in two principal provisions of the Treaty on the Functioning of the European Union (TFEU), related to economic, social and territorial cohesion. Pursuant to Article 174 paragraphs 1 and 2 of the Treaty "*The Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions*".[61] These provisions should be considered in conjunction with Article 175 paragraph 1, according to which "*(...) The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (...), the European Investment Bank and the other existing Financial Instruments*".[62]

Given the ratio of the JTF, closely intertwined with the EU's economic, social and territorial cohesion, it was decided that the JTF would be included in the legal framework of Cohesion policy, which is the EU's main investment policy designed "*to help less developed regions to catch up, and all the regions to invest in EU priorities and address new challenges*".[63] More specifically, the JTF has become part of the Common Provisions Regulation for the financial period 2021 – 2027, an umbrella legal act laying down common provisions for seven shared management funds.[64] Since

[59] Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund (hereinafter: JTF Proposal), COM(2020) 22 final, Brussels, 14 January 2020.

[60] On complementarities with the other two pillars of the Just Transition Mechanism – a dedicated scheme under InvestEU and a public sector loan facility with the EIB Group see: Chapter 2 subchapter 2 of the paper.

[61] Consolidated version of the Treaty on the Functioning of the European Union, OJ C 202, 7 June 2016.

[62] *Ibid.*

[63] My Region, My Europe, Our Future: The Seventh Report on Economic, Social and Territorial Cohesion, Publications Office of the European Union, Luxembourg, 2017, p. xxiii. The latest and the most accurate interpretation of Cohesion policy can be found in point 36 of the Conclusions of the European Council of July 2020, according to which "*The main objective of Cohesion Policy is to develop and pursue actions leading to the strengthening of economic, social and territorial cohesion by contributing to reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions*". Conclusions – Special meeting of the European Council, *op. cit.*, p. 22.

[64] The introduction of the JTF in early 2020 required the introduction of amendments to the already tabled Proposal

the Common Provisions Regulation provides for only the horizontal rules and principles applicable to all the Cohesion policy funds, each of those funds is also governed by a separate dedicated regulation which specifies its subject matter, objectives, methods of implementation, budget and other particularities. With regard to the JTF, the proposal for its regulation lays down its subject matter and scope of support, specific objective, geographical coverage, financial resources and their programming, the notion of territorial just transition plans necessary to underpin the programming, indicators and rules on financial corrections.[65] The incorporation of the JTF in the Cohesion policy framework should give a substantial impetus to green investments in the EU; however, a large share of cohesion funding has always been directed towards tackling key environmental challenges and improving the quality of the environment.[66] For example, in the current financial perspective 2014 – 2020, over EUR 75 billion will be invested into the low carbon economy and climate change adaptation by the end of 2023, mostly through the European Regional Development Fund (ERDF) and Cohesion Fund (CF).[67] What makes the JTF unique in comparison with the existing Cohesion policy funds is the percentage of its climate contribution. Namely, the JTF is the only Cohesion policy fund with 100% of its resources contributing to the mainstreaming of climate objectives.[68]

No EU Member State is exempted from taking an active part in reaching a climate-neutral economy by way of conversion or closure of fossil fuel production or other greenhouse gas intensive activities. For that reason, the JTF funding will be available to all the EU Member States, in line with the principle of 'leaving no one behind in the transition to a greener Europe.[69] The allocation of the JTF resources per Member State is to follow quite a complex methodology, which primarily takes into account the capacity of a Member State to finance green investments and the level of economic burden borne thereat.[70]

for the Common Provisions Regulation of 29 May 2018, which sets out common provisions for the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+), the Cohesion Fund and the European Maritime and Fisheries Fund, and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument. It should be noted that the JTF will be complementary to three Cohesion policy funds only – the ERDF, the ESF+ and the Cohesion Fund, and thus implemented under Cohesion policy rules. Those Cohesion policy funds, alongside the European Maritime and Fisheries Fund (EMFF) and the European Agricultural Fund for Rural Development (EAFRD), comprise the European Structural and Investment Funds (ESIF) responsible for supporting the economic development of the EU. See: Amended proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, COM(2020) 23 final, Brussels, 14 January 2020; 2019 Strategic Report on the Implementation of the European Structural and Investment Funds, COM(2019) 627 final, Brussels, 17 December 2019, p. 2.

[65] See: JTF Proposal, *loc. cit.*, n. 59.

[66] See: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'My region, My Europe, Our future: The Seventh Report on Economic, Social and Territorial Cohesion', COM(2017) 583 final, Brussels, 9 October 2017, p. 5.

[67] See: Highlights – 2020 Annual Activity Report, Directorate-General for Regional and Urban Policy (REGIO), Publications Office of the European Union, Luxembourg, 2020, p. 6.

[68] The climate coefficient of 100% is applicable to the Just Transition Mechanism as a whole, *i.e.* including the public sector loan facility. See: Fiche no. 84, *loc. cit.*, n. 36.

[69] 2020 European Semester – How Cohesion Policy Funds Support Member States' Green Reforms, European Commission, Brussels, 2020.

