

Tour de Table : Farm to Fork Law Update

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Tour de Table: Farm to Fork Law Update

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The article is the first of a periodic update of the progressing Farm to Fork laws in the making. This first edition takes stock of the legislative initiatives in the Farm to Fork Strategy, by making a ‘Tour de Table’: we analyse the potential of the F2F Communication to effect legal change (Section II) and report on the developments of selected legal actions proposed, notably: the umbrella actions (Section III); the actions relevant for food safety, quality, and information (Section IV); as well as food business responsibility (Section V). We conclude with our observations about the future of the F2F laws in the EU (Section VI).

I. Farm to Fork Law, Update #1 – Taking stock in 2022

In December 2019, under Commission President von der Leyen, the European Commission announced the European Green Deal as a “blueprint for (...) *transformational change*” to make Europe the first climate neutral continent in the world.¹ To achieve this ambitious goal, the Green Deal lists 48 key actions, among which the ‘Farm to Fork’ (F2F) Strategy is just one of many political strategies. In May 2020, the Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system² was published, outlining the European Commission’s (legal) plans for the food sector.

Now, in 2022, the European Green Deal policy cycle (2019-2024) has reached its half-life, and we take this opportunity to launch a periodic update of the progressing F2F law in the making.

This first update takes stock of the progress of the F2F Strategy, by making a ‘Tour de Table’: we first analyse the potential of the F2F Communication to effect legal change (section II) and then report on the developments of selected legal actions proposed. In this, we cover the umbrella actions (Section III) and analyse the F2F Strategy from the perspectives of food safety, quality, and information law (Section IV); as well as food business responsibility (Section V). Finally, we conclude with our ob-

servations about the future of the F2F laws in the EU (Section VI).

II. The F2F Strategy Heralds the ‘Sustainability Turn’ in EU Food Law

1. Overview

The F2F Strategy was presented as a Commission Communication and consists of two parts, the policy outline, and an Annex with the specific legal actions proposed (the action plan).

The policy outline aims for a fair, healthy and environmentally friendly food system. While this title

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1 Commission, ‘The European Green Deal’ (Communication) COM (2019) 640 final.

2 Commission, ‘A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system’ (Communication) COM (2020) 381 final (F2F Strategy).

shies away from using the ambiguous ‘sustainability’ concept, sustainability is omnipresent in the written policy outline (it is used 162 times). The overarching goal of the F2F Strategy can therefore reasonably be summarised as bringing the sustainability turn to EU food law.³

The Annex to the Communication is the most actionable element of the F2F Strategy, because it outlines the Commission’s draft Action Plan of 27 legal actions to be taken. Of these, there are two umbrella actions (see section III), namely a ‘legislative framework for sustainable food systems’ and a ‘food supply and security contingency plan’. The remaining actions address four dimensions of the food system: food production, food processing & services, food consumption, and food loss & waste (Table 1 in Appendix).

Looking at the actions proposed, apart from the two umbrella frameworks, a large number of the remaining legal actions are sustainability revisions, rather than proposals for new laws. Notable exceptions are the EU carbon farming initiative, actions in the area of food information (discussed in section 3 below) and in the area of business responsibility (discussed in section V below). It is also important to note the silence of the F2F Strategy on certain issues,

such as the future of GMO regulation in the EU or the digitalisation of the agri-food chain.

2. What is the Potential of the F2F Strategy to Institute a New ‘Sustainability Paradigm’ in the EU F2F law?

EU food law ‘as we know it’ is largely the product of the 2000 White Paper on Food Safety,⁴ which created the food safety oriented institutional and substantial foundation for the food domain. ‘Safety’ became the predominant paradigm, which in 2019 – under the impact of the Glyphosate/Monsanto scandal – was complemented by a push for transparency through the Transparency Regulation.⁵ A latent influence on EU food law was exercised through the Better Regulation Agenda. First, the 2010 ‘Fitness Check’ identified the food chain as one of four pilot projects, and reform of EU food law was continued under the Regulatory Fitness and Performance Programme (REFIT)⁶ that aimed to make EU law simpler and less costly. In fact, for a significant part, the F2F Strategy bundles open REFIT initiatives, for instance on Food Contact Materials or the Feed Additives legislation.⁷

