



WAGENINGEN
UNIVERSITY & RESEARCH

The European Union Farm to Fork Strategy: Sustainability and Responsible Business in the Food Supply Chain

European Food and Feed Law Review

Schebesta, H.; Bernaz, N.; Macchi, C.

<https://effl.lexxion.eu/article/EFFL/2020/5/4>

This article is made publicly available in the institutional repository of Wageningen University and Research, under the terms of article 25fa of the Dutch Copyright Act, also known as the Amendment Taverne. This has been done with explicit consent by the author.

Article 25fa states that the author of a short scientific work funded either wholly or partially by Dutch public funds is entitled to make that work publicly available for no consideration following a reasonable period of time after the work was first published, provided that clear reference is made to the source of the first publication of the work.

This publication is distributed under The Association of Universities in the Netherlands (VSNU) 'Article 25fa implementation' project. In this project research outputs of researchers employed by Dutch Universities that comply with the legal requirements of Article 25fa of the Dutch Copyright Act are distributed online and free of cost or other barriers in institutional repositories. Research outputs are distributed six months after their first online publication in the original published version and with proper attribution to the source of the original publication.

You are permitted to download and use the publication for personal purposes. All rights remain with the author(s) and / or copyright owner(s) of this work. Any use of the publication or parts of it other than authorised under article 25fa of the Dutch Copyright act is prohibited. Wageningen University & Research and the author(s) of this publication shall not be held responsible or liable for any damages resulting from your (re)use of this publication.

For questions regarding the public availability of this article please contact openscience.library@wur.nl

The European Union Farm to Fork Strategy: Sustainability and Responsible Business in the Food Supply Chain

Hanna Schebesta, Nadia Bernaz and Chiara Macchi*

In May 2020, the European Commission published the Farm to Fork Strategy aiming to create a fair, healthy and environmentally friendly food system. The Strategy is an important element of the European Green Deal and includes a Draft Action Plan with 27 specific proposals for action and a timeframe. This article outlines the Draft Action Plan and evaluates four clusters of proposed legislative actions. It then analyses how the Strategy will impact food businesses by focusing on two proposals to (a) improve the corporate governance framework, including a requirement for the food industry to integrate sustainability into corporate strategies; and (b) develop an EU code and monitoring framework for responsible business and marketing conduct in the food supply chain. It discusses how to reconcile those proposals with a separate EU commitment to a cross-sectoral legislative initiative on mandatory human rights and environmental due diligence obligations for all EU companies. Overall, we argue, first, that the idea of ‘sustainable business’ conflates many dimensions and should be more clearly explicated and, second, for coherence between the different initiatives targeting the private sector.

I. Introduction

In May 2020, the von der Leyen European Commission (EC) published the long-awaited Farm to Fork Strategy (from here on referred to as ‘the Strategy’),¹ aiming to create a ‘fair, healthy and environmentally friendly food system’. The initiative is an important element of the overarching ‘European Green Deal’² to tackle climate and environmental challenges, which is a political priority of the EC.³ The Strategy and the Green Deal are part of the effort to implement the United Nations 2030 Agenda and the Sustainable Development Goals⁴.

This article provides an overview of the Strategy and examines the legislative actions that the food sector can expect in the coming months and years. We distinguish between proposals for substantive sustainability actions and those aiming to achieve a sustainability enabling framework more broadly by targeting the structural conditions to which actors are generally subject. Most of the substantive proposals for actions - such as the reduction of pesticide use or the improvement of animal welfare - stem from ongoing legislative evaluations; they aim at modifying and improving existing frameworks from a sustainability perspective and are thus not entirely novel. In

* Hanna Schebesta is Associate Professor in the LAW group at Wageningen University. For Correspondence: <Hanna.Schebesta@wur.nl>. Nadia Bernaz is Associate Professor in the LAW group at Wageningen University. For Correspondence: <Nadia.Bernaz@wur.nl>. Chiara Macchi is Marie Skłodowska-Curie Researcher in the LAW group at Wageningen University. For Correspondence: <Chiara.Macchi@wur.nl>

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A Farm to Fork Strategy for a fair, healthy and environmentally friendly food system, COM(2020)381 final, 20 May 2020, at p. 5.