[70] See: Ann. I (Allocation Method for Resources of the Just Transition Fund) to the Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund, JTF Proposal, *loc. cit.*, n. 59.

3.2. State of Play of the JTF

Prior to any assessment of the JTF's specific objective and scope of support, it needs to be noted that the JTF file is still open and the subject to the ongoing negotiations between the Council of the European Union and the European Parliament. That is, the Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund, adopted by the European Commission on 14 January 2020, is currently under consideration in the ordinary legislative procedure, as enshrined in Article 289 paragraph 1 and Article 294 of the TFEU.[71] The JTF Proposal was first presented to the Council at the meeting of the Structural Measures Working Party (SMWP) on 21 January 2020,[72] during the Croatian Presidency. Its detailed examination by the SMWP ensued in February, March, May and June. The first partial mandate for negotiations with the European Parliament was endorsed at the meeting of the Permanent Representatives Committee (Coreper II) of 24 June 2020,[73] while the second partial mandate was adopted at the Coreper's meeting of 5 October 2020.[74] When it comes to fixing the European Parliament's position for negotiations with the Council, the JTF dossier has been entrusted to the Committee on Regional Development (REGI), who voted on its report on 6 July, leading to the adoption of the European Parliament's amendments on 17 September 2020.[75] After both co-legislators had reached their final positions, they have started negotiating at technical meetings which are to be followed by political trilogues soon (European Commission – Council – European Parliament). By mid-October 2020, two technical meetings on the JTF had been held – on 29 September and 16 October 2020, whereat the co-legislators put substantial effort into obtaining a provisional common understanding for as many provisions as possible.[76] Once adopted, the Regulation on the establishment of the JTF will be binding in its entirety and directly applicable in all Member States.[77]

The chronology of the JTF Proposal's adoption speaks volumes about the dynamics of the ordi-

[71] According to Art. 289 para. 1 of the TFEU, "*The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Art. 294*". Art. 294 regulates the steps which should be taken where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, once the European Commission submits a proposal to the European Parliament and the Council. See: Consolidated version of the Treaty on the Functioning of the European Union, *loc. cit.*, n. 61.

[72] See: The Structural Measures Working Party is a preparatory body of the Council responsible for preparing and drafting the Cohesion policy legislative package. See: Working Party on Structural Measures,

https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-structural-measures/ (13 October 2020).

[73] Coreper is the acronym for '**Co**mité des **repr**ésentants **per**manents', the French wording for the Committee of Permanent Representatives, which is a Council's body consisted of the Permanent Representatives of the Governments of the EU Member States and presided by the Permanent Representative of the country holding the presidency of the Council. According to Art. 240 para. 1 of the TFEU, COREPER II is responsible for preparing the work of the Council and for carrying out the tasks assigned thereto by the Council. See: Consolidated version of the Treaty on the Functioning of the European Union, *loc. cit.*, n. 61; Coreper II,

https://europa.eu/newsroom/events/coreper-ii-20_en (16 October 2020).

[74] See: Just Transition Fund: Update following the EUCO conclusions of July 2020 – Partial mandate for negotiations with the European Parliament (hereinafter: Just Transition Fund: Update following the EUCO conclusions), Interinstitutional File: 2020/0006 (COD), Brussels, 2 October 2020.

[75] See: Just Transition Fund,

https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2020)646180 (13 October 2020).

[76] This is the internal information of the Structural Measures Working Party (SMWP) of which the co-authors are members.

[77] The respective rule on the nature of EU regulations is stipulated by Art. 288 of the TFEU. See: Consolidated version of the Treaty on the Functioning of the European Union, *loc. cit.*, n. 61.

nary legislative procedure. Reaching a consensus on the final text of the JTF Regulation has been a thorny process by now, mostly due to three critical factors. First, even at the Council's level, at times, it was difficult to reach a consensus between the Member States on certain matters, such as financing of natural gas or formulating an obligatory commitment to climate neutrality. Second, there is quite a number of discrepancies between the Council's and Parliament's positions with regard to the content of the future JTF Regulation. For example, the European Parliament is much more inclined towards broadening of the Commission's initial Proposal, especially with respect to the scope of the JTF's support, while the Council prefers more limited interventions in the text. Third, the Proposal was also impacted by horizontal and sectoral changes in the overall legislative package of Cohesion policy, caused by the urgent adjustment of the EU's legal framework to the unprecedented COVID-19 crisis,[78] and later, to the Conclusions of the European Council (EUCO).[79] In consequence, since its adoption by the European Commission in January 2020, the Proposal has been amended twice, and almost all the changes were endorsed by the Coreper II on 5 October 2020.[80] Now, that the negotiations between the Council and the European Parliament have started, with the aim to reach mutual understanding, there is an opportunity to finalise the JTF Proposal in a way to better reflect the real transitional needs in the context of challenging circumstances related to the COVID-19 socio-economic crisis.

