

Fairtrade International input to Public Consultation on the draft revised Horizontal Block Exemption Regulations and Horizontal Guidelines, 26th April 2022

Fairtrade International welcomes the opportunity to comment on the Commission's draft revised Horizontal Block Exemption Regulations and Horizontal Guidelines as part of the public consultation process. In particular, we welcome the introduction of a stand-alone chapter (section 9) Horizontal sustainability agreements. This is an important step towards developing a clear framework increasing legal certainty and allowing companies to collaborate for initiatives in support of sustainable development. Achieving some key sustainability issues would mean that EU's competition law does not stand in the way of initiatives around a more sustainable development but supports it in a politically coherent way.

To further strengthen section 9 on sustainability agreements we like to stress the following aspects:

We welcome the fact that the introduction part of the chapter introduces sustainability as a holistic concept which "encompasses activities that support economic, environmental, and social (including labour and human rights) development". In line with the introduction a holistic approach of sustainability should be followed throughout the Guidelines to avoid a bias towards environmental aspects as this is currently the case in favour of strengthening the social dimension. Concretely, we suggest to explicitly include examples for sustainability objectives references to "payment of living wages and enabling living incomes for farmers via payment of prices allowing sustainable production" throughout the guidelines.

The underlying idea of sustainable business practices, and sustainability agreements in support of sustainable practices and defining clear objectives related to these, is to identify and mitigate negative externalities that result from a business activity. These externalities concern negative spill-over effects on the environment and on animals (livestock). They also concern all actors involved in the production and supply chain, such as the work conditions of self-employed and employees by achieving living wages for workers and living incomes for small farmers. Hence, we welcome the subchapter on collective benefits and the fact that the Commission endorses these collective benefits as relevant within Art. 101 (3) TFEU. However, the ability to do so is significantly limited by the requirement to prove in each case that actual direct users must be beneficiaries. In our view, such benefit to direct users can be assumed in all instances.

We therefore recommend the Commission to introduce a presumption that sustainability agreements and practices have a direct benefit for users, if all other conditions under Article 101(3) are met. Consumers do have an interest to -and also do benefit from -collective benefits that go beyond their direct use. For example, sustainability helps the prevention of environmental degradation, poverty reduction via enabling decent income¹, and an increase of workforce and production available in the sectors where

¹ <https://www.fairtrade.org.uk/resources-library/researching/policy-resources/competition-law-and-sustainability/>. The study shows, inter alia, that precarious working conditions along supply chains are leading to more fragile supply chains and therefore will affect consumers in the long run directly. : "A 2014 study by the Institute for Development Studies exploring attitudes of young people in Africa, Asia and Latin America towards farming found that many view farming as an undesirable occupation due to unstable low incomes. As a result, there is a risk that many countries will struggle to retain young workers in the farming

living wages/income have been introduced, maintaining an equilibrium on prices at the supply level. Under the currently still prevailing regulatory conditions (taxation systems not regarding societal costs of negative externalities)- unsustainable economic practices might result in lower costs for suppliers and distributors. However, such cost reduction may not have an immediate impact on price reductions for consumers. Even if they do, the underlying unsustainable practices carry real costs for societies and hence for consumers. These costs emerge elsewhere (e.g., increased costs for society because of environmental degradation, climate change) and often translate into financial burden for societies as a whole or parts of it. In conclusion, the net effect and impact of sustainable practices should be beneficial for consumers and society.

At the same time, more sustainable products do not necessarily have to result in material higher prices for the end-consumer.

A report by the Fair Wear Foundation has shown that the payment of a living wage does not need to result in higher consumer prices. This has been demonstrated on the example of a t-shirt, where the payment of living wages to the workforce involved in its production only takes 0,6 percent of the end price. The cost breakdown summarises the data Fair Wear collected pertaining to pricing for a single t-shirt created using Fairtrade-certified cotton. It indicates the costs of the key inputs for production, as well as the prices paid as this particular t-shirt moves through the supply chain ending at the retail level. In this case, the salary costs make up 0.6% of the retail price of what the factory receives for producing the t-shirt.

<https://api.fairwear.org/wp-content/uploads/2016/06/ClimbingtheLadderReport.pdf>

Hence, competition law should be applied in a way that is pragmatic and makes it possible for companies to cooperate and achieve sustainability objectives while having legal certainty. Sustainability agreements should be assessed as umbrella agreements that include agreeing on managing price escalation in a way that avoids higher prices for end-consumers, in order to generate both: “increased access to sustainable products” (=including allowing for living income and living wages at production level) at no additional costs for consumers (as an individual consumer benefit) and “increased sales of sustainable products” as a collective benefit to society and environment due to the application of sustainable production practices instead of unsustainable ones. Such cooperation in value chains would clearly put broad consumer access to sustainably produced products into the focus and, as such, let sustainability be considered a differentiator from initiatives focussed on profits or low prices. As explained above, transformation to sustainable economies benefit both the individual consumer, societies, and the environment in which we all live.

While opening up opportunities for undertakings to collectively pursue sustainability objectives we also understand the issue of green and ethicalwashing. In this regard we welcome paragraph 560 demanding

sector as workers move to cities in pursuit of more stable jobs with higher wages. This directly affects agricultural supply chains in Europe.

undertakings to bring forward all facts and evidence demonstrating that the agreement genuinely pursues sustainability objectives and is not used to disguise a by object restriction of competition. We understand that if the evidence allows to establish that the agreement indeed pursues a genuine sustainability objective, its effects on competition will have to be assessed. However, we also invite the EC to clarify how evidence of greenwashing (in the sense of a cartel-like arrangement disguised as a genuine sustainability agreement) might amount to a restriction “by object” and will be reflected in the level of fines imposed.

The EU can further develop its instruments in other policy fields to achieve greater policy coherence in order to create the enabling regulatory conditions in support of a comprehensive transformation process towards sustainable economic practices that addresses both individual consumer interests (including on price, transparency within value chains including on human and environmental rights, product traceability, value distribution amongst trade chain actors) as well as collective benefits such as a healthy environment and zero poverty which in turn has additional positive spill-over effects on consumers as individuals.

Lastly, we like to refer to the [joint letter](#) dated 5th January 2022 developed by our partner, the Fair Trade Advocacy Office, in consortium with the European Brands Association (AIM) and the Fair Wear Foundation as well as to their respective submission to the Public Consultation on the draft revised Horizontal Block Exemption Regulations and Horizontal Guidelines.