2 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – The European Green Deal, COM(2019)640 final, 11 December 2019, at pp. 11-12.

3 Ursula von der Leyen, *A Union that Strives for more – My agenda for Europe; Political Guidelines for the next European Commission 2019 – 2024*, European Commission.

4 UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

this article, we put the spotlight on the novel ideas that relate to the overarching legislative sustainability framework and on those actions that appear to place direct sustainability responsibilities on businesses.

Specifically, the EC proposes ‘to improve the corporate governance framework, including a requirement for the food industry to integrate sustainability into corporate strategies’ and ‘to develop a code and monitoring framework for responsible business and marketing conduct in the food supply chain.’ The first proposal raises questions given the various meanings assigned to the terms sustainability and sustainable business in existing food law. How will this definitional uncertainty play out when the EC undertakes to improve the corporate governance framework? Moreover, these two proposals come as the EC has separately committed to a cross-sectoral legislative initiative on mandatory human rights and environmental due diligence obligations for EU companies in early 2021.⁵ This raises questions about how these Strategy proposals fit in this context. Mandatory due diligence, sustainable business and responsible business conduct are not synonymous concepts, but they are closely related. Do the proposals, included in the Strategy, mean that despite committing to cross-sectoral due diligence obligations, the EC is ac-

tually favouring a sectoral approach, starting with the food sector?

The article begins with an overview of the Farm to Fork Strategy (section 2), and then moves to a discussion of the two proposals directly relevant to the food sector, ie improving the corporate governance framework including requiring the food industry to integrate sustainability into corporate strategies, and developing a code for responsible business conduct, placing them into their wider context (section 3). Overall, we argue for coherence between the different initiatives related to the private sector.

II. The Farm to Fork Strategy: An Overview

The European Green Deal strives to mainstream sustainability in all EU policies and resulted in several sector-based initiatives. The Farm to Fork Strategy addresses sustainability in the food sector, separately from the Common Agricultural Policy (CAP) initiatives. The Strategy attempts to create a sustainable food chain that ‘works for consumers, producers, climate and the environment’. Following this approach, it addresses sustainable food production, sustainable food processing and distribution, sustainable food consumption, and food loss and waste prevention.

Formally, the Farm to Fork Strategy is a Communication that details objectives and aspirations. It is accompanied by an Annex that lays down a Draft Action Plan and matches specific legislative actions with an indicative timeframe about when they should be achieved. The lead Directorate-General (DG) of the initiative was DG SANTE, specifically the Unit ‘Food information and composition, food waste’. The Farm to Fork Strategy action points reflect and take into account long-standing evaluations, specifically about Health Claims⁶, Plant Protection Products and Pesticides Residues⁷, Front-of-Pack Nutrition Labelling⁸, Sustainable Use of Pesticides⁹ and Animal Welfare Strategy¹⁰. Therefore, in important respects, the Farm to Fork Strategy builds upon ongoing initiatives, rather than proposing novel approaches. This is also reflected by the fact that a number of documents accompany the Farm to Fork Strategy. These are a Roadmap for the Fitness check of the Animal Welfare Strategy¹¹, an Implementation Report on the Sustainable Use of Pesticides Directive¹², a Report on the REFIT Evaluation of the Pesticide Legislation¹³,

5 ECCJ, “Commissioner Reynders Announces EU Corporate Due Diligence Legislation”, 30 April 2020, available on the Internet at <<https://corporatejustice.org/news/16806-commissioner-reynders-announces-eu-corporate-due-diligence-legislation>>, (last accessed on 23 July 2020).

6 C1 Regulation (EC) No 1924/2006 on Nutrition and Health Claims made on Foods, OJ 2006 L 404.

7 Evaluation of Regulation (EC) No 1107/2009 on the Placing of Plant Protection Products on the Market and of Regulation (EC) No 396/2005 on Maximum Residue Levels of Pesticides, COM(2020)208 final.

8 Regulation (EU) No 1169/2011 on the Provision of Food Information to Consumers, OJ 2011 L 304.

9 Directive 2009/128/EC establishing a Framework for Community action to achieve a Sustainable Use of Pesticides, OJ 2009 L 309.