3.3. Specific Objective and Scope of Support of the JTF

According to Article 1 of the JTF Proposal, the purpose of the JTF is to "*provide support to territories facing serious socio-economic challenges deriving from the transition process towards a climate-neutral economy of the Union by 2050*".[81] In the course of the examination of this provision by the Council and the European Parliament, both co-legislators have proposed its widening with a number of amendments. The most important matching request is the inclusion of the Union's 2030 target for climate set out in Article 2 paragraph 11 of Regulation (EU) 2018/1999.[82] This way, the Member States would be obliged to comply with both 2030 and 2050 targets.

The specificity of the JTF is that it should contribute to one single specific objective of "*enabling regions and people to address the social, economic and environmental impacts of the transition*

[78] Following the COVID-19 outbreak, on 28 May 2020, the European Commission submitted the amended proposals of the Cohesion policy legislative acts, which reflect the newly introduced measures for the immediate response to the pandemic within the European Union's recovery instrument – Next Generation EU (NGEU). See: Just Transition Fund: Update following the EUCO conclusions, *loc. cit.*, n. 74; Sectoral Legislation, https://ec.europa.eu/info/publications/sectoral-legislation_en (10 October 2020).

[79] The Conclusions were adopted at the special meeting of the European Council held on 17-21 July 2020. As noted in the document, its first part concerns the recovery effort related to the COVID-19 crisis (Next Generation EU – NGEU), while the second part deals with the 2021-2027 Multiannual Financial Framework (MFF). See: Conclusions – Special meeting of the European Council, *op. cit.*, p. 2.

[80] The provision that was the only point of discord and thus still needs to be validated/rejected in the future is new Art. 3(b) on conditional access to the JTF's resources, introduced during the second modification of the Cohesion legislative package, following the adoption of the EUCO Conclusions. It was drafted for the purpose of transposing point 100 of the Conclusions into the JTF Proposal, which stipulates that "*access to the JTF will be limited to 50% of national allocation for Member States that have not yet committed to implement the objective of achieving a climate-neutral EU by 2050, in line with the objectives of the Paris Agreement, the other 50% being made available upon acceptance of such a commitment*". Most Member States argued that newly proposed Art. 3(b) did not fully reflect the nature of point 100 and asked for further adjustments. See: Just Transition Fund: Update following the EUCO conclusions, *loc. cit.*, n. 74; Conclusions – Special meeting of the European Council, *op. cit.*, p. 47; Coreper II of 5 October 2020, https://www.consilium.europa.eu/en/meetings/mpo/2020/10/coreper-2-(296635)/ (6 October 2020).

[81] JTF Proposal, *loc. cit.*, n. 59.

[82] On Art. 2 para. 11 of Regulation (EU) 2018/1999 see: Chapter 2 subchapter 1 of the paper.

towards a climate-neutral economy" (Article 2).[83] In practice, this means that 100% of the JTF's resources will be directed towards green projects. Similar to their viewpoint on Article 1 of the JTF Proposal, both co-legislators have also been vocal about adding the 2030 and 2050 climate targets to the provision as they lie at the heart of the JTF's special objective.[84]

Pursuant to Article 3 paragraph 1 of the JTF Proposal, the JTF shall support the 'Investment for jobs and growth' goal in all Member States.[85] In the current financial period 2014 – 2020, a third of the EU budget is directed to Cohesion policy which helps achieve the jobs and growth goal, and thus reduce economic and social disparities. There is a large number of areas to which the respective money is channelled, such as investments in "*SMEs, R&D and innovation, skilled and competitive workforce, the fight against unemployment and social exclusion, climate change and the environment*".[86]

The total allocation of the JTF, as negotiated at the special meeting of the European Council in July 2020, amounts to EUR 17.500.000.000. This sum is divided into two tranches: EUR 10.000.000.000 are resources from the EU recovery instrument 'Next Generation EU (NGEU)' for the period of 2021 – 2023, and EUR 7.500.000.000 are resources under the 'Investment for jobs and growth' goal, available for budgetary commitment for the period of 2021 – 2027.[87] These amounts are still considered provisional because the final allocation will be known once the EU long-term budget – the Multiannual Financial Framework (MFF) 2021 – 2027 is adopted. The outcome of the MFF negotiations between the European Parliament and the Council is still uncertain as the European Parliament has widely criticised the Conclusions of the European Council and emphasised that it would not just rubber-stamp them as a *fait accompli.*[88] It believes that the EU's long-term priorities set out in the MFF should not be jeopardised either by the recovery instrument or by national interests and positions. It also warns that the related cuts to programmes supporting the transition of carbon-dependent regions, health and research programmes, education, the digital transformation and innovation, asylum, migration and border management go against the EU's objectives, including those set out in the EU's Green Deal agenda. In point 13 of its Resolution of 23 July 2020 on the Conclusions of the extraordinary European Council meeting, the European Parliament explicitly affirmed that it "*deplores the cuts made to future-oriented programmes in both the 2021 – 2027 MFF and the NGEU and considers that they will undermine the foundations of a sustainable and resilient recovery*".[89] In relation to the green transition, in point 15, it advocates the inclusion of "*a legally binding climate-related spending target of 30 % and a biodiversity-related spending target at 10 %*" in both the MFF and NGEU regulations, the adoption of "*a transparent, comprehensive and meaningful tracking methodology (...) for both climate-related spending and biodiversity-related spending*", and the inclusion of the 'do no harm' principle[90] in both the MFF and NGEU

[83] JTF Proposal, *loc. cit.*, n. 59.

