

The EU legislative framework for a sustainable food system

How can it effectively deliver for the environment and people?

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Executive summary

The EU's food system is a major contributor to climate change, biodiversity loss, environmental degradation and pollution. It also has severe negative impacts on our health and is a cause of increasing inequalities. Confronted with the evidence of these failures, the European Commission announced in 2020 that it will present a proposal for a legislative framework that will guide the EU's transition towards a sustainable food system – an initiative expected for the third quarter of 2023. The vision and tools that the new law will set out will be determining factors for the EU's capacity to build its resilience against the worsening climate and biodiversity crises.

This briefing highlights the importance of properly framing the EU's vision of the future sustainable food system framework law: it must ensure a transformation towards a sustainable food system that guarantees access to healthy and nutritious food for present and future generations. **The European Commission cannot compromise on the ambition to move away from the intensive models that characterise today's food system. The European Commission must go ahead with its proposal and publish it in September 2023; there is no better time.**

This briefing also provides solutions in the form of actionable tools that can best ensure the swift implementation of a sustainable EU food system on the ground: it underlines the **essential framework features** that the law should embed (section I); requirements to **engage key actors** along the food value chain in the sustainability transition (section II); conditions necessary for the successful **mandatory public procurement** of sustainable food (section III); and details mechanisms to guarantee **the public is empowered** to enhance the new law's enforcement (section IV).

Framing the EU's vision of a sustainable food system

The EU's current food system is a major contributor to climate change¹ and biodiversity loss,² as well as to the degradation and pollution of soil, water and air.³ It also has significant negative impacts on human health and people's capacity to access healthy food.⁴ The evidence of the food system's failures give rise to an essential question: **what will the EU do to ensure a transformation towards a sustainable food system that guarantees access to healthy and nutritious food for present and future generations?**

In 2020, the European Commission published its Farm to Fork Strategy; a blueprint for the Union's transition towards "a fair, healthy and environmentally-friendly food system".⁵ The Strategy, forming a part of the European Green Deal, announced that a legislative proposal in the shape of a horizontal framework for a sustainable food system (FSFS) will be tabled before the end of 2023. This project builds on the recognition of the failures of the current EU food system and its contributions to climate change, biodiversity loss and the pollution and depletion of natural resources, also characterised by the prevalence of unhealthy diets and the rise of non-communicable diseases.⁶ It acknowledges that the "divergences, inconsistencies and (...) gaps" in the search for sustainability across different levels of governance is "jeopardising the achievement of the European Green Deal and Sustainable Development Goals."⁷

The future FSFS proposal was therefore presented as the EU's flagship initiative to address these adverse circumstances. However, it appears that the European Commission's ambition has been impacted by the political context surrounding the European Green Deal in recent months. With the 2024 European elections approaching, certain politicians and Heads of State started to demonstrate a mounting hostility against the European Commission's green agenda,⁸ targeted in particular at the Farm to Fork Strategy and the closely related Biodiversity Strategy. This has notably resulted in the reform of the Sustainable Use of Pesticides Regulation being delayed, and in forceful attempts from within the European Parliament to dismantle the Nature Restoration Regulation proposal and water-down the proposed reform of the Industrial Emissions Directive. The dominant claim justifying this pushback resides in the allegation that environmental policies would jeopardise the EU's food production and therefore pose a threat to 'food security' – a scientifically flawed⁹ discourse that was revived in the wake of the COVID-19 pandemic and Russia's war against Ukraine, presumably to protect private industry interests.

¹ European Parliament, *At a glance: Climate impact of the EU agrifood system*.

² As the IPBES puts it: "Land-use change is the major direct driver of the loss of both biodiversity and ecosystem services in Europe and Central Asia. Production-based subsidies have led to intensification in agriculture and forestry, and, together with urban development, have led to biodiversity decline." (IPES, *The regional assessment report on Biodiversity and Ecosystem services for Europe and Central Asia, Summary for Policymakers*, 2018, p. 11.) See also EEA, *Biodiversity and Nature*, 2020.

³ EEA, *Sources and emissions of air pollutants in Europe, in Air quality in Europe 2022 Web Report*; EEA, *State of Nature in the EU, Report n. 10/2020*.

⁴ The UN Secretary-General recently reported that over 780 million people are going hungry while a third of the global food production continues being lost or wasted (UN Secretary-General's remarks to the UN Food Systems Summit +2 Stocktaking Moment, 24 July 2023. In the EU, the population is most affected by diet-related diseases (WHO Regional Office for Europe, *European Regional Obesity Report 2022*).

⁵ COM(2020) 381 final (hereafter "Farm to Fork Strategy"); It was published on the same day as the EU Biodiversity Strategy for 2030 'Bringing nature back into our lives', COM(2020) 380 final.

⁶ Inception impact assessment, *Sustainable food system framework initiative, Ares(2021)5902055*, p. 2.

⁷ *Ibid.*, p. 2.

⁸ Le Monde, *European Green Deal: More leaders call for 'a regulatory pause'*, 4 July 2023 (available [here](#)).

⁹ Pörtner, L. M., Lambrecht, N., Springmann, M. *et al.*, *Letter: We need a food system transformation – in the face of the Ukraine war, now more than ever*, 28 March 2022; See other references in BirdLife international, ClientEarth, EEB & WWF, *Nature restoration and food security: Why bringing back nature cannot wait*, Factsheet, June 2022; The European Commission has already recognised that the EU food supply is not currently at stake in its Communication on Safeguarding food security and reinforcing the resilience of food systems, *COM(2022) 133 final*.

The European Commission should not be swayed by self-serving political rhetoric and should remain clearly focused on the public interest. Recent climate-induced events in Europe and worldwide confirm that we find ourselves at a turning point and that, by action or omission, we are now choosing the path that will determine the EU's future resilience to the worsening climate and biodiversity crises. The European Commission can put the EU back on track if it proposes a legislative proposal for *“a guiding framework instrument that coordinates and drives changes across the food systems as well as an operational tool within and across its different sectors to overall improve the sustainability of the EU food system”*.¹⁰

It is paramount that the European Commission publishes by the end of September a proposal for a legislative framework fit for governing the transition to a sustainable EU food system that operates within planetary boundaries. But the law cannot be a simple declaration of good intent: it must lay down a vision with a clear time horizon for strengthening the resilience of the EU food system, underpinned by a clearly articulated governance system; make the improvement of human and planet health central to this transition; and provide actionable tools for the swift implementation of this vision on the ground.

I. Getting the essentials right

In 2022, the European Commission consulted the public on its initiative to adopt the new legislative framework proposal, explaining that “[s]uch an EU level intervention aims to establish new foundations for future food policies by introducing sustainability objectives and principles based on an integrated food system approach”.¹¹ The adoption of a framework law setting out overarching objectives and principles to oversee other relevant EU laws and policies, *i.e.* acting as an “umbrella law”, is in line with the integration principle set out in Article 11 of the Treaty on the Functioning of the European Union (TFEU) and Article 37 of the EU Charter of Fundamental Rights, as well as the consistency principle set out in Article 7 of the TFEU. The FSFS should also constitute an application of Article 3(3) of the Treaty on European Union (TEU) pursuing the ambition of a high level of protection and *improvement* of the quality of the environment.

