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EXECUTIVE SUMMARY

Placing the right to food at the centre of the European legislative framework for sustainable food systems (FSFS) would establish new foundations for European law related to food systems and enable the necessary systemic and structural changes for their sustainability. This report, commissioned by FIAN Belgium and prepared by a collective of European legal experts, provides scientific expertise to ongoing discussions on the FSFS. As a legislative framework, the FSFS offers an opportunity to adopt an ambitious European instrument. This report demonstrates that the right to food provides a solid foundation for guiding the transition of food systems and presents concrete recommendations for integrating the normative content of the right to food into the FSFS.

The right to food offers a solid and clear framework for the transition to sustainable food systems because it:

- is based on a binding legal framework that requires subordinating all branches of law and sectoral policies related to food systems to the requirements of its content and implementation;
- calls for a just transition towards sustainable food systems by placing the requirements of food availability, accessibility, sustainability and adequacy at the centre of the approach;
- pays particular attention to addressing inequalities or exclusions within all aspects of food systems;
- provides a cross-cutting, comprehensive and coherent perspective on all policies related to food systems at all territorial levels, based on a clearly identified objective;
- establishes clear accountability mechanisms for public and private actors in all sectors of food systems, relying on the obligations of states derived from international human rights treaties;
- is built upon principles rooted in human rights (participation, accountability, non-discrimination, transparency, human dignity, empowerment, rule of law, solidarity) that can guide modes of governance, policy strategies, and monitoring and evaluation mechanisms, and are applicable at all territorial levels.

Therefore, the report calls on the Commission to base its work on this fundamental right and recommends that the following aspects be considered for the drafting of the FSFS:

- **Initial considerations of the legislation:** clearly and forcefully position the right to food to ensure its normative content is recognised as the guiding foundation for all provisions of the FSFS.
- **Objectives, definitions and principles:** base the drafting of these sections on the content of the right to food and on human rights principles to translate the requirements for structural transformations that they entail.
- **Governance mechanisms:** include mechanisms that meet the requirements of a rights-based approach, both in substance and form, prevent power asymmetries in multi-stakeholder processes, and implement measures to avoid conflicts of interest. The Commission could establish a European Food Policy Council to strengthen cooperation and dialogue

among various stakeholders transparently, drawing on the recommendations of iPES Food to develop innovative governance processes.

INTRODUCTION

- **Implementation provisions of the FSFS:** include accountability mechanisms and monitoring and control mechanisms that align with the requirements of the right to food framework. Set up specific institutions responsible for assessing progress and independent recourse mechanisms. Pay careful attention to formulating indicators of expected impact and change to reflect all the requirements of the right to food and human rights principles (beyond technical indicators primarily based on environmental considerations).
- **Provisions relating to favourable food environments:** ensure that their drafting clarifies the scope of the FSFS and justifies the importance of adopting mandatory and binding measures for states. Highlight the extent of public action domains falling under the FSFS's scope and address the structural causes of inequalities in access to sustainable food.
- **Policy measures to strengthen the sustainability of European food systems:** do not limit the content of the FSFS to the measures previously considered by the Commission (minimum sustainability criteria, consumer information labels, and public procurement with regard to sustainability issues). Provide for a review of all legislations and sectoral policies that impact food systems based on the requirements set forth in the horizontal elements of the FSFS. For the three policy measures considered thus far, arbitrate between the different options regarding their content and scope, considering the requirements of the right to food and principles of a rights-based approach. Apply the same decision-making process to all other policy measures falling within the scope of the FSFS.

While the European Union and its member states recognise the essential role they can play in setting standards and a framework for a necessary, just transition towards sustainable food systems, they also have an essential role to play in defending the need for an approach based on the right to food to ensure this transition takes place.

In accordance with the framework of the “Farm to Fork” action plan, the European Commission is currently working on a proposal for a legislative framework for Sustainable Food Systems (FSFS), scheduled for completion by the end of 2023.

The Commission notes that while sustainability issues have already been introduced in some European sectoral legislations, there is currently no “horizontal regulatory instrument in place at Union level, which could act as a guiding framework instrument that coordinates and drives changes across the food systems as well as an operational tool within and across its different sectors to overall improve the sustainability of the EU food system”¹. The aim of adopting this legislative framework is to address this gap and “establish new foundations for future food policies by introducing sustainability objectives and principles on the basis of an integrated food system approach”². This means promoting policy coherence at European Union (EU) and member state levels (including their international dimensions), integrating sustainability into all food-related policies, and strengthening the resilience of food systems³.

The Commission also emphasised that the objective is to ensure a “fair, healthy and environmentally-friendly food system”⁴ that ensures sustainable production, food safety, promotes sustainable practices throughout the food chain and sustainable food consumption, reduces food losses and waste, and combats food fraud⁵. The ambition is, therefore, a just transition that benefits all citizens and value chain operators within the EU and beyond⁶.

These perspectives of the “Farm to Fork” strategy, as well as the objectives pursued by the current work on the FSFS, directly relate to the content of the right to food as defined in international law. In reality, the European Commission would greatly benefit from drawing on the normative framework of this human right to develop the future European legislative framework and meet these expectations.

The purposes of this right align fully with those underlying the Commission’s current work on the FSFS. However, the meaning of the right to food extends beyond the pursued objective or the need to ensure that the guidelines and implementation of the FSFS do not compromise the right to food (or any other interdependent right, such as the right to an adequate standard of living, the right to a healthy environment, the right to water, the right to health, peasants/farmers’ rights and the rights of workers in food systems). The right to food framework reflects the ambition of a human rights-based approach to guide a socially, ecologically and economically just transition towards sustainable food systems. Drawing upon this normative framework, which has already been well developed in international law, would thus provide guidance for the European Commission’s current work on the FSFS. As David R. Boyd, United Nations Special Rapporteur on Human Rights and the Environment, reminds us: “a right-based approach, focused on the right to food and the right to a healthy environment, is an essential catalyst for accelerating the transformation from today’s unsustainable food systems to a future where everyone enjoys healthy and

¹ EUROPEAN COMMISSION, Inception Impact Assessment for the Sustainable food system framework initiative, 28/09/2021, Ares(2021)5902055, p. 3.

² Ibid, p. 2.

³ EUROPEAN COMMISSION, 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 Table Fork Strategy for a fair, healthy and environmentally-friendly food system, Brussels, 20 May 2020, COM/2020/381 final, p. 5.

⁴ COM/2020/381 final, op. cit. subtitle of „A Farm to Fork Strategy”.

⁵ COM/2020/381 final, op. cit.: outline of sub-section 2 „Building the Food Chain that works for Consumers, Producers, Climate and the Environment”, pp. 4-17.

⁶ COM/2020/381 final, p. 2.

sustainable food, workers are treated fairly and degraded ecosystems are restored. This is an obligation for States, not an option”⁷.

Therefore, while the European Union acknowledges the “essential role”⁸ it can play in setting the standards and framework to ensure a necessary and just transition to sustainable food systems, it also has an essential role to play in advocating for the importance of the requirements of a rights-based approach to food as a condition for this transition. This report aims to assist the European Commission in its work to ensure that the drafting of the FSFS aligns with this objective.

In the first part, we justify and elaborate on the central role that the right to food should play in the design and implementation of the FSFS (I). In the second part, we provide concrete examples of how the drafting of the FSFS could incorporate the normative content of the right to food (II).

I. PLACING THE RIGHT TO FOOD AT THE CENTRE OF THE FSFS

The right to food is a fundamental right well known to the European institutions and their member states. They have committed to respect, protect and fulfil this right, and the European institutions have repeatedly advocated for a binding rights-based approach to the right to food (1).

The normative framework of this fundamental right implies an integrated approach to food systems and guides both the understanding of the issues at hand and the methods and tools that could be mobilised in line with the requirements of a human rights-based approach. Therefore, the right to food framework is essential to meet the objectives of the FSFS (2).

Placing the right to food at the centre of the FSFS is particularly necessary as the right to food relies on legal mechanisms that can address the current lack of coherence and formal unity within the agriculture and food law and that can encompass various aspects of food systems. Changes to the European legal framework are essential to bring together and subordinate all aspects of the law that regulate the practices and operations of food system actors in line with the intended purpose of a just transition to sustainable food systems. The principles and objectives to be introduced as part of the FSFS align with the content of the right to food (3).

The right to food framework is an essential tool to guide the Commission in drafting the FSFS, drawing upon all the work that has been done since 1996 to define, promote, and develop legal tools for implementing and promoting an approach based on this fundamental right, including the importance of adopting a framework law (4).

1. THE RIGHT TO FOOD: RECOGNISED AND DEFENDED BY THE EUROPEAN INSTITUTIONS

The right to food was politically proclaimed as an autonomous right in 1996 by the heads of state and government of 185 countries, including the European Community, at the “World Food Summit”. It is widely recognised in international law through general or sectoral human rights treaties, treaties relating to international humanitarian law, international criminal law, various UN convention instruments, certain instruments related to international trade, non-binding commitments related to food security or sustainable development, and more. In particular, it is enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights, which has been ratified by all EU member states. Therefore, all member states have committed to respect, protect and fulfil the right to food.

Furthermore, European institutions have repeatedly taken a position recognising and defending the need for a right to food framework to address issues related to food security and food systems. As early as 2002, European institutions defended the right to food as a legally binding human right in contrast to states pressuring to replace it with the concept of food security in the Final Declaration of the “World Food

⁷ BOYD David, Healthy and sustainable food: reducing the environmental impacts of food systems on human rights, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, General Assembly of the United Nations, 19 July 2021, A/76/179, § 89.

⁸ COM/2020/381 final, p. 5.

Summit: Five Years Later”⁹. This position is clearly reflected in two resolutions adopted by the European Parliament around the Summit - one before it was held for the preparation of the European position¹⁰ and another afterward, addressing the Summit’s conclusions¹¹.

Since then, numerous European Parliament resolutions have reaffirmed the right to food, making reference to the Voluntary Guidelines on the Right to Food adopted in 2004¹² or to the enforceable right to food under international law with the procedure created by the Optional Protocol to the ICESCR adopted in 2008¹³. These resolutions also specify areas in which public authorities should take action to make this right effective¹⁴. Moreover, various European institutions (Parliament, Commission, Council of the EU, etc¹⁵.) explicitly mention the right to food in adopted documents. This is evidenced by recent Council conclusions on the EU’s priorities in relevant United Nations human rights forums communicated in February 2023, in which “the EU reaffirms its strong commitment to respect, protect and fulfil, as well as to promote all economic, social and cultural rights (ESCR), including the right to [...] food [...]. It will continue to pay specific attention to the human rights aspects of the food security crisis¹⁶”. Additionally, the European Parliament adopted a resolution during the 2015 Milan World Expo (“Feeding the Planet, Energy for Life”), in which it “strongly suggests that the whole food system, of which agriculture is a part, together with trade, health, education, climate and energy policies, function under a human-rights-based approach, which should be championed by the Union”¹⁷.

These renewed international commitments and recommendations by European institutions to defend the right to food attest to the recognition of the need to rely on this right to respond to the issues surrounding food systems. However, these commitments have not yet been translated into EU law.

The adoption of the legislative framework for sustainable food systems represents an opportunity to legally anchor the commitments and discourses of European institutions and their member states.

9 Jean ZIEGLER and the UNITED NATIONS GENERAL ASSEMBLY, Report of the Special Rapporteur of the Commission on Human Rights on the right to food, Mr Jean Ziegler, 27 August 2002, A/57/356, §10.

10 EUROPEAN PARLIAMENT, World Food Summit (FAO) - European Parliament resolution on the United Nations World Food Summit, 16 May 2002, P5_TA(2002)0252.

11 EUROPEAN PARLIAMENT, Combating hunger - European Parliament resolution on the conclusions of the United Nations World Food Summit, 4 July 2002, P5_TA(2002)0366.

12 See for example: EUROPEAN PARLIAMENT, European Parliament resolution of 7 June 2016 on The New Alliance for Food Security and Nutrition (2015/2277(INI)), P8_TA(2016)0247, in the citations of the resolution and at § 13 and 16; EUROPEAN PARLIAMENT, European Parliament resolution of 27 November 2014 on child undernutrition and malnutrition in developing countries (2014/2853(RSP)), P8_TA(2014)0072, in the citations of the resolution.

13 See for example: EUROPEAN PARLIAMENT, European Parliament resolution of 5 October 2016 on the next steps towards attaining global goals and EU commitments on nutrition and food security in the world (2016/2705(RSP)), P8_TA(2016)0375, in the citations of the resolution; European Parliament resolution of 27 November 2014, P8_TA(2014)0072, op. cit. in the citations of the resolution.

14 See in particular: European Parliament resolution of 27 November 2014, P8_TA(2014)0072, op. cit. §2. The Parliament „insists that public authorities must guarantee the three dimensions of the right to food and good nutrition: availability, meaning that it is possible either to feed oneself directly from productive land or other natural resources, or to establish well-functioning distribution, processing and market systems; accessibility, meaning that food must be safe and satisfy the dietary needs of every individual, taking into account age, living conditions, health, occupation, sex, culture and religion”

15 A search of the EUR-Lex database for the term „right to food” provides an analysis of the authors who have used this expression and the number of references made (search updated on 09 May 2023). These authors are the European Parliament (92), the Committee on the Environment, Public Health and Food Safety (34), the Committee on Development (31), the European Economic and Social Committee (19), the Committee on Agriculture and Rural Development (16), the Committee on International Trade (14), the Committee on Foreign Affairs (11), the Committee on Industry, Research and Energy (9), the ACP-EU Joint Parliamentary Assembly (8), the European Commission (8), the Committee on Women’s Rights and Gender Equality (6), the Committee on the Internal Market and Consumer Protection (5), the Committee on Transport and Tourism (4), the Committee on Regional Development (4), the Committee on Employment and Social Affairs (4), the Committee on Fisheries (4), the Committee on Budgets (3), the Committee on Legal Affairs (3), the Committee on Economic and Monetary Affairs (2), the Committee on Budgetary Control (2), the Council of the European Union (2), the European Committee of the Regions (1), the European Parliament and Council (1) and the Committee on Natural Resources (1).