[84] See: Just Transition Fund: Update following the EUCO conclusions, *op. cit.*, pp. 1-2.

[85] As noted in point 36 of the Conclusions of the European Council of July 2020, Cohesion policy is designed to pursue two goals: 'Investment for jobs and growth' and 'European territorial cooperation'. See: Conclusions – Special meeting of the European Council, *loc. cit.*, n. 63.

[86] See: Investment for Jobs and Growth – Promoting Development and Good Governance in EU Regions and Cities: Sixth Report on Economic, Social and Territorial Cohesion, Publications Office of the European Union, Luxembourg, 2014, pp. xxvi-xxvii.

[87] See: Just Transition Fund: Update following the EUCO conclusions, *op. cit.*, pp. 2-3.

[88] See: European Parliament Resolution of 23 July 2020 on the conclusions of the extraordinary European Council meeting of 17-21 July 2020 (2020/2732(RSP)) (hereinafter: European Parliament Resolution of 23 July 2020), P9_TA(2020)0206, Brussels, 23 July 2020, point 7.

[89] *Ibid.*

[90] The 'do no harm' principle is part of the EU taxonomy, the purpose of which is to provide tools for financing the transition of economies towards clear environmental goals, and thus help investors, companies, issuers and project

regulations.[91] Finally, the European Parliament reiterates that Europe's recovery should be based on the objectives and principles enshrined in key European strategies and initiatives, including the European Green Deal.[92]

The financial potential of the JTF can be further reinforced by additional resources in two ways. First, pursuant to Article 3 paragraph 2 of the JTF Proposal, the resources for the JTF under the 'Investment for jobs and growth' goal available for budgetary commitment for the period 2021 – 2027 (EUR 7.500.000.000) may be increased by additional resources allocated in the Union budget, and by other resources in accordance with the applicable basic act.[93] According to Article 3(a) paragraph 1, the term 'other resources in accordance with the applicable basic act' relates to resources from the EU recovery instrument and they constitute external assigned revenue as set out in Article 21 paragraph 5 of the Financial Regulation.[94] Second, as per Article 6 paragraph 2 of the JTF Proposal, the JTF allocation can be additionally boosted by transfers from the European Regional Development Fund (ERDF) and the European Social Fund Plus (ESF+) by up to three times the amount of support from the JTF to the JTF priority.[95]

The JTF may only support socio-economic activities that are directly linked to its specific objective. They are of a twofold nature, depending on whether the investments are focused on economic diversification or people. When it comes to the former, they can encompass productive investments in SMEs, including start-ups, leading to economic diversification and reconversion; investments in the creation of new firms, including through business incubators and consulting services; investments in research and innovation activities and fostering the transfer of advanced technologies; investments in the deployment of technology and infrastructures for affordable clean energy, in greenhouse gas emission reduction, energy efficiency and renewable energy; investments in digitalisation and digital connectivity; investments in regeneration and decontamination of sites, land restoration and repurposing projects; and investments in enhancing the circular economy, including through waste prevention, reduction, resource efficiency, reuse, repair and recycling. On the other hand, the investments in people may include upskilling and reskilling of workers; job-search assistance to jobseekers; and active inclusion of jobseekers.[96] As noted earlier, the list of investment areas will be tentative as long as the Council and the European Parliament do not reach a consensus

promoters navigate the transition to a low-carbon, resilient and resource-efficient economy. The principle insists on exclusion of fossil fuels from financing as they are in direct conflict with environmental objectives and may cause a significant harm to the environment. See: Taxonomy: Final Report of the Technical Expert Group on Sustainable Finance, EU Technical Expert Group on Sustainable Finance, Brussels, March 2020, pp. 2, 8, 10, 13 and 21.

[91] See: European Parliament Resolution of 23 July 2020, *loc. cit.*, n. 88.

[92] *Ibid.*

[93] See: Just Transition Fund: Update following the EUCO conclusions, *op. cit.*, p. 2.

[94] Art. 21 para. 5 regulates that: "*A basic act may assign the revenue for which it provides to specific items of expenditure. Unless otherwise specified in the basic act, such revenue shall constitute internal assigned revenue*". Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No. 1296/2013, (EU) No. 1301/2013, (EU) No. 1303/2013, (EU) No. 1304/2013, (EU) No. 1309/2013, (EU) No. 1316/2013, (EU) No. 223/2014, (EU) No. 283/2014, and Decision No. 541/2014/EU and repealing Regulation (EU, Euratom) No. 966/2012, OJ L 193, 30 July 2018, p. 37.

