

Law for Sustainable Food Production

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1. Introduction

The Netherlands is a small country, with no less than 17 million inhabitants. More than half of the Dutch territory is used for agriculture.¹ After the United States, the Netherlands is the largest agricultural exporter, both through the export of its own production and through re-export and processing of agricultural imports.² The Netherlands also has the highest livestock density of all European countries,³ and according to some studies even the entire world.⁴

Intensive agricultural production results in significant externalities for the living environment, both within and outside Dutch borders. Although important steps in the field of sustainability have arguably been taken in the agricultural sector in recent decades,⁵ current levels of inputs from (artificial) fertilizers, pesticides and other chemicals including (micro-)plastics and per- and polyfluoroalkyl substances ('PFAS') remain very high.⁶

The agricultural sector in the Netherlands is regulated through an intricate and detailed legal framework, of which the large majority is set at the EU level. In recent years, the EU has put great emphasis on enabling a transition to a sustainable food production system through the EU Green Deal, the Farm to Fork Strategy, the EU Biodiversity Strategy, and, more recently, the Strategic Dialogue on the Future of Food.⁷ Thus far, attempts by EU and national policy makers to enhance the level of ambition and stringency of environmental regulations have led to widespread unrest among the food production sector, including large-scale farmer protests in the Netherlands.⁸ While the direction of EU policies on the sustainability of food production presently remain uncertain in light of this, the sustainability of the food system has undeniably claimed a central position on the policy agenda.

¹ CBS, 'Hoe wordt de Nederlandse bodem gebruikt? - Nederland in cijfers 2020 | CBS', <https://longreads.cbs.nl>, laatst geraadpleegd 1 augustus 2023.

² CBS, 'Nederland in EU grootste importeur Braziliaanse landbouw', 6 juli 2022, laatst geraadpleegd 18 december 2023.

³ Eurostat, Index van de veedichtheid, [Index van de veedichtheid - Data Europa EU, laatst geraadpleegd 9 augustus 2023](#).

⁴ 'Heeft Nederland de Hoogste Veedichtheid Ter Wereld? Dat Hangt Af van de Berekening - Nieuwscheckers' <<https://nieuwscheckers.nl/heeft-nederland-de-hoogste-veedichtheid-ter-wereld-dat-hangt-af-van-de-berekening/>> accessed 15 November 2024

⁵ PBL, 'Landbouw wordt duurzamer, maar beleid onvoldoende om milieudoelen te halen | PBL Planbureau voor de Leefomgeving, 29 oktober 2007, laatst geraadpleegd op 18 december 2023.

⁶ See, for instance: [Nitraat in het uitspoelend water onder landbouwbedrijven, 1992-2021 | Compendium voor de Leefomgeving \(clo.nl\)](#).

⁷ European Commission, *Strategic Dialogue on the Future of Food Systems* (2024) <https://agriculture.ec.europa.eu/document/download/171329ff-0f50-4fa5-946f-aea11032172e_en?filename=strategic-dialogue-report-2024_en.pdf> accessed 19 November 2021 [Hereinafter: Strategic Dialogue].

⁸ [Tienduizenden boeren maken vuist tegen kabinet, actie leidt tot chaos op wegen \(nos.nl\) 22 juni 2022..](#)

The Law chair group of Wageningen University & Research is focused on advancing understanding of the role and potential of law in such sustainability transitions.⁹ At the request of PBL, this exploration serves to gain better insight into legal instruments that can be used to help achieve sustainability in the food production sector, as well as current barriers in existing legislation and regulations that may hinder or impede sustainability.¹⁰

This exploration specifically seeks to answer the following main research question: “*What are leverage points and barriers of existing legislation and regulations for the sustainability of the food and agricultural system?*” Food safety, food sustainability and food chain dynamics are as said for the most part governed at the EU level. Therefore, the focus here is on European legislation, as well as the national implementation thereof in the Netherlands, across fields such as environment, food safety, trade and (international) companies that influence the sustainability of the agricultural and food system in a broader sense.

In this report, we do not only focus on the legal barriers and leverage points of laws themselves, but also on their implementation on the ground, including through processes of monitoring compliance and enforcement. As Heyes also concludes: “[t]he most carefully crafted set of regulations is only as good as the enforcement program put in place to implement it.”¹¹ The relevance of this approach becomes particularly prevalent when taking into account existing compliance and enforcement gaps in the agri-environmental law domain.¹² For example, the European Court of Auditors has already reported on strong shortcomings in the enforcement of pesticide regulations,¹³ has noted strong difficulties in monitoring green performance in the Common Agricultural Policy,¹⁴ and has emphasized the need for stronger enforcement of the Nitrates Directive.¹⁵

Methodologically, this explorative study builds on expert workshops and writing sessions between the authors, synthesizing existing research strands and complementing these where relevant with additional scholarly, scientific and policy literature. It is explicitly stated that the question posed

⁹ See: WUR Law group, <https://www.wur.nl/en/research-results/chair-groups/social-sciences/law-group.htm>, last accessed 10 December 2024.