In this section, we set out the overarching objectives and principles that the FSFS should establish, as well as new common definitions to guide the framework’s interpretation. In addition, we describe the mechanisms necessary to ensure EU laws align with the FSFS’s objectives.

In developing our recommendations, we have considered a broad scope for the application of the FSFS: the new legislative framework should apply to all aspects of the EU food system’s operations, including but not exclusively, the production, processing, packaging, transport, distribution, trade, retail, marketing, consumption and disposal of food, and to all food placed on and exported from the EU market.

1. Definitions

Legal definitions play an important role in the application and interpretation of law, as they provide the boundaries in which the legal text operates and shed light on the legislator’s intentions at the moment of the law’s implementation and enforcement. This section makes recommendations for defining “food system” and “sustainable food system” in the FSFS.

¹⁰ Inception impact assessment, *op. cit.* p. 3.

¹¹ See [ClientEarth’s public consultation response](#) to the European Commission’s “Sustainable food system – setting up an EU framework”.

Definitions of what constitutes a “**food system**” have been developed by scholars and governance bodies alike. The Scientific Group of the UN Food Systems Summit (2021)¹² provides a useful description that encompasses a wide range of actors and activities, which is in line with the European Commission’s commitment that the framework law will “*address the responsibilities of all actors in the food system*”.¹³ However, the definition of the UN Scientific Group omits a reference to trade, which must be included in the legal text of the FSFS given the significant role that trade plays in the governance, functioning and prosperity of the EU, as well as its significant role as an indirect driver of many unsustainable aspects of the EU food system, including in the international dimension that characterises climate change and many environmental issues. We therefore recommend to include the following definition in the FSFS:

“Food system” means the entire range of actors and their activities involved in the production, aggregation, processing, distribution, **trade**, consumption and disposal (loss or waste) of food that originate from agriculture (including livestock), forestry, fisheries and aquaculture, and food industries, and the broader economic, societal, and natural environments in which they are embedded.

The terms “sustainability” and “sustainable” have been attributed different meanings in the past decades, as they inherently convey different perceptions by different people across geographies and time. Although crystallising the meaning that the EU gives to “sustainable food system” in legal definitions may appear challenging, the Evidence Review Report by the Science Advice for Policy by European Academies (SAPEA) consortium already provides a definition of what constitutes a “**sustainable food system for the EU**”.¹⁴

We recommend using the phrasing developed by SAPEA as the main source of inspiration for the establishment of a legal definition in the FSFS, making some adjustments that we highlight in bold:

“Sustainable EU food system” means a food system **that operates within planetary boundaries**, provides and promotes safe, nutritious and healthy food of low environmental impact, **including climate impact**, for all people, in a manner that protects and restores the natural environment and its ecosystem services, is robust and resilient, economically dynamic, just and fair, and socially acceptable and inclusive **for present and future generations**. A sustainable EU food system does not compromise the availability of and access to sufficient, safe, nutritious and healthy food for people living outside the EU, nor impair **their rights** or their natural environment.

2. Overarching objectives and targets

The inclusion of overarching objectives and legally binding, time-bound targets is essential for the FSFS to successfully steer the transition to a sustainable EU food system, supporting the delivery of the EU’s Green Deal objectives on climate, biodiversity and environment and its commitments towards the United Nations Sustainable Development Goals (SDGs). As acknowledged in the European Commission’s draft Impact Assessment, “[t]hese commitments cannot be achieved without a transformation of the food system, which has a substantial climate and environmental footprint, a key role in meeting fundamental human needs, and major socio-economic functions. Therefore, these commitments cannot be achieved without changing the way in which we produce, process, distribute, consume and dispose of food. [...]”

¹² Scientific Group of the UN Food Systems Summit, *Food systems – Definition, Concept and Application for the UN Food Systems Summit*, 5 March 2021, p. 4.

¹³ Farm to Fork Strategy, p. 5.

¹⁴ SAPEA, Science Advice for Policy by European Academies, *A sustainable food system for the European Union*, 2020, p. 68.

*This is also in line with the 8th Environment Action Programme which calls for reduction of environment and climate pressures related to production and consumption, also in the area of food systems, by 2030.*¹⁵

The European Commission has also recognised that there is a clear “*lack of an overarching cross-sectoral sustainability objective and of a common understanding for Union and national measures in relation to sustainability of food and food systems on the single market.*”¹⁶ By applying an integrated food system approach and setting overarching objectives and targets, the FSFS would mainstream sustainability into all food-related policies and ensure their alignment around a common vision for the EU food system. Advancing the transition to a sustainable food system should be understood as a means of securing long-term access to healthy food, which necessarily implies that the food system operates safely within planetary boundaries.¹⁷

It is therefore essential that the FSFS embeds the two following objectives:

1) *Guaranteed access to healthy and sustainable food*

The EU and its Member States have obligations to ensure that our food system does not interfere with the enjoyment of all human rights guaranteed by the EU Charter of Fundamental Rights and the European Convention on Human Rights. In light of the adverse impacts that industrialised food systems have on climate, biodiversity, natural resources and human health and well-being,¹⁸ EU authorities have a particular responsibility to respect, protect and fulfil the right to health as well as the right to a healthy environment in all its procedural and substantive elements, including in relation to healthy and sustainable food. As explained in a [ClientEarth publication of March 2023](#), the FSFS should primarily aim at guaranteeing the full realisation of the right to healthy and sustainable food for present and future generations. **Making access to healthy and sustainable food for all one of the core objectives of the FSFS would set a clear pathway for developing the social and environmental sustainability of the EU’s food system, with a view to guaranteeing long-term food accessibility.**

The recitals (*i.e.* the preamble) to the FSFS should highlight the relevant EU and Member State obligations stemming from the Aarhus Convention, the constitutional traditions of Member States, the case law of the European Court of Human Rights,¹⁹ the decisions of the European Committee of Social Rights,²⁰ as well as the case law of the Court of Justice of the European Union (CJEU).²¹ The recitals should also bring attention to key developments at international level, including the UN Special Rapporteur on Human Rights and the Environment’s recognition of healthy and sustainable food as one of the six substantive elements of the right to a safe, clean, healthy and sustainable environment.²²

¹⁵ Draft Impact Assessment, as published by Politico in February 2023, p. 4 (hereafter “**Draft Impact Assessment**”).

¹⁶ Inception impact assessment, *op cit.* p. 3.

¹⁷ Stockholm Resilience Centre, [Planetary boundaries](#).

¹⁸ IPCC, *Climate change and land: An IPCC Special Report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*, 2019, p. 142-143 (available [here](#)).

¹⁹ See European Court of Human Rights, *The Convention as a Living Instrument at 70* (Background Document, Judicial Seminar 2020), Chapter B, p. 13 (available [here](#)).