[95] This means that the JTF allocation could be additionally increased with up to EUR 22.500.000.000 of the ERDF and/or ESF+ funding. The additional rule is that the resources transferred from either the ERDF or the ESF+ cannot exceed 20% of the ERDF and ESF+ allocation to the Member State concerned. Once money is transferred from the ERDF and the ESF+ to the JTF, it becomes 'green money' that can be invested in the green transition only, in line with the single specific objective of the JTF. Once transferred, the ERDF and ESF+ money cannot be transferred back. See: JTF Proposal, *op.cit.*, p. 16. See also: Article 21(a) of the Proposal for the CPR. Common Provisions Regulation: Update following the EUCO conclusions of July 2020 – Partial mandate for negotiations with the European Parliament, Interinstitutional File: 2018/0196 (COD), Brussels, 1 October 2020, p. 16.

[96] See: Art. 4. JTF Proposal, *loc. cit.*, n. 59.

on common understanding about the final text of the JTF Regulation. Changes are inevitable since both co-legislators have included a number of amendments into their negotiating positions.

The provision of the Proposal that has sparked a lot of debate and discussion both between the Member States and co-legislators is Article 5 on activities excluded from the scope of support. In accordance with the JTF Proposal, the JTF should not support the decommissioning or the construction of nuclear power stations; the manufacturing, processing and marketing of tobacco and tobacco products; undertakings in difficulty; investment related to the production, processing, distribution, storage or combustion of fossil fuels; and investment in broadband infrastructure in areas in which there are at least two broadband networks of equivalent category.[97] The main ongoing point of contention are investments related to fossil fuels, advocated by eight Member States dependent on them, i.e. Bulgaria, Czechia, Greece, Hungary, Lithuania, Poland, Romania, and Slovakia. In a joint non-paper titled 'The Role of Natural Gas in a Climate-Neutral Europe', they asked for a tailored approach in transitioning away from solid fossil fuels, which would allow them to use and invest in natural gas and other gaseous fuels (e.g. bio-methane and decarbonized gases) during the transitional period towards a climate neutral economy. They argue that a transition based solely on renewable energy sources does not consider wide national and regional disparities between the levels of development of zero-emission technologies in the Member States. They acknowledge that natural gas and other gaseous fuels may provide the fastest and the most affordable intermediate path to a less carbon-intensive economy as energy sources which are adequate to reduce emissions significantly. One of their key arguments is that the security of energy supplies should be continuously ensured while at the same time considering all the socio-economic difficulties caused by the unprecedented COVID-19 crisis.[98] Given the wide gap between the Member States which press for inclusion of natural gas in the JTF scope of support and those which oppose it, the Council has decided to exclude it from the scope of the JTF's support in its final position, but the European Parliament has not, so further complex negotiations are expected in this regard.

Although all the Member States have access to JTF's resources, there are rather strict rules on where and under which conditions to invest them. Namely, the system of the JTF funding has introduced a unique concept of territorial just transition plans in which the Member States may underline all the territories most negatively affected by the green transition, "*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*".[99] Each Member State can prepare one or more territorial just transition plans which cover one or more affected territories corresponding to level 3 of the common classification of territorial units for statistics ('NUTS level 3 regions').[100]

[97] See: JTF Proposal, *loc. cit.*, n. 59.

[98] See: Role of Natural Gas in Climate-neutral Europe – Position Paper of Bulgaria, Czechia, Greece, Hungary, Lithuania, Poland, Romania, Slovakia, https://www.ceep.be/www/wp-content/uploads/2020/05/Non-paper_Role-of-gas-in-climate-neutral-Europe.pdf (10 October 2020).

[99] See: Art. 7 para. 1. JTF Proposal, *loc. cit.*, n. 59.

[100] According to Art. 1 of the Regulation on the establishment of a common classification of territorial units for statistics (NUTS), a common statistical classification of territorial units ('NUTS') is established for the purpose of enabling the collection, compilation and dissemination of harmonised regional statistics in the EU. Pursuant to Art. 2 paras. 1 and 2, the respective classification subdivides the economic territory of each Member State "*into NUTS level 1 territorial units, each of which is subdivided into NUTS level 2 territorial units, these in turn each being subdivided into NUTS level 3 territorial units*". See: Regulation (EC) No. 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS), OJ L 154, 21 June 2003, p. 2. For example, in Croatia, a NUTS level 1 territorial unit encompasses the whole country, while NUTS level 2 territorial units comprise two regions – Jadranska Hrvatska and Kontinentalna Hrvatska, and NUTS level 3 territorial units are all the counties. See: Ann. I of Commission Regulation (EU) No. 868/2014 of 8 August 2014 amending the annexes to Regulation (EC) No. 1059/2003 of the European Parliament and of the Council on the establishment of a

