

Brussels, 03 May 2022

Summary of Joint Response on the Horizontal Guidelines' Chapter 9 - Sustainability Agreements by Fair Wear, ISEAL, AIM, and the Fair Trade Advocacy Office

**European Commission's public consultation on the draft revised
Horizontal Block Exemption Regulations and Guidelines**

The European Brands Organisation (AIM), the Fair Wear Foundation (Fair Wear), ISEAL Alliance and the Fair Trade Advocacy Office (FTAO), (together “we”) welcome the European Commission (“EC”)’s draft revised Horizontal Block Exemption Regulations and Horizontal Guidelines (“HG’s”) and the opportunity to comment on them as part of the public consultation.

We find it particularly positive that the EC introduced a standalone section on the application of competition law to sustainability agreements that defines sustainability by taking into consideration the economic, environmental, and social dimensions of sustainability, as well as collective benefits, beyond the sole consumer benefits. We also welcome the reference to the UN’s Agenda 2030 on Sustainable Development, as we believe that it rightly defines the concept of sustainability by considering all its aspects. We very much welcome this direction, as this will encourage the development of genuine sustainable business practices.

However, we would like to draw attention to the social dimension of sustainability, which, in our view, does not find equal recognition in the draft revised HGs in comparison with the environmental dimension of sustainability. The strong focus on the environmental aspects of sustainability in the draft HGs tends to obscure the direct link between social sustainability aspects, such as human rights, and their potential adverse effects on the environment.

We are also wary that a price-centric approach to consumer benefits in the context of sustainability agreements will be problematic in many respects, as we explain below.

In addition, we find that the notion of “*individual non-use value benefits*” relies excessively on consumers’ opinions. While consumers value more than just their own individual benefit and become increasingly conscious of sustainability issues, willingness to pay studies tend not to fully reflect consumer support for broader objectives. When faced with a binary choice, the majority of consumers will actually tend to favour lower prices even if they would be willing to support the relevant sustainable objective overall. In that sense, adopting the draft HGs as they currently stand would prevent the conclusion of agreements meant to contribute to a more sustainable development.

Nonetheless, while opening up opportunities for undertakings to collectively pursue sustainability objectives, we also understand the concerns about “*greenwashing*” or “*ethics washing*”. In this regard, we welcome paragraph 560 demanding from competing undertakings that they bring forward all facts and evidence demonstrating that their agreement genuinely pursues sustainability objectives and is not used to disguise a “by object” restriction of competition. We understand that if the evidence ascertains that the agreement indeed pursues a genuine sustainability objective, its compliance with competition will have to be assessed according to the HGs. However, we invite the EC to also clarify the extent to which evidence of *greenwashing* (in the sense of a cartel-like arrangement disguised as

a genuine sustainability agreement) might amount to a restriction “by object” or be considered as an aggravating circumstance, and should be reflected in the level of fines imposed.

In the light of these preliminary considerations, we would like to convey the following propositions:

1. As the social and environmental dimensions of sustainability are highly intertwined, we urge the EC to approach both in fairness, not prioritising one of them.

The draft HGs rightly give a broad dimension to sustainability, referring to the UN’s Agenda 2030 of Sustainable Development. However, given the references and examples throughout chapter 9 of the draft HGs, we fear that the EC has overlooked the social dimension of sustainability, such as the payment of Living Wages or Living Incomes.¹ This would undermine the HGs’ definition of sustainability, as “eradicating poverty” is Goal 1 of the UN’s Agenda of Sustainable Development – one of the greatest global challenges that plays a central role for sustainable development. Not addressing living incomes and wages in global supply chains will make it impossible for a large part of the world’s farmers and workers to be lifted out of poverty and to reach the Sustainable Development Goals. For instance, how can we expect smallholder farmers to apply more environmentally friendly agricultural practices and to mitigate climate change if they do not receive a living income to provide nutritious food, education and essential medical services to their families?

Moreover, the UN’s Guiding Principles on Business and Human Rights expect companies to take their responsibilities. Accordingly, competition law rules, as part of a smart mix of various measures, should enable – if not entice – companies to work together on issues where the market requires them to do so to have these solved, in particular when (i) production takes place in a country where the laws are simply not strong enough to warrant good working conditions and payment of a Living Wage or Living Income² or (ii) in supply chains where a myriad of suppliers connected to many companies cater the EU market.³ Whereas great progress has been already made in some areas due to multiple collaborative forums tackling sustainability issues, “*there has been notably less progress on the issues of low wages and incomes*”.⁴

2. The underlying essence of sustainable business practices lies in the proper consideration of (i) negative spill-over effects on the environment and animals, and (ii) all actors involved in the value chain of a product, from the raw material producers to the end consumers.

We heard from – and do agree with – DG Competition, as our 5th January 2022 [joint letter](#) made clear, that European competition law cannot solve all the problems of the world.

The stark focus of European competition law on consumer benefits makes that body of law rather difficult to reconcile with several other legitimate concerns around sustainability issues

¹ We refer to the following definitions of [Living Wage](#) and [Living Income](#).

² We recognise that living incomes and wages are human rights in themselves and, at the same time, a precondition to the fulfillment of other human rights.