²⁰ Council of Europe, *Manual on Human Rights and the Environment* (3rd edition), February 2022 (available [here](#)); *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the merits) Collective Complaint No. 30/2005 [6 December 2006]: “*The Committee has therefore taken account of the growing link that states party to the Charter and other international bodies (...) now make between the protection of health and a healthy environment, and has interpreted Article 11 of the [European Social] Charter (right to protection of health) as including the right to a healthy environment.*”

²¹ See e.g. Judgement of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, where the CJEU emphasised that the right to an effective remedy is particularly important where environmental pollution affects and puts human health at risk.

²² Report of Special Rapporteur on human rights and the environment, *Healthy and sustainable food: reducing the environmental impacts of food systems on human rights*, [A/76/179](#), 19 July 2021.

2) *The EU food system operates within planetary boundaries*

Our current global and European food systems are not resilient, operating outside of planetary boundaries and therefore failing to ensure that the right to healthy and sustainable food can be enjoyed now and in the future. In order to make access to healthy and sustainable food the norm, the FSFS must establish an **overarching objective to bring the EU food system within all planetary boundaries**, including driving a steep reduction in greenhouse gas (**GHG**) emissions, other forms of pollution and adverse impacts on biodiversity from food production, consumption and all operations in between. Importantly, the legislative proposal must set **time-bound and legally binding targets** against which progress can be monitored. This is essential to guarantee the timely achievement of the law's objectives.

3. Environmental integration and policy coherence

To act as an umbrella law, the FSFS must establish monitoring and review mechanisms to facilitate its timely implementation. For this purpose, inspiration can be drawn from Article 4(2) and Article 6(2-3) of the EU Climate Law (Regulation (EU) 2021/1119). Article 4(2) of the EU Climate Law requires the European Commission to align relevant Union legislation with the 2030 climate target and the 2050 climate-neutrality objective, which led to the preparation and adoption of the Fit for 55 package. Article 6(2-3) then requires the European Commission to periodically review the consistency of Union measures with the climate-neutrality objective and the progress made on adaptation, and take action on the basis of this review.

Similarly, we propose that the FSFS gives the European Commission the responsibility to **review the consistency of existing EU laws and policies, including the Common Agricultural Policy and the Common Fisheries Policy, with the FSFS's overarching objectives and targets**. A first review should take place within one year after the adoption of the FSFS and be repeated every five years thereafter. On the basis of these assessments, the European Commission must be empowered to take the necessary initiatives to align Union measures with the FSFS's overarching objectives and targets, including the adoption of legislative proposals to revise existing laws and adopt new ones. For this to be possible, it is essential that Article 43(2) and Article 192(1) of the TFEU appear among the legal bases underpinning the FSFS.

In addition, the FSFS should set a general obligation to **align new draft measures or legislative proposals with the overarching objectives and targets of the FSFS**. Here, Article 6(4) of the EU Climate Law sets an interesting example. Concretely, the FSFS should give the European Commission the responsibility to assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the FSFS's overarching objectives and targets before adoption, and make the result of that assessment publicly available at the latest by the time of adoption. Where an impact assessment accompanies these measures or proposals, the consistency assessment should be included²³ and published at the latest when it is sent to the Regulatory Scrutiny Board.²⁴ The European Commission should then align its draft measures and legislative proposals with the FSFS's overarching objectives and targets.

²³ When no impact assessment is drawn for a proposed measure, the FSFS consistency assessment must be conducted separately and made public prior to the publication of the proposed measure.

²⁴ The Court of Justice has confirmed that impact assessments are legislative documents and should therefore be made "directly accessible" in accordance with Article 12 of Regulation 1049/2001 at a point that enables citizens to effectively make their views known, i.e. *prior* to the publication of the legislative proposal they relate to (Case C-57/16 P *ClientEarth v Commission*, para. 84-85).

Empowering the European Commission to align existing and future laws and policies with the FSFS, and where necessary to fill legal gaps, would improve the coherence of EU law and increase legal certainty, thereby optimising the use of EU leverages to accelerate the transition towards a sustainable food system.

4. Principles

The European Commission has indicated its plan to introduce new normative principles in the FSFS. This section explains what, in our view, is the potential of different principles to guide the transition towards a sustainable food system.

- **The precautionary principle.** The precautionary principle must be recognised as one of the highest standards governing EU food system law. This principle means that “*authorities are prepared to tackle risks for which there is no definitive proof that there is a link of causation between the suspected activity and the harm or whether the suspected damage will materialize.*”²⁵ Already recognised as a general principle of EU law,²⁶ it aims at “*ensur[ing] a high level of protection of health, consumer safety and the environment*”,²⁷ and is supposed to apply across all EU policies.²⁸ The precautionary principle is not a novelty in EU law but the way it is applied for environmental protection varies, resulting in inconsistent levels of protection. It is therefore important to reinforce it. The General Food Law offers a positive example of its application that resulted in a higher degree of protection of human health and food safety.²⁹ As such, the precautionary principle is already used concretely in EU food law and policy. However, the General Food Law aims to achieve a high level of food safety in the Union and therefore the mechanisms it introduces on the basis of the precautionary principle do not relate to the sustainability of food or the food system. We therefore call on the EU to **elevate the precautionary principle – encompassing both environmental and health protection – as a primary guiding principle of EU food system law**, by enshrining it as an overarching principle in the FSFS. This is fundamental to manage risks linked particularly to the development of technical innovations in the food sector, and eventually guarantee the protection of environmental and human health.
- **Intergenerational equity.** The principle of intergenerational equity calls for fairness between generations, recognising the needs and responsibilities of both current and future generations.³⁰ Through its human-centred and climate justice approach, it echoes the concept of sustainable development: “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*”³¹ The European Green Deal implicitly refers to this principle, indicating the EU’s commitment to “*support[ing] the transition of the EU to a fair and prosperous society that responds to the challenges posed by climate change and environmental*

²⁵ de Sadeleer, N. M. (2010), *The precautionary Principle in EU law*, Aansprakelijkheid Verzekering En Schade No. 5, p. 173.

²⁶ This recognition derives from Treaty articles, in particular Article 191(2) TFEU, and case law from the CJEU.

²⁷ Case T-74 *Artgodan* §183.

²⁸ *Ibid.*; See also Case T-13/99 *Pfizer* §114; P. Graig and G. de Búrca, *EU Law: Text, cases, and materials*, OUP, 7th ed., UK version, p. 629-630.

²⁹ Regulation (EC) 178/2022 of 28 January 2022 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. See Article 7(1): “*In specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the Community may be adopted, pending further scientific information for a more comprehensive risk assessment*”.

³⁰ Mary Robinson Foundation – Climate Justice, *Climate Justice: An Intergenerational Approach*, November 2013.

³¹ World Commission on Environment and Development, *Our Common Future (the “Brundtland Report”)*, 1987.

degradation, improving the quality of life of current and future generations.”³² In addition, this principle reflects the constitutional traditions of several Member States.³³ Guided by an intergenerational equity principle, the FSFS would support the Union in developing the social and environmental sustainability of its food system and ensuring that healthy and sustainable food is accessible now and in the future.