16 COUNCIL OF THE EUROPEAN UNION, Council conclusions on EU priorities in UN human rights fora 2023 - Press release of 20 February 2023, [https://www.consilium.europa.eu/en/press/press-releases/2023/02/20/council-conclusions-on-eu-priorities-in-un-human-rights-fora-2023/], consulted on 15 March 2023, §13.

17 EUROPEAN PARLIAMENT, European Parliament resolution of 30 April 2015 on Milano Expo 2015: Feeding the Planet, Energy for Life, (2015/2574(RSP)), P8_TA(2015)0184, §34.

THIS IS WHY THE RIGHT TO FOOD IS CENTRAL TO THE FSFS:

- It encompasses the **legal obligations of all EU member states in accordance with human rights treaties**. By ratifying the ICESCR, states have committed to respecting, protecting and fulfilling the right to food;
- It demonstrates a commitment to **political consistency in the positioning of the European institutions**. These institutions recognise and defend the need for a binding framework based on the right to food to address issues related to food security and food systems.

2. THE RIGHT TO FOOD: A FOUNDATION AND AN INSTRUMENT FOR A JUST TRANSITION TOWARDS SUSTAINABLE FOOD SYSTEMS

The content of the right to food should not be limited to its minimum core protected by the fundamental right to be free from hunger. States have an obligation to progress rapidly towards making the right to food a reality, which has a much broader scope. The definition of this right, as well as the legal and policy mechanisms for its implementation, are inseparable from the objective of a just transition to sustainable food systems.

As highlighted by former Special Rapporteur on the Right to Food, Olivier De Schutter, “the right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations”¹⁸. Making the right to food a reality therefore requires a transition towards sustainable food systems.

The content of the right to food can be summarised in four requirements: availability, accessibility, sustainability and adequacy of food¹⁹. These four requirements lead to a comprehensive perspective on the various issues surrounding food systems. A human rights-based approach allows for a particular focus on addressing inequalities and exclusions throughout the food chain, with the aim of correcting them and protecting the affected. The interpretation of the right to food is therefore inseparable from social justice²⁰ and the demand for a just transition of food systems²¹.

- **Availability** means ensuring that people always have access to reliable and sufficient sources of food, by considering and protecting various supply channels. Self-production is one of these channels, and states must ensure that people have fair and equitable access to land and other productive resources. Regarding food available for sale in open-

18 DE SCHUTTER Olivier, HUMAN RIGHTS COUNCIL, Report of the Special Rapporteur on the right to food, Olivier de Schutter. Final report: The transformative potential of the right to food, 24 January 2014, A/HRC/25/57, §2.

19 COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, General Comment No. 12: The Right to Adequate Food (Art 11), E/C.12/1999/5, 1999, § 7-13.

20 Ibid, §4.

21 KALJONEN Minna, KORTETMÄKI Teea and TRIBALDOS Theresa, „Introduction to the special issue on just food system transition: Tackling inequalities for sustainability”, Environmental Innovation and Societal Transitions, vol. 46, march 2023.

air markets or shops, it is important that distribution, processing and marketing systems are fair, stable and competitive, and that the rights of food producers are protected and respected, ensuring they receive fair remuneration. It is also necessary for workers in all areas of food systems (including factories, transport, distribution or restaurants) to have healthy and safe working conditions²².

- The requirement of **accessibility** relates to the conditions of access to available food. It should be physically accessible (close to people) and economically accessible (which implies addressing financial accessibility) so that everyone, including the most marginalised, can access adequate food. These points directly address the importance of considering the food environment of individuals (discussed further below). Moreover, the requirement of accessibility implies the ability to obtain food “in a sustainable manner that does not compromise the enjoyment of other human rights”²³. It is therefore about long-term access to food, as opposed to emergency food situations, and ensuring that the conditions of access respect the dignity of individuals and the principle of non-discrimination. Thus, charitable and emergency food aid measures cannot be seen as satisfactory responses to the requirement of accessibility, and it is important to recognise the need for equal access to sustainable food for all.
- The **sustainability** requirement refers to the double meaning of the word ‘sustainable’. It is intrinsically linked to the concept of sufficient food or food security, and implies production, processing, distribution and consumption conditions that respect human rights and the environment throughout the food chain, for both present and future generations. Additionally, the sustainability requirement also implies that consumers have long-term access to food rather than occasional or emergency access to food (which relates to the accessibility requirement).
- Finally, the **adequacy** requirement refers to the properties that food must meet. It should be available “in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”²⁴. This requirement partly relates to the imperatives of healthy and sustainable food and the safety of food products, the control and transparency of which are the responsibility of public authorities and the private sector to protect consumer interests. It also recognises that principles related to food systems involve subjective values of acceptability unrelated to nutrition, food safety or ecological issues. It is necessary to consider and protect values related to the social and cultural dimensions inherent in food production, processing, distribution and consumption.

A right to food approach requires “a focus on the most marginalised and vulnerable in society and the underlying systemic reasons for human rights violations²⁵” throughout all aspects of food systems, from farm to fork.

22 COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, General Comment No. 12, op. cit. 8-12; FAKHRI Michael and UNITED NATIONS GENERAL ASSEMBLY, ‘The right to food in the context of international trade law and policy’, Report of the Special Rapporteur on the right to food, Michael Fakhri, pursuant to General Assembly resolution 73/171, 22 July 2020, A/75/219, § 13-15

23 COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, General Comment No. 12, op. cit., §8.

24 Ibid.

25 FAKHRI Michael, ‘The right to food and the COVID-19 pandemic’, Report submitted to the United Nations General Assembly on 18 July 2022, A/77/177, §47.

This framework, based on the right to food, allows us to move away from a purely technical analysis that reduces the understanding of sustainability challenges in food systems to ecological, agronomic, technological or nutritional factors alone. As emphasised by the current Special Rapporteur, Michael Fakhri, “the right to food requires States to ensure that people always eat with dignity. [...] In this respect, the right to food raises fundamentally political questions about the way we produce, distribute and consume food, that can neither be subsumed under nor answered by the often-technical language of food security²⁶”. With its focus on the social and political organisation of food systems and on the structural causes underlying the current food system crises, the right to food framework points to the importance of modifying our political and legal frameworks as one of the essential levers for a just transition to sustainable food systems.

The binding normative framework of the right to food, based on a set of obligations rather than a series of strategic choices for states²⁷, also clarifies the accountability mechanisms for public and private actors that are necessary to achieving the content protected by this right.

Therefore, the right to food offers two essential functions²⁸ in relation to the objectives pursued by the FSFS: a fundamental role since the transition to sustainable food systems is inherent in the definition of this fundamental right recognised in international law, and an instrumental role based on the legal and policy mechanisms to be mobilised in response to the need for a just transition that benefits all citizens and value chain operators, within the European Union and beyond (a requirement set out in the “ Farm to Fork” strategy²⁹).

Furthermore, as human rights are indivisible and interdependent, the right to food framework also mobilises the foundations of other interdependent rights, which also provide a basis for and further specify these different expectations (such as the right to an adequate standard of living, the right to a healthy environment, the right to water, the right to health, peasants/farmers’ rights and the rights of workers in food systems).

26 FAKHRI Michael, UNITED NATIONS GENERAL ASSEMBLY, ‘The right to food in the context of international trade law and policy’, Report of the Special Rapporteur on the right to food, Michael Fakhri, pursuant to General Assembly resolution 73/171, 22 July 2020, A/75/219, § 9-21.

27 FAKHRI Michael, ‘The right to food and the COVID-19 pandemic’, Report submitted to the United Nations General Assembly on 18 July 2022, A/77/177, op. cit., §42.

28 THÉRIAULT Sophie and OTIS Ghislain, ‘Le droit et la sécurité alimentaire’, Les Cahiers de droit, vol. 44, n o4, 2003, pp. 573-596.

29 COM/2020/381 final, op. cit. p. 2.

HENCE:

- The content of the right to food **is inseparable from the objective of a just transition to sustainable food systems**. It is based on the requirements of **food availability, accessibility, sustainability and adequacy**, with **particular attention to addressing inequalities or exclusions** throughout all aspects of food systems.
- **The right to food is interdependent and indivisible from other human rights**, including the right to an adequate standard of living, the right to a healthy environment, the right to water, the right to health, peasants/farmers' rights and the rights of workers in food systems.
- The right to food is a **necessary foundation for** achieving the objectives of the FSFS, which advocates for a **systemic and integrated approach to food systems**.
- The right to food serves as an **instrument/tool** to accomplish this objective, relying on legal and policy mechanisms that need to be mobilised.
- The right to food is based on a **binding normative framework** that clearly establishes the mechanisms of accountability for both public and private actors, in line with the obligations derived from international human rights treaties.

3. THE NEED TO DEVELOP THE EUROPEAN LEGAL FRAMEWORK FOR AGRICULTURE AND FOOD LAW

In order to meet the objectives of a just transition towards sustainable food systems, the European legal framework needs to evolve. One of the key contributions of adopting this European framework, as envisaged by the FSFS, would be to address the current lack of coherence and formal unity within agriculture and food laws. This refers to the national, European and international standards applicable to the food sector, from farm to fork, which govern our agricultural and food practices, with both areas still being heavily separated in terms of legal frameworks³⁰.

Given that food is considered a “total social fact” by sociologists³¹, this right invokes a vast and heterogeneous legal field that covers all aspects of food systems. The field of agriculture and food law encompasses extremely diverse areas, falling under multiple branches of law (land law, environmental law, commercial law, intellectual property law, public procurement law, specific rights applicable to different economic operators, consumer law, etc.), surpassing traditional divides between national, European or

30 BODIGUEL Luc, Construire un nouveau modèle juridique commun agricole et alimentaire durable face à l'urgence climatique et alimentaire : de la transition à la mutation, *European Journal of Consumer Law* 2020/1, 29-42; BODIGUEL Luc, « De l'isolement à la rencontre : le produit agricole et l'aliment au service de l'urgence climatique », in Alessandra DI LAURO (ed.), *Les métamorphoses de l'aliment*, ETS coll. Nutritionalog, 2019, 179-181, ISBN: 978-884674504-0.

31 In other words, a particularly complex social fact, “setting in motion the totality of society and its institutions”, according to the definition proposed by Marcel Mauss, quoted in: POULAIN Jean-Pierre, *Sociologies de l'alimentation : les mangeurs et l'espace social alimentaire*, 3rd edn, Paris, France, Presses Universitaires de France, 2013, p. 228.

international law. The fields of agriculture and food law are also characterised by the vastness and diversity of their sources, as well as the technical and specific nature of each field. Moreover, each branch currently pursues its own objectives, based on the general principles of specific legal disciplines, developed in a compartmentalised manner without harmonisation between them.

Two principles, enshrined in European law, currently hold a significant importance: the free movement of foodstuffs and their food safety³². These principles are common to various legislations and directly respond to the choices made in the founding treaties, particularly regarding the internal market and the health and interests of consumers.

Several limitations and obstacles to a transition towards sustainable food systems arise from the current state of positive law:

- Firstly, this diverse set of norms that regulate the practices of food system actors, often with conflicting values between different branches, seems contradictory to any ambition for a coherent and integrated approach to food systems - an ambition that motivates the work on the FSFS. For example, even within Article 38 of the Treaty on the functioning of the European Union (TFEU) on the Common agricultural policy, or concerning Article 207 of the TFEU (common commercial policy), which aims to establish uniform common principles that may not necessarily be compatible with the diversity of food systems.
- Secondly, the current principles enshrined in European food law (including EC Regulation No 178/2002³³), which make “the free movement of safe and wholesome food the cornerstone of this right to food”³⁴, do not currently enable to redirect EU and member states laws and policies in line with the requirements of sustainable food systems, as they do not reflect the content of the right to food and are limited to commercial aspects and product safety.
- Lastly, the application of these principles currently constrains and sometimes hinders initiatives that contribute to the sustainability of food systems and the reshaping of socio-economic dynamics. These include the preservation and free exchange of plants and seeds, the propagation of local and non-commercial varieties of plants and seeds, the access to land for new generations of farmers and individuals with limited access to capital, the promotion of agroecological production, the use of public procurement to support virtuous producers and facilitate accessibility, collaboration between food chains, and the establishment of food chains that respect workers' rights and implement regenerative practices, among others³⁵.

Due to the decisive influence of the law and the orientation of public policies on agricultural and food issues, it is important to give order and coherence to this vast legal field and to arbitrate between the different objectives pursued, considering a primary goal that recognises and reflects the ambition of a just transition towards sustainable food systems. This is the role that the adoption of the FSFS, currently

32 See in particular: BERNARD Alain, DUTILLEUL François Collart and RIEM Fabrice, “Penser autrement le rapport du droit et de l'alimentation. Présentation du dossier”, *Droit et société*, No. 101, No. 01, 9 May 2019, pp. 11-20; BOUILLOT Pierre-Étienne, “L'absence de considérations du droit à l'alimentation dans la construction du droit de l'alimentation”, *Droit et société*, No. 101, No. 01, 9 May 2019, pp. 53-69; PARENT Geneviève, “Le droit comme outil de sécurité alimentaire durable : l'enjeu du vide juridique international”, *La sécurité alimentaire mondiale - Etat des lieux et perspectives*, L'Harmattan, 2017, pp. 207-216.

33 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.

34 BOUILLOT Pierre-Étienne, “L'absence de considérations du droit à l'alimentation dans la construction du droit de l'alimentation”, op. cit. p. 55.