In how far, then, is it likely that the F2F Strategy will be successful in instituting a new ‘sustainability paradigm’? The F2F Strategy is very vocal about its commitment to sustainability, but the outline sketched by the European Commission in the action plan presented is far from tangible. The White Paper on Food Safety was comprehensive and clear about the envisaged institutional changes, for instance by proposing the creation of the European Food Safety Authority and matching it with processes and legal mechanisms. The F2F Strategy, by contrast, remains elusive as to what the sustainability umbrella legislation would entail and does not propose institutional or procedural modifications that would enshrine the sustainability turn at a systemic level. Furthermore, the F2F Strategy does not explain how the sustainability framework would be implemented by or even relate to the General Food Law Regulation (GFL).⁸ Where the White Paper on Food Safety provided a veritable blueprint of a new food safety architecture, the potential of the F2F Strategy to do the same for sustainability must still materialise during the law-making processes.

3 Next to the written policy outline, the text of the Communication further mentions a number of non-binding quantitative objectives, notably the reduction of chemical and hazardous pesticides by 50%; the reduction of nutrient losses by at least 50%, and the use of fertilisers by at least 20%; have at least 25% of the EU’s agricultural land under organic farming; and to roll-out of fast broadband internet in rural areas to achieve the objective of 100% access by 2025.

4 Commission, ‘White Paper on food safety’ (Communication) COM (1999) 719 final (White Paper on Food Safety).

5 Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC [2019] OJ L231/1 (Transparency Regulation).

6 Commission, ‘EU Regulatory Fitness’ (Communication) COM (2012) 746 final.

7 For the progress of the REFIT in Health and Food Safety see Commission, ‘REFIT – Making EU law simpler and less costly: REFIT Scoreboard – Health and food safety’ <<https://op.europa.eu/webpub/com/refit-scoreboard/en/policy/9/index.html>> accessed 3 June 2022.

8 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 [2002] OJ L31/1 (General Food Law Regulation).

III. Umbrella Strategies

The Commission presented two umbrella frameworks that are meant to streamline a new systematic approach to sustainability. These are the 'Proposal for a legislative framework for sustainable food systems' (FSFS) - expected in Q4 2023 - and the 'Contingency plan for ensuring food supply and food security' that has already been presented this year.

1. Proposal for a Legislative Framework for Sustainable Food Systems ('FSFS Proposal')

In 2018, the Fitness Check of the GFL found the existing food law framework to be ineffective in coping with the sustainability facets of the food system. The FSFS Proposal aims to address this deficiency by shaping a new EU legal framework committed to food sustainability. Akin to how the GFL established the foundation for food safety, the new instrument could establish the foundation for sustainability in future legislation, and ensure coherence and policy integration both at the EU and national level. However, and in contrast to the White Paper on Food Safety, the F2F Strategy is elusive about the precise content of the sustainability legal framework, and of itself does not represent a solid basis to guide the legislative process giving shape to this endeavor.

Looking at the roadmap to the Commission's adoption of the final proposal, the European Commission published an Inception Impact Assessment⁹ for feedback in September 2021, and 230 feedback contributions were received.¹⁰ The public consultation was planned for Q2 2022.

According to the Inception Impact Assessment, the FSFS will likely take the shape of a Regulation. The full Impact Assessment will assess four policy options, namely the baseline ('do nothing specific') scenario, voluntary approaches, reinforcing existing legislation, and a new comprehensive framework legislation on the sustainability of the Union food system. It is specifically from the outline of the comprehensive framework, and the elements to be considered in the policy options, that one can learn more about the European Commission's intentions for the FSFS Proposal.

Mirroring the GFL structure for the most part, the proposal might lay down rules on sustainability prin-

ciples, objectives, and requirements as well as responsibilities of all the actors involved in the food chain. It will also include new definitions, such as 'food system', 'sustainable food system', 'food environment', 'sustainability analysis', 'healthy/sustainable diets', and 'traceability for sustainability purposes', to provide a baseline and a common understanding of the sustainability concept in legal terms. The Proposal is expected to provide minimum sustainability standards for food and feed operations, conceptualise a new sustainability analysis, and govern other areas of food law, such as food labelling and food public procurement policy.

The outline of the EU Commission Proposal is not yet sufficiently detailed to determine the content of sustainability in food – which is a notoriously ambiguous concept, and presents no solutions on how to disentangle potential controversies about conflicting dimensions of sustainability, as could happen when environmental and social sustainability clash. In addition there is a time-lag, as other actions that should find their (legal) basis in the FSFS Proposal are expected sooner than the latter - as in the case of the sustainable labelling scheme -, making it more difficult to achieve legal coherency.