- **The One Health principle.** The One Health principle provides *“an integrated, unifying approach that aims to sustainably balance and optimise the health of people, animals and ecosystems. It recognises that the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and interdependent.”³⁴ Adopting a One Health principle in the FSFS could help to better take into account the intricacy of our food system and its reliance on efficient health systems. Fundamentally, it has the potential to contribute to advancing a healthy and sustainable EU food system that is more resilient to foodborne zoonotic agents, antimicrobial resistance and communicable diseases.³⁵*
- **Food security.** While we are not against the principle of food security, this concept has too often been misused to justify intensifying production practices and undermining the Farm to Fork Strategy³⁶ and Biodiversity Strategy, as well as the legislative initiatives stemming from them. There is a significant risk that the inclusion of an undefined food security principle would again be used to water-down the ambition and implementation of the FSFS with regard to environment, climate and health – unless it is exhaustively defined in a way that unequivocally supports the FSFS’s objectives. To further avoid this risk, **we strongly recommend adopting the objective of “guaranteeing long-term access to healthy and sustainable food”**. Guaranteeing long-term access to healthy and sustainable food and ensuring the EU food system operates within planetary boundaries would in reality better achieve what the European Commission is trying to accomplish through the inclusion of a food security principle.
- **The ‘do no significant harm’ principle.** One of two options presented by the European Commission to increase the sustainability of the food value chain consists of relying on the “Do no significant harm” (DNSH) principle for the *“gradual establishment of minimum sustainability requirement for food system operations”*.³⁷ The draft Impact Assessment contemplated a preference for this option over the other, namely the *“introduction of a general primary responsibility (strengthened due diligence) for food system actors”*.

As discussed in the following section, the FSFS must not fail to mobilise the capacity of commercial actors to determine the sustainability of their operations and products, shape the EU food environment,³⁸ and improve the sustainability and resilience of the EU food system. This said, **we urge the European Commission not to rely *only* on the DNSH principle to develop minimum sustainability requirements in the FSFS**. Experience from the application of the DNSH principle

³² European Commission, *The European Green Deal*, COM(2019) 640, 11 December 2019, p. 23-24.

³³ See Article 20a of the [German Constitution](#) and Article P1 of the [Hungarian Constitution](#).

³⁴ WHO, *One health*.

³⁵ Boqvist S., Söderqvist K. and Vågsholm I. (2018), *Food safety challenges and One Health within Europe*, Acta Veterinaria Scandinavica 60(1).

³⁶ Joint NGOs’ open letter, *EU food supply and solidarity response to the war in Ukraine*, March 2022.

³⁷ Draft impact assessment, p. 57-58.

³⁸ Joint NGOs’ policy brief, *Food environments and EU food policy: Discovering the role of food environments for sustainable food systems*, October 2021.

under the Recovery and Resilience Facility shows that assessments of the “significance” of harm are inherently dependent on the quality and availability of data at the time of assessment *and* on an ongoing basis through effective monitoring as the decision is implemented. The lack of available and reliable data has undermined the effectiveness of the DNSH principle as a sustainability safeguard.³⁹ The DNSH principle can help to remove the worst products from the market but is insufficient to create a race to the top on sustainability.

II. Engaging key actors along the food value chain

The Farm to Fork Strategy announced that the FSFS proposal would “*address the responsibilities of all actors in the food system.*”⁴⁰ This means the FSFS should not only set a direction for EU and national authorities to follow, but also regulate commercial food system operators. They are instrumental actors in the transition towards a sustainable EU food system, especially the ‘middle of the chain’ actors between producers and consumers, as they hold the greatest market influence and have the capacity to significantly determine the food products and choices available to consumers.⁴¹ They also claim the majority of value generated in the food value chain⁴² and often exert disproportionate influence over their suppliers and other value chain participants.⁴³ They therefore have the greatest capacity and leverage to drive sustainability improvements along the food value chain.

The FSFS offers the potential to mobilise the capacity of these important and influential actors in the EU food system to ensure sustainability throughout their value chain, shape the EU food environment, and improve the sustainability and resilience of the EU food system. The FSFS is also the best tool available to achieve a coordinated, consistent and just transition across the EU; voluntary initiatives have proven inadequate to deliver structural sustainability improvements in the food sector.⁴⁴ It is therefore necessary that the FSFS includes appropriate **legal obligations** for commercial food system actors.

Despite this evidence, and as discussed under section I, we understand that the European Commission may have abandoned the option to include binding sustainability obligations for commercial actors in its legislative proposal. We are very concerned that this approach will be inadequate and will fail to drive the necessary food system transformation. This is even more disappointing given the introduction of “*primary responsibility (strengthened due diligence) for food system actors*” was an option presented during the public consultation and assessed under the Impact Assessment.⁴⁵ **This option must not be disregarded.**

While the FSFS’s overarching objectives and principles are fundamental to define a clear direction of travel and facilitate long-term reform and coherence across the EU, the FSFS must also provide “*an operational*

³⁹ Green 10, *EU funds should never harm nature, climate or the environment: Statement of the Green 10 on the ‘do no significant harm’ principle*, November 2021.

⁴⁰ Farm to Fork Strategy, p. 6.

⁴¹ European Commission, *The economic impact of modern retail on choice and in innovation in the EU food sector: Final report*, September 2014.

⁴² Yi J., Meemken EM., Mazariegos-Anastassiou V. et al. (2021), *Post-farmgate food value chains make up most of consumer food expenditures globally*, Nature Food 2, p. 417-425.

⁴³ Walton S. (2023), *Linking middle-chain actors to the environmental impacts of farmers and consumers: underlying drivers and policy implications*, Centre for Food Policy, City, University of London.

⁴⁴ MSI Integrity (2020), *Not Fit-for-Purpose*; Greenpeace International (2021), *Destruction: Certified*; European Parliamentary Research Service, (2020), *Towards a mandatory EU system of due diligence for supply chains*, European Parliament; Grunert, K. G., Hieke, S., Wills, J., (2014) ‘Sustainability labels on food products: Consumer motivation, understanding and use’, *Food Policy*, Volume 44, pp. 177-189; Garnett, T., (2013) ‘Food sustainability: Problems, perspectives and solutions’, *Proceedings of the Nutrition Society*, 72(1), 29-39.

⁴⁵ Based on the draft Impact Assessment.

too⁴⁶ to implement its vision in practice and ensure the most urgent sustainability reforms are undertaken without delay. In the paragraphs below, we describe what we consider to be the minimum level commercial actors should be regulated along the food value chain.

1. Binding legal obligations for ‘middle of the chain’ actors

Middle-chain actors such as food processors, wholesalers, retailers and food service businesses should be legally obliged to ensure that their food operations and the food products they make available on the EU market are consistent with the sustainability objectives and principles enshrined in the FSFS. As discussed above, we understand the European Commission intends to include a number of overarching sustainability objectives and principles in the FSFS proposal that will be binding on EU and Member State legislators. We understand that these objectives and principles are intended to establish requirements for future law reform processes that are relevant to the EU food system. There is no reason why similar **overarching sustainability objectives and principles applicable to commercial food system actors** cannot also be included. On the contrary, including a framework of objectives and principles applicable to commercial actors would clarify and address the responsibilities of these important actors in the food system, provide a clear direction of travel for commercial food system actors, and establish a normative framework against which commercial actors can assess the sustainability of their operations and products.