35 See for example : GOLAY Christophe and BATUR Fulya, *Practical manual on the right to seeds in Europe - The United Nations Declaration on the right of peasants and other people working in rural areas and the right to seeds in Europe*, Geneva Academy, coll. “Academy briefing n°19”, 2021 ; GOLAY, Christophe, *The Right to Land and the UNDROP*, International Land Coalition and Geneva Academy, 2021. More broadly, see the collective response communicated in June 2020 by researchers working on food sovereignty, concerning the “Farm to Fork” strategy: <https://foodgovernance.com/eu-farm-to-fork-strategy-collective-response-from-food-sovereignty-scholars/>.

being developed by the European Commission, can play. Specifically, the formulation of objectives and principles in the FSFS can make a decisive contribution to the necessary evolution of the European legal framework concerning agriculture and food law.

To achieve this, the formulation of the objectives and principles of the FSFS should reflect a comprehensive perspective on food systems issues and provide a framework for all relevant laws and policies at the level of the European Union and its member states (including their international dimensions). This means that these objectives and principles in the FSFS must be grounded on the content protected by the right to food and that its binding nature must be recognized in order to subordinate all branches of agriculture and food “law” (related to food systems) to the requirements of the “right to” food.

THEREFORE:

- The **current principles enshrined in European agricultural and food law do not provide guidance and regulation for a just transition towards sustainable food systems.**
- **There is a need for a change in the European legal framework and the need to adopt binding legislation** based on the right to food. This legislation would serve to:
 - regulate and subordinate all branches of law and public policies that apply to food systems,
 - bring order and coherence to this vast legal field, and
 - reconcile the various objectives in line with the requirements of the right to food.
- **The formulation of objectives and principles within the FSFS** is of paramount importance. It is necessary to recognise a primary purpose in the FSFS that reflects the ambition of a just transition towards sustainable, accessible and equitable food systems, in accordance with the requirements of the right to food.

4. NUMEROUS STUDIES ON THE RIGHT TO FOOD CAN GUIDE THE ADOPTION OF A LEGISLATIVE FRAMEWORK FOR SUSTAINABLE FOOD SYSTEMS

Placing the framework of the right to food at the centre of the FSFS can guide the European Commission’s current work towards the adoption of a framework legislation for sustainable food systems. The development of the legal framework and the drafting of a framework law on the right to food actually align with the recommendations put forth by international bodies.

These guidelines and expectations regarding the normative framework of the right to food are based on numerous tools and studies that have been developed to define and promote specific measures for making the right to food a reality.

There is a relatively substantial database of studies and research that justifies the need to rely on the right to food framework and presents the legal and policy tools that states should implement to ensure that

the transition of food systems is based on the requirements of the right to food³⁶. These sources serve as valuable guidance for the European Commission’s current work, enabling them to turn to and draw upon studies and reports conducted by international experts on these subjects since 1996. This allows for the development of expectations and content for the drafting of a European framework legislation that supports a just transition to sustainable food systems.

As early as 1999, the Committee on ESC rights stated that “States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food”³⁷. The 2004 Voluntary Guidelines on the Right to Food also encouraged the development of a legal framework as an essential element for making the right to adequate food a reality (Guideline 7.1).

The content and objectives of such framework legislation are clearly identified³⁸:

- It should specify the definition and scope of the right to food, outline the obligations of public authorities and responsibilities of the private sector, and establish the necessary institutional mechanisms for governance, monitoring, and recourse mechanisms.
- The adoption of such a framework law should ensure that the right to food and the requirements of a rights-based approach are at the centre of strategies for the adoption of subsidiary legislation and all other legal or policy measures taken by competent authorities.
- It also plays a crucial role in reviewing all components of agricultural and food law in light of recognised requirements. The FAO emphasises that “the legal implementation of the right to food [...] requires a comprehensive review of all relevant sectoral legislation affecting the availability, accessibility and adequacy of food. [...] As a result, some of their provisions may and often do represent an obstacle to the full enjoyment of the right to food”³⁹.

The database developed by the FAO, and more specifically by the Development Law Service⁴⁰, catalogues and develops legal mechanisms that promote the economic, social and environmental sustainability of food systems. These services aim to assist states in strengthening their legislation and adopting such framework legislations as the primary tool for making the right to food a reality. The European Commission would benefit from relying on these works to guide and facilitate the drafting of the FSFS, ensuring that its content meets the requirements of a rights-based approach that are clearly developed and established at the international level.

The work carried out on the scope of the right to food also contributes to guiding the European Commission in its reflections on governance and policy measures to be adopted in order to guide the transformation of food systems towards sustainability (which entails significantly expanding the spectrum of measures to be considered compared to those presented thus far in the work on the FSFS⁴¹).

36 The adoption of the FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, in November 2004, was already precisely in line with these objectives. Subsequently, the work of the FAO’s Right to Food Division, in partnership with other United Nations bodies such as the Committee on ESC rights, the Special Rapporteurs on the Right to Food and NGOs, has helped to consolidate and enrich the work on the normative framework of the right to food.

37 COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, General Comment No. 12, op. cit., §29-30

38 DE SCHUTTER Olivier, Countries tackling hunger with a right to food approach - Significant progress made in implementing the right to food at national scale in Africa, Latin America and South Asia, Special Rapporteur on the right to food, „Fact Sheet” series, 2010; FAO, Guide to legislating for the right to food - Book 1, FAO, 2010; OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, The right to adequate food, FAO, „Fact Sheet” series, 2010.

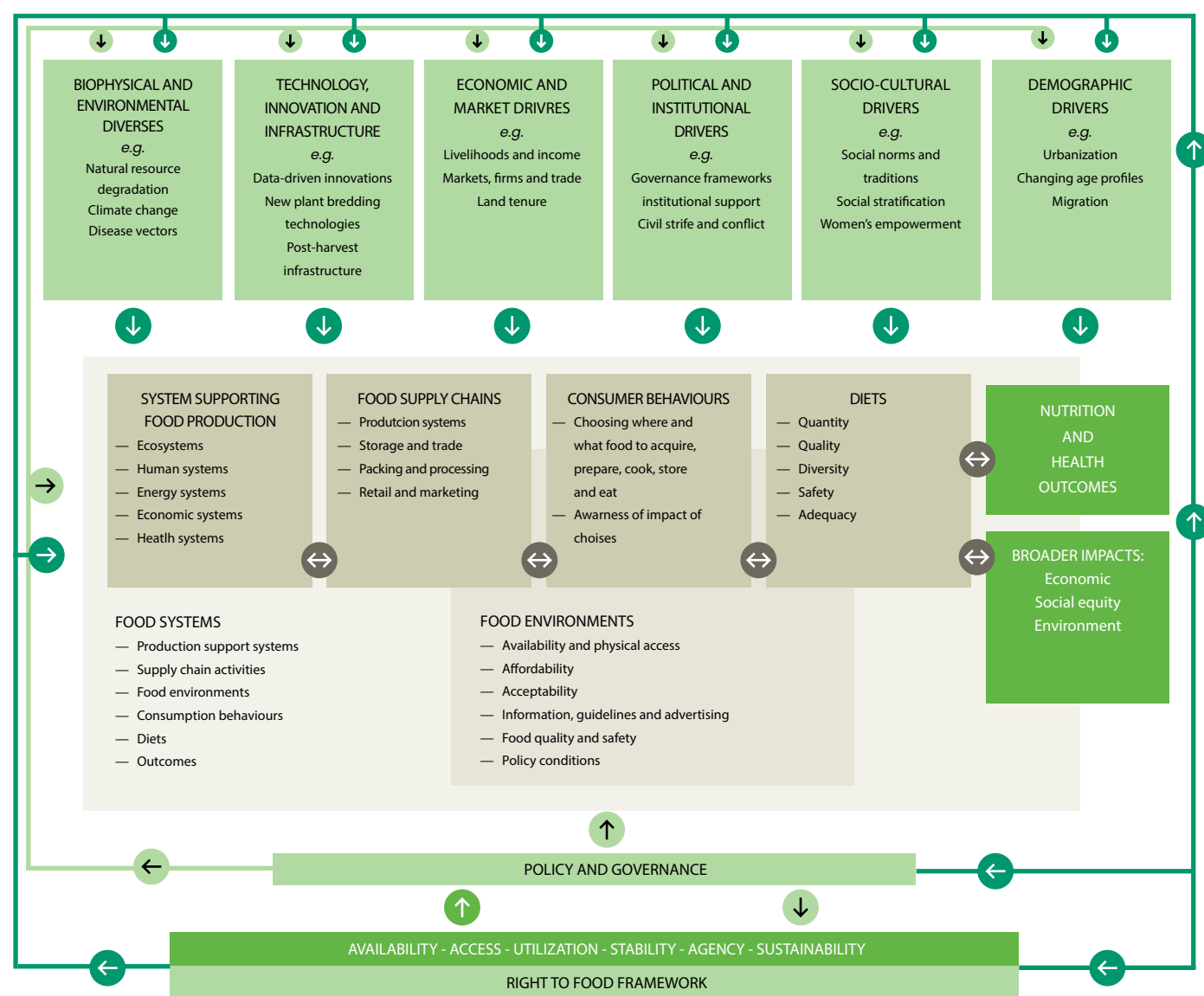
39 FAO, Guide to legislating for the right to food, op. cit. pp. 4-5.

40 The Development Law Service website: <<https://www.fao.org/legal-services/en/>>.

41 See Part II of this report: „The right to food in the drafting of the FSFS”.

In particular, a recent report by the HLPE⁴² (High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security), develops the conceptual and strategic framework that should be adopted for the transformation of food systems in line with the requirements of a rights-based approach to food and to advance the achievement of all Sustainable Development Goals (SDGs). The diagram below presents and summarises the dimensions and interactions of a framework for sustainable food systems based on the right to food as a guiding principle. It takes into account the interdependence of food systems with other systems and the complex interaction of all the SDGs, which are essential considerations for acting structurally to transform food systems. According to the HLPE, the policies and governance of food systems should encompass and support the various dimensions illustrated below, aiming for a strategy of structural changes for the sustainability of food systems within a framework that meets the requirements of the right to food.

SUSTAINABLE FOOD SYSTEM FRAMEWORK



Excerpt from HLPE report No. 15⁴³

This conceptual and strategic framework developed by the HLPE and illustrated by this diagram highlights the breadth of legal and public policy fields that fall within the scope of the FSFS that should be considered and regulated coherently to ensure the sustainability of food systems (beyond the limited political measures related to minimum sustainability criteria, labelling, and public procurement considered thus far in the European Commission's efforts to enhance the sustainability of food systems at the European level).

Only such an approach, based on the framework of the right to food, would enable the achievement of the objectives set for the adoption of the FSFS: establishing new foundations for food system policies with an integrated approach to their challenges, introducing sustainability into all food-related policies, and promoting policy coherence at the European Union and member state levels, including their international dimensions.

We explore below how the right to food could be integrated into the drafting of this framework legislation.

THEREFORE:

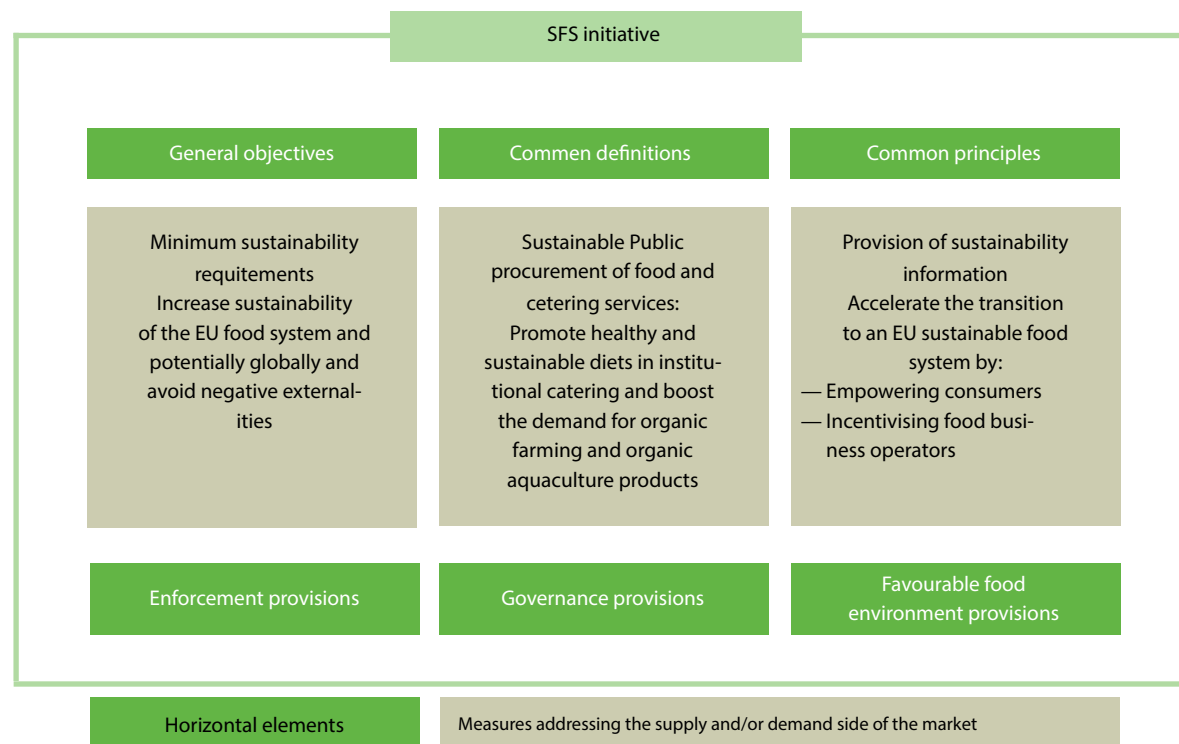
- The European Commission has **numerous resources** at its disposal to draft the FSFS by drawing upon the international work that has been developed to specify the requirements based on the normative framework of the right to food.
- **These resources provide guidance for the drafting of framework legislation**, thus helping to guide the Commission in its current work on the content of the FSFS.
- These resources also allow for an understanding of **the magnitude of policy measures that will fall within the scope of the FSFS** and need to be regulated for the sustainability of food systems (beyond the measures considered by the Commission in its preliminary work).