The FSFS framework is the most ambitious element of the F2F legal actions, and it certainly has the potential to create a veritable food sustainability revolution. However, given the lack of clear vision of the F2F policy document and the adverse political climate, it is doubtful that far-reaching obligations will be agreed to by the Member States during the legislative process within the given timeframes.

2. Contingency Plan for Ensuring Food Supply and Food Security

Adopted in 2021, the Contingency Plan¹¹ strives to institute strategic and multi-level procedures on the

9 Commission, 'Inception Impact Assessment - Sustainable food system framework initiative' (Report), 2021.

10 Commission, 'Sustainable EU food system – new initiative: Feedback and statistics: Inception impact assessment' <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13174-Sustainable-EU-food-system-new-initiative/feedback_en?_id=26525304> accessed 2 June 2022.

11 Commission, 'Contingency plan for ensuring food supply and food security in times of crisis' (Communication) COM (2021) 689 final (Contingency Plan).

EU response to (food) future crises, thus enhancing resilience and prompt reactions of the food system.

With the aim of strengthening the EU readiness in all the economic sectors affecting food production and supply, the plan is built on precautionary policies already existing both at the EU and national levels. It therefore requires collaboration between public and private actors and horizontal coordination at the political and administrative levels.

The Contingency Plan foresees the creation of a European Food Security Crisis preparedness and response Mechanism (EFSCM). The EFSCM would be a permanent group of experts, to be convened in case of “*exceptional, unpredictable and large-scale events or risks that have the potential to threaten EU food supply or security.*”¹² The experts will also periodically map risks and vulnerabilities of the EU food supply chain, monitor trade flows and market imbalances, and engage in transparent communication with stakeholders to avoid food crisis exacerbation. In addition, there are to be recommendations about diversity of food supply sources, crisis communication and mitigation measures for risks and vulnerabilities.¹³ This preventive approach complements the crisis reaction frameworks that had been established by the GFL.

The mechanism was born from the need of stemming the repercussions of the Covid pandemic on the food (supply) system, but received an unexpected significance in light of the war in Ukraine and its consequences on the EU food supply.

That said, the Contingency Plan is far from operational. The list of actions to implement by the EFSCM run through 2022 to 2024, with basic features such as information platforms and monitoring tools not yet implemented, and recommendations for addressing risks foreseen in 2024 only – this timeliens is most likely too distant to serve as a tool in shaping the EU reaction to the ongoing Ukraine supply crisis.

IV. Key Developments in Food Safety, Food Quality, and Food Information

In the following section, we survey the main progress of the F2F Strategy in the topics food safety, food quality, and food information.

1. Food Safety

Food safety has been the guiding principle of the EU food architecture as developed by the GFL. Interestingly, the EU food safety system is not addressed explicitly in any action of the F2F Strategy, which neither mentions nor explains the relationship of the sustainability framework to the existing safety framework. This is certainly one of the more important silent gaps in the policy.

Only one legal action is dedicated to a sectoral food safety instrument, which is the proposed revision of the Food Contact Material framework to be published by Q4 2022. Food contact materials are a notoriously problematic regulatory field for the food industry, and the revision is therefore not surprising.

In reality, it is not the F2F Strategy but the Chemicals Strategy for Sustainability that formulates systemic ambitions coupled with clear goals: “*Almost 20 years after the first strategic approach to chemicals management in Europe, the time has come to chart a new long-term vision for the EU’s chemical policy.*” This new vision has significant implications for the food sector, at the institutional level in restructuring risk analysis processes, and at integrating the regulation of hazardous chemicals across domains. The Chemicals Strategy proposes to extend the generic approach to risk management to ensure that consumer products do not contain chemicals that cause cancers, gene mutations, affect the reproductive or the endocrine system, or are persistent and bioaccumulative and toxic; assess the modalities and timing to extend the same approach to further chemicals including those affecting the immune, neurological or respiratory systems and chemicals toxic to a specific organ. Furthermore, it aims to define criteria for essential uses to ensure that the most harmful chemicals are only allowed if their use is necessary for health, safety or is critical for the functioning of society. More specifically, the Chemicals Strategy suggests to reinforce the regulation of chemical contaminants in food to ensure a high level of human health

12 Commission, ‘Ensuring global food supply and food security’ (2021) <https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/contingency-plan_en#european-food-security-crisis-preparedness-and-response-mechanism> accessed 14 April 2022.