¹⁰ This exploration builds on previous research by Dr. Hanna Schebesta for the Ministry of Agriculture, Nature and Food Quality, in which an overview was made of legal bases for sustainability measures aimed at the supply of food in the Netherlands (“Wettelijke grondslagen verduurzamingsmaatregelen voedsel”, 2022).

¹¹ Anthony Heyes, ‘Implementing Environmental Regulation: Enforcement and Compliance’ (2000) 17 *Journal of Regulatory Economics* 107.

¹² See, in this context: S Kingston and others, ‘Magnetic Law: Designing Environmental Enforcement Laws to Encourage Us to Go Further’ (2021) 15 *Regulation & Governance* S143.

¹³ European Court of Auditors, *Sustainable Use of Plant Protection Products: Limited Progress in Measuring and Reducing Risks. Special Report No 05, 2020* (Publications Office of the European Union 2019) <<https://data.europa.eu/doi/10.2865/349084>> accessed 25 November 2024.

¹⁴ European Court of Auditors, ‘Special Report 20/2024: Common Agricultural Policy Plans’ (*European Court of Auditors*) <<http://www.eca.europa.eu/en/publications/sr-2024-20>> accessed 11 December 2024.

¹⁵ European Court of Auditors, ‘Special Report 19/2023: EU Efforts for Sustainable Soil Management’ (*European Court of Auditors*) <<http://www.eca.europa.eu/en/publications/sr-2023-19>> accessed 17 December 2024.

cannot be answered exhaustively at this stage, but should primarily be seen as agenda-setting and exploratory.

In terms of structure, after this brief introduction, chapter two will provide a short contextualization of the topic of sustainability and food production. In chapter three, we will present our findings, structured along two main categories of relevant stakeholders: 1) farmers; and 2) food manufacturers, processors, caterers and retailers.¹⁶ The fourth and final part of the study will serve to bring the findings together and develop concrete routes forward for further research.

2. Conceptual framework: Sustainability transitions and law

2.1 Conceptualizing barriers and leverage points in sustainability transitions

In recent years, a large body of literature has emerged on the governance of sustainability transitions, developing ‘theories of change’ such as adaptive governance, evolutionary governance and transformative governance.¹⁷ At the same time, as authors such as Soininen et al note, while law is central in sustainability transitions, the role of law is often both poorly understood and integrated into such transition research.¹⁸ Law is often understood in an instrumental sense and, as Korhonen-Kurki et al describe, something that can “easily be adapted according to the political will and needs of a desired transformation”.¹⁹ As Soininen et al also stress in this regard, legal systems are complex and path-dependent systems, with a need to balance legal changes with preserving legal certainty.²⁰ In this context, the authors highlight that law can perform ‘accelerating, braking and steering roles’ in transitions, emphasizing that “law is a complex system containing legal forces that both support and hinder sustainability transition”.²¹

We build on this theoretical work to distinguish between what we describe as ‘leverage points’ and ‘barriers’. Leverage points are understood as elements in the legal framework that can enable or promote sustainability transitions, while barriers are understood as those elements in the legal

¹⁶ For future research, a third relevant actor category would be actors involved in the supply of agri-food inputs, including seeds, pesticides, fertilizers, and food packaging.

¹⁷ K Korhonen-Kurki and others, ‘Transformative Governance: Exploring Theory of Change and the Role of the Law’ (2025) 23 *Earth System Governance* 100230.

¹⁸ N Soininen and others, ‘A Brake or an Accelerator? The Role of Law in Sustainability Transitions’ (2021) 41 *Environmental Innovation and Societal Transitions* 71

¹⁹ K Korhonen-Kurki and others, ‘Transformative Governance: Exploring Theory of Change and the Role of the Law’ (2025) 23 *Earth System Governance* 100230, 2.

²⁰ N Soininen and others, ‘A Brake or an Accelerator? The Role of Law in Sustainability Transitions’ (2021) 41 *Environmental Innovation and Societal Transitions* 71.