10 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the European Strategy for the Protection and Welfare of Animals 2012 – 2015, COM(2012)56 final, 19 January 2012.

11 Fitness Check of the EU Legislation on Animal Welfare of Farmed Animals, DG SANTE, 2020.

12 Report on the Experience Gained by Member States on the Implementation of National Targets Established in their National Action Plan and on Progress in the Implementation of Directive 2009/128/EC on Sustainable Use of Pesticides, COM(2020)204 final.

13 See Evaluation of Regulation (EC) No 1107/2009, supra note 7.

a Report on Front-of-Pack Nutrition Labelling¹⁴, an Evaluation of the Nutrition and Health Claims Regulation¹⁵, and a Staff Working Document on the link between the CAP Reform and the Green Deal¹⁶.

The most tangible element of the Farm to Fork Strategy is the Draft Action Plan, which suggests actions that can be clustered in four groups¹⁷: The Draft Action Plan proposes (1) two *overarching, systemic actions*. The remaining action points are specific interventions and, in comparison to the elaborated strategy text, much more limited in scope. The Commission commits to undertake a number of actions between the last quarter of 2020 and the end of 2023, notably (2) actions specifically concerning *agricultural production and farming*, (3) actions that address special issues by *ad hoc* punctual interventions, and, lastly, (4) actions that create an *enabling framework*.

1. Overarching systemic actions

Of the two overarching actions, one is an *overarching legislative framework for sustainable food systems* by 2023 and the other is a contingency plan for ensuring food supply and food security by 2021.¹⁸ The sustainable food system framework, aimed at promoting policy coherence and mainstreaming sustainability ‘in all food-related policies’, will most likely combine mandatory and voluntary measures, addressing ‘the responsibilities of all actors in the food system’.¹⁹ While clearly an important aspirational cornerstone of a sustainable future food policy, this proposal is currently presented only in vague terms.

2. Agricultural Production and Farming

For the area of agricultural production and farming, the Draft Action Plan tables several substantive revisions: it proposes to change the Sustainable Use of Pesticides Directive to reduce use and risk and dependency on pesticides and promote Integrated Pest Management; to revise the Plant Protection Product framework to facilitate biological active substances; to modify the Feed Additives framework in order to reduce the environmental impact of livestock farming; to revise the animal welfare legislation, specifically about animal transport and slaughter; and also undertakes to exploit carbon farming. A major tool for the future implementation of sustainability goals within agricul-

tural production will be recommendations by the EC about how sustainability can be included in the Member States’ national strategic CAP action plans.

The agricultural production and farming part of the Strategy is tied to quantified targets, namely a reduction of chemical and hazardous pesticides by 50%, a reduction of fertilizer use by 20%, a reduction of nutrient losses by at least 50%, a quota of 25% of EU arable land dedicated to organic farming, and a reduction of sales of antimicrobials by 50%. These are the only quantifiable indicators that are referenced in the Strategy, and it is unclear whether the relatively light modifications suggested will suffice to meet the targets. For instance, the Draft Action Plan foresees no action on antimicrobials. The new Regulations on veterinary medicinal products and medicated feed are regarded as sufficient to promote this target. Other elements, notably on organic land use, remain tied up to the willingness of Member States to actually commit to the targets in their national action plans within the CAP. The effectiveness of the Strategy, therefore, may be compromised by the tension that characterizes EU food policy between, on the one hand, the demands of the CAP and the Common Fisheries Policy and, on the other hand, general food sector policies primarily addressing food trade, marketing and safety. An important part of EU policy making in terms of food production remains within the CAP. Concretely, reconciling the new CAP for 2021-2027 and the Farm to Fork Strategy may prove challenging.

3. Ad Hoc Punctual Interventions

A third cluster of proposed actions concern *ad hoc* punctual interventions. These touch on a range of

14 Report Regarding the Use of Additional Forms of Expression and Presentation of the Nutrition Declaration, COM(2020)207 final.

15 Commission Staff Working Document Evaluation of the Regulation (EC) No 1924/2006 on Nutrition and Health Claims made on Foods with regard to Nutrient Profiles and Health Claims made on Plants and their Preparations and of the General Regulatory Framework for their Use in Foods, SWD(2020)95 final.