13 Contingency Plan, Annex, point 9.

protection; for instance to address PFAS. Further, it aims to address the currently deficient risk assessment for chemical mixture assessments and combined effects of exposure to chemicals in water, food contact materials, food additives, toys, detergents, and cosmetics. The overarching goal is to reach a system of 'One substance, one assessment', which would cause considerable integration of the food, pharmaceutical, and veterinary sectors – thereby implying significant systemic alterations of the food safety system.

2. Food Quality

The notion of food quality in the EU legal framework rests on a complex and multi-dimensional concept that will not be particularly affected by the F2F Strategy. This notion is changing and evolving over time. Quality was primarily understood as the absence of a defect, fraud, or adulteration. More recently, quality stands on expected properties such as organoleptic and nutritional characteristics. In addition to that, today's quality designates desirable characteristics likely to justify the added value and associated cost. This can be motivated as a form of production (like organic farming and animal welfare requirements) or related to production areas and traditional techniques (like geographical indications). Moreover, food quality has both an objective dimension, with measurable physicochemical characteristics, and a subjective dimension, outlined by consumer acceptance and expectations.

Against this background, there are two legal actions that relate to food quality aspects, both due in 2022: the 'Proposal for a revision of EU marketing standards for agricultural, fishery and aquaculture products' and the 'Proposal to require origin indication for certain products'.

Marketing standards set technical product specifications, for instance on cucumbers, in order to outline uniform trade characteristics. They set minimum quality requirements, establish different grades and classes of products, and provide relevant information to consumers. An example relating to sustainability is the current regulation of the term 'free range' for poultry products.

In relation to sustainability, the revision of marketing standards is aimed at reinforcing the role of sustainability criteria, although it is not clear in

which terms this will occur. In accordance with the Inception Impact Assessment¹⁴, next to the new sustainability focus, the revision of marketing standards also aims to address stakeholders' needs, consumers' preferences, the evolution of technologies and to rationalize these instruments. Room for improvement of EU marketing standards was also highlighted in a Commission staff working document¹⁵ that gives a more comprehensive evaluation on the effectiveness of these measures. As far as the Commission assesses, the changes would be of limited scope, and to be taken through Commission Regulations. It therefore does not seem likely that the European Commission will choose to exercise the available option of utilizing marketing standards as a tool for widely requiring sustainable product characteristics by law.

The second food quality related proposal is the potential extension of mandatory origin and place of provenance requirements to more food products. The Commission initiative is moving from a framework that is currently quite limited, as in the EU origin labelling is now required only for certain fruits, vegetables, fishery products, honey, olive oil, and eggs, as well as for certain meat products. This means that many important food categories like rice and milk are exempted from origin labelling requirements. First, it is important to note that there is no clear sustainability link in the justification of required origin labelling; the F2F Strategy aims to empower consumers; Second, there are limits to this rationale of intervention that should be respected, for instance the necessity to have an actual proven link between provenance and quality as opposed to a merely 'subjective association' of consumers.¹⁶

In general, it is reasonable to expect the Commission to propose to extend current rules on mandatory indication of origin to new categories of products where consumer interest is particularly strong, like milk, and no adverse consequences to the proper functioning of the single market are foreseen.

14 Commission, 'Inception Impact Assessment - Agricultural products: revision of EU marketing standards' (Report), 2021.

15 Commission, 'Evaluation of marketing standards (contained in the CMO Regulation, the 'Breakfast Directives' and CMO secondary legislation)' (Staff Working Document) SWD (2020) 230 final. The evaluation aimed to determine to what extent EU marketing standards for food products were enabling the EU to achieve their objectives in a manner that is useful and sufficient for all stakeholders, and that avoids unintended side-effects.

16 Case C-485/18 *Groupe Lactalis* [2020] ECRI-763, para 42.

3. Food Information

Food Information Law¹⁷ is a major component of EU food law, and will evolve under the pressure of the F2F Strategy. Currently, the Food Information to Consumers Regulation is the cornerstone of food information law, which not only aims to allow consumers to make safe use of food, but to facilitate informed choices “with particular regard to health, economic, environmental, social and ethical considerations.”¹⁸ However, current EU food labelling rules mostly focus on providing consumers with information suitable to avoid food safety risks, to prevent misleading practices, and to promote a certain degree of nutrition awareness.¹⁹

To date, only a few legal instruments cover aspects that could relate to providing consumers with information that takes into account their economic, environmental, social, or ethical considerations. The Organic Regulation includes a labelling scheme to inform consumers that a product complies with certain environmentally-friendly standards (such as by limiting the use of certain pesticides).²⁰ Fisheries and aquaculture labelling rules require information with a social value, particularly the indication of the type of gear used to capture fish and the area where it was caught.²¹ Finally, the current marketing standards for eggs require labels and eggshells to include information regarding the farming methods, to promote choices taking into consideration animal welfare concerns.²²

In the F2F Strategy, the Commission expresses its willingness to enshrine sustainability concerns in

current and forthcoming food labelling rules. Table 2 (Annex) describes the F2F Strategy approach to food information to consumers, and the current state of play for each of the issues raised by the Commission in the policy part of the Strategy.