At a minimum, these legal obligations should engage influential actors in the middle of the food value chain and mobilise the influence they exert throughout the food system to mainstream the sustainability objectives and principles across the private sector. As with the sustainability objectives and principles that apply to EU and Member State legislators, the objectives and principles applicable to commercial actors should also cover the field of sustainability issues relevant to the transition of the EU food system.

2. Appropriate due diligence obligations to avoid and mitigate adverse impacts in the food value chain

Global food systems account for about a third of all greenhouse gases⁴⁷ and are responsible for major environmental impacts. These occur primarily at the production stage.⁴⁸ In the EU, agriculture represents the greatest risk for species and their habitats, with demand for agricultural land, intensification and specialisation of practices, as well as the use of fertilisers and pesticides, constituting considerable drivers of biodiversity loss. These further contribute to polluting the air, soil, and surface and ground waters.⁴⁹ Agriculture is an important driver of climate change, accounting for 11% of the EU’s annual GHG emissions.⁵⁰ Equally, fishing and aquaculture are the greatest drivers of marine ecosystem depletion, with damaging and unselective fishing gear impacting the seabed and driving unacceptable levels of bycatch. **Appropriate due diligence obligations are necessary to ensure that commercial food system actors identify, avoid and mitigate the negative impacts in their food value chain and act consistently with the sustainability objectives and principles in the FSFS.**

⁴⁶ Inception impact assessment, *op. cit.* p. 3.

⁴⁷ Crippa, M. *et al.* (2021). *Food systems are responsible for a third of global anthropogenic GHG emissions*, Nature Food No 2 (3), p. 198.

⁴⁸ *Ibid.*, p. 198; United Nations Environment Programme (2021). *Catalysing Science-based Policy action on Sustainable Consumption and Production – The value-chain approach & its application to food, construction and textiles*, Nairobi, p. 50-51.

⁴⁹ EEA, *State of Nature in the EU*, Report n. 10/2020.

⁵⁰ EEA, *Progress and prospects for decarbonisation in the agriculture sector and beyond*, Briefing of October 2022.

These due diligence obligations should be consistent with other due diligence requirements adopted or currently being developed at EU level and require relevant companies to gather reliable and verifiable evidence, identify and assess the actual and potential adverse impacts of their operations and products throughout their value chains, and take steps to prevent, mitigate or bring these impacts to an end. Businesses should be allowed to use third-party services to complete this process, however using third-party certificates or assurances must not replace the due diligence obligations or be taken as evidence of compliance. If necessary, secondary legislation could be used to establish detailed rules for the uniform implementation of the due diligence procedure by specific food sectors, in alignment with other applicable EU legal requirements.

In this regard, the FSFS should build on relevant existing initiatives, such as the Corporate Sustainability Due Diligence Directive (**CSDDD**) proposal,⁵¹ which proposes cross-sectoral due diligence obligations for companies' own *operations* and throughout their value chain, and the recently enacted EU Deforestation-Free Products Regulation (**EUDR**),⁵² which establishes cross-sectoral due diligence obligations for a limited scope of *products*. Inspiration could also be drawn from the EU Conflict Minerals Regulation and EU Batteries Regulation, which also impose specific due diligence requirements for specific *products*.

As explained above, the EU has already demonstrated that some sectors need specific rules and requirements to ensure that the particular risks and impacts for business operations, products or services in a particular sector are adequately addressed (e.g. the EUDR). Specific and detailed rules for certain sectors in the food system are certainly needed (see section 3 below). However, there is also a clear and obvious benefit in establishing common EU-level requirements for commercial food system actors to identify, assess and mitigate the risks of sustainability impacts in their value chain in a uniform and consistent way that maintains the integrity and level playing field of the single market (e.g. the CSDDD). Specific requirements for specific food sectors and/or specific categories of food products that are known to have heightened and particular sustainability risks should be subsequently developed and build on the 'framework' due diligence procedure, sustainability objectives and principles in the FSFS.

3. A process to enact binding minimum sustainability requirements

The FSFS should introduce **a time-bound process to enact binding minimum sustainability requirements (MSR) for specific food sectors, starting with the food processing, wholesale, retail and food service sectors**. The FSFS should include a time-bound obligation on the European Commission to develop and adopt proposals to establish binding MSR that apply, depending on the sector, to both food value chains and food products. The FSFS should specify that these MSR must: build on the sustainability objectives and principles in the FSFS; include comprehensive and objective criteria addressing the environmental and social dimensions of sustainability; be based on independent and science-based sustainability and health benchmarks; and include criteria that will drive the transition to an environmentally-positive, fair and healthy food system.

As noted above, the draft Impact Assessment suggests that any MSR should be based on the "Do no significant harm" principle. However, a legislative structure that enshrines the avoidance of "significant

⁵¹ Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence, [COM\(2022\) 71 final](#).

⁵² Regulation (EU) 2023/1115 of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation (available [here](#)).

harm” as a *minimum* standard and, consequently, permits actual, material, and potentially irreparable harm (which may become ‘significant’ over time) is unlikely to support the food sector to achieve a timely and just transition towards a sustainable food system. MSR based on the ‘do no significant harm’ principle could help to phase-out the most unsustainable food system operations and products, however DNSH should not be the only principle relied on for the development of the MSR.

Indeed, a more appropriate materiality threshold for any permissible negative impacts on sustainability criteria to be adopted in the MSR is that of **“non-negligible” harm**. In this regard, negligible harm would be permissible while any harm that is greater than negligible (*i.e.* non-negligible harm) would contravene the relevant MSR. We also recommend defining what constitutes “negligible harm” in the MSR to avoid ambiguity and guarantee legal certainty.

As with the requirement to ensure consistency with the sustainability objectives and principles in the FSFS, the requirement to comply with the MSR should also be ‘operationalised’ by an obligatory due diligence procedure.

4. Include a robust enforcement framework and accountability mechanisms

The FSFS should require Member States to designate independent and properly-resourced competent authorities to implement and enforce the FSFS, including companies’ compliance with the new legally-binding obligations the FSFS should create. EU-wide implementation and coordination should be overseen and actively facilitated by the European Commission. Member States should also be required to establish a complaints mechanism that allows interested parties, including consumers and civil society organisations, to submit ‘substantiated concerns’ before the national competent authorities and trigger enforcement action in cases of perceived non-compliance. Member States should also be obliged to provide interested parties with access to administrative or judicial procedures to review the law’s implementation and enforcement before national courts. Lastly, the FSFS should include robust transparency obligations for food system actors and Member States alike to publicly report on the implementation of their obligations.

III. Requiring public authorities to procure sustainable food

Public procurement has a major direct impact on driving demand for, and production of, sustainable products. Moreover, driving production through public procurement can have spill-over effects that further increase the demand for more sustainable goods and services across the whole market, as the result of the creation of lead markets, innovation and example-setting.

The purchasing power of contracting authorities is estimated at 14-16% of the EU’s GDP, with the social food service market for the EU estimated to be worth €82 billion.⁵³ It follows that public procurement is an

⁵³ Louro Caldeira S., Storcksdieck Genannt Bonsmann S., Bakogianni I., Gauci, C.. (2017), *Public Procurement of Food for Health: Technical report on the school setting*, Technical report on the school setting.

essential tool to create enabling food environments and alter the structural factors that drive unsustainable and unhealthy food choices.⁵⁴ The absence of mandatory EU sustainability requirements for food procurement hinders the potential for the public sector to lead change.