16 Commission Staff Working Document, Analysis of links between CAP Reform and Green Deal, SWD(2020)93 final.

17 Schebesta and Candel, ‘The EU’s Farm to Fork Strategy: gamechanger or business as usual?’, on file with author/Nature Food (in review; tbc).

18 A Farm to Fork Strategy, *supra* note 1.

19 *Ibid.*

specific issues within food health, safety, quality, fraud and waste. In the food and health nexus, nutrition receives some attention with initiatives on food composition; nutrition profiles to restrict salt, sugar, fat; and a legislative proposal for mandatory nutrition labelling. These proposals have been in the pipeline for some time, and it is hardly surprising that a mandatory front-of-pack labelling is to be proposed. This is an isolated action and the Strategy does not invest much in the direction of the One Health food and health nexus. Similarly, for food safety, the Strategy only picks up a much-needed revision of the Food Contact Material legislation as the current EU and national regulations leave many scientific and legal questions open, for instance, with respect to recycling. Other issues relating to food safety such as genetic modifications, nanomaterials or microplastics are not addressed. Also, for food quality, the Strategy makes a well thought through proposal, namely the Revision of EU Marketing Standards in an effort to support sustainability. The action points also propose mandatory origin indications on food. Most notably, the Strategy wants to introduce a sustainable food labelling framework – the lack of a mandatory framework for voluntary labelling, including sustainability labelling, being one of the major gaps in the regulation of EU food information to consumers. On the point of food waste, there is a proposal for a revision of EU rules on date marking, and to impose legally binding targets for food waste reduction on Member States. Lastly, the Strategy also addresses food fraud, suggesting to enhance enforcement as a remedy.

All of these initiatives are tangible, actionable options that are capable of garnering political agreement relatively easily. However, food health, safety, quality, waste and fraud have clearly not been addressed in a holistic or systemic way. Rather, a few distinct challenges have made their way into the Strategy and will now likely be tackled successfully.

4. Actions to Create an Enabling Framework

A number of actions are dedicated to creating an enabling framework. For public entities, the Strategy

foresees a revision of the public procurement framework and wants to introduce minimum mandatory criteria for sustainable consumption in food procurement. This goes hand in hand with a revision of the EU public promotional schemes concerning the promotion programme and the EU School Scheme. The Strategy therefore addresses not only private actors, but also public actors.

The Strategy also aims to adapt structural rules to allow private actors to take measures more easily in the name of sustainability. In this respect, clarifying the scope of competition rules in the TFEU should enhance the possibility for actors to take collective actions for sustainability. This is an issue at the national level as the application of competition law frustrated sustainability agreements on the grounds that they restrain competition.²⁰ In addition, the Draft Action Plan proposes initiatives to enhance cooperation of primary producers to support their position in the food chain and non-legislative initiatives to improve transparency. Next to the *overarching legislative framework for sustainable food systems*, two specific action points tackle business responsibilities directly. These are an ‘initiative to improve the corporate governance framework, including a requirement for the food industry to integrate sustainability into corporate strategies’ and a plan to ‘develop an EU Code on responsible business and marketing conduct in the food supply chain’. Both are discussed in the next section.

This last cluster of action points speaks to the Strategy’s idea of addressing the food system and aims to improve a number of structural rules that currently constrain public and private actors, notably in public procurement and competition law. The business responsibilities’ actions are among the more ambitious and novel plans of the Strategy, as explained below.

III. Sustainability and Responsible Business in the Food Supply Chain

The Strategy proposes to create an overarching sustainability framework for sustainable food systems. The framework is meant to mainstream sustainability in all food-related policies and provide ‘common definitions and general principles and requirements for sustainable food systems and foods’. The framework will also address the responsibilities of all actors in the food system. While apparently holistic

20 Gerbrandy, A. (2017). Solving a sustainability-deficit in European competition law. *World Competition*, 40(4).

and ambitious, this idea, however, remains vague, raising questions about which responsibilities for which food business operators, and the nature of the sustainability principles. Read in a positive light, such openness attests to the fact that the EC is keen to make this a stakeholder-intensive process, which leaves the ultimate design of the food system instrument truly open for negotiation. It is virtually impossible at this stage to foresee whether this part of the strategy will remain aspirational only or mature into a tangible initiative.