42 HLPE, Food Security and Nutrition: Building a global narrative towards 2030. Report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, Rome, „HLPE Report“ series, 2020.

43 Ibid, p. 13.

II. THE RIGHT TO FOOD IN THE DRAFTING OF THE FSFS

Based on the work carried out over the past twenty years, particularly within international bodies, to specify the specificities of an approach based on the right to food, we explore below on how the drafting of this framework legislation could incorporate these elements. To this end, we will follow the structure and various sub-sections of the FSFS as communicated by the European Commission during the public consultation.



Building block of the Sustainable EU Food System initiative⁴⁴

The right to food framework is a tool that can guide both the drafting of the horizontal and general provisions of this framework law (B) and the more specific provisions regarding the policy measures to be adopted to strengthen the sustainability of food systems at European level (C). We also suggest some elements related to the initial recitals of this framework legislation for sustainable food systems (A).

⁴⁴ Diagram summarising the main parts of the proposed legislative framework for sustainable food systems, presented in the materials for the public consultation held between 28 April and 21 July 2022.

A. FOUNDATIONS OF THE FRAMEWORK LEGISLATION

The text of the FSFS will likely begin with a preamble that presents the foundations and justifications for adopting such a European framework legislation for sustainable food systems.

It is essential that the right to food be clearly and strongly positioned in order for its normative framework to be recognised as the guiding principle for all provisions of the FSFS. This section should also recall the obligations of the EU member states derived from human rights treaties to emphasise the legitimacy and necessity of a rights-based approach in implementing the objectives of the FSFS.

To this end, we believe that the preamble of the framework legislation should refer to the following elements:

- Recall that the Treaty of the European Union confirms the commitment of EU member states “to the principles and values of human rights and their attachment to the principles of freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law” (recital 4 of the EU Treaty).
- Recall that “The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights” (Article 2 of the EU Treaty).
- Highlight that the European Parliament “strongly suggests that the whole food system, of which agriculture is a part, together with trade, health, education, climate and energy policies, adopt a human-rights based approach, which should be championed by the Union”⁴⁵.
- Highlight that, through the Council of the European Union, the European Union recently “reaffirms its strong commitment to respect, protect, and fulfil, as well as to promote all economic, social and cultural rights (ECSR), including the right to [...] food”⁴⁶.
- Emphasise that the right to food is widely recognised in international law, specifically enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and that all EU member states have ratified the ICESCR, thus committing themselves to respecting, protecting, and fulfilling the right to food without discrimination, in accordance with the obligations derived from international human rights treaties.
- Recall that the right to food and the right to food sovereignty have been defined for peasants and rural workers in Article 15 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted by the UN General Assembly in 2018⁴⁷.

⁴⁵ EUROPEAN PARLIAMENT, European Parliament resolution of 30 April 2015 on Milano Expo 2015: Feeding the Planet, Energy for Life, (2015/2574(RSP)), P8_TA(2015)0184, §34.

⁴⁶ COUNCIL OF THE EUROPEAN UNION, Council conclusions on EU priorities in UN human rights for a 2023 - Press release of 20 February 2023, <<https://www.consilium.europa.eu/en/press/press-releases/2023/02/20/council-conclusions-on-eu-priorities-in-un-human-rights-fo-ra-2023/>>, consulted on 15 March 2023, §13.

⁴⁷ UN GENERAL ASSEMBLY, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted on 17 December 2018. For more information about the elaboration and implementation of UNDROP, see the website <https://defendingpeasantsri ghts.org/en/home>.

- Reaffirm the need to adopt a European framework legislation on food systems that lays new foundations for policies implemented at the EU and member state levels, enabling the necessary structural and urgent reforms for a just transition to sustainable food systems.
- Recognise that the right to food framework is essential to ensure an integrated and coherent approach to the entire body of law and public policies related to food systems, and to provide structural responses to the crises currently affecting food systems.
- Affirm the need for the introduction of new principles and objectives in European law to govern all branches of agricultural and food-related “rights” concerning food systems, in accordance with the requirements of the “right to food” and the principles of a human rights-based approach.
- Assert the urgency and necessity of adopting this new legislative framework based on the right to food for a profound transformation of food systems that should be “not only more resilient in the face of crises, fairer and inclusive, but also conducive to empowerment, respect, regeneration, health, nutrition, as well as productivity and prosperity for all”⁴⁸.
- Affirm that the transformation of food systems within the framework of the right to food is a fundamental and indispensable step towards achieving all the sustainable development goals⁴⁹.

⁴⁸ HLPE, Nutrition and Food Systems, op. cit. summary of back cover.

⁴⁹ According to Ibid.

B. HORIZONTAL ELEMENTS

The previous discussion has shown why drafting the objectives (1), definitions (2) and principles (3) of the FSFS will be decisive in establishing a framework for sustainable food systems based on the right to food. The work carried out over more than twenty years to develop this regulatory framework has also clarified certain expectations and points of attention regarding governance (4), implementation provisions (5) and the food environment (6) to ensure they meet the requirements of a rights-based approach.

B.1. GENERAL OBJECTIVES

THE NEED TO FORMULATE OBJECTIVES ACKNOWLEDGING THE RIGHT TO FOOD FRAMEWORK

According to the information provided by the Commission, these general objectives will define “the most important objectives that the FSFS framework must achieve”.

It is essential that these objectives are formulated clearly and with reference to the main objective of a just transition towards sustainable food systems based on the right to food as an essential condition for this transition. This positioning aligns, as we recall, with that advocated by European institutions on the international stage, as well as in the European Green Deal and the corollary strategy “From farm to fork”.

Placing the right to food at the centre of the FSFS is necessary to allow for a comprehensive and systemic approach to all aspects of food systems (see “Framework for sustainable food systems” diagram from the HLPE report⁵⁰). It also provides a binding pathway to ensure the coherence of law and policies at the EU and member states’ level, facilitating the choice between different objectives pursued, in light of the main requirements of a rights-based approach. Moreover, it fully acknowledges that it is impossible to talk about sustainable food systems until human rights are respected, protected and fulfilled.

THE LIMITATIONS OF THE OBJECTIVES SUBMITTED FOR PUBLIC CONSULTATION BY THE EUROPEAN COMMISSION

During the public consultation, the European Commission proposed the following eight objectives for consideration:

- Strengthen the resilience of the EU food system, through the transition to sustainability
- Reduce negative externalities & raise global standards
- Improve natural resource management, resource efficiency & reduce loss and waste
- Establish a favourable and transparent food environment
- Facilitate sustainable and healthy choices
- Mainstream sustainability in all food-related policies
- Enabling environment for future policy and legislation
- Ensure policy coherence at EU and national level

⁵⁰ See parts I.2 and I.4 of the report above.

The framework of the right to food, along with other interdependent human rights, fully ensures, develops, and implements these different objectives, as has been explained and justified by various works from different UN Special Rapporteurs on the right to food, the HLPE and the FAO.

However, the reverse is not true; the list of eight objectives suggested by the Commission allows for the elaboration and clarification of certain requirements of the content of the right to food, but it does not cover all of them. In particular, the wording leaves unaddressed the primary role of sustainable food systems, namely their role in providing nourishment and the issue of equal access to sustainable food for present and future generations. This purpose is protected by the very essence of the right to food. It is also explicitly mentioned in the text of the “From Farm to Fork” strategy, which aims at “ensuring food security, nutrition and public health – making sure that everyone has access to sufficient, nutritious, sustainable food that upholds high standards of safety and quality, plant health and animal health and welfare, while meeting dietary needs and food preferences”⁵¹. The inclusion of the FSFS initiative within the SDG framework and the principle of “leaving no one behind” also calls for placing the issue of combatting inequalities and discrimination at the core of this legislative framework, across all aspects of food systems, and addressing their root causes and structural issues. This implies beyond the matter of access to food, the need to also ground the transformation of food systems on the recognition and protection of the rights of peasants/farmers and workers in food systems and, more broadly, to recognise the risks of power imbalances, inequalities, and exclusion within all aspects of food systems and protect against them. These various elements, inherent in the normative framework of the right to food and requiring profound socio-economic changes within food systems⁵², also relate to the objective of a “just transition” and the realm of the social dimension of the sustainability of food systems.

Finally, as formulated, these 8 objectives also do not reflect an idea present in the “From Farm to Fork” strategy, which also falls under the obligations of the states under the right to food, namely the global nature of sustainable food systems, implying the need to ensure coherence in law and public policies, including their international and extraterritorial dimensions.

Therefore, it is necessary for the Commission to ensure that the formulation of the general objectives of the FSFS will be sufficiently broad and comprehensive to meet the expectations of a legislative framework that lays new foundations for a just transition towards sustainable food systems based on the right to food.

For the sake of efficiency and legitimacy, it would be possible to rely on a formulation proposed by the HLPE for drafting the general objectives:

The FSFS must allow “to adopt new food system frameworks, which will not only be more resilient to crises, but also more equitable and inclusive, empowering and respectful, regenerative, healthy and nutritious, as well as productive and prosperous for all”⁵³. For this purpose, these frameworks must be “based on the right to food as a guiding principle”⁵⁴.

The list of the eight aforementioned objectives, submitted for discussion by the Commission during the public consultation, could then be understood as specific, though not exhaustive, objectives to be interpreted in the context of the right to food.

51 COM/2020/381 final, op. cit. p. 5.

52 HLPE, Nutrition and Food Systems, op. cit.

53 Ibid, summary of the back cover.

54 Ibid, p. 11.

HENCE:

- **The decisive role that the formulation of the FSFS objectives will play** in enabling a comprehensive and integrated approach to all aspects of food systems.
- **The need to formulate a general objective that refers to the requirement for a just transition towards sustainable food systems based on the framework of the right to food** (a necessary foundation for a comprehensive and integrated approach to the issues), based on the work of the HLPE.
- The need to **recognise that the sustainability of food systems requires respecting, protecting, and fulfilling human rights** (the right to food and all other interdependent rights) **and that their normative framework must be consistently used** to guide the transformation of food systems.
- In the case of **formulating specific objectives, they should reflect and encompass all the requirements of the right to food**. Particularly, the essential aspect of accessibility should not be omitted.

B.2. KEY DEFINITIONS

According to the information provided by the Commission, this subsection aims to “list the essential strategic definitions that can shape the FSFS framework”. The scope of these definitions will be crucial since the Commission also specifies that “to achieve these objectives, the Sustainable EU Food System initiative could establish common definitions on which all future EU and national food legislation could be based”.

During the public consultation, the European Commission suggested several definitions, inviting stakeholders to provide input on the terms that should be defined to achieve the objectives of this legislative framework, to specify the various elements that these definitions should cover, and to possibly refer to existing definitions that could be used as a basis for the work of the FSFS.

A recent report from IPES Food⁵⁵ calls on the European Commission to be particularly attentive to power dynamics in defining terms and concepts related to the sustainability of food systems: “the more encompassing and transformative understandings of sustainable development, which include social justice and ecological concerns, can be obscured by more narrowly defined visions of food system change. Because resources follow policy signals, the material risk is that funds move away from the structural transformation of food systems and into so-called alternatives that maintain the unsustainable status quo”⁵⁶.

55 IPES FOOD (INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS), *Smoke & Mirrors - Examining competing framings of food system sustainability : agroecology, regenerative agriculture, and nature-based solutions*, 2022.

56 Ibid, p. 6.

This applies to the use of terms such as “nature-based solutions”, “regenerative agriculture” or “agroecology”, which have been used vaguely and interchangeably in recent world summits concerning the future of food systems, despite their divergent foundations and scope⁵⁷.

It is necessary for the definitions in the FSFS to reflect the ambition of a just transition towards sustainable food systems and to address the various requirements of an approach based on the right to food (including concerns of social and environmental justice, protection against inequalities and power imbalances within food systems, issues of food accessibility, etc.). This will ensure that the scope of this legislative framework embodies the ambition of a structural transformation of food systems.

In general, we encourage the Commission to rely on the definitions suggested by the HLPE or the UN Special Rapporteurs on the right to food.

As an example, we present below a table comparing the definitions of the food environment and sustainable food systems presented by the European Commission during the public consultation with the definitions of the same terms proposed by the HLPE, which appear to be broader and more precise, and better align with the requirements of an approach based on the right to food.

We also emphasise the importance of including the term “right to food” among the key definitions of the FSFS.

TERMS	DEFINITIONS SUBMITTED FOR REVIEW AND CONSULTATION DURING THE CONSULTATION PROCESS	SUGGESTED DEFINITIONS
RIGHT TO FOOD	No definition proposed during the consultation.	“The right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate, and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations” ⁵⁸ . “The right to food is not just the right to be free from hunger. It is the right [...] to celebrate life through their meals with each other in communion. [...] the right to food requires States to ensure that people always eat with dignity. [...] In this respect, the right to food raises fundamentally political questions about the way we produce, distribute and consume food, that can neither be subsumed under nor answered by the often-technical language of food security” ⁵⁹ .
FOOD ENVIRONMENT	The food environment concept in this questionnaire must be understood to include physical and digital dimensions. The physical food environment can be defined as the physical, economic, political and socio-cultural contexts in which people engage with the food system to make their decisions about acquiring, preparing and consuming food. The digital food environment refers to the online settings through which flows of services and information that influence people's food and nutrition choices and behaviour are directed. They encompass a range of elements, including social media, digital health promotion interventions, digital food marketing and online food retail ⁶⁰ .	Food environment refers to the physical, economic, political and socio-cultural context in which consumers come into contact with the food system to acquire, prepare and consume food. It serves as an interface between consumers and food systems. It includes: i) ‘food entry points’, which are places where food is obtained; ii) the built environment - infrastructure that allows consumers to access these places; iii) personal determinants of food choices (income, education, values, skills, among others); and iv) the political, social and cultural norms underlying these interactions. The key aspects of the food environment that influence food choices, food acceptability and dietary patterns are: physical and economic access to food (proximity and affordability); promotional activities, advertising and information concerning food products; and, finally, food quality and safety (HLPE, 2017) ⁶¹ . All these elements of the food environment must be embedded in the obligations to respect, protect, and fulfill the right to food.