³ United Nations, “[Guiding Principles on Business and Human Rights](#)”, 2012.

⁴ Fairtrade Foundation UK, “[Competition Law and Sustainability - Fairtrade Foundation](#)”, 2018. For example, the need for collaboration in the cocoa sector to achieve progress on key sustainability goals has been recognised: “*There has been tremendous effort by many players to work together to achieve the sort of progress we need. [...] However, the lack of clarity around competition law continues to prevent any meaningful progress on the issue of low farm-gate prices, which is a major issue in our sector and beyond. This really restricts further progress being made on other issues such as living incomes and wages*”. Sophi Tranchell, Divine Chocolate.

that European consumers are, at least partly, responsible for. For example, if European consumers demand cotton T-shirts for €5, which entails that farmers and producers keep being exploited, why should European consumers be compensated if the industry agrees to improve the working conditions of these farmers and producers?

3. Consumers have other interests beyond prices.

A growing number of EU consumers have already adapted to contribute to sustainability and are willing to pay more for sustainable products. According to findings from the European Consumer Payment Report 2020 by Intrum, almost one in two respondents (47%) say that their interest in sustainability has motivated their spending in 2020.⁵

Research on supply chain trends and technology in the apparel sector found that consumers are willing to pay more for sustainable options, with 35% respondents willing to pay 25% more than the original price, and 12% willing to pay 50 – 100 percent more.⁶

With regards to more sustainable food, and the agricultural supply chain, research by the European Consumer Organisation (BEUC) found that over half of their respondents (EU consumers) agreed that sustainability concerns have either some (42.6%) or a lot of influence (16.6%) on their eating habits, concluding that two-thirds of consumers are open to changing their eating habits for social and/or environmental reasons.⁷

At the same time, European consumers also believe that brands must drive sustainability. 69% of them wish companies to be more transparent about their business practices, according to research by Forrester.⁸

4. Consumers benefit from social and environmental sustainable business practices because precarious working conditions along supply chains directly affects the security of supply of goods for EU consumers in the long run.

In order to secure supply chains, EU companies and their supply chain partners might need to collaborate on environmental and economic aspects, but also to create social incentives. For example, a 2014 study by the Institute for Development Studies exploring attitudes of young people in Africa, Asia and Latin America towards farming⁹ found that many view farming as an undesirable occupation due to unstable and low incomes. As a result, many countries struggle to retain young workers in the farming sector because they tend to move to cities in pursuit of more stable jobs with higher wages, which directly affects the security of agricultural supplies (e.g., cocoa, coffee, bananas) in Europe.

5. More sustainable business practices, such as paying a Living Wage or Living Income, does not have to lead to higher prices for the end consumers.

⁵ Intrum, “[European Consumer Payment Report 2020](#)”, 2021.

⁶ CGS, “[Increasing Consumer Value Through Digital Transformation: CGS 2020 Annual Report: Supply Chain Trends & Technology](#)”, 2020.

⁷ BEUC, “[Consumers and the Transition to Sustainable Food](#)”, 2020.

⁸ Michelle Beeson and Mellisa Chaudet, Forrester, “[European Consumer Drive The Sustainability Demand](#)”, 2022.

⁹ Food and Agriculture Organization of United Nations, “[The future of food and agriculture: Trends and challenges](#)”, 2017.

Reports by the “Fair Fashion Guide”, an initiative funded by the Fair Wear Foundation and the German Federal Ministry for Economic Cooperation and Development, have shown that the payment of a living wage does not have to result in higher consumer prices because they are composed of other (more significant) fixed and variable costs and markups applied by the seller to make profit. This can be demonstrated by the example of a t-shirt where labour costs for making the product only account for 0.6% of the consumer price.¹⁰ The cost breakdown summarises the data that Fair Wear collected, which pertains to pricing for a single t-shirt created using Fairtrade-certified cotton. It indicates the costs of the key inputs for production, as well as the prices paid as this particular t-shirt moves through the supply chain, ending at the retail level. In this case, the salary costs make up 0.6% of the retail price, and only 3,6% of what the factory receives for producing the t-shirt.¹¹

EU companies that would like to increase labour costs to meet a living wage for workers in their production facility can implement various strategies to mitigate additional costs (for example as a result of compounding price escalation) for EU consumers, such as increased productivity and efficiency measures throughout the supply chain or adapting the company’s business model.

Please note that this paper is a summary of our full response to the [draft revised Horizontal Guidelines](#) published by the European Commission on the 1st of March 2022. For further reading please find the full joint response [here](#). It proposes concrete amendments and modifications to the text of Chapter 9 on sustainability agreements.

The changes that we suggest aim to translate our argumentations and key positions as well as the [joint letter](#) that we sent to Executive Vice President Margrethe Vestager on the 5th of January 2022. Our suggestions aim to strengthen the HGs by making them more comprehensive and clearer around sustainability agreements.

¹⁰ Fair Fashion Guide, “[Was kostet mein T-Shirt?](#)”, 2022.

¹¹ Fair Wear Foundation, “[Climbing the Ladder to Living Wages](#)”, 2012.