

The Sustainable Food Systems Initiative Framework

ClientEarth's feedback to the Inception Impact Assessment

ClientEarth is a non-profit European environmental law organisation with offices in Brussels, London, Madrid, Berlin, Warsaw and Luxembourg (as well as Beijing and Los Angeles). Using the power of the law, we develop legal strategies and tools to address major environmental issues, we provide legal support and information to most of the environmental NGOs in Brussels (and beyond) and use the courts where necessary to enforce environmental law.

ClientEarth welcomes the Sustainable Food Systems Framework Initiative as the cornerstone to deliver the ambitious objectives of the European Green Deal and of the Farm to Fork Strategy in particular. We appreciate the opportunity to contribute with our feedback to the Inception Impact Assessment (IIA).

Food is a universal connection between people¹, and food systems are highly complex, encompassing many different actors, cultures and geographies. In this context, adopting a systems-based approach helps identify synergies and trade-offs and recognise that food systems are comprised of all the elements (from the environment to institutions) and activities that relate to the production, processing, distribution, preparation and consumption of food².

Collective efforts are necessary to transform our food systems and make them environmentally positive, healthy, fair and inclusive. The Farm to Fork Strategy is a first step in this direction, and the announced

¹ Reynolds, C., Oakden, L., West, S., Pateman, *et al.* (2021), Citizen science for the food system. In: Cohen, K. and Doubleday, R. (Eds.), *Future Directions for Citizen Science and Public Policy*, pp. 55-69, Cambridge, UK: Centre for Science and Policy. ISBN 978-0- 9932818-1-5.

² Willett, W., Rockström, J., Loken, B., Springmann, M., *et al.* (2019), Food in the Anthropocene: the EAT–Lancet Commission on healthy diets from sustainable food systems, Published [Online](#).

legislative framework on sustainable food systems is an opportunity to translate these political commitments into law.

Food production and sustainable food systems

As recognised in the IIA, **food production is one of the largest causes of environmental depletion**. A third of global and 30% of EU greenhouse gas emissions come from the food system³; conversion of natural ecosystems to croplands and pastures generates biodiversity loss⁴; misuse and overuse of nitrogen and phosphorus create eutrophication, threatening freshwater and marine ecosystems⁵. In this scenario, food production needs to urgently change.

Therefore, it is surprising to read in the IIA that “in some sectoral legislations, such as the Common Fisheries Policy (CFP) and the Common Agricultural Policy (CAP), the objectives of sustainability are already the guiding principles and the transition has started at production level.”

Scientific data regarding the CAP currently in force⁶, shows that the €100 billion of CAP funds attributed to climate action had little impact on greenhouse gas emissions, which have not changed significantly since 2010⁷. Similarly, on water usage, the CAP has supported negative trends of overuse of water resources rather than boosting efficiency⁸.

As for the post-2023 CAP⁹, the political compromise struck by the co-legislators in June should not be regarded as a success from a social and environmental policy perspective. The governance framework of the CAP political agreement fails to guarantee that agricultural subsidies will significantly contribute to achieving the European Green Deal (EGD).

Although the scope of the Sustainable Food Systems Framework should go beyond the production level – including also the middle and end of the food chain – inconsistencies between it and the CAP will most likely emerge. To avoid this divergence, the European Commission should, first, robustly assess the CAP strategic plans and require the needed modifications to boost sustainable and regenerative farming. Secondly, the impact assessment for the Sustainable Food Systems Framework initiative should seriously take into consideration the whole range of effects – both positive and negative – that the CAP could have

³ Crippa, M., Solazzo, E., Guizzardi, D., Monforti-Ferrario, F., et al. (2021), Food systems are responsible for a third of global anthropogenic GHG emissions, in *Nature Food*, Vol. 2, pp. 198–209.

⁴ Benton, T.G., Bieg, C., Harwatt, H., Pudasaini, R., et. al. (2021), *Food system impacts on biodiversity loss. Three levers for food system transformation in support of nature*, Chantham House Research Paper.

⁵ Diaz, R.J., Rosenberg, R. (2008), Spreading dead zones and consequences for marine ecosystems, in *Science*, pp. 926–29.

⁶ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009; Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005; Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.