The potential of public procurement to enhance the transformation of our food system has been recognised by the European Commission. The establishment of mandatory general and specific requirements for sustainable public procurement emerges as a preferred option in the draft Impact Assessment. According to this document, “*the FSFS would introduce a general requirement of producing food sustainably in public institutions, including food services and vending machines, with a clear reference to the environmental, social-health and economic dimension of sustainability*”.⁵⁵ A follow-up legislative procedure would establish the mandatory criteria.

After exposing some important shortcomings of current public procurement law specifically relative to environmental sustainability, this section provides recommendations for principles to underpin public procurement of sustainable food and presents essential environmental sustainability requirements that should feature in the FSFS.

1. Shortcomings of the existing public procurement framework

As it stands, the existing general rules on public procurement laid down in the Procurement Directive⁵⁶ – which also apply to food – raise various obstacles to the introduction of sustainability criteria in public procurement procedures. While the Procurement Directive recognises the role of public procurement for facilitating the implementation of environmental policy objectives⁵⁷ and provides tools for the integration of social values in public procurement procedures,⁵⁸ sustainable public procurement is proposed on a purely voluntary basis. In addition, the Procurement Directive focuses predominantly on ‘*how to buy*’ rather than on ‘*what to buy*’.⁵⁹

The European Commission has aimed to incentivise contracting authorities across the EU to make use of the available tools under the Procurement Directive, through several guidance documents on Green Public Procurement (**GPP**) including on food, catering services and vending machines.⁶⁰ However, the application of this guidance is purely voluntary.

Due to the voluntary nature of existing tools for sustainable public procurement, the uptake by Member States⁶¹ has been largely insufficient. Estimates are that even in the most ambitious Member States, GPP does not exceed 16% (over the period 2006-2017, as a percentage of all public procurement across all

⁵⁴ See also FAO, Alliance of Bioversity International and CIAT, and Universidade Federal do Rio Grande do Sul – Editora da UFRGS (2021), *Public food procurement for sustainable food systems and healthy diets*, Volume 2.

⁵⁵ Draft Impact Assessment, p. 61.

⁵⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

⁵⁷ *Ibid.*, point 47 of the considerations.

⁵⁸ Notably, see reference to sustainability considerations in Articles 18(2), 42(1), 43, 56(1), 67, 68, 69(2)(d), 70, 71.

⁵⁹ Andhov M., Caranta R., Janssen W.A., Martin-Ortega O. (2022), *Shaping sustainable public procurement laws in the European Union – An analysis of the legislative development from ‘how to buy’ to ‘what to buy’ in current and future EUG legislative Initiatives*, p. 11.

⁶⁰ Commission staff working document, EU green public procurement criteria for food, catering services and vending machines, 27 September 2019, [SWD\(2019\) 366 final](#).

⁶¹ For examples of public procurement for sustainable food procurements, see the case studies in the discussion paper by EPHA and HCWH Europe, *How can the EU Farm to Fork Strategy contribute? Public procurement for sustainable food environments*, December 2019.

sectors). Moreover, GPP national action plans show strong divergences between Member States in terms of GPP objectives (ranging from a 100% objective to no set objectives at all).⁶²

The low uptake of GPP can be partially explained by the fact that contracting authorities face significant legal complexity and legal uncertainty – and associated legal challenges – when implementing voluntary GPP. As a result, the current general framework governing public procurement⁶³ leaves a gap regarding the implementation at national level of sustainable public procurement, which can be filled through sectoral legislation. This gap must be filled by prescribing clear and specific mandatory sustainability requirements, notably in sector-specific legislation like the FSFS, which provides a critical opportunity to fill this gap in relation to the public procurement of food.

2. Better integrate the sustainability principle in public procurement

A better integration of the sustainability principle in public procurement legislation is paramount for achieving sustainable public procurement practices by contracting authorities. Importantly, the existing legal framework does not constitute an obstacle to strengthening the sustainability principle in sector-specific legislation like the FSFS. Moreover, recent policy developments have included calls for concrete initiatives to better integrate the sustainability principle in sectoral legislation.

When adopting the Procurement Directive, EU institutions decided not to pursue mandatory sustainable public procurement through general (cross-sectoral) provisions based on the argument that it would impinge too much on the discretion of Member States and their contracting authorities to procure tailor-made solutions on the market.⁶⁴ Accordingly, it was preferred to leave it to sector-specific legislation to set mandatory criteria and targets, while in parallel promoting the development and use of the European approaches to life-cycling costing.⁶⁵

Since then, the sustainability principle relative to public procurement has been enshrined in many sector-specific legislation, shifting the procedural approach of the law on public procurement (focussing on *how* to buy) to a more substantive approach (focussing on *what* to buy). For instance:

- Regulation (EC) No 106/2008 (so-called EU Energy Star Regulation), which introduces obligations on contracting authorities to require in their public contracts a certain level of energy efficiency;
- Directive 2012/27/EU on energy efficiency, which calls on the public sector to play an exemplary role in the field of energy efficiency;
- Directive 2019/11/61 on clean vehicles, which contains targets for the number of clean vehicles that are bought by contracting authorities;
- Directive 2009/28/EC on the promotion of the use of energy from renewable sources and Directive 2010/31/EU on the energy performance of buildings, which promote resource-efficient public buildings, for instance because of low or zero primary energy consumption; and

⁶² See https://circabc.europa.eu/ui/group/44278090-3fae-4515-bcc2-44fd57c1d0d1/library/b1af4b10-e76c-4e7c-816a-6d9644a5691b?p=1&n=-1&sort=name_ASC

⁶³ Directive 2014/24/EU of 26 February 2014 on public procurement and Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

⁶⁴ European Commission, *Green Paper on modernisation of EU public procurement policy: Towards a more efficient European Procurement Market, Synthesis of replies*, p. 15.

⁶⁵ Recital 95 of Directive 2014/24/EU and Recital 100 of Directive 2014/25/EU.

- Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.