In this light, the other proposals that directly target business responsibilities as a whole are equally novel, but more tangible. These two proposals, ie improving the corporate governance framework to integrate sustainability into corporate strategies and developing an EU Code on responsible business and marketing conduct in the food supply chain are discussed in turn.

1. Improving the corporate governance framework to integrate 'sustainability'

In a Green Paper adopted in 2011 the EC defines the corporate governance framework as 'a combination of legislation and 'soft law', including recommendations and [national] corporate governance codes'²¹. The Green Paper was adopted following the 2008 financial crisis and is complemented by the EU Strategy for Corporate Social Responsibility (CSR)²². Both documents remained rather traditional in their approach, favouring short-termism and the protection of shareholders' interests. As Tsagas commented, 'the path followed continued to be that of a minimum standard means of harmonisation'²³. In recent years, she noted a shift in the Commission's policy seemingly towards more attention paid to sustainability, but she ultimately dismissed these efforts as window-dressing²⁴. Among the various issues she highlighted in the EC's approach to corporate governance is the lack of a clear definition for the term sustainability²⁵. This point is particularly relevant for the Farm to Fork Strategy, as explained below.

One of the major questions a future food system legal framework will need to answer is whether all businesses and all business operations are 'equal', or whether specific actors, as well as practices, warrant the creation of special obligations, protections, and privileges. Existing food law instruments have em-

braced different approaches regarding which businesses deserve exemptions, derogations, flexibilities, privileges and/or protection. Special treatment may be linked to the size of businesses, (measured by various indicators), the number of links in a supply chain (short supply chains), the direct sale to the consumer, the local nature of operations, the traditional nature of their operation, or to their protected status as primary producers.

The 2000 White Paper on Food Safety²⁶, and the following General Food Law Regulation²⁷ instituted an encompassing, overarching food safety system that created responsibilities for all food business operators, at all stages of production. Regarding safety aspects, the point of departure of the legal framework is that all actors are generally treated equally. However, specific exemptions abound for special types of businesses or business practices.

Examples can be found for direct sales (Food to Consumer Information Regulation²⁸) or direct sales in small quantities and for small businesses in the context of food hygiene (Hygiene I and II Regulations²⁹). Privileges for different types of businesses are even more pronounced within the common organization of agricultural markets, which is sector based (wine, agriculture, hops, etc.)³⁰ and recognises the special role for producer organisations and associations and interbranch organisations³¹, and often

21 Green Paper; The EU Corporate Governance Framework, COM(2011)164 final, at p. 2.

22 Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions - A Renewed EU Strategy 2011-14 for Corporate Social Responsibility, COM(2011)0681 final.

23 Georgina Tsagas, "A Proposal for Reform of EU Member States' Corporate Governance Codes in Support of Sustainability", 12 *Sustainability* (2020), pp. 4328, *et seq.*, at p. 5.

24 *Ibid.*, at p. 6.

25 *Ibid.*

26 White Paper on Food Safety, COM(1999)719 final, 12 January 2000.

27 Regulation (EC) No 178/2002 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, OJ 2002 L 31, at pp. 1-24.

28 Regulation (EU) No 1169/2011, *supra* note 8.

29 Regulation (EC) No 853/2004 Laying down Specific Hygiene Rules for on the Hygiene of Food Stuffs, OJ 2004 L 39.

30 See Regulation (EU) No 1308/2013 Establishing a Common Organisation of the Markets in Agricultural Products, OJ 2013 L 347, Article 1(2).

31 See *Ibid.* Chapter III, Article 152.

for micro-, small- and medium-sized enterprises within the meaning of Commission Recommendation 2003/361/EC³². Within the legal context of rural development, short supply chains enjoy special treatment, defined as 'a supply chain involving a limited number of economic operators, committed to cooperation, local economic development, and close geographical and social relations between producers, processors and consumers'.³³ Equally, some businesses are specifically protected in their business practices. During the legislative procedure of the Unfair Trading Practices Directive in the food supply chain, one of the most contentious issues was which kind of businesses would be protected by the new law.³⁴ The final version of the Unfair Trading Practices Directive applies a dynamic approach, based on the relative size of the supplier and the buyer in terms of annual turnover.³⁵ A discussion about personal scope is likely going to be equally contentious for any corporate governance obligations.