⁷ Special report: Common Agricultural Policy (CAP) and climate (europa.eu).

⁸ Special report 20/2021: Sustainable water use in EU agriculture (europa.eu).

⁹ Namely the CAP Strategic Plans Regulation, the Regulation on the financing, management and monitoring of the CAP (so called Horizontal Regulation), and the Regulation on the common organisation of the markets in agricultural products (CMO Regulation).

on the implementation of the Sustainable Food Systems Framework. At this stage, it cannot be taken for granted that the CAP will support the shift towards sustainable food systems, and this should be reflected in the impact assessment of the framework under analysis. **If the flaws of the CAP reform are not promptly addressed, the CAP will risk jeopardising the objectives of the Sustainable Food Systems Framework.**

In the Fisheries sector, the CFP provides ambitious rules and objectives to make European fisheries and aquaculture economically, socially and environmentally sustainable. However, **the main challenge is that it is still implemented too slowly to end overfishing and rebuild marine ecosystems.**

Although the CFP has delivered in reducing overfishing overall, in the last decade, the EU has missed its target to sustainably harvest all stocks by 2020. The most recent report from the Scientific, Technical, and Economic Committee for Fisheries (STECF) shows that stocks in the Baltic Sea are not improving, the Mediterranean and Black Seas are heavily overfished (with 83% of the assessed stocks being overfished), and the North-East Atlantic overfishing rate has increased from 2018 to 2019¹⁰. In parallel, environmental degradation and unselective fishing continue to produce high levels of bycatch and negatively affect marine biodiversity and the seabed.

To date, **the current development of aquaculture in the EU has not provided a sustainable alternative to overfishing.** Support to the EU aquaculture sector is needed to ensure the supply of nutritious, healthy and tasty food with low environmental and climate footprints and high welfare standards. This would also create new economic opportunities and jobs, making the EU a global reference for sustainability and quality.

Therefore, while the CFP remains a relevant framework that has been slowly leading towards reduction of overfishing, there is still a long way to go in terms of implementation, control and enforcement¹¹.

Basis for the EU intervention

Feeding the world while respecting planetary boundaries is a challenge that only a harmonised approach at EU level is able to tackle. Acting at EU level is the only way to ensure policy coherence and harmonisation of relevant legal frameworks at national level. The IIA proposes as legal bases for a legislative intervention at EU level Articles 43(2), 114, 168(5) and 192(1) of the Treaty on the Functioning of the European Union (TFEU).

Although this choice is in line with EU legislative actions in the field of food safety and environment, it could fall short when considering **food health beyond food safety**¹². It should be recalled that protection of

¹⁰ Scientific, Technical and Economic Committee for Fisheries (STECF), "Monitoring the performance of the Common Fisheries Policy" (2021), <https://bit.ly/3enUvJ5>

STECF confirms yet again that many stocks remain overfished and/or outside safe biological limits, and that progress achieved until 2019 is too slow to ensure that all stocks are fished at or below F_{MSY} in 2020.

¹¹ Recommendations on how to tackle the gaps in the current CFP text have been made to the Commission by a group of NGOs, including ClientEarth, Oceana, BirdLife, FishSec, Ourfish, Seas at Risk, WWF: https://europe.oceana.org/sites/default/files/20210615_cfp_mission_not_yet_accomplished_joint_ngo_paper.pdf

¹² The General Food Law (Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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) considers only risks derived from biological, chemical or physical hazards (Articles 3(9) and 3(14)).

health is a general principle of EU law, which “takes precedence over mere economic considerations.”¹³ Indeed, Article 9 and 168(1) TFEU, together with Article 35 of the EU Charter of Fundamental Rights, prescribe a high level of human health protection in the implementation of all Union policies and activities, while Article 12 TFEU emphasises the need to take into account consumer protection requirements. Although the Treaties do not provide a specific legal basis for EU action in the field of food health, the scope of an existing provision, namely Article 168 TFEU, could be broadened.

