European Commission

Directorate-General for Competition

Unit E5

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Belgique /België

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|  | 13 April 2023 |

**Public consultation on sustainability guidelines on an antitrust exclusion in agriculture**

Dear Sir or Madam,

we, Forum for Sustainable Palm Oil (FONAP), thank the European Commission for the opportunity to provide feedback on the draft Commission Guidelines on the application of the derogation from Article 101 TFEU for sustainability agreements of agricultural producers pursuant to Article 210(a) of Regulation 1308/2013.

The Forum for Sustainable Palm Oil (FONAP e.V.) currently has 51 members, including companies, non-governmental organizations, associations, the German Federal Ministry of Food and Agriculture (BMEL) and the German Federal Ministry for Economic Cooperation and Development (BMZ). The aim of FONAP e.V. is to promote sustainable agricultural supply chains with a focus on palm oil. Since its foundation in 2015, FONAP has been committed to more sustainable oil palm cultivation in the countries of origin. The members of FONAP have publicly committed to using only sustainably produced palm and palm kernel oil in their products. They also undertake to ensure the traceability of the palm oil they use and to comply with certain add-on criteria that are not yet covered by the certification systems.

FONAP does not currently partner with producers in any way that restricts competition in the European market. In future, however, it might enter partnerships with producers of palm (kernel) oil and its fractions to pursue goals related to social and environmental sustainability (e.g., improving biodiversity on plantations, protecting wild animals, limiting the use of hazardous fertilizers, protecting forests and peatlands). Producer partners of any such agreement will be based outside the EU, as stipulated by chiffre (30) of the guidelines.

As stakeholders in sustainable palm oil, we welcome the article and its implementation guidelines as a step towards more sustainable supply chains. To unlock the full potential of the article, we invite the EC to:

* **Clarify the role of non-food actors in the agricultural supply chain**. The article itself stipulates that “operators at different levels of the production, processing, and trade *in the food supply chain*, including distribution” can be party to a sustainability agreement. In the guidelines, (28) limits processors to the food value chain, while 28 (c) and (d) appear to be broader in scope.   
    
  A significant portion of European palm oil consumption goes to energy production or industrial uses (e.g., hygiene sector), as detailed in a [recent publication by Fern](https://www.fern.org/fileadmin/uploads/fern/Documents/2022/Palm_oil_production_comsumption_and_trade_pattern.pdf). Including non-food actors into sustainability agreements with producers is therefore vital to achieve a transformation of the value chain.   
    
  To provide legal clarity to such operators, we would like to suggest re-formulating the main passage of (28) to include non-food actors more clearly and / or add an additional example in which non-food actors enter a sustainability agreement with processors (e.g., Indonesian oil mills cooperating with European chemistry companies to limit the use of certain hazardous pesticides on plantations).
* **Provide additional guidance on sustainability agreements with processors based outside the European Union**. All or nearly all the examples provided in the guidelines relate to agreements implemented within the European Union. We consider it helpful to include an additional constellation clarifying the role of national standards in non-EU countries, e.g., Indonesian non-deforestation regulations. (55) stipulates that “regardless of whether non-EU operators are parties to a sustainability agreement, mandatory standards are to be understood as EU standards or national standards by EU Member States.” What happens if processors are based outside the European Union? Should sustainability standards covered by Article 210a be higher than those stipulated by EU import regulations, than those stipulated by national law in the producing country, or than both?
* **Reiterate in the guidelines the link between social and environmental aspects of sustainability**. This would help the article achieve its full potential and improve policy coherence with the Farm to Fork strategy. When working with producers in the Global South, especially smallholder farmers, it is common to work on social alongside environmental goals. The guidelines should clarify what happens to ancillary social objectives of a sustainability standard which are necessary to incentivize or enable producers to work towards environmental targets. For example, a sustainability standard may stipulate that palm oil producers set up biodiversity corridors on their plantations. Operators in the European market may then agree to purchase oil at a higher price that covers processors’ costs for the corridors but also moves them closer toward a living income.

We hope that our feedback will be taken into account in finalizing the guidelines and thank the EC for the opportunity to contribute.

Ein Bild, das Text enthält.

Automatisch generierte Beschreibung

Almut Feller

Head of the Steering Committee

Forum for Sustainable Palm Oil (FONAP)