Pursuant to Article 7 paragraph 2, each territorial just transition plan has to comprise several essential elements. Namely, there needs to be: 1) a description of the transition process at national level towards a climate-neutral economy, including a timeline for key transition steps which are consistent with the latest version of the National Energy and Climate Plan; 2) a justification for identifying the territories as most negatively affected by the transition process; 3) an assessment of the transition challenges faced by the most negatively affected territories, including the social, economic, and environmental impact of the transition to a climate-neutral economy; 4) a description of the expected contribution of the JTF support to addressing the social, economic and environmental impacts of the transition to a climate-neutral economy; 5) an assessment of its consistency with other national, regional or territorial strategies and plans; 6) a description of the governance mechanisms consisting of the partnership arrangements, the monitoring and evaluation measures planned and the responsible bodies; 7) a description of the type of operations envisaged and their expected contribution to alleviate the impact of the transition; 8) where support is provided to productive investments to enterprises other than SMEs and/or to investments to achieve the reduction of greenhouse gas emissions, a list of such operations and enterprises and a justification of the necessity of such support; and 9) synergies and complementarities with other Union programmes and pillars of the Just Transition Mechanism.[101] These requirements are carefully assessed by the European Commission before its final approval. To help the Member States identify the territories potentially fitted to be included into territorial just transition plans and thus financed by the JTF, the European Commission has proposed eligible areas per Member State in Annex D to the Country Report prepared within the 2020 European Semester. For example, in relation to Croatia, it has singled out two regions on the basis of greenhouse gas emissions intensity: Sisak-Moslavina County and Istria County. As noted in Annex D, apart from providing a guidance on the potentially eligible territories, the European Commission's proposal also provides a basis for a further dialogue between the Member State and the Commission's services on obtaining financial resources.[102] Preparing a good territorial just transition plan should be taken with utmost seriousness because these plans are a *conditio sine qua non* for obtaining the JTF funding and its programming.

Although negotiations for the Cohesion policy legislative package are running late, it is expected that the JTF funding will be available to the Member States at the beginning of the new financial perspective in 2021, as planned. The starting positions of the Member States in the process of the green transition vary greatly and consequently, so do their national envelopes. Some of them are expected to receive billions of euros (Poland, Germany, Romania, Czechia and Bulgaria),[103] but concerns about the real cost of the transition and a probable lack of finance remain. The EU has set quite a solid financial base with the JTF and other complementary funding of the Green Deal strategy, yet, it acknowledges that the just transition would require 'a Herculean effort' to be fully achieved.[104]

common classification of territorial units for statistics (NUTS), OJ L 241, 13 August 2014, p. 29.

[101] The template for territorial just transition plans is set out in Ann. II to the Proposal. See: JTF Proposal, *loc. cit.*, n. 59.

[102] See: 2020 European Semester, Overview of Investment Guidance on the Just Transition Fund 2021-2027 per Member State (Annex D), European Commission, Brussels, 2020.

[103] See: Just Transition Fund: Update following the EUCO conclusions, *op. cit.*, p. 11.

[104] See: F. Simon, *Green Transition will Require "Herculean Effort", EU Admits*, 5 March 2020, https://www.euractiv.com/section/energy-environment/news/green-transition-will-require-herculean-effort-eu-admits/ (16 October 2020).

4. Climate Targets in the Legislation of the Next Multiannual Financial Framework 2021 – 2027

In order to fulfil its ambitious masterplan of turning Europe into the first climate-neutral continent by 2050, the EU has had to green many of its programmes, financial mechanisms and initiatives covered by the forthcoming Multiannual Financial Framework 2021 – 2027. The JTF is thus just a cog in the wheel of the green transition, disregarding its pivotal role in financing green projects.

The Conclusions of the European Council of July 2020 explicitly state that "*both Next Generation EU (NGEU) and the Multiannual Financial Framework (MFF) will help transform the EU through its major policies, particularly the European Green Deal, the digital revolution and resilience*".[105] They underline that during the process of an extensive sustainable and resilient recovery from the crisis caused by the COVID-19 pandemic, the EU should continue supporting its green and digital priorities (often referred to as 'twin priorities'). To that end, climate objectives will be included and mainstreamed across all the policies and programmes financed under the MFF and NGEU, with the overall climate target of 30% applied to the total amount of expenditure from the MFF and NGEU. The Conclusions specifically accentuate the obligation to align all the targets in sectoral legislation with the objective of EU climate neutrality by 2050 and the Union's new 2030 climate targets, and all the EU expenditure with the objectives of the Paris Agreement.[106]

In order to achieve the overall target of 30% climate-related expenditure, climate mainstreaming has been embedded in the EU legislation under the NGEU and the MFF both horizontally and sectorally. Speaking of sectoral legislation, the European Commission has proposed a specific climate coefficient for the legal basis of a spending programme, as expected climate contributions.[107] The highest climate coefficient of 100% is set for the Just Transition Mechanism and ITER,[108] followed by 61% for LIFE[109] and 60% for Connecting Europe Facility.[110] The other specific sectoral climate coefficients are included in the Common Agricultural Policy 2023-2027 (41%),[111] Cohe-

[105] See: Conclusions – Special meeting of the European Council, *op. cit.*, p. 2.

[106] *Ibid.*, p. 7.

[107] All the climate coefficients for spending programmes under the NGEU and the MFF see in: Fiche no. 84, *loc. cit.*, n. 36.