Comparing these definitions and connecting factors further reveals different implied 'sustainability' assumptions about why some businesses deserve special treatment. The Farm to Fork Strategy follows the same path: it understands fairness as being part of sustainability, and aims to especially support primary producers, shorter supply chains, small-scale farmers, as well as SMEs. This gives a sense that these classes of businesses are sustainable *per se*, almost by definition. A wide understanding of sustainability encompasses traditional economic arguments that are made to protect small- and medium-size companies, for instance about fairness, resilience, or food security. Next to economic arguments, small, local, short or direct sale food businesses could be regarded as 'sustainable' *per se*, for instance, for social or environmental reasons. This gives rise to the ques-

tion whether some classes of businesses by definition should be regarded as 'sustainable'. This question is impossible to answer as long as the notion of 'sustainability' conflates so many dimensions. In turn, this will have repercussions on how the EC will go about improving the corporate governance framework to integrate sustainability into corporate strategies, as per the Draft Action Plan of the Farm to Fork strategy. How will sustainability be defined in this context? Will certain business be exempt from the obligation to incorporate sustainability in their strategies because they are already considered sustainable *per se*? This is an issue to follow in the coming months as this proposal should be implemented in the first quarter of 2021.

2. EU Code on Responsible Business

The Farm to Fork Strategy contains clear references to the responsibilities of private actors within the food system in the form of aspirational goals and planned actions, as well as of mandatory and voluntary measures. Some of these actions directly concern the responsibilities of businesses and seem to anticipate regulatory developments that might significantly impact the operations of companies in the food industry.

The first relevant action is the Commission's commitment to adopt an *EU Code of Conduct for Responsible Business and Marketing Practice accompanied with a monitoring framework*. The development of the code, foreseen for the second quarter of 2021, should involve 'all relevant stakeholders' and help promote the availability and affordability of healthy and sustainable food options, thereby reducing the environmental footprint of the food system. The title 'code of conduct' and the wording used ('promote', as opposed to 'require') seem to indicate a voluntary or opt in instrument. However, should the code of conduct be linked not only to a monitoring framework, as explicitly envisaged by the Communication, but also to a system of incentives (eg public procurement conditionality) and/or contractual obligations (eg incorporation of the code in supply contracts), the food and retail companies' discretion to opt out of its provisions might be *de facto* reduced.

Whatever form the code will take, its role and impact might also be influenced by parallel developments. The Commission is currently working on the

32 Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro-, small- and medium-sized enterprises, OJ 2003 L 124, at p. 36.

33 Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ 2013 L 347, Article 2.

34 Hanna Schebesta, Kai Purnhagen, Bert Keirsbilck and Tom Verdonk, "Unfair Trading practices in the Food Supply Chain Regulating Right?", 9(4) *European Journal of Risk Regulation* (2018), pp. 690–700.

35 Directive (EU) 2019/633 of the European Parliament and of the Council on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain, OJ 2019 L 11, pp. 59–72.

elaboration of EU-wide rules on the mandatory human rights due diligence of companies. The concept of human rights due diligence was first formulated in the UN Guiding Principles on Business and Human Rights (UNGPs) adopted in 2011 by the United Nations Human Rights Council. It represents the standard of conduct that all companies need to abide by to discharge their responsibility to respect human rights.³⁶ Human rights due diligence entails the company's duty to assess, prevent and/or mitigate the risk of causing or contributing to human rights violations. It also entails checking the supply chain to ensure that the company is not directly linked to negative impacts through its business relationships. This soft law standard was most notably translated into binding rules through the *devoir de vigilance* law adopted in France in 2017, which also includes a duty to address and prevent environmental harm.