The case-law of the CJEU indisputably shows that the sustainability principle, as referred to in Article 18(2) of the Procurement Directive, is central to EU public procurement as it constitutes a general principle of procurement. Therefore, the requirements that economic operators must comply, in the performance of the contract, with obligations relating to environmental, social and labour law constitute a cardinal value of the Procurement Directive, at the same level as the principles contained in Article 18(1) (these are the principles of equal treatment, non-discrimination, transparency, proportionality and prohibiting the exclusion of a contract from the scope of the Procurement Directive and artificially narrowing competition).⁶⁶ Arguably, this CJEU jurisprudence shows that the Procurement Directive does not sufficiently integrate the sustainability principle – at least not to the same extent as the principles of equal treatment, non-discrimination, transparency, proportionality, etc. This also explains why contracting authorities insufficiently implement green public procurement, as explained above. **The FSFS initiative provides an exceptional opportunity for the European Commission to make sure that the sustainability principle is effectively integrated in the public procurement of food.**

3. Other principles to underpin sustainable public procurement

Next to the sustainability principle, the FSFS should embed the following principles to guide the sustainable public procurement of food, which relate to aspects that are not sufficiently reflected in the general public procurement framework:

- **Good governance.** Member States have a general responsibility to enable sustainable public procurement that goes beyond adhering to their own legal obligations. Member States should support the training of public procurers as well as inform and educate (small-size) market operators on public procurement rules and procedures.⁶⁷ This plays an important role in enabling the use of sustainable procurement practices. According to the good governance principle, Member States must also: (i) create meetings of public procurement experts at national or international level; (ii) develop multi-level governance model discussions around food and food procurement; and (iii) promote co-creation of urban, regional and national food policies especially with respect to public procurement below the EU Public Procurement thresholds.⁶⁸
- **Market engagement first.** Food procurement practices that include a diverse range of stakeholders in the planning phase from along the supply chain – starting with food producers, caterers to canteen/kitchen staff – are critical to reach ambitious health and sustainability targets, and ultimately result in more resilient food regions. By consulting with the market of potential suppliers early on, procurers can avoid risks, such as putting too much weight on price rather than quality, or by formulating overly rigid requirements that may prevent small and medium-sized enterprises (SMEs) from participating in ‘calls for tenders’ (or open competitions). This is why up-to-date knowledge of market structures, actors, and technical and feasibility aspects are invaluable for devising procurement goals. Goals that also achieve increasingly ambitious sustainability targets, such as those related to reducing GHG emissions, supporting local/short food supply

⁶⁶ Case C-395/18, Tim SpA, ECLI:EU:C:2020:58, paragraph 38.

⁶⁷ An illustrative example in this respect is the public procurement platform developed by the Dutch government, enabling both contracting authorities as well as market operators/participants to procure more sustainably in general (see [here](#)).

⁶⁸ ICLEI - Local Governments for Sustainability, EU Food Policy Coalition, *Manifesto for establishing minimum standards for public canteens across the EU*, October 2022.

chains and preserving biodiversity. Establishing a two-way dialogue with the market in the stage prior to starting the public procurement process is fundamentally important to procure sustainably, build trust and innovate.

4. Specific sustainability criteria for food public procurement

The introduction of specific sustainability requirements in public procurement is in accordance with the principle of subsidiarity,⁶⁹ especially if implemented through minimum harmonisation – leaving Member States with the freedom to go beyond EU targets. Specific sustainability requirements should only apply to public procurement procedures exceeding the EU thresholds provided by the Procurement Directive. For reference, a threshold of €140,000 applies to public supply and service contracts awarded by central government authorities. For public supply and service contracts awarded by sub-central contracting authorities a threshold of €215,000 applies.⁷⁰ Below those thresholds, Member States remain free to shape public procurement procedures, as long as they comply with the main principles of public procurement emanating from the TFEU when the contract is of certain cross-border interest, namely when in view of its nature, value or place of performance, the contract is of interest to a supplier in another EU member state. The applicable principles include the sustainability principle.

To ensure the effective implementation of the FSFS, when developing specific mandatory requirements for the procurement of food, the European Commission should introduce wording with the effect of:

- Obliging contracting authorities to make sure that during the performance of public contracts, economic operations comply with provisions in the fields of environmental, social and labour law, whether established by Union law, national law, collective agreements or by international environmental, social and labour law provisions to be listed in an annex to the FSFS;
- Obliging contracting authorities to ensure that during the performance of public contracts, economic operators comply with their corporate sustainability due diligence and sustainability reporting obligations under EU law;
- Obliging Member States to take appropriate measures, including monitoring and sanctioning, to ensure that in the performance of public contracts, economic operators comply with the obligations referred to above. Contracting authorities may not award a contract to the winning tenderer if they have established that the tenderer does not comply with those obligations. Contracting authorities must exclude a tenderer where they have established a violation of the said obligations;
- Obliging contracting authorities to rely on specific *mandatory minimum requirements* by only purchasing products and services that respect at least the technical specifications⁷¹ set at 'core'

⁶⁹ Article 5(3) of the TEU establishes that “[u]nder the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

⁷⁰ Article 4 of Directive 2014/24/EU.

⁷¹ Thus excluding selection criteria, award criteria and contract performance clauses.

level⁷² in the EU GPP criteria for food, catering services and vending machines.⁷³ For the purpose of ensuring an effective implementation of the sustainability principle, legal certainty and a level playing field, tertiary legislation should provide binding minimum thresholds regarding technical specifications;⁷⁴

- Introducing a general obligation for contracting authorities to explain how they have integrated sustainability considerations in the design of public procurement procedures – including the design of *selection criteria* and *award criteria* – and contracts, notably with reference to the EU GPP criteria for food, catering services and vending machines, when no mandatory environmental obligations of Union law, national law or international law are applicable. When no sustainability considerations are integrated, contracting authorities should have the obligation to justify this.

For completeness, we note that to allow an effective uptake of green public award criteria, major hurdles at the level of the Procurement Directive should be tackled. Most importantly, the current subject matter approach in the Procurement Directive, implying that award criteria must be linked to the subject-matter of the contract,⁷⁵ is unnecessarily restrictive and should be removed in a potential review of the Directive.

IV. Empowering the public to enhance enforcement

The FSFS must guarantee the full realisation of environmental procedural rights, as protected under the Aarhus Convention, Article 10(3) of the TEU, Article 47 of the Charter of Fundamental Rights of the EU, and Article 13 of the European Convention on Human Rights.

1. Access to information

In line with Article 10(3) of the TEU which provides that “[d]ecisions shall be taken as openly and as closely as possible to the citizen”, **the FSFS must guarantee a high level of transparency of the procedures it establishes and the enjoyment of the public’s right to access information.** This means making all relevant information proactively available to the public, using an online, free-of-charge and user-friendly database as soon as it is produced – or, where relevant, by a given date. “Proactively” means without the necessity to file access to information requests with the EU institutions.

Access to information is a prerequisite to an effective exercise of the right to participate in decision-making processes, and to hold public authorities and private actors accountable in case of inadequate action.

It is particularly important that due diligence obligations and minimum sustainability requirements for food operations and products are supported by obligations on commercial actors to report publicly on the

⁷² The EU green public procurement criteria for food, catering services and vending machines provide that the core criteria are designed to allow for easy application of GPP, focusing on the key area(s) of environmental performance of a product and aimed at keeping administrative costs for companies at a minimum. The core level criteria are to be distinguished from the comprehensive criteria, which take into account more aspects or higher levels of environmental performance, for use by authorities that want to go further in supporting environmental and innovation goals.

⁷³ As noted by the European Commission, the basic concept of GPP relies on having clear, verifiable, justifiable, and ambitious environmental criteria for products and services, based on a life-cycle approach and scientific evidence base. In the context of the FSFS, the relevant set of EU GPP are the green public procurement criteria on food, catering services and vending machines.

⁷⁴ In other words, where contracting authorities are provided with freedom to determine thresholds in the EU public procurement criteria, tertiary legislation should provide minimum thresholds.

