



Joint response to the public consultation on the draft guidelines on antitrust exclusion to sustainability agreements in agriculture

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Joint feedback by the Fair Trade movement and Solidaridad

Brussels, 24th of April 2023

The World Fair Trade Organization – Europe, Fairtrade International, the Fair Trade Advocacy Office (hereafter: the Fair Trade movement) and Solidaridad welcome the opportunity to provide comments on the draft guidelines on the use of the derogation exempting sustainability agreements in the field of agriculture from EU competition law. This is a significant step towards more sustainable and fairer products. We welcome this direction and look forward to seeing the ambitions of the SDGs, the EU’s Green Deal, and the Farm to Fork strategy translated into the upcoming guidelines. We understand the derogation’s focus on the environmental aspect of sustainability, in line with the climate change emergency, but this should not lead to ignoring its social dimension (see footnote 1 for more on this topic¹). As the draft guidelines indicate, the Commission is also committed to implementing the United Nation’s Sustainable Development Goals (‘SDGs’), which include no poverty (SDG 1), zero hunger (SDG 2), decent work (SDG 8), and sustaining income growth and reduced inequalities (SDG 10) among countries. It would be a missed opportunity to adopt a narrow, selective approach, focusing on environmental issues, rather than a holistic approach, that can serve as guidance for all ESG-related aspects of agreements in the agricultural sector.

We consider that the wording of Article 210a allows for a broader approach to sustainability but are afraid the Guidelines will miss the opportunity to do so. Therefore, we urge the EC to revise the draft guidelines in a way that recognizes the multifaceted nature of sustainability.² This would also be coherent with broader policy instruments, including the Green Deal and its Farm to Fork strategy.

¹ Summary of Joint Response on the Horizontal Guidelines’ Chapter 9 - Sustainability Agreements by Fair Wear, ISEAL, AIM, and the Fair Trade Advocacy Office, URL: <https://fairtrade-advocacy.org/wp-content/uploads/2022/07/Joint-response-FTAO-AIM-ISEAL-Fair-Wear-short-version.pdf>

² As it is also reflected in the draft Horizontal Guidelines on the applicability of Article 101 TFEU, published by the European Commission in February 2022. See paragraph 462 of the Horizontal Guidelines.



We would like to focus on the following and invite the EC to:

- Reiterate in the guidelines that there is a direct link between social sustainability aspects and adverse environmental effects as stated in the Farm to Fork strategy: *“ensuring a sustainable livelihood for primary producers, who still lag behind in terms of income, is essential for the success of the recovery and the transition.”*³

Recent research on sustainable agriculture⁴ by Fairtrade International shows that the interconnectedness of 25 prioritized risk dimensions to sustainability in agriculture with the three sustainability dimensions is clearly evident. The analysis indicates, failing to address achievement of “Living Incomes and Living Wages” for small farmers and farm workers is a risk to broader sustainability aspects in agriculture. The reports states (page 60): *“The issues associated with living incomes and wages are numerous and nuanced, involving other factors such as gender, vulnerability, inequality, and access to land. Yet, in terms of sustainability, living incomes and wages are imperative, as failure to achieve them would not only impair supply chain continuity and the flourishing of rural communities but also result in significant damage to the natural environment.”*

At the same time, Solidaridad’s research on “Price in Global Commodity Value Chains”⁵ reveals that *“current competition law and particularly antitrust policies are a critical factor why prices are not on the agenda of sustainability initiatives.”* It makes clear that if EU’s Competition Law continues to have a chilling effect on the industry’s progress on the achievement of Living Incomes and Living Wage this will also be reflected in further key sustainability issues.

Due to this link, initiatives on living wages, living incomes and purchasing practices contribute to the objectives set out in the CMO Regulation and should thus also benefit⁶ the EC should reconsider this point to provide farmers with legal certainty.

- Confirm that when an agreement pursues the objectives listed in Article 210a(3), any ancillary restraints that are necessary for the implementation of such agreement can also benefit from the exemption. For instance, it is common for initiatives aiming to e.g., reduce the use of pesticide, to include compensation mechanisms to cover the extra costs incurred by producers. Clarifying that these mechanisms would be covered, and under what conditions, would give Article 210a its full effect in line with the EC’s commitment in the Farm to Fork strategy to help agricultural producers “strengthen their position in the supply chain and to capture a fair share of the added value of sustainable production”.

³ page 4 of European Commission's Farm to Fork Strategy: URL: https://food.ec.europa.eu/system/files/2020-05/f2f_action-plan_2020_strategy-info_en.pdf

⁴ The baseline report titled “Sustainable Agriculture under Fairtrade terms” will be published in the course of 2023.

⁵ Solidaridad: Price in Global Commodity Value Chains: URL: https://www.solidaridadnetwork.org/wp-content/uploads/2023/03/Solidaridad_-_Price-in-global-commodity-value-chains_FINAL.pdf

⁶ Paragraph 43 of the draft Guidelines: “If a sustainability standard aims to contribute to objectives that are not listed in Article 210a(3), such as social objectives (for example working conditions or healthy and nutritious diets) [...], the aspects of the sustainability standard that aim to contribute to these objectives cannot be taken into account when assessing compliance with Article 210a”



- Clarify how agreements relating to production of agricultural products outside of the EU which are then processed for EU consumers can benefit from the guidance provided for the application of the Article 210a derogation. From a competition law standpoint, we see no reason why Article 210a criteria should not apply to the assessment of agreements concerning non-EU farmers and producers in the agricultural sector. This would also help raise sustainability standards globally and “avoid the externalization and export of unsustainable practices” that the Farm to Fork strategy aims to prevent.