These proposals cover several dimensions of sustainability (particularly, nutrition, environmental and social elements). Presumably, the changes could result in changes to the Food Information to Consumers Regulation (for instance, to incorporate updated rules on nutrition labelling, date marking, origin indications and accessibility issues) and in the adoption of new pieces of legislation covering animal welfare and sustainability elements.

However, when comparing the Commission’s narrative in the policy part with the actions envisaged in the Action Plan, we conclude that post-F2F, in terms of nutrition and health, changes in EU Food Information Law might be more limited than initially thought. For instance, while the inception impact assessment report for the Proposal for a revision of the Food Information to Consumers Regulation indicates that establishing a mandatory EU-harmonised front-of-pack nutrition labelling system is on the table, the Commission may decide to maintain business as usual, or to establish a voluntary EU-harmonised front-of-pack information only. EFSA recently delivered its scientific opinion on Nutrients of public health importance, food groups which have important roles in European diets and on the choice of nutrients and non-nutrient components of food for nutrient profiling.²³ The advice points to the com-

17 Understood as the legal concept referring to information concerning a food and made available by food business operators to the final consumer, for instance, by means of a label, see Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 [2011] OJ L304/18 (Food Information Law), art 2.2(a).

18 Food Information Law, art 3.1.

19 For most food products, mandatory information (or ‘mandatory particulars’ as expressed in the Food Information Law) includes the name of the product, the name of the food, the list of ingredients, allergen indications, the quantity of certain ingredients or categories of ingredients, the net quantity of the food, date marking, storage conditions and instructions for use, the identification of the food business, and a nutrition declaration. See Food Information Law, art 9.

20 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 [2018] OJ L150/1 (Organic Regulation), chpt IV.

21 Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 [2013] OJ L354/1, art 35.

22 Commission Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs [2008] OJ L163/6, art 12.

23 EFSA Panel on Nutrition, Novel Foods and Food Allergens (NDA), ‘Scientific advice related to nutrient profiling for the development of harmonized mandatory front-of-pack nutrition labelling and the setting of nutrient profiles for restricting nutrition and health claims on food’ (2021) 4 EFSA Journal 20, 77259.

plexity of nutrition science, and is clear largely in its advice on saturated fatty acids, sodium and added/free sugars.²⁴

By contrast, there is significant movement on the topics of claim, and it will be interesting to see in how far these initiatives will culminate in a coherent framework. To date, there is some tension in the proposed general consumer law solution versus developing food-domain specific approaches, and whether green or sustainable claims are targeted. Interestingly, the most mature of the initiatives, which is the Proposal for a Directive on empowering consumers for the green transition, was not originally envisaged as such under the F2F Strategy. Instead, the Proposal for sustainability labelling in food foreshadowed a special instrument that would cover all dimensions of sustainability under new food information legislation. It remains to be seen whether the ‘Green Transition Proposal’ will curb the ambitions for strong positive sustainable food information rules.

V. Food Responsibility

Next to the dimensions of food quality, safety, and information, a novel key component of the F2F Strategy is its approach to business responsibility. Business responsibility is explicitly addressed in two actions – the EU Code of Conduct on Responsible Food Business and Marketing Practices, and the Proposal for a Corporate Sustainability Due Diligence Directive.

1. The EU Code of Conduct on Responsible Food Business and Marketing Practices

The EU Code of Conduct²⁵ was launched in July 2021, making it one of the earliest operational actions of the F2F Strategy. It is a non-regulatory, voluntary initiative that was drafted together by the Commission with stakeholders, laying down “*a common aspirational path towards sustainable food systems*”.