⁵⁷ Ibid, p. 6.

⁵⁸ DE SCHUTTER Olivier, HUMAN RIGHTS COUNCIL, Report of the Special Rapporteur on the right to food, Olivier de Schutter. Final report : The transformative potential of the right to food, 24 January 2014, A/HRC/25/57, §2.
⁵⁹ FAKHRI Michael, UNITED NATIONS GENERAL ASSEMBLY, “The right to food in the context of international trade law and policy”, Report of the Special Rapporteur on the right to food, Michael Fakhri, pursuant to General Assembly resolution 73/171, 22 July 2020, A/75/219, § 9-21.
⁶⁰ BOCK Anne-Katrin, BONToux Laurent et RUDKIN Jennifer, Concepts for a sustainable EU food system: reflections from a participatory process, LU, Publications Office of the European Union, 2022.
⁶¹ HLPE, Agroecological and other innovative approaches for sustainable agriculture and food systems that enhance food security and nutrition, Rome, “HLPE Report”

SUSTAINABLE FOOD SYSTEMS	Sustainable food system: An indicative definition of sustainable food system could be considered the following: “A sustainable food system for the EU is one that: provides and promotes safe, nutritious and healthy food of low environmental impact for all current and future EU population in a manner that itself also protects and restores the natural environment and its ecosystem services, is robust and resilient, economically dynamic, just and fair, and socially acceptable and inclusive. It does so without compromising the availability of nutritious and healthy food for people living outside the EU, nor impairing their natural environment. (SAPEA) ⁶²	Sustainable food system (HLPE): A food system that is based on human rights (and particularly the right to food framework ⁶³) to ensure food security and nutrition for all without compromising the economic, social and environmental foundations required for food security and nutrition for future generations. Sustainable food systems present the following qualities: productivity and prosperity; equity and integration; respect and empowerment; resilience; support for the six dimensions of food security (availability, access, utilisation, stability, agency and sustainability) ⁶⁴ .
	A sustainable food system is one that delivers food security and nutrition for all in such a way that the economic, social and environmental bases to generate food security and nutrition for future generation is not compromised. This means that it is profitable throughout, ensuring economic sustainability, it has broad-based benefits for society, securing social sustainability, and that it has a positive or neutral impact on the natural resource environment, safeguarding the sustainability of the environment (FAO)	

HENCE:

- Advocate for the necessary **adoption of definitions that embody the ambition of a just transition towards sustainable food systems and that reflect the requirements of structural transformations driven by a right to food approach.**
- Rely on the **definitions suggested by the HLPE or the Special Rapporteurs on the right to food.**

62 SAPEA (Science Advice for Policy by European Academies), A sustainable food system for the European Union, 2020. <<https://doi.org/10.26356/sustainablefood/>>.

63 HLPE, Nutrition and Food Systems, op. cit. p. 5.

64 Ibid, p. 91

B.3. GENERAL PRINCIPLES

In accordance with the framework provided by a rights-based approach to the right to food, it is important that the FSFS is founded on the principles of human rights and that it enforces the application of these principles in all processes and policy strategies related to the transition of food systems, at all territorial levels.

Several of these principles are set out in detail in the preamble of the 2004 Voluntary Guidelines on the Right to Food.

“§7 The Voluntary Guidelines take into account a wide range of important considerations and principles, including equality and non-discrimination, participation and inclusion, accountability and rule of law, and the principle that all human rights are universal, indivisible, interrelated and interdependent. Food should not be used as a tool for political and economic pressure.

§ 19: At the national level, a human rights-based approach to food security emphasizes universal, interdependent, indivisible and interrelated human rights, the obligations of States and the roles of relevant stakeholders. It emphasizes the achievement of food security as an outcome of the realization of existing rights and includes certain key principles: the need to enable individuals to realize the right to take part in the conduct of public affairs, the right to freedom of expression and the right to seek, receive and impart information, including in relation to decision-making about policies on realizing the right to adequate food. Such an approach should take into account the need for emphasis on poor and vulnerable people who are often excluded from the processes that determine policies to promote food security and the need for inclusive societies free from discrimination by the State in meeting their obligations to promote and respect human rights. In this approach, people hold their governments accountable and are participants in the process of human development, rather than being passive recipients. A human rights-based approach requires not only addressing the final outcome of abolishing hunger, but also proposing ways and tools by which that goal is achieved. Application of human rights principles is integral to the process.”

The FAO brings these human rights under the seven “PANTHER” principles: participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law⁶⁵.

It is essential that the legal and policy framework promoted by the FSFS, as well as the ensuing measures and practices, be based on these principles. Not only will their incorporation into the FSFS ensure that the transformation of food systems aligns with the requirements of a rights-based approach, but the implementation of these PANTHER principles in itself serves as a vector for transforming food systems.

Some other complementary principles, also related to human rights, deserve to be introduced or clarified, such as gender equality, equity, solidarity, or social justice (inseparable from the right to food according to the Committee on Economic, Social and Cultural Rights)⁶⁶.

65 Participation, accountability, non-discrimination, transparency, human dignity, empowerment, and rule of law. FAO, Right to Food. Making it Happen: Progress and Lessons Learned Through Implementation, 2011, pp. 6–7.

66 COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, General Comment No. 12, op. cit., §4.

In its work to formulate the principles of the FSFS, the European Commission can also draw inspiration from:

- The ten principles for the implementation of the Voluntary Guidelines on the responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, 2012;⁶⁷
- the ten principles for responsible investment in agriculture and food systems of the Committee on World Food Security, 2014;⁶⁸
- the thirteen principles of agroecology guiding the transition to sustainable food and agricultural systems⁶⁹ (which “not only show[s] strong conceptual connections with the right to food, but has proven results for fast progress in the concretisation of this human right for many vulnerable groups in various countries and environments”⁷⁰).

THEREFORE:

- It is **essential** that the legal and policy framework promoted by the FSFS, as well as the measures that will result from it, **be based on human rights principles**.

B.4. GOVERNANCE MECHANISMS

The governance of food systems is also a central issue in guiding the just transition towards sustainable systems. In line with the key considerations raised by the European Commission during the public consultation, it is important to think about coordinated governance across different territorial scales (local, national, and regional), to develop a coherent and integrated approach to all sustainability issues, and to involve all actors in a fair manner⁷¹.

The normative framework of the right to food also guides and specifies the requirements regarding the type of governance mechanisms to be developed: it is essential that they adhere to the principles of a rights-based approach.

67 The principles for implementing the Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security include: respect for human dignity, non-discrimination, equity and justice, gender equality, a holistic and sustainable approach, consultation and participation, the rule of law, transparency and accountability.

68 The Committee on World Food Security’s Ten Principles for Responsible Investment in Agriculture and Food Systems aim to guide all types of agricultural investment to serve a range of environmental, social and economic objectives and to support sustainable food systems: 1. Contribute to food security and nutrition, 2. Contribute to sustainable and inclusive economic development and the eradication of poverty, 3. Foster gender equality and women’s empowerment, 4. Engage and empower youth, 5. Respect tenure of land, fisheries and forests, and access to water, 6. Conserve and sustainably manage natural resources, increase resilience and reduce disaster risks, 7. Respect cultural heritage and traditional knowledge, and support diversity and innovation, 8. Promote safe and healthy agriculture and food systems, 9. Incorporate inclusive and transparent governance structures, processes and grievance mechanisms, 10. Assess and address impacts and promote accountability.

69 The HLPE proposes a list of thirteen principles of agroecology (consolidated list of the ten principles suggested by FAO (2018)). These are structured around three operational principles that underpin sustainable food systems: improving resource efficiency, building resilience and ensuring equity/social responsibility. The 13 principles of agroecology are: recycling, input reduction, soil health, animal health, biodiversity, synergy, economic diversification, co-creation of knowledge, social values and diets, fairness, connectivity, land and natural resource governance, participation. HLPE, *Agroecological and other innovative approaches*, op. cit. pp. 47-51.

70 DE SCHUTTER Olivier and UNITED NATIONS GENERAL ASSEMBLY, Report submitted by the Special Rapporteur on the right to food, 20 December 2010, A/HRC/16/49. FAKHRI Michael, The right to food and the COVID-19 pandemic, Report submitted to the United Nations General Assembly on 18 July 2022, A/77/177.

71 This is particularly true of the topics for discussion on governance and the questionnaires submitted for the one-to-one interviews.

This implies, on the one hand, on a substantive level, embedding governance bodies within the framework and requirements of the right to food. As iPES Food highlights in a recent report on food governance, it is crucial to place “human rights at the centre of all (...) policy processes, as the key unifying element. The right to food, within the indivisibility of all other human and collective rights, would become the lens through which all policy decisions are explored, assessed and decided.”⁷² This concretely means avoiding any form of discrimination, prioritising marginalised populations, considering the rights of future generations, integrating food governance into a holistic approach that simultaneously implements the rights to food, water, housing, health, a healthy environment, etc., and analysing the structural causes of food poverty to address inequalities.

On the other hand, on a procedural level, it is essential that the governance mechanisms are founded on human rights principles.

The 2004 Voluntary Guidelines on the Right to Food emphasise the close links between democracy (especially in food matters), good governance, and human rights for making the right to food a reality (Guideline 1).

They also specify that “individuals and civil society must be empowered to exert pressure on their government to implement policies that respond to their specific needs, and to ensure government accountability and transparency in state decision-making processes related to the application of these policies” (Guideline 1.2).

Therefore, it is particularly the principles of participation (with special attention and voice for the most marginalised individuals or groups), equity, transparency, and state accountability that guide the governance mechanisms to be promoted at all territorial levels.

In this regard, the current Special Rapporteur on the right to food⁷³, iPES Food⁷⁴, FIAN International⁷⁵ and academics⁷⁶ raise concerns about the significant flaws in multi-stakeholder approaches to governance, which were evident during the 2021 Global Food Systems Summit. These approaches that involve all stakeholders in food systems indiscriminately do not consider existing power asymmetries (within institutions, political programmes, regulatory frameworks, and norms), which tend to be dictated by certain private sector actors.

- Multi-stakeholderism does not respect the principle of participation, as power asymmetry compromises the participation of local populations and civil society, potentially leaving out the contributions of those most affected by the social, environmental, and economic impacts of unsustainable food systems – those who are best placed to propose appropriate and decisive solutions for the success of the adopted policies.
- It also does not respect the principle of equity, and one of the major challenges is to invent food governance processes and spaces that limit and confront the influence of large corporations.

72 IPES FOOD (INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS), *Who’s Tipping the Scales? The growing influence of corporations on the governance of food systems, and how to counter it*, 2023, p. 30.

73 FAKHRI Michael, *The right to food*, Report submitted to the United Nations General Assembly on 27 July 2021, A/76/237.

74 IPES FOOD (INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS), *Who’s Tipping the Scales?*, op. cit.

75 FIAN INTERNATIONAL, *Briefing note on multi-stakeholder initiatives*, 2020.

76 CLAEYS Priscilla, DUCAN Jessica, “Power to the Elites? Multistakeholderism and the UN Food Systems Summit”, July 2021, [https://www.agroecologynow.com/unfss-multistakeholderism/].

- Lack of transparency is also a significant cause for concern, as these processes of corporate influence over food system governance are often not visible to the public.⁷⁷
- Lastly, multi-stakeholderism significantly compromises the principle of state accountability, as multi-stakeholder governance processes blur the lines of roles and responsibilities between different stakeholders. They no longer clearly establish the distinctions between rights-holders and duty-bearers (the states), including the obligation to protect against the negative influence of dominant third parties.

As a result, these multi-stakeholder processes may create an illusion of democratic and inclusive processes, but they are deeply concerning in terms of respecting human rights principles.

These concerns should be addressed when designing the governance mechanisms to be developed within the framework of the FSFS. As IPES Food highlights, “a much more foundational re-imagining is required that transforms existing systems and structures of power”⁷⁸ to limit corporate influence, democratise decision-making, and create conditions for the participation of the most marginalised groups. It is also crucial that these governance mechanisms (at local, national, regional and international levels) are accountable to the populations who hold the rights and that they address the structural inequalities in food systems.⁷⁹

If it is necessary to “re-imagine food system governance in the public interest”⁸⁰, and therefore develop innovative mechanisms within the FSFS, we recommend that the Commission draw on the recommendations of IPES Food for the types of governance to be promoted, illustrated by inspiring initiatives.

According to IPES Food, two complementary governance mechanisms should be promoted, and thus two different approaches should be developed in the provisions relating to governance within the FSFS.

- First, to develop multilateral and democratic governance spaces, the Commission can draw inspiration from the examples of food policy councils/groups that are emerging at various territorial levels, with a participatory approach⁸¹. Such a Food Policy Council could be established at the European level (an EU Food Policy Council) to ensure the participation of all food system actors and strengthen cooperation rather than competition, as recommended by the European Economic and Social Committee⁸².
- In addition, to transform/rebalance power relations and create conditions for the participation of the most marginalised groups, the governance mechanisms of the FSFS should

⁷⁷ The IPES Food study distinguishes between visible ways in which companies influence global food governance (multi-stakeholder initiatives, public-private partnerships, funding of food governance forums) and less visible processes (corporate concentration and financial investment, lobbying and revolving doors between private and public management positions, research sponsorship, political donations and structural influence on trade and investment agreements). IPES FOOD (INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS), *Who's Tipping the Scales?* op. cit. p. 14.

