

Transparency number 7128251296-84

24 April 2023, Brussels

**Re: feedback to the public consultation on sustainability agreements**

Dear Mr. Philippe Chauve,  
Dear members of the DG COMP E5 unit,

IFOAM Organics Europe welcomes the European Commission's public consultation on the first draft of the sustainable agreements set under the Common Market Organisation's Article 210 and in the frame of the new Common Agricultural Policy 2023-2027. This Article 210 has created an opportunity to elaborate agreements across the whole value chain to ensure the achievement of environmental and animal welfare goals, while providing a minimum compensation remuneration to farmers. We believe it can be a game changer because it will incentivize farmers who already implement farming practises with high standards in terms of environment, animal welfare and biodiversity to continue to do so.

IFOAM Organics Europe would like to highlight **the need to emphasize the bargaining power of producers within the sustainability agreements**. Please find below our recommendations:

**1. Consumers' willingness to pay more must not be an exclusion criterion for indispensability.**

It is strongly suggested that consumers' willingness to pay more for sustainable products **does not** - as currently assumed in recital 100 - **automatically mean that producers can finance sustainable production through higher consumer prices**. The fact that the need for cooperation is not to be recognised here is extremely questionable. It is true that cooperation at the retail level may not be necessary, since retailers set consumer prices and can thus charge consumers for additional expenditure on sustainability, provided that they are willing to pay more. However, producers have no share in the increased value added through higher consumer prices if the consumer's willingness to pay more is already fully skimmed off at the retail level (and possibly at the processing level), i.e. the increased value added is not passed on along the food value chain to the producer (who actually applies the sustainability standard and who incurs the increased costs). **It is not an isolated case that producers do not receive a fair share of the added value of sustainable production due to their weak bargaining position compared to the oligopoly of trade when acting individually**. The explanatory memorandum recognises the need for cooperation between producers or with other actors in the food supply chain in order **to strengthen the position of producers in the food supply chain so that they can achieve an appropriate share of the increased value added**. This must also apply especially in the case of consumers' willingness to buy more. Cooperation is needed both at the horizontal level - to strengthen the negotiating position of producers - and at the vertical level - to pass on the increased value added along the chain to the producer who incurs the increased costs for the standard.

**It is therefore strongly suggested that recital 100 be deleted without replacement, as this wording contradicts the clear intention of the legislator. At the very least, it should be pointed out that the consumer's willingness to pay more does not prevent the need for cooperation if this is skimmed off at the level of trade or processing so that it does not reach the producers.**

Accordingly, a change in the consumer's interest in the product concerned in the sense that a willingness to increase the number of consumers develops must not lead to the sustainability

agreement no longer being considered indispensable, since according to the above-mentioned reasoning, the mere willingness of consumers to increase the number of consumers does not automatically lead to the producers being able to finance their expenditure through higher consumer prices if this is already skimmed off at the level of trade and processing.

**2. The policy intention of "consolidating the position of producers in the food supply chain and strengthening their negotiating position" is not taken up in the Guidelines.**

In 1.1.1 Policy context, para. 7, the need for producers to cooperate with each other or within the agri-food supply chain to achieve greater sustainability is justified by "lack of resources". The nature of these "lacking resources" (are financial resources meant?) remains vague. Yet the political context is clearly set out in the explanatory memorandum to Art. 210a of the CMO: Art. 210a CMO is intended to consolidate the position of producers in the supply chain and to strengthen their negotiating position. The legislators thus intended a negotiating power-specific reference to the competition exception. This intention is not taken up in the draft guidelines, but in our opinion it represents a decisive criterion for interpretation. **It is therefore imperative to supplement the guidelines in order to establish the negotiating power-specific reference of the cartel exemption in accordance with the legislative will and to use it as a criterion for interpretation. This is necessary so that farmers receive security for their investments in sustainability and can value their costs across the entire value chain.** The necessity of including the negotiating power-specific objective of Art. 210a of the CMO is also visible, for example, in marginal 88, Ex. 1. According to this, the obligation to use organic instead of chemical pesticides would only "slightly increase" the costs, but the producers in the example operate with a winning margin. Here, the agreement of fixed prices is nevertheless not considered indispensable, as only small improvements in terms of sustainability (only 2%) are achieved in the example. In principle, it is agreed that in the case of only marginal improvements, sustainability agreements should be critically examined in order to prevent greenwashing and antitrust agreements under the guise of sustainability. However, the justification that it is sufficient to agree on the renunciation of chemical pesticides even without funding is questionable, since the small additional costs are incurred by all producers and they thus remain competitive with regard to the additional costs incurred.

This example does not take into account that due to the low bargaining power of producers vis-à-vis the downstream value chain and their low profit margin, the actual problem is the actual enforcement of the passing on of the increased costs along the value chain. Even low additional costs cannot be borne by the producers alone if the profit margin is low. The extent to which Art. 210a CMO can actually fulfil its purpose of improving the negotiating position of producers and consolidating their position in the supply chain is not addressed by the examples. **Possible areas of application would be, in particular, the creation of price transparency to compensate for the negotiation imbalance, as well as sustainability agreements that ensure the passing on of increased producer costs for sustainability "up" the value chain or the actual participation of producers in higher consumer prices by passing on the increased yields "down" the value chain to the producers,** as described under 1. In this respect, a supplement to the guidelines beyond the blanket reference in **para. 89** that "restrictions of competition in the actual economic environment" are to be examined **taking into account "market structure, [...] economic risks and [...] incentives for the parties"**.