[108] The ITER project is the key facility for fusion research related to developing the technology of fusion energy as a future clean power source in the process of transitioning to a climate-friendly society. It is a unique project the purpose of which is to build the biggest fusion device in history (to be called ITER) and it is done in collaboration of seven international partners: China, Euratom (represented by the European Commission), India, Japan, Russia, South Korea and the USA. Every partner needs to contribute to the project with money, services and high-tech components, and the EU is the biggest contributor. Started in 2006, it is currently under construction in Cadarache, France. See: Broader Approach, *loc. cit.*, n. 7; The ITER Project, European Commission, Publications Office of the European Union, Luxembourg, 2019; The ITER Project – Governance and Funding, European Commission, Publications Office of the European Union, Luxembourg, 2019.

[109] LIFE is the EU's fund for financing innovative projects in the domain of the environment, nature conservation and climate action. See more: LIFE is Good for the Environment!, European Commission, Publications Office of the European Union, Luxembourg, 2018.

[110] The Connecting Europe Facility (CEF) is the EU's flagship funding programme for supporting targeted infrastructure investments in high performing, sustainable and efficiently interconnected trans-European networks in the fields of transport, energy and digital services. Through the CEF, these three sectors have been combined in one programme at the EU level for the first time. See: Investing in European Networks – The Connecting Europe Facility: Five Years Supporting European Infrastructure, European Commission, Innovation and Networks Executive Agency (INEA), July 2019, p. 6; Connecting Europe Facility, European Commission, Innovation and Networks Executive Agency (INEA), https://ec.europa.eu/inea/en/connecting-europe-facility (18 September 2020).

[111] The objective of the Common Agricultural Policy after 2020 is to ensure a resilient, sustainable and competitive ag-

sion Fund (37%),[112] Recovery and Resilience Facility (37%),[113] Horizon Europe (35%),[114] InvestEU Fund (30%),[115] the ERDF (30%),[116] the EMFF (30%),[117] REACT-EU (25%),[118] NDICI (25%),[119] OCT

ricultural sector producing high-quality, safe and affordable food, with particular focus on the environment and climate action. The climate coefficient for the Common Agricultural Policy 2021-2022 is 26%. See: EU Budget: The CAP after 2020 – Modernising and Simplifying the Common Agricultural Policy, European Commission, Publications Office of the European Union, Luxembourg, June 2018.

[112] The resources of the Cohesion Fund are available to the Member States with the Gros National Income (GNI) per capita below 90% of the EU average. Consequently, its purpose is to reduce economic and social differences in the EU in the interests of promoting sustainable development. See: Art. 1. Regulation (EU) No. 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) No. 1084/2006, OJ L 347, 20 December 2013, p. 283.

[113] The Recovery and Resilience Facility (RRF) is a large scale financial support introduced to help the Member States overcome the socio-economic consequences of the COVID-19 crisis and make their economies stronger and more resilient. Both public investments and reforms are financed, particularly green and digital. See more: Recovery and Resilience Facility: Helping EU Countries to Come Out of the Coronavirus Crisis Stronger, European Commission, Publications Office of the European Union, Luxembourg, 2020.

[114] Horizon Europe is the new 2021-2027 EU framework programme for research and innovation consisting of three pillars: 1) Excellent Science, 2) Global Challenges and European Industrial Competitiveness, and 3) Innovative Europe. The second pillar will support, *inter alia*, research and innovation in the area of climate change and clean energy. See: Implementation Strategy for Horizon Europe – Version 1.0, European Commission, Research and Innovation, 29 April 2020, p. 3; Horizon Europe, European Commission, Research and Innovation, 23 December 2019.

[115] On InvestEU see: Chapter 2 subchapter 2 of this paper.

[116] The European Regional Development Fund supports projects aimed at strengthening economic, social and territorial cohesion as well as eliminating regional disparities across the EU. In the current financial period 2014-2020, the support of the ERDF has also been concentrated on promoting a shift to a low-carbon economy, whereas in the next financial period 2021-2027, it should continue contributing to a greener, low carbon and circular economy within the investment priority "a Greener, carbon free Europe". See: Regulation (EU) No. 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No. 1080/2006, OJ L 347, 20 December 2013, p. 289; New Cohesion Policy, European Commission, https://ec.europa.eu/regional_policy/en/2021_2027/ (17 October 2020).

[117] The European Maritime and Fisheries Fund adds to the Green Deal objectives by supporting sustainable fisheries and the conservation of marine biological resources, the growth of a sustainable blue economy and prosperous coastal communities. It also contributes to the creation of a sustainable food system able to protect every link in the fisheries and aquaculture chain: the oceans, consumers and fishers. See: Facts and Figures on the Common Fisheries Policy, Basic Statistical Data – 2020 Edition, Publications Office of the European Union, Luxembourg, 2020, p. 1; Information Fiche No. 12: Climate Change – European Maritime and Fisheries Fund (EMFF) Contribution to Adaptation and Mitigation 2021 – 2027, European Commission, 21 May 2019, p. 6.