⁷⁸ Ibid, p. 24.

⁷⁹ FAKHRI Michael, *The right to food*, Report submitted to the United Nations General Assembly on 27 July 2021, A/76/237, op. cit., §91.

⁸⁰ IPES FOOD (INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS), *Who's Tipping the Scales?*, op. cit. p. 23.

⁸¹ See in particular MORAGUES-FAUS Ana & BATTERSBY Jane, “Urban food policies for a sustainable and just future: Concepts and tools for a renewed agenda,” *Food Policy*, Elsevier, vol. 103(C), 2021; HAMMELMAN C., LEVKOE C., AGYEMAN J., KHAROD, S. MORAGUES-FAUS, A. MUNOZ, E., ... & WILSON A., “Integrated Food Systems Governance”, *Journal of Agriculture, Food Systems, and Community Development*, 9 (2), 2020, pp.1-16; IPES FOOD, *Who's Tipping the Scales?*, op. cit. p. 26.

⁸² European Economic and Social Committee, “Food security and sustainable food systems”, 19 January 2022, NAT/844-EESC-2021: <<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/food-security-and-sustainable-food-systems>>.

also “build up autonomous processes and spaces for voices, claims, and proposals of people’s organisations and social movements”⁸³. In this regard, the Commission could draw inspiration from the Civil Society and Indigenous Peoples’ Mechanism (CSIPM) of the Committee on World Food Security, which aims to adopt public policies by consensus while clearly placing the responsibility for implementation in the hands of governments and, simultaneously, prioritises organisations representing the most marginalised groups in the debates.

HENCE THE IMPORTANCE OF:

- Elaborating **governance mechanisms that meet the requirements of a rights-based approach: in substance**, systematically think through the right to food; **in form**, be grounded in the principles of human rights.
- Promote this type of governance mechanism at various territorial levels.
- **Consider and prevent existing power asymmetries in multi-stakeholder governance processes and implement measures to avoid conflicts of interest.**
- **Establish a European Food Policy Council to strengthen cooperation and dialogue among different stakeholders, with transparency.**
- **Draw on the IPES Food recommendations to develop innovative governance processes within the FSFS**, including:
 - multilateral and democratic governance spaces;
 - autonomous spaces for voicing the concerns, demands, and proposals of groups most affected by the social, environmental, and economic impacts of unsustainable food systems.

⁸³ IPES FOOD, *Who's Tipping the Scales?*, op. cit. p. 27.

B.5. IMPLEMENTATION PROVISIONS

In accordance with the framework of the right to food and the principle of accountability, states have an obligation to be accountable and to establish monitoring and control measures to assess the progress made in achieving sustainable food systems. The questions raised by the European Commission during the public consultation about these monitoring and implementation mechanisms are thus fully integrated and developed within a rights-based approach.

Without claiming to be exhaustive, at least three requirements arise from the framework of the right to food in order to consider the implementation provisions of the FSFS.

Firstly, these monitoring and control mechanisms must be understood according to the international human rights framework, which is based on a series of obligations for states rather than a series of political and strategic choices.

- In accordance with the obligation to respect human rights, states must refrain from taking any measures that would hinder the achievement of sustainable food systems. Therefore, the implementation measures of the FSFS must ensure that there is no regression in making the right to food a reality.
- In accordance with the obligation to protect, states must ensure that companies or individuals (dominant or aggressive third parties or those with more powerful economic interests) do not take actions that would contradict the objectives of a just transition towards sustainable food systems. States must, therefore, regulate the practices of intermediary actors (including private companies), prevent any conflict of interest, hold them accountable for any violations of human rights and the environment. In this regard, the implementation measures of the FSFS are closely related to the due diligence duty of businesses.
- In accordance with the obligation to fulfil, states must adopt legal and political measures to make the right to food a reality and, therefore, take measures to accelerate the necessary just transition towards sustainable food systems. States are required to find and allocate as many resources as possible to achieve this objective.

The monitoring mechanisms and evaluation of progress made towards achieving the sustainability of food systems, within the framework of the FSFS must, therefore, cover these three sets of obligations for states.

Secondly, it is important to establish specific institutions responsible for assessing the progress made towards achieving sustainable food systems as well as independent recourse mechanisms, so that it is possible to invoke this framework legislation for sustainable food systems to demand accountability and obtain redress if necessary.

It is possible to draw inspiration from various tools developed for these monitoring and control mechanisms at the international level, including the mandates of UN Special Rapporteurs on the right to food or the reviews by the Committee on Economic, Social and Cultural Rights (in the context of periodic reviews or pursuant to the Optional Protocol to the ICESCR)⁸⁴.

⁸⁴ UNITED NATIONS GENERAL ASSEMBLY, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

The application of the principle of participation also extends to these monitoring and evaluation mechanisms, and it is necessary to link these independent control and monitoring institutions with governance bodies.

Finally, the expected indicators of impact and change (which will guide the monitoring and evaluation of all policies and strategies for sustainable food systems) should reflect all the principles of this framework legislation. It is, therefore, important to ensure that the indicators chosen cover both the content of the right to food (the requirements of availability, accessibility, sustainability and adequacy) and the principles of a rights-based approach, to guide the monitoring of sustainable food systems strategies.

However, based on the preliminary elements communicated by the Commission during the public consultation, the approach seems quite technical for formulating expected changes and impacts, primarily focused on considerations related to environmental issues⁸⁵. This point should be carefully considered by the Commission in its work on the FSFS, so that the data monitored and analysed within these monitoring mechanisms truly reflect the ambition of a just transition towards sustainable food systems that is grounded in the right to food framework. It is necessary to develop a multi-criteria evaluation system, integrating the ecological, social, and economic determinants of the sustainability of food systems and allowing progress on all these criteria, while taking into account potential conflicts. The latest HLPE report on data collection and analysis tools for food security and nutrition to make decision-making more effective, inclusive, and evidence-based⁸⁶ could serve as a source of support for drafting this sub-section of the FSFS.

THEREFORE:

- **Monitoring and control mechanisms** are fully provided for and framed by a right to food approach, and they are **correlated with the obligations of states** in accordance with the international normative framework of human rights.
- **Specific institutions responsible for assessing the progress made and mechanisms for recourse to independent bodies should be established.**
- The **principle of participation extends to these monitoring and control measures** (and these surveillance mechanisms should be **linked to governance measures**).
- **There is a need for vigilance in formulating indicators of expected impact and change** for monitoring strategies aimed at transitioning food systems: the indicators must reflect all the requirements of the right to food and the principles based on human rights (beyond technical indicators primarily based on environmental considerations).

Resolution adopted by the General Assembly on 10 December 2008, A/RES/63/117.

⁸⁵ EUROPEAN COMMISSION, Inception Impact Assessment for the Sustainable food system framework initiative, 28/09/2021, Ares(2021)5902055.

⁸⁶ HLPE, Data collection and analysis tools for food security and nutrition: towards enhancing effective, inclusive, evidence-informed decision-making, Rome, coll. „HLPE Report“, 2022.

B.6. FAVOURABLE FOOD ENVIRONMENT PROVISIONS

The provisions related to a favourable food environment constitute the final block of the elements envisaged by the European Commission as part of the horizontal components of this framework law, according to the information provided during the public consultation.

Indeed, the notion of a food environment is widely emphasised in work on food systems. The HLPE calls for recognising the “decisive importance” of the food environment, related to food supply, in determining individual practices and advocates adopting a new conceptual framework for understanding issues related to food systems and nutrition⁸⁷. Similarly, a recent IDDRI study calls on “public decision-makers to change their narratives on food transition”⁸⁸, based on the concept of the food environment.

Essentially, the perspective brought by the concept of a food environment leads to decentralising the approach focused on the evolution of individual food behaviours for food system transitions, in line with the responsible consumer or ‘consumer-actor’ paradigm. Instead, it urges consideration of the “physical, economic, political and socio-cultural context in which consumers engage with the food system to make their decisions about acquiring, preparing and consuming food”⁸⁹. It thus highlights the central influence of social and political organisation on households’ access to food, and the determination of their individual choices and food acceptability. The major contribution of this notion is, therefore, to shift the perspective towards guiding the transition to sustainable food systems: moving “from individual responsibility to the responsibility of public authorities”⁹⁰.

Two major contributions can be highlighted in placing this notion of a food environment among the horizontal elements of the FSFS, considering the requirements of a right to food approach. Firstly, it is crucial for addressing the issue of inequalities in access to food, which is the subject of the right to food. The focus on individual food behaviours is insufficient and may even be counterproductive, exacerbating social inequalities and exclusions for vulnerable households if measures to promote sustainable food choices are not accompanied by political actions that enable them to respond by acting on their food environment⁹¹. Therefore, to achieve the objective of the right to food and structurally address access to food inequalities, reliance on the notion of a food environment is necessary. Secondly, this notion clarifies the scope of states’ obligations and responsibilities for transitioning to sustainable food systems, regarding their necessary actions on people’s food environments.

These considerations are linked to the definition of monitoring and control measures of the FSFS to track and evaluate the progress made by states in achieving the sustainability of food systems, in light of their correlative obligations to the right to food (subsection 5 of the FSFS’s horizontal elements). They also justify the need for the adoption of mandatory and binding commitments, rather than voluntary commitments, for making the right to food a reality. The mobilisation of the notion of food environments also points to the wide range of domains of public action that should be considered and included in the scope

87 See in particular HLPE, Nutrition and Food Systems. Report of the High-Level Panel on Food Security and Nutrition of the Committee on World Food Security, „HLPE Report“ series, 2018.

88 IDDRI, „Les décideurs publics doivent changer leurs récits sur la transition alimentaire“, April 2023, <<https://www.iddri.org/fr/publications-et-evenements/billet-de-blog/les-decideurs-publics-doivent-changer-leurs-recits-sur-la>>.

89 HLPE definition of the food environment.

90 „Les décideurs publics doivent changer leurs récits sur la transition alimentaire“, op. cit.

91 RAMEL Magali, Le droit à l’alimentation et la lutte contre la précarité alimentaire en France, op. cit, pp. 353-367.

of the FSFS⁹², in order to act on the main aspects of people’s food environments: physical and economic access to food (proximity and affordability); promotion, advertising, and information activities relating to food products; and finally, the quality and safety of food, which should consistently meet sustainability requirements⁹³.

With the mobilisation of the notion of food environments, “the fundamental aim is to change the discourse on food strategy, as well as the strategy used to bring it about”⁹⁴, in order to be able to “orchestrate changes that... will rise to the challenges.”⁹⁵ Therefore, it is essential and particularly interesting to include the need to act for favourable food environments in the horizontal elements of the FSFS, and the mobilisation of this notion further justifies the importance and relevance of the right to food framework to guide the European Commission in its work on drafting the FSFS.

FROM THIS STANDPOINT:

- **The introduction of the notion of a food environment in the horizontal elements of the FSFS brings a decisive contribution** to specifying the responsibilities of actors and the scope of the FSFS: it allows for a **shift in perspective from individual responsibility to the responsibility of public authorities for the sustainability of food systems.**
- The significance of this concept is crucial in clarifying the scope of the FSFS:
 - **It highlights the importance of state monitoring and control measures**, in accordance with the normative framework of human rights,
 - **It emphasises** the need for the **adoption of mandatory and binding measures for states within the framework of the FSFS, rather than voluntary measures,**
 - It points to the **wide range of domains of public action to be considered for the scope of the FSFS,**
 - **It is a critical and necessary concept for addressing the issue of inequalities in access to sustainable food.**

The normative framework of the right to food thus guides the drafting of all the horizontal and general provisions of this legislative framework, ensuring that it provides directions consistent with the requirements of a rights-based approach.

This rights-based approach allows for a critical analysis of the policy options envisaged by the European Commission to strengthen the sustainability of food systems at the European level.

92 See the conceptual and strategic framework for sustainable food systems proposed by the HLPE and presented in part I.4 of this report.

93 According to the definition of food environments proposed by the HLPE and set out in the definitions section of this report (II.B.2).

94 „Les décideurs publics doivent changer leurs récits sur la transition alimentaire“, op. cit.

95 Ibid.

C. POLICY MEASURES TO STRENGTHEN THE SUSTAINABILITY OF EUROPEAN FOOD SYSTEMS

During the public consultation, the European Commission presented three policy measures that it identified to enhance the sustainability of European food systems by addressing both food supply and consumer demand. However, these three policy measures alone appear inadequate to meet the requirement for transforming food systems and covering all the policy measures falling within the scope of the FSFS (1). In line with the expectations of a framework law on the right to food, the FSFS must envisage a revision of all sectoral legislations and policy measures, considering the requirements of the aforementioned horizontal elements (2). Nevertheless, the right to food framework will also serve to arbitrate between the various options envisaged by the European Commission regarding the implementation of the three policy measures considered so far (3).

C.1. THE MAJOR INSUFFICIENCY OF THE POLICY MEASURES ENVISAGED IN THE FSFS

During the public consultation, the European Commission presented three policy measures identified to strengthen the sustainability of European food systems by addressing both food supply and consumer demand. These measures consist of: 1/ introducing minimum sustainability criteria to regulate the activities of all economic actors in the food system (thereby acting on food supply), 2/ addressing consumer information by introducing sustainability labels, and 3/ establishing sustainability criteria in public procurement provisions related to food and catering services.