It is open for signature by associations and companies that play a role in the food system F2F, including, for example, food service operators, food processors, retail, and also addressing NGOs. In ad-

dition to the Signatories, the EU Code of Conduct establishes a Collaborative Platform, and a Liaison Group as an interlocutor between the European Commission and the Signatories Group. The Code establishes Guiding Principles (Chapter II), a general framework of aspirational targets coupled with indicative actions, as well as a more ambitious programme for ‘frontrunners’ (Chapter III). Overall, the EU Code of Conduct follows the Food and Agricultural Organization (FAO) definition of sustainable food systems that covers economic, social, and environmental sustainability.²⁶ The aspirational targets aim to improve sustainability in particular on three levels, namely “1) *In relation to food consumption patterns for healthy and sustainable diets; 2) Within internal processes, operations and organisation at the level of the actors in the middle part of the food chain; 3) Throughout the supply chain, in liaison with primary producers and other actors*”. The Code indicates aspirational goals and indicative actions. Signatories commit to placing their activities in line with the aspirational objectives, while providing, in the meantime, an individual pledge to make at least one commitment, to disclose commitments, and to provide a publicly available report. Monitoring and evaluation activities should support adherence to the Code, and therefore companies are encouraged to present progress in the Collaborative Platform.

To date, the EU Code of Conduct has 65 signatories, among which many of the biggest players of the EU food industry. It is not clear how influential the EU Code of Conduct will ultimately prove. The aspirations of the Code, as well as the indicative actions, are minimum level good practices only – these are, however, now embedded in an institutional process that may amplify the ambitions for change. Success of the EU Code of Conduct, therefore, clearly depends on the uptake by companies.

24 Commission, ‘Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information’ (Communication) COM (2022) 143 final.

25 Commission, ‘EU Code of Conduct on Responsible Food Business and Marketing Practices: A common aspirational path towards sustainable food systems’ (Code of Conduct) 2021 (EU Code of Conduct).

26 EU Code of Conduct.

2. The EU Draft Directive on Corporate Sustainability Due Diligence

The Commission's proposal for a Corporate Sustainability Due Diligence Directive²⁷ was published in February 2022. It lays down rules for some large companies based or operating in the EU market to perform due diligence checks throughout their global supply chains with the aim to identify, prevent and mitigate human rights and environmental risks arising from their own operations and business relationships. The much-awaited draft Directive turns the soft law notion of 'human rights due diligence' enshrined in the UN Guiding Principles on Business and Human Rights (UNGPs) into a binding legal requirement that Member States are required to link to a system of sanctions and civil liability. The draft Directive, based in Articles 50 and 114 TFEU, aims at creating a level playing field by targeting not only large companies domiciled in the EU, but also third-country companies operating in the Union market. It also covers companies with lower turnover and less employees that are active in particularly high-impact sectors for which sectoral OECD guidance exists. These sectors include, among others, 'agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages.'²⁸ Small and Medium Enterprises (SMEs) are excluded from its scope, but it is expected that they will be indirectly concerned by the new due diligence requirements due to their positioning in the supply chains of in-scope companies.²⁹

Notwithstanding its groundbreaking nature, the current draft text raises some questions. The required due diligence checks concern the adverse impacts arising from the company's own operations or those of its subsidiaries and from its 'established business relationships', which excludes more occasional business partners. Yet, it is often in the operations of tem-

porary suppliers and contractors that serious human rights and labor rights violations take place, which is why this limitation was not envisaged in the UNGPs' notion of due diligence. Also, the proposal's civil liability provisions do not address the significant barriers that victims face when trying to hold a corporation accountable in the courts of its home state, such as the onerous burden of proof or the difficulty in obtaining the disclosure of necessary information from the respondent. Importantly, the draft Directive requires companies to also assess their risk of contributing to climate change and, if needed, include emission reduction objectives in a Climate Change Plan,³⁰ but the draft does not specify any differentiated approach to Scope 1, Scope 2 or Scope 3 emissions.

In spite of these potentially critical aspects, the draft Directive is an unprecedented legislative measure at the EU level, in that, for the first time, mandatory due diligence checks are included in a non-sectoral instrument and linked to enforcement mechanisms at the Member State level. It can therefore be regarded as a distinguished element of the F2F Strategy, which is likely to materialise significant implications for the food industry as a whole.