The following three examples aim to show that social and environmental outcomes are deeply connected and need to be addressed simultaneously. This also means that the three environmental exceptions defined in Article 210a – environmental objectives, reduction of the use of pesticides and animal health and welfare – also have a social side.

Example 1, by Solidaridad:

If we focus on industry efforts to reduce the use of pesticides, for example, we find a situation in which brands came together to support farmers to start supplying them with organic – and therefore pesticide free – cotton.⁷ In that specific case, “*all the participating brands and implementing partners have agreed to pay a pre-agreed premium to farmers in support of the farmer business case for organic*”. This premium turned out to be essential. When asked how best to be supported in growing organic cotton in the seasons to come, 26% of farmers mentioned an increase in price for the cotton as their number one need. This shows how improved producer livelihoods through pricing, a topic generally labeled as belonging to the social angle of sustainability, can have profound impacts on the environment too. In fact, low prices and price volatility negatively impact producers’ and workers’ livelihoods, and are a root cause for environmental degradation⁸, often leading to issues such as increased use of pesticides or deforestation (see also example 3).

Example 2, by the Fair Trade movement:

Within the Fair Trade movement examples have shown that there is a need for collaboration around prices in the cocoa sector to achieve progress on broader sustainability goals: “*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.

⁷ OCA Farm Programme Impact Report 2021-2022: URL: <https://organiccottonaccelerator.org/wp-content/uploads/s-reports/FARM-PROGRAMME-IMPACT-REPORT-2021-22-1.pdf>

⁸ Price in Global Commodity Value Chains: Key to Achieving Living Income and Living Wage: URL: https://www.solidaridadnetwork.org/wp-content/uploads/2023/03/Solidaridad-Price-in-global-commodity-value-chains_FINAL.pdf



Within the report on “Competition Law and Sustainability”⁹, by the Fairtrade Foundation UK, interviewees consistently highlighted that in order for farmers to receive prices which deliver environmental sustainability and poverty reduction, there is a need for alignment between multiple supply chain actors on a common approach. The key point for policymakers to note from this research is that the current understanding of competition law by a considerable number of experts and businesses is that it does restrict business collaboration on farm-gate prices and incomes for sustainability purposes. It was felt to be difficult, if not impossible, for industry actors to explore pre-competitive initiatives aimed at increasing the income of farmers and workers, due to concerns of breaching competition law. This constrains broader progress against the United Nations Sustainable Development Goals.

Example 3, by Sustainable Cocoa Initiative on Living Income and Deforestation:

Cocoa farmers face enormous challenges. That is particularly true for West Africa. A lot of West African producers earn a low income from cocoa, which is often below the international poverty threshold. The impact of these living conditions characterized by poverty are abusive forms of child labour, food insecurity and malnutrition. As a result, also the agricultural practices in place are often harmful to the environment.

The German Initiative on Sustainable Cocoa (GISCO), a joint initiative of the German Ministry for Economic Cooperation and Development (BMZ) and the German Ministry of Food and Agriculture (BMEL), aims at achieving a sustainably thriving cocoa sector.¹⁰ GISCO members, of which amongst others Fairtrade Deutschland, take a common stand on this and exchange their experiences and knowledge and strengthen their cooperation on some key sustainability issues. Apart from economic and ecological ones, social aspects, and in particular better living conditions of cocoa farmers, are at the forefront. A main focus is put on the improvement of farm-gate prices and premium systems as well as other income-generating measures as contributions to a living income of cocoa farming households. The initiative acknowledges this to have a direct impact on its further 12 interconnected goals which include environmental aspects, such as the end of deforestation and conservation of forests and biodiversity.¹¹

⁹ URL: <https://www.fairtrade.org.uk/resources-library/researching/policy-resources/competition-law-and-sustainability/>

¹⁰ Sustainable Cocoa Initiative: URL: <https://www.kakaoforum.de/en/about-us/our-goals/>

¹¹ This has also been acknowledged by the European Parliament and adopted within the current text of the Deforestation Regulation from the 19th of April 2023: “*When sourcing products, reasonable efforts should be undertaken to ensure that a fair price is paid to producers, in particular smallholders, so as to enable a living income and effectively address poverty as a root cause of deforestation.*”: paragraph 50: URL: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0109_EN.html



Ultimately, the original aim of EU competition law is to protect the consumers. Therefore, the Guidelines must acknowledge that more sustainable business practices, such as paying a Living Income, do not necessarily have to lead to higher prices for the end consumers.¹² Moreover, it is a matter of fact that consumers benefit from environmental but also social sustainable business practices because precarious working conditions along supply chains directly affect 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.¹³ Unless farmers and workers receive higher incomes and wages, we argue that the medium to long-term supply of commodities such as cocoa and bananas will be at risk, ultimately harming the consumer.

Mikkel Kofod Nørgård,
Regional Coordinator

**World Fair Trade
Organization – Europe**

Sophie Aujean,
Director Global Advocacy

Fairtrade International

Jorge Conesa,
Managing Director

Fair Trade Advocacy Office

Heske Verburg,
Director

Solidaridad Europe

¹² This case was further developed in the Joint Response to the European Commission’s public consultation on the draft revised Horizontal Block Exemption Regulations and Guidelines, URL: <https://fairtrade-advocacy.org/wp-content/uploads/2022/05/Joint-response-FTAO-AIM-ISEAL-Fair-Wear.pdf>

¹³ 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.