Certainly, these policy measures are necessary. However, the framework proposed by the European Commission is too limited and restrictive considering the breadth of public policies that need to be considered and regulated coherently to ensure sustainable food systems. On their own, they are far from achieving the objectives set for adopting the FSFS, which include establishing new foundations for food systems policies with an integrated approach to their issues, introducing sustainability into all food-related policies, and promoting policy coherence at the European Union and Member States levels, including their international dimensions.

On one hand, a policy framework based solely on these three measures would be extremely incomplete compared to the conceptual and strategic framework outlined by the HLPE for transforming food systems based on the right to food and targeting all Sustainable Development Goals (SDGs)⁹⁶.

On the other hand, these three policy measures cannot be considered sufficient or satisfactory in light of the right to food framework, which involves addressing the structural inequalities of food systems and implementing the necessary structural transformations for a just transition to their sustainability.

Numerous other major issues for transforming food systems towards economic, social, and environmental sustainability need to be prioritized.

For example, Mr. Fakhri calls on states to develop action plans on the right to food based on solidarity, self-sufficiency, and dignity, which integrate the following policy priorities⁹⁷:

- strengthening international cooperation and solidarity,
- improving food production and conservation by valuing cultural and biological diversity in food systems,
- promoting an integrated, agroecological approach that draws on traditional, local, and indigenous knowledge as well as scientific knowledge (addressing issues related to land rights and agrarian reforms),
- reforming food systems to ensure the availability and accessibility of food in dignified and equitable conditions, respecting the rights of workers,
- ensuring fair trade in terms of food sovereignty and workers' rights to establish stable and equitable markets.

The issue of physical and economic accessibility to sustainable food is another major concern that needs to be adequately addressed, which is currently dealt with unsatisfactorily in the preliminary works on the FSFS⁹⁸.

THEREFORE:

- **It is necessary to significantly broaden the scope of policy measures considered by the Commission, in light of the scope of the FSFS (relying on the conceptual and strategic framework proposed by the HLPE).**

⁹⁷ FAKHRI Michael, The right to food and the COVID-19 pandemic, Report submitted to the United Nations General Assembly on 18 July 2022, A/77/177, op. cit., §92.

⁹⁸ In the lines presented in the Inception Impact Assessment document of September 2021, the Commission appears to assume that "sustainable food is more expensive and inaccessible for vulnerable households" today. It is also stated that, in the short term, the measures of the FSFS will likely generate additional costs, which could further reinforce social inequalities in accessing sustainable food. It is only in the long term that the project hopes for a reversal of this trend when "sustainable food becomes the main offering in society" (expected effects of the FSFS measures), which should lead to a decrease in prices (correlated with an overall reduction in food system costs) and, consequently, hope for "impacts on the accessibility of sustainable diets for consumers". However, until these desired long-term impacts materialise, the guidelines of this legislative framework seem to assume that due to the increase in the prices of sustainable food, an ever-increasing number of people in precarious situations will have to turn to charitable assistance to feed themselves. The redistribution of surplus food is also presented as an "important social dimension for those who cannot afford the food they need". The framework of the right to food radically questions these orientations for the FSFS: emergency food aid or policies to fight food waste aimed at redistributing surplus to charitable organisations cannot be deemed sufficient and satisfactory in light of the requirements of an approach based on the right to food. Furthermore, the social dimension of sustainable food systems includes combating access inequalities and promoting a rights-based approach, in accordance with the framework of the right to food.

⁹⁶ Please refer to the conceptual and strategic framework for sustainable food systems proposed by the HLPE and presented in Part I.4 of this report.

C.2. ENVISAGE A REVISION OF ALL LEGISLATION AND SECTORAL POLICIES IN LIGHT OF THE HORIZONTAL ELEMENTS OF THE FSFS.

In accordance with the framework established for the right to food⁹⁹, the adoption of a legislative framework plays a crucial role in subsequently examining all laws and policies that significantly impact the realization of the right to food, ensuring their compatibility with this right. Therefore, within the measures of the FSFS's implementation, it is necessary to include provisions for a comprehensive revision of all legislation and sectoral policies that affect food systems, based on the requirements recognized in the FSFS's horizontal elements.

The status of a legislative framework implies the subordination and regulation of all laws and policies related to food systems in line with the requirements of the FSFS. Indeed, one of the significant contributions that this European legislation could make is restoring coherence and direction within the broad legal framework involved¹⁰⁰ (including commercial law, competition law, intellectual property law, etc.). This revision will enable the correction of any provisions that do not contribute to the sustainability of food systems and the realization of the right to food. Consequently, all European policies should also be reassessed in light of the requirements adopted in the FSFS's horizontal elements.

The FAO emphasises that for this sectoral review, it is necessary to first establish institutional responsibility within the provisions of the legislative framework and pre-identify priority areas requiring intervention.

In practice, the FAO explains that to have real effects, a framework law on the right to food must include application provisions for two purposes¹⁰¹.

- 1 The implementation of the framework law requires the development and enactment of a series of other legal texts. Therefore, it should be stipulated in the framework law that:
 - Specific implementing texts must be adopted within a defined timeframe.
 - Any future legal text affecting the realization of the right to food must be compatible with this right and the framework law.
 - Other relevant legislation must be interpreted in a manner compatible with the right to food.
- 2 As the implementation of the framework law will likely require the amendment of various sectoral laws and the promulgation of related texts in these sectors, it is necessary to also provide:
 - A list of sectoral areas where texts will be re-examined on a priority basis and amended if necessary, to ensure compatibility with the right to food and promote its realization.

- The obligation to repeal any legislation that the examining body deems incompatible with the right to food and the framework law. In cases of inconsistency with other provisions, the human right to food must take precedence.

These recommendations from the FAO, supported by technical assistance from the Development Law Service¹⁰², are fully applicable to the expectations for the drafting of the FSFS. Therefore, it is essential for the Commission to include such provisions for implementation and institutional responsibility for a comprehensive review of sectoral legislation and policies.

THEREFORE:

- **Ensure a comprehensive review of all legislation and sectoral policies** that have an impact on the availability, accessibility, sustainability, and adequacy of food, **in light of the requirements recognised in the horizontal elements of the FSFS.**
- **Include such provisions for implementation in the FSFS as well as institutional responsibility for this review, in accordance with the expectations specified by the FAO for the implementation of the right to food.**

C.3. THE RIGHT TO FOOD FRAMEWORK TO GUIDE CHOICES BETWEEN THE DIFFERENT OPTIONS PRESENTED DURING THE PUBLIC CONSULTATION

Lastly, concerning the three specific policy measures presented by the European Commission to enhance the sustainability of European food systems, the framework of the right to food helps guide the choice between the various options presented during the public consultation.

This arbitration among the different options should be based on:

- the need to reform the European legal framework concerning agriculture and food towards a just transition to sustainable food systems¹⁰³,
- the need for a binding framework that outlines the obligations of States in relation to the right to food,
- and an interpretation of these policy measures in accordance with the requirements presented in the horizontal elements of the FSFS, encompassing the normative framework of the right to food and the principles of a rights-based approach.

99 See section I.4 of this report.

100 See section I.3 of this report.

101 FAO, Guide on Legislating for the Right to Food op. cit., p. 194.

102 The Development Law Service (LEGN) of the FAO aims to provide technical assistance to FAO members (including the European Union) to strengthen their legislation as a primary tool for achieving the right to food. <https://www.fao.org/legal-services/en/>.

103 See section I.3 of this report.

MINIMUM SUSTAINABILITY REQUIREMENTS FOR ECONOMIC OPERATORS

Summary of options presented by the Commission during the public consultation:

- **Option 0:** Relying on currently applicable legislation that sets minimum sustainability requirements for different products
- **Option 1:** Introduction of a voluntary approach (guidelines on sustainability standards)
- **Option 2:** Review and alignment or development of new sectoral legislation in line with FSFS objectives/principles
- **Option 3:** Reinforcement of compliance with existing sustainability standards and requirements with primary responsibility placed on business operators (strengthened due diligence with compliance management system)
- **Option 4A:** Introduction of new minimum sustainability requirements based on the ‘do no harm’ principle applicable only to products produced in the EU
- **Option 4B:** Introduction of minimum sustainability requirements based on the ‘do no harm’ principle applicable to products placed on the EU market produced in, or imported into the EU
- **Option 5:** Introduction of a combination of previously mentioned measures 2, 3 & 4

Options 0 and 1 should be discarded as a transformation of the European legislative framework is necessary, and the normative framework of the right to food implies adopting binding and harmonized measures rather than following a voluntary approach.

Insufficiency of Option 2: there is a need for a revision of all legislations and sectoral policies falling within the scope of the FSFS, in line with the requirements of its horizontal elements, and not only a revision of provisions related to economic operators.

Option 3: to be interpreted in line with the obligation of State protection, which entails regulating the practices of intermediary actors (including private enterprises), preventing any conflict of interest, and holding these actors accountable for any violations of human rights and the environment¹⁰⁴.

Option 4: State obligations deriving from human rights treaties are also international and extraterritorial; therefore, only Option 4B is feasible. However, the “do no harm” principle only corresponds to the application of the obligation to respect the right to food, which means avoiding any regression in its realization due to measures that would undermine its content. In accordance with the obligation to fulfill the right to food, which implies implementing as many measures as possible for its realization, the requirements of the FSFS cannot be limited to these considerations aiming to eliminate the least sustainable products (raw and processed) and operations from European markets.

The implementation of the horizontal elements of the FSFS, in line with the requirements of the normative framework of the right to food, entails much more stringent obligations for regulating the operations of economic actors, in line with the requirement for a just transition towards sustainable food systems.

- The normative framework of the right to food would imply adopting Option 5, provided that it aligns with an interpretation of Options 2, 3, and 4 that is in accordance with the requirements of an approach based on fundamental rights.

¹⁰⁴ See section II.B.5 of this report.

INTRODUCTION OF A SUSTAINABILITY LABEL

Options presented by the Commission during the public consultation:

- **Option 0:** Relying on currently applicable legislation and on sustainability component specific labelling provisions (e.g. nutrition, environment)
- **Option 1:** A voluntary approach such as guidelines developed by the Commission and/or commitments taken by operators through memorandums of understanding or codes of conduct
- **Option 2:** Reinforcing existing legislation, with sustainability labelling provisions related to more than one sustainability component set out in sector-specific legislation
- **Option 3A:** An EU general framework and a voluntary harmonised EU sustainability label for EU and imported food products of higher sustainability performance
- **Option 3B:** An EU general framework and a voluntary harmonised EU sustainability label for all EU and imported food products
- **Option 4A:** An EU general framework and a harmonised EU sustainability label mandatory on all EU food products and voluntary for imported food products.
- **Option 4B:** An EU general framework and a harmonised EU sustainability label mandatory on all EU and imported food products.

Only option 4B appears compatible with an approach based on the right to food (developing a European sustainability label based on comprehensive and binding regulations that reflect the objectives and principles set by the FSFS and align with a rights-based approach). Options 0, 1, and 2 are too vague, fragmented, and have weak normativity considering the requirements of this approach. Option 3 is solely voluntary and therefore not compatible with binding obligations. Option 4A is not aligned with the position the European Commission has defended, especially concerning the regulation against deforestation¹⁰⁵ and risks being deemed incompatible with international trade standards.

However, as already explained above, it is worth noting that the notion of a food environment, included in the horizontal elements of the FSFS, directly challenges the relevance of relying solely on measures to inform consumers and encourage them to adopt more sustainable eating habits. Such measures focusing on individual food behaviors also carry the risk of exacerbating social inequalities and exclusions for vulnerable households if they are not combined with other measures aimed at combating structural inequalities in access to sustainable food. Indeed, consumers’ cognitive capacities tend to be overestimated, and price remains a crucial factor in purchasing decisions. The concept of a food environment implies that public authorities need to address distortions in access to clear and verifiable information for consumers (including online) and marketing offers, as well as ensuring the quality of all food products (including sustainability criteria) and their physical and economic accessibility.

Thus, while the importance of measures related to consumer information can be justified, especially concerning the transparency of product composition and consumer information rights, it cannot be interpreted as a sufficient measure to transform food environments or combat structural inequalities in access to sustainable food¹⁰⁶.

¹⁰⁵ Regulation of the European Parliament and of the Council on making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM(2021)0706 – C9-0430/2021 – 2021/0366(COD)).

¹⁰⁶ This subsection was drafted with the support of- Arnaud Lellinger, a lawyer at the Paris Bar, specialised in intellectual property law.

SUSTAINABLE PUBLIC PROCUREMENT

Summary of options presented by the Commission during the public consultation:

- **Option 0:** Relying on existing provisions related to sustainable public procurement for food in currently applicable legislation.
- **Option 1:** A voluntary approach by extending current guidance on Green Public Procurement criteria (GPP), to cover the three dimensions of sustainability and in particular healthy diets.
- **Option 2:** An approach setting out general provisions and requirements aiming to raise awareness and improve skills and knowledge of SPP procurement, capacity building and support local authorities in using public procurement strategically, e.g. by:
 - Extend the European Commission E-competence centre with tools and information to help public buyers with sustainable food public procurement;
 - Establish an EU network of food procurement professionals;
 - Create centralized MS focal points.
 - Require MS to set up national action plans
- **Option 3:** An approach setting mandatory general and specific requirements, including the introduction of a general mandatory requirement of procuring sustainably with a clear reference to the environmental, social-health and economic dimension of sustainability of food products and some related operations e.g. by.
 - Introduction of a general mandatory requirement of procuring sustainably with a clear reference to the environmental, social-health and economic dimension of sustainability of food products and some related operations.
 - Empowerment to the Commission to adopt delegated/implementing acts to specify the SPP criteria
 - Providing for the setting of national minimum (mandatory) targets with timelines as part of national action plans.