VI. Outlook – From Farm to Fork Strategy to Farm to Fork Laws?

The update has analyzed the state of the F2F policy-making progress with respect to the umbrella strategies, the dimensions of food safety, quality, information, and business responsibility. It is clear that the F2F Strategy will certainly be influential on EU food law. However, will it change the system or rather lead to a compilation of 'ad-hoc' initiatives? In our view, sustainability will certainly become a cornerstone principle of EU food law. It is, however, unlikely that we will see systemic institutional or procedural innovations materialise within the currently proposed timelines – as a result of the F2F Strategy, sustainability will complement and inform an essentially safety-based food law architecture. In expecting fundamental systemic sustainability change, one probably has to think beyond the F2F Strategy's lifetime.

The F2F Strategy faces challenges, which are in part inherent and in part exogenous strains on the policy process. The transformation from F2F policy to law faces inherent challenges, notably on the is-

27 Commission, 'Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937' (Communication) COM (2022) 71 final (draft Directive).

28 Draft Directive, art 2(1)(ii).

29 Stéphan Brabant and others, 'Due Diligence Around the World: The Draft Directive on Corporate Sustainability Due Diligence (Part 1)' (*Verfassungsblog on Matters Constitutional*, 15 March 2022) <<https://verfassungsblog.de/due-diligence-around-the-world/>> accessed 31 May 2022.

30 Draft Directive, art 15.

sues of the unresolved ambiguity of food sustainability, the discrepancy between policy objectives and the specific legal actions proposed, the vulnerable institutional embedding of the F2F policy making within the European Commission, and limited coordination with the EU's Member States.³¹ A systemic limit to the transformative potential of the F2F Strategy is the relation to the Common Agriculture Policy (CAP). The CAP runs asynchronous (namely from 2023-27) to the Green Deal initiatives, and the integration of the F2F Strategy is tenuous at best, by means of the European Commission's control of Member States' CAP national plans and whether they are in line with F2F objectives.

An external challenge to the implementation of the F2F Strategy comes in the guise of the aftermath of the Corona pandemic, and more recently, the Russian war in Ukraine with the resulting supply chain, energy, and grain shortages. These crises have

changed the political climate to be sustainability adverse and largely protective of struggling industry sectors.

Despite calls for a 'pause' of the F2F Strategy, our update confirms continuous activity on the policy making front. In our view, the novel reluctance in the political climate will unfold most strongly in curbing the unwritten aspirations of the Food System Sustainability Framework, and in watering down the Commission's oversight on the F2F compatibility of the CAP national action plans. Other concrete legal actions will be funnelled into the persistence of the Commission's respective inner institutional structures, which have proven resilient to 'high politics' in the past.

31 Hanna Schebesta and Jeroen J. L. Candel, 'Game-changing potential of the EU's Farm to Fork Strategy' (2020) 1 *Nature Food* 10, 586.