As recently announced by EU Commissioner for Justice Didier Reynders, the European Commission, within the framework of the Green Deal, aims to adopt a regulatory instrument inspired by the French law that might require the imposition of a duty of care on (at least some) EU-based companies.³⁷ What clearly emerges from the words of Commissioner Reynders is that the upcoming instrument - either a directive or a regulation - will have a cross-sectoral scope and cover the entire supply chain and address the whole spectrum of risks, including human rights and environmental risks.³⁸ The new rules are to be underpinned by a sanctions system and might be linked to civil liability.³⁹ This development, although not explicitly referenced in the Farm to Fork Strategy, is likely to constitute the pivotal action subsumed under the Commission's envisaged initiative 'to improve the corporate governance framework, including a requirement for the food industry to integrate sustainability into corporate strategies', as discussed above.⁴⁰ Indeed, this action is scheduled for the first quarter of 2021, which is also the timeframe in which the new instrument on mandatory human rights due diligence is expected to be tabled.⁴¹ Should it become obligatory for companies to identify and address social, human rights and environmental risks throughout their supply chains, businesses in the food sector should be prepared to put sound management systems in place, if they have not done so already. In this scenario, opting in a voluntary Code of Conduct for Responsible Business and Marketing Practice would not only provide them with additional guid-

ance in shaping the company's human rights due diligence processes, but also with a potential defence against liability. While the upcoming cross-sectoral rules will be an important piece of the puzzle, the Commission's strategy seems to indicate that additional, sector-specific measures might also be envisaged, particularly aimed at the integration of sustainability into corporate strategies.⁴²

IV. Conclusion

Despite the disruptions caused by the Corona crisis, the EC published the Farm to Fork Strategy, thereby indicating its intentions to pursue the European Green Deal, and a more sustainable food policy as part of it. The ultimate commitment to sustainability that is required for a successful implementation of the Strategy will likely be influenced by how the pandemic unfolds over the next years. Indeed, while the Corona crisis initially resulted in more sustainable attitudes among consumers it is questionable whether such impetus can withstand a stark economic recession.

The Farm to Fork Strategy proposes two systemic actions, and otherwise several specific actions. The overall framework wants to target the food system and is ambitious but also vague - the extent to which this framework can create a shared understanding of sustainability, and attribute responsibilities for sustainability, depends on the momentum and the political process in the coming years. In their specificity the initiatives will likely be implemented but, overall, the success of the Strategy depends heavily on the future CAP. It is unclear whether the specific mea-

36 UN Guiding Principles on Business and Human Rights, UN Doc. A/HRC/17/31, 21 March 2011.

37 ECCJ, "Commissioner Reynders announces EU corporate due diligence legislation", 30 April 2020, available on the Internet at <<https://corporatejustice.org/news/16806-commissioner-reynders-announces-eu-corporate-due-diligence-legislation>>, (last accessed on 23 July 2020).

38 Ibid.

39 Ibid.

40 A Farm to Fork Strategy, supra note 1, at p. 12.

41 Ropes & Gray, "EU Mandatory Human Rights Due Diligence Legislation to Be Proposed in Early 2021", 26 May 2020, available on the Internet at <<https://www.ropesgray.com/en/newsroom/alerts/2020/05/EU-Mandatory-Human-Rights-Due-Diligence-Legislation-to-be-Proposed-in-Early-2021>> (last accessed on 23 July 2020).

42 A Farm to Fork Strategy, supra note 1, Annex, at Action point 13.

asures by themselves are enough to achieve the more ambitious quantified targets or the ambitions of the Green Deal.

Two proposals in the Draft Action Plan will particularly impact food businesses. First, the EC envisages to *improve the corporate governance framework including a requirement for the food industry to integrate sustainability into corporate strategies*. As shown, the lack of a clear definition of the term sustainability will complicate the implementation of this proposal. As vague as the proposal is for now, at least some reform is coming, and the term requirement suggests binding obligations on food businesses. Second, the EC wants to develop an *EU Code of Conduct*

for Responsible Business and Marketing Practice accompanied with a monitoring framework. It remains to be seen how this Code for food businesses will relate to the EC plans for supposedly cross-sectoral and mandatory corporate due diligence legislation in the areas of human rights and the environment, both closely related to the concept of sustainability.

Throughout the Farm to Fork Strategy and its Draft Action Plan, sustainability remains an elusive concept. While it is not clear what its content precisely will be and which commitments will be demanded from businesses, all food business operators should know and prepare for the fact that sustainability – in whichever shape – will affect their business.