⁷⁵ See Case C-513/99, *Concordia Bus* [2002] ECR I-7213, para 64.

implementation of their obligations under the FSFS, in particular on the due diligence procedures conducted as well as any risks of non-compliance identified and the corresponding mitigation measures.

2. Participation in decision-making processes

According to Article 10(3) of the TEU, “[e]very citizen shall have the right to participate in the democratic life of the Union.” Considering the systemic changes that the FSFS aims to bring about, **it is paramount that citizens are empowered to participate in the decisions that will impact their health and the environment they live in.**

In the event that the FSFS requires the preparation of national food plans, it must ensure that the Strategic Environmental Assessment (**SEA**) Directive⁷⁶ applies to these plans and must include further detailed requirements for public participation at national level, in line with the requirements of Article 7 of the Aarhus Convention. Most importantly:

- The public should be given early and effective opportunities to actively participate during the preparation, modification or review of national food plans, when all options are still open;
- National plans must contain a summary of how the outcome of the public consultation process has been taken into account and list the authorities responsible for their implementation; and
- The European Commission should oversee that public participation processes at national level are correctly conducted.

3. Access to effective remedies

Guaranteeing the public and civil society a broad access to effective remedies is essential to ensure public authorities and private actors are held accountable for their inadequate actions or omissions. This in turn allows for course correction and a better implementation of the law. It is also a fundamental right under Article 47 of the Charter of Fundamental Rights of the EU, Article 13 of the European Convention on Human Rights and Article 9(3) of the Aarhus Convention.

If the FSFS introduces obligations for Member States, such as the preparation of national food plans or binding targets, it must introduce provisions that facilitate the legal standing of individuals and NGOs to challenge any acts and omissions with regard to these obligations, including failures in the process of adopting food plans, as well as the content of adopted plans where they fail to respect EU law.

In the European Commission’s words, “*national redress mechanisms via the national courts of the Member States are an integral part of the EU’s system of judicial redress*”⁷⁷ and experience shows that this decentralised form of enforcement is an essential enabler for the successful implementation of legislation in the fields of environment and health.⁷⁸ In its Communication on Improving access to justice in environmental matters in the EU and its Member States, the European Commission committed itself to introduce access to justice provisions in new or revised EU law concerning environmental matters, as “*clear provisions in EU environmental legislation in this matter would be in the interest of legal certainty*”

⁷⁶ Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

⁷⁷ European Commission, Communication on Improving access to justice in environmental matters in the EU and its Member States, [COM\(2020\) 643 final](#), §22.

⁷⁸ IEEP, Development of an assessment framework on environmental governance in the EU Member States, [Final report](#), May 2019; European Commission, Fitness check of the Ambient Air Quality Directives, [SWD\(2019\) 427 final](#).

and also necessary to underpin the obligation to grant effective judicial protection of the rights enshrined in EU law.⁷⁹

Secondly, where the FSFS imposes obligations on private operators, it must include sanctions in case of non-compliance and guarantee that such obligations and sanctions can be enforced by individuals and NGOs by way of a court action.

The enforcement mechanisms for due diligence obligations set out in the EUDR and the CSDDD proposal could provide guidance in this respect. In particular, the substantiated concerns approach contained in the EUDR could be mirrored in the FSFS for cases of perceived non-compliance by private operators. This approach would be consistent with principles of administrative justice and allow interested members of the public, including consumers and environmental and health NGOs, who submit a valid substantiated concern to national competent authorities, to have the handling of their substantiated concern reviewed before national courts where they claim the requirements of the FSFS have not been met. In addition, the inclusion of clear rules on penalties (their type, severity and application) would provide additional incentives for food system actors to comply with any legally binding obligations under the FSFS and promote a consistent application of the rules across EU Member States.

4. A right to compensation for damages suffered by any person due to breaches of the FSFS

Where the FSFS sets out legally-binding obligations for public authorities or private actors, another tool that would enhance the level of compliance with the FSFS is the inclusion of a clause ensuring that people who suffer material and non-material damage following a breach of the FSFS can obtain compensation from the person responsible. **The inclusion of such a right in the FSFS is essential to ensure that any future obligations on public authorities and private actors set out in further legislation adopted on the basis of the FSFS are effectively enforceable.**

Such a compensation right should be provided within the FSFS in a manner that is not practically impossible or excessively difficult, in order to create an effective and harmonised access to remedies. Such a compensation right already exists in other legislation (e.g. Directive 2014/104/EU on Antitrust Damages) and was recently included in the European Commission's proposals to revise the Industrial Emissions Directive, the Ambient Air Quality and Cleaner Air for Europe Directive, as well as the Urban Waste Water Directive. The obligations outlined in the FSFS will ultimately influence the shape of the potential compensation right. However, to be effective, such a clause should at least provide that:

- Any individual who suffers material and non-material damages due to breaches of the FSFS has the right to request and obtain compensation from the non-compliant natural or legal person, in a manner that is not practically impossible or excessively difficult;
- NGOs promoting the sustainability of the food system (including the protection of human health, the environment and animal welfare) must have the right to represent the affected individuals and bring collective actions for compensation to give the most vulnerable people a chance to obtain compensation. This draws from best practices in other areas of EU law (see e.g. Article 7 of Directive 2000/43 on equal treatment between people irrespective of racial or ethnic origin and Article 17 of Directive 2006/54 on equality between men and women in the workplace); and

⁷⁹ *Ibid.*, §§33-34.

the relevant court should be able to order the disclosure of evidence to ensure the symmetry of information between the parties where the claimant has presented reasonably available facts. Enforceable disclosure obligations already exist in EU law, for example, in Articles 5 and 8 of the Antitrust Damages Directive and Articles 18 and 10 of Directive (EU) 2020/1828 on Collective Redress (the European Commission has also made a similar proposal in the revision of the Product Liability Directive, see Article 8).

Conclusions

The FSFS proposal represents a critical opportunity for the European Commission to present both a *“guiding framework instrument that coordinates and drives changes across the food systems as well as an operational tool”*⁸⁰ to drive the necessary and timely transition of the EU food system towards sustainability.

However, for the FSFS to achieve its objectives and live up to its potential, it must present a high level of ambition, have direct application to key food system players, and include several fundamental components. We have serious concerns that the European Commission is not currently developing a proposal that will meet these standards.

To support the European Commission in this important endeavour, we have emphasised three essential messages in this briefing:

1. It is absolutely essential that the European Commission moves forward with its initiative to **adopt a proposal for an EU legislative framework for a sustainable food system in September 2023**.
2. The vision reflected in the proposal will have a critical impact on the future of our food system. It is imperative that the EU breaks the vicious cycle generated by its reliance on, and support for, current intensive models of production. Instead, it must **place people and long-term access to healthy and sustainable food at the centre of Union policies on food**.
3. The European Commission shouldn't satisfy itself with a legislative proposal that is simply a declaration of good intent for future law reform. The EU legislative framework for a sustainable food system must **provide directly actionable tools that attribute clear responsibilities to public authorities and private actors alike, and empower the public to participate in shaping and enforcing the decisions that concern their health, environment and food choices**.

⁸⁰ Inception impact assessment, *op. cit.* p. 3.

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