[118] The Recovery Assistance for Cohesion and the Territories of Europe is an initiative which provides funding for the crisis response and repair measures introduced earlier by the Coronavirus Response Investment Initiative and the Coronavirus Response Investment Initiative Plus (*e.g.* investments in job maintenance, job creation, health care systems, SME's *etc.*). It is also aimed at supporting investments in the European Green Deal objectives and digital transition. See: EU Budget for Recovery: Questions and Answers on REACT-EU, Cohesion Policy Post-2020 and the European Social Fund+, European Commission, QANDA/20/948, Brussels, 28 May 2020.

[119] The Neighbourhood, Development and International Cooperation Instrument is defined as "*the EU's main financial tool to contribute to eradicating poverty and promoting sustainable development, prosperity, peace and stability*". Per definition, the portion of its budget is directed into stepping up efforts on environmental and climate change. See: EU Budget for the Future - The Neighbourhood, Development and International Cooperation Instrument, European Commission, Brussels, June 2020.

(20%),[120] and Pre-Accession Assistance (16%).[121] Apart from these specific climate coefficients set for the particular sectoral legislation, the contribution to the mainstreaming of climate objectives set at 30% has been horizontally foreseen for all the EU spending programmes.[122] The intention is to include the horizontal provision of 30% into the recitals of legislative acts, and negotiations are already running for a number of them, e.g. Home Affairs funds (AMIF, ISF and BMVI), Health Programme, European Defence Fund, Digital Europe Programme, European Solidarity Corps, Justice Programme, Rights and Values Programme, Single Market Programme, Erasmus+ and European Social Fund Plus.

As outlined in this chapter, the formal greening of EU legislation has come a long way. Climate targets have been closely intertwined with all the key EU programmes, funds, initiatives and other financing schemes, setting a solid basis for the EU's embarkment on a long and challenging journey of shaping an economy with net-zero greenhouse gas emissions by 2050.

5. Conclusion

The European Green Deal is a historical step forward in the fight against climate change. For the first time, the EU has laid down a comprehensive green framework with a solid financial base, in which every segment is designed to act in synergy with the other in order to transform the EU into a climate-friendly, resource-efficient, competitive, and socially- and environmentally-sensitive economy. Climate change knows no borders, so although the EU efforts to tackle pollution might appear European only, their end results will be certainly global. Given the fact that the EU is currently one of the three biggest polluters in the world, its actions aiming to deliver net-zero greenhouse gas emissions by 2050 will have an immense positive impact on global environmental and climate change processes. Hopefully, the other continents will follow the EU's lead.

The green institutional and legal framework inaugurated by the European Green Deal should be perceived as a living instrument. It is still a rough block of stone that needs to be carved into a sculpture. Namely, most legal acts that will provide basic rules for the green and just transition are still in the process of negotiation and adoption. It poses a challenge to align them with specific demands of 27 Member States with usually very different socio-economic environments and just transition needs. In addition, the three core institutions participating in the legislative process – the Council, the European Commission and the European Parliament sometimes have considerably

[120] The Overseas Countries and Territories is an association contributing to the economic and social development of overseas countries and territories constitutionally linked to Denmark, France and the Netherlands (previously to the UK too) and their close economic relations with the EU. The latter also includes the financial assistance under the 11th European Development Fund (EDF) in the areas of environmental issues, climate change and sustainable use of natural resources. See: Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision'), OJ L 344, 19 December 2013, pp. 1-5, 7-10, 21-22.

[121] The Instrument for Pre-Accession Assistance (IPA) provides financial and technical assistance for reforms in enlargement countries (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia, and Turkey), including the funding for the environment and climate change. See: 2020 Communication on EU enlargement policy, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2020) 660 final, Brussels, 6 October 2020.

[122] See: Fiche no. 84, *op. cit.*, p. 1.

different standpoints on how certain provisions should read. Clashes are particularly usual when financial envelopes are discussed and decided. Nevertheless, the negotiations for the Cohesion policy legislative package, which constitutes the legal core of the just transition, are well under way, so the European Green Deal is about to deliver in that regard.

The just transition alone is already a burden for a number of Member States still dependent on classic fossil fuels, as they find it difficult to drastically reshape their economies in a short time to comply with the just transition requirements. Since the beginning of the year, this burden has been additionally potentiated by the large-scale crisis caused by the COVID-19 pandemic. In the light of current circumstances, it is challenging to predict to what extent the crisis will impact the envisaged dynamics of the just transition in the EU. From the legal point of view, there should not be tectonic disturbances, because the urgent Cohesion policy legislation adopted to support the recovery and resilience of the EU economy from the COVID-19 crisis includes the duty of reaching green objectives in the process of an economic recovery.

In the latest phase of the codification of the just transition in the EU, depicted in this paper, the Just Transition Fund should be seen as the key driver of the green reform. Although its financial capacity is rather limited, it is undeniable that it lays a solid foundation for financing purely green projects that lead us closer to achieving the goal of climate neutrality by 2050. Big things start small.