Appendix

| Actions | Indicative time table | N.° |
|--|-----------------------|-----|
| Proposal for a legislative framework for sustainable food systems | 2023 | 1. |
| Develop a contingency plan for ensuring food supply and food security | Q4 2021 | 2. |
| Ensure sustainable food production | | |
| Adopt recommendations to each Member State addressing the nine specific objectives of the Common Agricultural Policy (CAP), before the draft CAP Strategic Plans are formally submitted | Q4 2020 | 3. |
| Proposal for a revision of the Sustainable Use of Pesticides Directive to significantly reduce use and risk and dependency on pesticides and enhance Integrated Pest Management | Q1 2022 | 4. |
| Revision of the relevant implementing Regulations under the Plant Protection Products framework to facilitate placing on the market of plant protection products containing biological active substances | Q4 2021 | 5. |
| Proposal for a revision of the pesticides statistics Regulation to overcome data gaps and reinforce evidence-based policy making | 2023 | 6. |
| Evaluation and revision of the existing animal welfare legislation, including on animal transport and slaughter of animals | Q4 2023 | 7. |
| Proposal for a revision of the feed additives Regulation to reduce the environmental impact of livestock farming | Q4 2021 | 8. |
| Proposal for a revision of the Farm Accountancy Data Network Regulation to transform it into a Farm Sustainability Data Network with a view to contribute to a wide uptake of sustainable farming practices | Q2 2022 | 9. |
| Clarification of the scope of competition rules in the TFEU with regard to sustainability in collective actions. | Q3 2022 | 10. |
| Legislative initiatives to enhance cooperation of primary producers to support their position in the food chain and non-legislative initiatives to improve transparency | 2021-2022 | 11. |
| EU carbon farming initiative | Q3 2021 | 12. |
| Stimulate sustainable food processing, wholesale, retail, hospitality and food services' practices | | |
| Initiative to improve the corporate governance framework, including a requirement for the food industry to integrate sustainability into corporate strategies | Q1 2021 | 13. |
| Develop an EU code and monitoring framework for responsible business and marketing conduct in the food supply chain | Q2 2021 | 14. |
| Launch initiatives to stimulate reformulation of processed food, including the setting of maximum levels for certain nutrients | Q4 2021 | 15. |
| Set nutrient profiles to restrict promotion of food high in salt, sugars and/or fat | Q4 2022 | 16. |
| Proposal for a revision of EU legislation on Food Contact Materials to improve food safety, ensure citizens' health and reduce the environmental footprint of the sector | Q4 2022 | 17. |
| Proposal for a revision of EU marketing standards for agricultural, fishery and aquaculture products to ensure the uptake and supply of sustainable products | 2021-2022 | 18. |
| Enhance coordination to enforce single market rules and tackle Food Fraud, including by considering a reinforced use of OLAF's investigative capacities | 2021-2022 | 19. |
| Promote sustainable food consumption, facilitating the shift towards healthy, sustainable diets | | |
| Proposal for a harmonised mandatory front-of-pack nutrition labelling to enable consumers to make health conscious food choices | Q4 2022 | 20. |
| Proposal to require origin indication for certain products | Q4 2022 | 21. |
| Determine the best modalities for setting minimum mandatory criteria for sustainable food procurement to promote healthy and sustainable diets, including organic products, in schools and public institutions | Q3 2021 | 22. |
| Proposal for a sustainable food labelling framework to empower consumers to make sustainable food choices | 2024 | 23. |
| Review of the EU promotion programme for agricultural and food products with a view to enhancing its contribution to sustainable production and consumption | Q4 2020 | 24. |
| Review of the EU school scheme legal framework with a view to refocus the scheme on healthy and sustainable food | 2023 | 25. |
| Reduce food loss and waste | | |
| Proposal for EU-level targets for food waste reduction | 2023 | 26. |
| Proposal for a revision of EU rules on date marking ('use by' and 'best before' dates) | Q4 2022 | 27. |

Table 1 - Overview of Legal Actions, Annex F2F Strategy Communication

| F2F Sub-section | Topic | Policy Proposal | Legal Action | State of Play | Legal Instrument Affected |
|---|--|--|---|---|--|
| 2.1. Ensuring sustainable food production | Animal Welfare Labelling | Consideration of an EU system for animal welfare labelling | Part of Action 7 | Inception impact assessment and public consultation completed | Potentially new legal instrument |
| 2.4. Promoting sustainable food consumption and facilitating the shift to healthy, sustainable diets | Nutrition Labelling | Review current front-of-pack rules and potential adoption of nutrient profiles | Action 20 | Inception impact assessment and public consultation completed. | Regulation 1169/2011 |
| | Origin Labelling | Potential extension of mandatory origin and place of provenance requirements to more foods than those covered by current rules | Action 21 | Inception impact assessment and public consultation completed. | Regulation 1169/2011 |
| | Voluntary green Claims | Considering the harmonisation of voluntary claims referring to environmental impact of products, including food | Not in the Action Plan (part of DG Environment's "Initiative on substantiating Voluntary Green Claims") | Inception impact assessment and public consultation completed. | Potentially new legal instrument |
| | Sustainability Labelling | Consideration of a new sustainable labelling framework that covers the nutritional, climate, environmental and social aspects of food products | Action 23 | Inception impact assessment and public consultation completed. | Potentially new legal instrument |
| | Accessibility of Information | Explore new ways to provide information, particularly, to visually impaired consumers, potentially through digital means. | Not in the Action Plan | Not applicable | Not applicable |
| 2.5. Reducing food loss and waste | Date Marking | Revision of date marking rules to prevent household food waste. | Action 27 | Inception impact assessment and public consultation completed. | Regulation 1169/2011 |
| 4. Promoting the global transition | Enforcement | Promotion of sustainability standards and enforcement of rules on misleading information. | Not in the Action Plan (but refers to Action 23) | Not applicable | Not applicable |
| Not mentioned in F2F | Empowering the consumer (greenwashing practices, misleading sustainability labels and information tools) | Empowering consumers for the green transition through better protection against unfair practices and better information | Not in the Action Plan (part of the Circular Economy Action Plan and the New Consumer Agenda) | Proposal for a Directive on empowering consumers for the green transition and annex has been published. | Amendment to Unfair Commercial Practices Directive and Consumer Rights Directive |

Table 2 – Food Information Law in F2F. Source: author