Union’s powers in the field of health is limited to complementing the Member States’ activities¹⁴. However, Article 168(4) TFEU provides for three exceptions that expand EU competence, including one that creates shared competence to adopt “measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health.”¹⁵ As it is not specified what “veterinary and phytosanitary” mean, there is room to broaden the scope of this provision. While traditionally “veterinary and phytosanitary” measures are interpreted in light of the WTO SPS Agreement¹⁶, there is no obligation to do so. Moreover, the protection of human health from the negative effects of low nutritious food has not been explicitly ruled out from the scope of Article 168(4)(b) TFEU¹⁷. It can, therefore, be questioned whether food health is actually covered by Article 168(4)(b) TFEU, and **the Sustainable Food Systems Framework represents an opportunity to reassess the interpretation of the Union’s competence in this regard.**

Objectives and Policy Options

The Inception Impact Assessment foresees as an overall objective of the Sustainable Food Systems Framework that “all foods placed on the EU market increasingly become sustainable. This implies building a socially responsible food value chain that progressively reduces the environmental and climate footprint of the Union food system, and ultimately transform the EU food system into a positive contributor to the health of people, of the economies and of the planet.”

When defining the overarching objective of the Sustainable Food Systems Framework, emphasis should be on transforming the EU food system. Making food products sustainable is one of the means to achieving this objective but not the objective itself. This is not a mere semantic distinction; rather, it has far reaching implications for the design of the legislative framework itself.

The Sustainable Food Systems Framework should be shaped into an “umbrella law.” It should take the form of an EU-wide, cross-sectoral framework covering the entire food value chain, from production to consumption. It should set strong and ambitious overarching as well as sub objectives, to steer all other agro-food policies and legislation.

Indeed, to be successful, the Sustainable Food Systems Framework requires the alignment of relevant laws and policies to contribute to delivering an ambitious, just and systemic transition to environmentally-sound, fair and healthy food systems. The principle of policy coherence could be translated into law by introducing into the framework under analysis a **legal obligation requiring the adaptation of other**

¹³ Case C-183/95 *Affish BV v Rijksdienst voor de Keuring van Vee en Vlees*, para 43; Case C-221/10-P *Artegoda GmbH v European Commission*, para 99.

¹⁴ Article 6(a) TFEU.

¹⁵ Article 168(4)(b) TFEU.

¹⁶ The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Annex I, Article 1.

¹⁷ Wieke Willemijn Huizing Edinger (2014), Food Health Law: A Legal Perspective on EU Competence to Regulate the 'Healthiness' of Food, in *European Food and Feed Law Review*, Vol. 9, No. 1, pp. 11-19.

sectoral Union laws. To the greatest possible extent, the proposal for a Sustainable Food Systems Framework should already be accompanied by proposals to amend Union laws and update Union policies in view of their alignment with the objectives of the Sustainable Food Systems Framework.

Transforming the food system also implies establishing a clear set of actions for all the actors of the food value chain. Public authorities should be covered as well, and their role should go beyond official controls, focusing instead on the transformative potential that public procurement can have in the food sector. Indeed, public procurement, if tailored to respond to the needs of sustainable food systems, creates the opportunity to set standards and utilise buying power in favour of environmental, health and social objectives. At society-wide level, public procurement can help steer markets towards sustainable options and contribute to durable changes in eating habits and preferences¹⁸.

Of key importance are also the incentives that drive consumption patterns. The Sustainable Food Systems Framework should consider how to change the structural factors that inform food choices, adopting a food environment approach. Food environments have the potential to make the healthy and sustainable choice the default one, while limiting the availability and promotional opportunities for foods associated with unhealthy diets.

For these reasons, **of the policy options presented in the IIA, only the fourth one is suitable to achieve the objective of sustainable food systems.** In particular:

- Option 1 – Baseline: maintaining the *status quo* is not an acceptable option. Existing legislation is either incoherent with the objective of sustainable food systems – such as the CAP, whose CAP Strategic Plans do not even have to be in line with the Farm to Fork Strategy to be approved – or inadequate to transform the EU food system – e.g. the General Food Law, which focuses on the concept of food safety and leaves no room for sustainability concerns.
- Option 2 – Voluntary approaches: relying on voluntary commitments will not drive the EU towards the transformation envisaged in the Farm to Fork Strategy. The challenges that this law is set to tackle cannot be faced by relying on the good will of the actors of the food chain.
- Option 3 – Reinforcing existing legislation: this option is insufficient. The IIA itself (pp. 3) recognises that “a harmonised transformational change is needed at EU level” and that “[I]n the absence of harmonised rules directly applicable in Member States aiming at ensuring the sustainability of food systems and of food, different national approaches will continue to be put in place and will lead to further fragmentation of the market.” Harmonisation and policy coherence cannot be achieved through scattered interventions. An “umbrella law” that sets the overarching objective and guides EU actions is needed to create the level of policy and legislative integration that is required to transform the EU food system.
- Option 4 – New comprehensive framework legislation on the sustainability of the Union food system: as mentioned above, this is the only policy option that provides a fully integrated strategy to achieve sustainable food systems. Currently, the general lack of interaction between and misalignment of various policies is a critical barrier towards a sustainable food system. Areas of policy such as agriculture, fisheries, food safety and environmental law¹⁹ have seldom been considered coherently through a food policy lens. Moreover, the current EU policy environment

¹⁸ Discussion paper on Public procurement for sustainable food environments (2019), EPHA.

¹⁹ In particular, environmental law addressing the negative externalities caused by food production, such as the Nitrates Directive.

does not fully cover all aspects relevant to food sustainability, such as soil quality²⁰. These issues can only be addressed through a new and ambitious umbrella law that goes beyond traditional policy silos and has the potential to drive the shift towards sustainable food systems.

Option 4 could be strengthened through references to fundamental rights and the inclusion of access to justice provisions, as shown in the paragraph below.

Strengthening Policy Option 4 through fundamental rights and access to justice

Although we welcome the Inception Impact Assessment's consideration for the likely impacts of the Sustainable Food Systems Framework on fundamental rights, we strongly encourage the Commission to consider the **improved enjoyment of fundamental rights as being core to the new legislation**. When designing the Sustainable Food Systems Framework, the Commission should assess how different options perform on the facilitation of different human rights, including the right to a healthy environment. The inclusion of fundamental rights could be assessed in the context of the impact assessment, under Policy Option 4, which risks being incomplete if this aspect is not considered.

The Sustainable Food Systems Framework should also establish clear access to justice provisions, as citizens should have the right to go to court to ensure proper implementation of the framework. The Sustainable Food Systems Framework represents an opportunity for the European Commission to fulfil the commitment expressed in its Communication "Improving access to justice in environmental matters in the EU and its Member States"²¹, namely that provisions on access to justice will be included in EU legislative proposals made by the Commission for new or revised EU law concerning environmental matters. As the Sustainable Food Systems Framework certainly falls under the definition of environmental law, including access to justice is key for the correct implementation of this law and for empowering citizens.

Impact assessment and participation

It is unclear why the IIA in Section D (pp. 8) only specifies that the "impact assessment will quantify the possible administrative burden linked to the policy measures to the extent possible [...]." Other "likely impacts" on economy, society and environment are mentioned under Section C (pp. 6, 7, 8) but are missing in the abovementioned description.

The impact assessment is expected to cover the three pillars of sustainability – social, environmental and economic. **It should consider short and long-term environmental, health and social impacts and also describe the effects of inaction**. Assessment and quantification of all externalities along the food value chain is needed and will help the decision-makers identify the most suitable policy options to achieve the objective of sustainable food systems. The methodology used to carry out the impact assessment

²⁰ Chief Scientific Advisors – SAM, EGE – Independent scientific advice for policy making (2020), *Towards a Sustainable Food System. Moving from food as a commodity to food as more of a common good*, Scientific Opinion No.8, Supported by SAPEA Evidence Review Report No. 7, pp. 26.

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Improving access to justice in environmental matters in the EU and its Member States*, Brussels, 14 October 2020, COM(2020) 643 final.

should support the European Commission in identifying the most promising leverage points in the system where intervention shows potential to yield multiple benefits. Considering the complexity of food systems, **it is key to assemble diverse and relevant information to identify enabling conditions and barriers to sustainable practices.**

In light of the magnitude of the issue that the Sustainable Food Systems Framework is set to tackle, effective and meaningful participation with all stakeholders is necessary. Workshops, events and consultations should be as inclusive as possible, allowing all interested actors at different levels, including vulnerable groups and those without technical and specific knowledge on the subject, to express their views.

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