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M. van der Sluis

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The European Green Deal Paradox – remarkably successful, but falling short?

As part of the political wheeling and dealing to secure her appointment as Commission President in July 2019, Ursula von Leyen ‘turned green’ and promised to launch a European Green Deal (EGD).¹ In December 2019, she followed up on that promise. The EGD was set to become a central pillar of the Von der Leyen Commission. At that point, one could be forgiven to be skeptical: the Commission has a habit of announcing grand plans that slowly wither away. Four years later, however, the EGD has an impressive track record. The legislative machine of the EU has churned out a constant stream of new rules to combat climate change. This includes a new EU climate law, a new Emission Trading System, a carbon border adjustment mechanism, and several sets of rules on renewable energy production and efficiency.

And yet, it is doubtful that the EU will meet its targets, as the EGD depends too much on the MS for its implementation and political opposition to speeding up mitigation measures seems to be growing. This editorial examines the paradox of European Green Deal: the EGD can simultaneously be seen as a ‘motor of integration’ that has made climate mitigation a key pillar of the European integration and yet unable to make the EU reach its climate goals.

The EGD in European integration

To understand the significance of the EGD and to evaluate its success, we can first look at the EGD from the perspective of European integration, by examining its origins beyond the initiative of Von der Leyen. The EGD can then be seen as a response to the growing awareness in recent years of the perils of climate change. This awareness strengthened demands for legal and political action and the EU was well-equipped and well-positioned to address these demands. Climate change mitigation obviously goes beyond what any country can achieve on its own, as it requires a coordinated effort. Moreover, mitigating climate change is primarily a matter of re-organizing economic relations, thus bringing the matter even more clearly within the remit of the EU. The EU holds many competences that are essential for the green transition. The EU was in search of a opportunity to present itself in a positive light after a decade of crises. From the euro-crisis to the migrant/refugee crisis and Brexit, the EU faced several (existential) threats. The embrace of climate change as a central topic demonstrated the strengths of the European project, especially in the eyes of a younger generation.² When

¹ U. Von der Leyen, Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission, 16 July 2019.

² G. Davies, ‘Can climate policy give Europe its mojo back?’, 17 *CYELP* (2021), p. VII-XVIII.

the EGD was launched, the EU also already had experience with climate policy, for example through the Emission Trading System (ETS). Launched in 2005, the ETS had needed several tweaks over the years to become an effective tool to reduce emissions. The EGD therefore did not signal a political or economic change of direction, but rather an intensification and broadening of the EU's approach. From this perspective, the fact that Von der Leyen 'turned green' was neither surprising, nor transformative: the political momentum was there, and the necessary tools were readily available. And indeed, many aspects of the EGD build upon rather conventional aspects of European integration, with a focus on market integration, economic efficiency, stimulating innovation and product regulation. In this sense, the EGD is business as usual for the EU.³ Already since the Single European Act, the EU has an environmental integration obligation (which also covers change mitigation), which, in its current form, requires that environmental protections are integrated in all EU policies. The EGD can in this regard be seen as finally living up to that promise.

However, this is not the whole story of the EGD. When Von der Leyen launched the EGD in December 2019, the first known cases of COVID-19 had appeared in China. The ensuing pandemic would have major social and economic consequences. Italy was the first country to be hit in Europe, leading to long lockdowns – and worries about the economic consequences of the pandemic. During the Euro-crisis, the state of the Italian economy had been a key concern. But this crisis was different, not in the least because this time the European response was not burdened by a 'blame-game'. Within months, the COVID Recovery Fund was negotiated that would provide subsidies and loans to the MS, based on borrowing by EU. Given the severity of the crisis that had hit the EU, it is noteworthy that the pandemic did not distract from the EGD. The economic uncertainty of the situation could have propelled arguments for slowing down the green transition, as apparently had happened during the Euro-crisis.⁴ Rather, the green transition appears to have been an enabler for the COVID Recovery Fund, as it solved the issue of what these new EU funds would be used for. Although the Fund stabilized the economic situation in the EU, by providing trust about the EU's response, the immediate purpose of the funds was unclear. How could the EU prevent that the MS would abuse the newly created funds? The green transition provided a clear objective. As a result, the requirement was introduced that the MS use 37% of their funding for the green transition.⁵ The COVID Recovery fund is a big step in European integration because of its size and the source of the funding, but for its functioning, it builds on existing instruments and goals, with a primary role for the green transition.⁶

³ Editorial Comments, 'The European Climate Law: Making The Social Market Economy Fit For 55?', 58 *CMLRev* (2021), p. 1321 – 1340.

⁴ J. Skovgaard, 'EU climate policy after the crisis', 23 *Environmental Politics* (2014) p. 1-17.

⁵ Art. 18(4)(e) Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, O.J. L 57.

⁶ Another part of the COVID Recovery Fund, the linkage with the European Semester, is extensively researched. The connection with the green (and digital) transition has received less scholarly and political attention. See e.g. Vanhercke & Verdun.