Options 0 and 1 should be discarded since changes to the European legislative framework are necessary, and the normative framework of the right to food requires adopting binding and harmonised measures rather than a voluntary approach.

Option 2 is insufficient as it relies solely on incentive mechanisms.

Therefore, **Option 3** would be the only one compatible with the normative framework of the right to food.

MANDATORY REQUIREMENTS WITH A CLEAR SOCIAL DIMENSION FOR SUSTAINABLE PUBLIC PROCUREMENT

Huge resources are spent in the EU Member States for public procurement. The new Circular Economy Action Plan (CEAP)¹⁰⁷ adopted in March 2020, one of the main building blocks of the European Green Deal, indicates that public authorities purchasing power represents 14% of EU GDP and can serve as a powerful driver of the demand for sustainable products.” (p. 5).

To be effective, this huge buying power must be marshalled by mandatory rules. The CEAP clearly indicates that instruments such as the EU GPP criteria “have reduced impact due to the limitations of voluntary approaches” (p. 3). Responding to the call from scholars from many disciplines¹⁰⁸, to tap into the potential offered by public procurement, the Commission “will propose minimum mandatory green public procurement (GPP) criteria and targets in sectoral legislation and phase in compulsory reporting to monitor the uptake of Green Public Procurement (GPP)” (p. 5). A huge number of proposals including mandatory SPP provisions have already been tabled by the Commission, covering batteries, construction products, energy etc¹⁰⁹.

Food and catering procurement should follow the same shift towards mandatory SPP. The shift towards mandatory criteria is in line with the JRC recommendations in its Concepts for a sustainable EU food system¹¹⁰. The report stressed that “while voluntary measures and agreements [...] might be useful to initiate change in the short term, substantial change requires the formulation of ambitious and effective binding rules” (ibid., pp. 7 and 58). Action 3 of the Draft Action Plan included in the Annex to the Farm to Fork Strategy requires the determination of “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”.

Possible approaches to mandatory SPP include (1) minimum mandatory public procurement requirements and (2) targets. The former may be distinguished between (1a) substantive criteria, setting for instance minimum quality thresholds (technical specifications) or prizing better quality (award criteria), and (1b) procedural criteria, e.g requiring contracting authorities to motivate the choice for the lowest price as an award criterion¹¹¹. Minimum mandatory substantive requirements are to be preferred because being clear and precise they create certainty for both buyers and sellers. They cannot be easily circumvented as procedural criteria and targets, and they are easily enforceable in court,

¹⁰⁷ EUROPEAN COMMISSION, A new Circular Economy Action Plan For a cleaner and more competitive Europe, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, March 11, 2020, COM/2020/98 final.

¹⁰⁸ ANDHOV Marta et al. Sustainability Through Public Procurement: The Way Forward – Reform Proposals (March 23, 2020). Available at SSRN: <<https://ssrn.com/abstract=3559393> or <http://dx.doi.org/10.2139/ssrn.3559393>>.

¹⁰⁹ JANSSEN Willem & CARANTA Roberto (2023) Mandatory Sustainability Requirements in EU Public Procurement Law (Oxford, Hart, forthcoming); see also ANDHOV Marta et al. (2023) Shaping Sustainable Public Procurement Laws in the European Union available at <<https://extranet.greens-efa.eu/public/media/file/1/8361>>.

¹¹⁰ BOCK Anne-Katrin, BONToux Laurent et RUDKIN Jennifer, Concepts for a sustainable EU food system: reflections from a participatory process, LU, Publications Office of the European Union, 2022.

¹¹¹ JANSSEN Willem (2023), ‘Foundations of the Paradigm Shift: Towards Mandatory Sustainability Requirements in EU Public Procurement’ in Janssen & Caranta op. cit. 17 f.

creating a strong disincentive against cheating on the criteria. At the same time, they should be minimum to allow more sustainability minded contracting authorities to go beyond what is required. Italy is a great case in point, with minimum mandatory SPP criteria for food and catering¹¹².

Human rights, including workers' and social rights, should instead be enforced through stronger exclusion criteria. Under Article of 25 of Regulation (EU) No XXX/2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation, the Member States shall provide for penalties in case of infringements of the Regulation by operators and traders, including, under lit. (d) "temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions". A similar rule might be enacted with reference to breaches of clear provisions in the forthcoming FSFS proposal (but amendments to the 2014 procurement and concessions directives should also be considered). Strong links with the forthcoming Corporate Sustainability Due Diligence Directive should be established to make sure that relevant companies in the food supply chain comply with the obligations there set, and that breaches of these obligations are fully considered in public procurement procedures¹¹³.

Additional measures are needed to support the implementation of mandatory criteria and a broader adoption of sustainable public food procurement (SPFP). The EU has to provide support through sectorial guidelines, EC helpdesk initiatives, and the dissemination of best practices to raise public awareness and improve knowledge and skills. Moreover, in line with the general public procurement legislation (Arts. 83, 85 Directive 2014/24/EU), Member States may be required to set up focal points to receive and provide relevant information on SPP, to assist contracting authorities and economic operators through guidance and support, and, finally, to create communities of practice to exchange best practices at the sub-national level. Additionally, Member States may be required to elaborate SPP National Action Plans (NAPs), also providing information on the current uptake of SPP, communication and training initiatives and monitoring mechanisms. Monitoring and reporting requirements are essential to assess the implementation of the requirements in practice, including any challenges encountered, as well as the results achieved¹¹⁴.

HENCE:

- For the three policy measures envisaged and outlined in the work on the FSFS (and for any other policy measures that will fall within the scope of the FSFS), it is key to choose **between the different options considered in light of the requirements of the right to food and the principles of a rights-based approach.**

¹¹² BOTTA Giulia (2023) 'Italy: Leading the Way towards Mandatory Sustainable Public Procurement through Minimum Environmental Criteria' in Janssen & Caranta Roberto op. cit.

¹¹³ Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 COM/2022/71 final.

¹¹⁴ Sidebard drafted by Roberto Canranta (Professor of Law, University of Turin, Italy) and Chiara Falvo (PhD candidate in Law, University of Turin, Italy).

CONCLUSION

Through its work on a legislative framework for sustainable food systems (FSFS), the European Commission aims to “*set the foundations for the systemic changes that are needed by all actors of the food system, including policy makers, business operators and consumers in order to accelerate the transition to a sustainable EU food system*”¹¹⁵.

As a framework legislation, the FSFS offers the opportunity for the adoption of a text that will enable a comprehensive and coherent approach across all aspects of food system-related laws and policies (at the EU and member state levels, including their international dimensions, as stated in the “From Farm to Fork” strategy). However, considering the significant areas of law and policy that need to be taken into account, as highlighted by the HLPE in its conceptual and strategic framework for a sustainable food system, the scope that must be considered goes beyond the three policy measures developed in the preliminary work on the FSFS (introducing minimum sustainability criteria, developing labels to inform consumers, and aligning public procurement with sustainability goals).

Moreover, the legislative framework for sustainable food systems at the European level must address the current lack of coherence and formal unity within food system-related laws and policies and address the limitations and obstacles of the principles currently carried by European law to guide the EU and its member states towards a transition of food systems. In light of the pursued objectives, it is essential that the standards set by the FSFS are based on a binding framework that leads to a transformation of the European legal framework regulating food systems. The FSFS should frame and subordinate all branches of sectoral law to a primary objective, that of realising the right to food for all.

To achieve this, it is crucial to pay particular attention to the formulation of the foundations, objectives, and principles of this framework law to align with this integrated and operational approach. In accordance with the objectives of the “From Farm to Fork” strategy, which emphasises the importance of leaving no-one behind, any approach that limits the scope to mere ecological, nutritional, and technical considerations for sustainability dimensions should be avoided. Instead, the primary goal should be a socially, ecologically, and economically just transition towards sustainable food systems.

These objectives that motivate and justify the interest in the FSFS work align with the normative framework of the right to food, as defined in international law, and we urge the Commission to base its work on this fundamental right.

The right to food serves as a foundation for the adoption of a framework legislation for a just transition towards sustainable food systems. On one hand, it clearly establishes the objectives and scope by requiring a just transition towards sustainable food systems, placing the demands of availability, accessibility, sustainability, and adequacy of food at the centre of the approach, with particular attention to addressing inequalities and exclusions across all aspects of food systems. On the other hand, the normative framework of the right to food, rooted in the obligations of states derived from human rights treaties, justifies and legitimises the adoption of a European framework legislation for a just transition towards sustainable food systems. Given that all EU Member States have ratified the ICESCR, they have committed to respect,

protect, and fulfill the right to food. A European framework legislation based on the right to food and human rights principles would simply reiterate and elaborate on the legal commitments and obligations already binding all EU Member States.

The right to food and a human rights-based approach also serve as instrumental means to achieve the objectives pursued by the FSFS. They provide mechanisms, both legal and policy-oriented, to mobilise for this transition (with the FAO considering the strengthening of legislation through framework laws as the main tool to make the right to food a reality). The right to food framework also clarifies the accountability mechanisms for public and private actors across all sectors of food systems, based on states’ obligations derived from international human rights treaties. Human rights principles (participation, accountability, non-discrimination, transparency, human dignity, empowerment, rule of law, solidarity) guide modes of governance, policy strategies, and monitoring and evaluation mechanisms at all territorial levels. Lastly, the right to food is indivisible and interdependent with all other human rights (such as the right to an adequate standard of living, the right to a healthy environment, the right to water, the right to health, peasants/farmers’ rights and the rights of workers in food systems), and thus, it mobilises other rights and these rights further ground and support a just transition towards sustainable food systems.

The FSFS presents an opportunity to adopt an ambitious European instrument that can guide the transition towards sustainable food systems based on the right to food. This objective precisely aligns with the position advocated by European institutions on the international stage since 1996, where they have repeatedly recognised and emphasised the need for the right to food, which involves a binding framework based on human rights, to address issues related to food security and food systems. In drafting the content of the FSFS in this sense, the Commission can refer to numerous tools and studies developed internationally for over twenty years, aiming to define and promote the right to food and guide states in adopting strategies for making this right a reality.

This normative framework allows encompassing all subjects and points of attention presented by the Commission during the public consultation on the FSFS while expanding the scope and requirements, particularly in light of human rights principles. Therefore, the right to food enables addressing the expectations and objectives that motivate the work on the FSFS while guiding and detailing the expected content for drafting all the parts that will structure this framework legislation.

In concrete terms, this means, first and foremost, that the right to food must be clearly and strongly positioned in the foundations of the legislation so that its normative content is recognised as the foundation guiding all provisions of the FSFS.

Regarding the horizontal elements of the FSFS provisions, the formulation of objectives, definitions, and principles will be decisive in adopting a systemic and coherent approach across all EU and member states’ laws and policies, considering the objective of a just transition towards sustainable food systems. The drafting of these subsections should be based on the right to food and human rights principles to translate the requirements of the structural transformations they entail.

Regarding governance mechanisms, they should meet the requirements of a rights-based approach, both in substance and form, and include measures to prevent existing power asymmetries in multi-stakeholder processes and avoid conflicts of interest. The Commission could establish a European Food Policy Council to strengthen cooperation and dialogue between the various stakeholders, promoting transparency and drawing on the iPES Food recommendations to develop innovative governance processes.

¹¹⁵ European Union, “Legislative framework for a Union sustainable food system”, EG GFL SFS, 20 May 2022 (presentation).

Concerning the provisions for the implementation of the FSFS, accountability mechanisms and monitoring and control mechanisms should be aligned with states' obligations concerning the right to food. Specific institutions should be designed to assess progress made and establish independent recourse mechanisms. The Commission should also be particularly vigilant in formulating expected impacts and changes to reflect all the requirements of the right to food and human rights principles (beyond technical indicators primarily focused on environmental considerations).

Regarding provisions for favourable food environments, they will be essential in clarifying the scope of the FSFS. Particularly, they will justify the importance of adopting mandatory and binding measures for states, highlight the range of areas of public action falling under the FSFS's scope, and address the structural causes of inequalities in access to sustainable food.

Finally, concerning the policy measures to be adopted to enhance the sustainability of food systems at the European level, the content of the FSFS should not be limited to the measures considered thus far by the Commission. In line with the expectations of a framework law on the right to food, the FSFS should include a revision of all sectoral legislation and policies that impact food systems, considering the requirements set out in the horizontal elements of the FSFS. Regarding the three policy measures considered so far (minimum sustainability criteria, consumer information labels, and public procurement related to sustainability issues), the Commission must arbitrate between different options in terms of content and scope, in light of the requirements of the right to food and the principles of a rights-based approach. The same arbitration must be applied to any other future policy measure that falls within the scope of the FSFS.

Placing the right to food at the core of the drafting of the FSFS will enable establishing new foundations for European law related to food systems and driving the systemic and structural changes necessary for their sustainability. Based on this framework legislation, the requirements of a right to food approach can then be translated into all aspects of EU and member state law and policies, including their extra-territorial scope. At a time when strong concerns were raised during the last World Summit on Food Systems about the secondary position given to human rights-related issues¹¹⁶, the European Union and its member states have a crucial role to play in defending the need for a human rights-based approach as a condition for a just transition towards sustainable food systems.

FIAN Belgium is a non-profit association that defends the right to food for all. FIAN Belgium is one of the national sections of FIAN International, which works in more than 50 countries around the world. FIAN has consultative status with the United Nations. As a human rights organisation, FIAN works to transform food systems by placing social and environmental justice at the heart of this urgent change.

Alongside specialist expertise and mobilisation capacity, FIAN support grassroots social movements around the world, representing peasants, rural workers, women, indigenous peoples, fishers and consumers who suffer and are threatened by hunger, malnutrition, food insecurity and the systemic violation of their fundamental human rights.

¹¹⁶ FAKHRI Michael, The right to food, Report submitted to the United Nations General Assembly on 27 July 2021, A/76/237, op. cit.



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