The Russian invasion of Ukraine and the subsequent European response resulted in another economic shock. Energy prices soared, contributing to high inflation and increases in the costs of living. Again, one might have expected that this would have led to a lowering of climate ambitions. The EU's response, RePowerEU, combined the goals of energy savings and increasing the production of renewable energy. This merging of green objectives with other economic objectives is also clearly visible in the proposed Critical Raw Materials Act, which aims to reduce supply chain risks, especially from China.⁷ First and foremost in the proposed regulation is protecting the green transition, more specifically the growth of renewable energy. Rather than that the crises pushed the EGD aside, the EGD appears to inform and give shape to European action in times of crises. The EGD reshapes existing EU policies and drives new policies.

A politics for the long term

A second question regarding the EGD is whether it has set the EU on a viable path towards climate neutrality. Is the EU living up to “this generation’s defining task”, as the Commission put it?⁸ The scorecard is mixed. The European Court of Auditors (ECA) recently noted that for 2020, the EU’s goals and ambitions were met, with quite some room to spare.⁹ For the target for 2030 the ECA was unconvinced: “we found little indication so far that the ambitious 2030 EU targets will be translated into sufficient action.”¹⁰ This concerned the National Energy and Climate Plans of the MS for the period of 2021-2030. This strikes at the heart of the EGD: despite the ambition and action at the EU level, a lot of the responsibility for climate change mitigation in the EU is placed on the MS. The main task for the EU in this regard is the ETS, which covers around 40% of emissions in the EU.¹¹ The MS remain responsible for the rest, with their individual targets set on the basis of the Effort Sharing Regulation. The ECA noted that the MS especially fail to identify the sources for the funding of the green transition.¹²

Hence, it is in the MS that the opposition to climate policies is most relevant, even if it is not directly expressed towards the EU. Although the actual rolling back of policies, as for example recently announced in the UK, appears to be rare in the EU, the adoption of new policies does seem to become harder in several countries.¹³ One response to the wavering in the MS might be to look to the tools for the enforcement of EU law. The EU targets for the MS are legally

⁷ Commission proposal for a regulation of the European Parliament and the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020, COM(2023) 160 final.

⁸ Communication from the Commission, The European Green Deal, 11 December 2019, COM(2019) 640 final.

⁹ European Court of Auditors, “Special Report: EU climate and energy targets - 2020 targets achieved, but little indication that actions to reach the 2030 targets will be sufficient”, 2023/18.

¹⁰ European Court of Auditors 2023, p. 43-46.

¹¹ European Commission, ‘What is the EU ETS?’, <https://climate.ec.europa.eu/>.

¹² European Court of Auditors 2023, p. 41-42.

¹³ M. Bryant, ‘Swedish government faces backlash after slashing climate budget’, *The Guardian*, 21 September 2023.

binding.¹⁴ However, focusing on the legal aspects of enforcement might be unwise. The road to climate neutrality is long, and it is doubtful whether sticks, rather than carrots, will entice MS to adopt the necessary policies. Avoiding antagonism amongst the MS is not only relevant with regards to the goals the MS have to reach, but also with regards to new legislation that will have to be adopted over the coming years.

This political pushback should not come as a surprise. The EGD will bring about significant economic and social changes. That is indeed its purpose. However, these changes obviously create winners and losers on a personal, local, regional and national level. The EGD does contain some social justice components through the Just Transition, but these appear to be too small to truly compensate the economic losers of the green transition in Europe. The manner in which the funds are distributed, with again a strong role for the Member States, moreover hides the European origins of these funds. Too little, too hidden. But even if the Just Transition had been setup on a larger scale, it is doubtful it could prevent the growing political opposition to speeding up the green transition, as opposition to the green transition is not only motivated by economic concerns. A key question for the green transition will thus be how to engage with the opposition to speeding up the transition.

This is an urgent question, as there appears to be little time to take stock and recalibrate. For example, a decision needs to be taken soon on the target for the EU for 2040. The European Climate Law sets targets for 2030 and 2050, with a process in place to adopt an intermediate target for 2040, which a role for the European Scientific Advisory Board on Climate Change. This Advisory Board advised recently that the target should be set at a reduction of emissions of 90-95% compared to 1990.¹⁵ With an ambitious new target of course also comes the need for new policies to reach that target.

Conclusion

The EGD has mainly been discussed in terms of policy, not in terms of its meaning for the EU as such.¹⁶ After a decade of crises, it is understandable that there is little desire to start a constitutional debate about climate policy. And why would such a debate even be necessary? The EU has been able to adopt ambitious climate policies without running into constitutional problems. A constitutional debate might only slow things down, one might fear. This seems naïve, given the daunting task ahead. Achieving climate neutrality requires a significant overhaul of the European economy in a relatively short time period. Especially in the European Union, where economic issues are at the core of its constitutional law, that cannot be just a matter of policy.

¹⁴ M. Peeters & N. Athanasiadou, 'The continued effort sharing approach in EU climate law: Binding targets, challenging enforcement?', 29 *RECIEL* (2020), 201-211.

¹⁵ European Scientific Advisory Board on Climate Change, *Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030–2050*,

¹⁶ A notable exception is E. Chiti, 'Managing the ecological transition of the EU: The European Green Deal as a regulatory process', 59 *CMLRev* (2022), p. 19-48.