²¹ *Ibid.*

system that “create institutional, procedural, and substantive barriers to the changes needed to transition towards sustainability”.²²

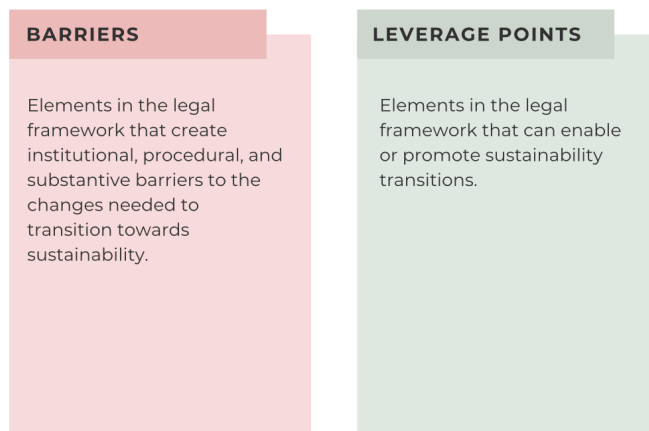


Figure 1: Conceptualizing barriers and leverage points for sustainability transitions through law.

2.2 Defining sustainability through law

Legal definitions are critically important because they can provide clarity, precision, and consistency in understanding and applying laws.²³ By specifying the exact meanings of terms, legal definitions can eliminate ambiguity and reduce the risk of misinterpretation. This clarity is essential for consistent enforcement and interpretation of laws across different cases and jurisdictions. Definitions also establish the scope of a law’s application. Precise definitions help prevent loopholes that might be exploited to bypass legal responsibilities or gain unfair advantages. At the same time, a degree of vagueness in the formulation of laws and the use of undefined terms can be a deliberate strategy for governments to prevent a law from being too restrictive in its application.²⁴

In this context, it is important to note that sustainability – as a key focus in this report - is a broad concept that does not have a firm definition in EU law. For the time being, sustainability in the food system is often understood as the threefold concept, encompassing environmental, social, and economic dimensions.²⁵ Focusing on environmental sustainability, among the six key ambitions

²² Substantive law means the content of the law, including rights and obligations. Procedural law includes the rules for decision-making processes, such as court and environmental permitting procedures, through which substantive law is enforced. See: K Korhonen-Kurki and others, ‘Transformative Governance: Exploring Theory of Change and the Role of the Law’ (2025) 23 *Earth System Governance* 100230, 2.

²³ See: S Ezzrouali & Y Chami (2023) Inclusion of Definitions in Legislative Drafting: A Necessity or Luxury? *Mazahib* 22(1):37-64.

²⁴ M Alessandrini, *Regulating Short Food Supply Chains in the EU*, vol 28 (Springer Nature Switzerland 2024) <<https://link.springer.com/10.1007/978-3-031-69390-8>> accessed 17 December 2024

²⁵ FAO, *What is a Sustainable Food System?* (FAO, 2018) <<https://openknowledge.fao.org/server/api/core/bitstreams/b620989c-407b-4caf-a152-f790f55fec71/content>> accessed 19 November 2024.

outlined in the political agenda of the EU Commission for the period 2019–2024,²⁶ the EU Green Deal stands out prominently.²⁷ At the core of the EU Green Deal lies the Farm to Fork (F2F) Strategy,²⁸ showcasing the EU’s commitment to a fair, healthy and environmentally-friendly food system. The overarching goal of the F2F Strategy is to “bring [...] the sustainability turn to EU food law”.²⁹ The Strategy is accompanied by an Action Plan,³⁰ comprising 27 policy and legal initiatives to be implemented by 2024. Among those, great attention was directed toward the Proposal for a Legislative Framework for Sustainable Food Systems (FSFS), aimed at streamlining sustainability across the food sector through a horizontal regulation. This proposal sought to establish fundamental principles, obligations, and rules related to food sustainability while also providing a legal definition of sustainability at the EU level. After intensive farmer protests across the EU over the last years, this and related proposals such as the Sustainable Use of Pesticides Regulation (SUR) have been put on hold, and are now unlikely to materialize, leaving significant uncertainty about whether a legal definition of sustainability with concrete targets will ever be adopted at the EU level.

Despite this uncertainty, the EU’s recent Strategic Dialogue on the Future of Food marks a potentially important step forward for sustainable food production in the EU.³¹ Commissioned by the European Commission in 2023, the report represents the contributions of 29 key stakeholders from the EU agri-food sector, rural communities, civil society, and academia. It offers a comprehensive assessment of the challenges and opportunities in achieving sustainable food systems and sets forth recommendations for the future EU policy agenda.

A notable development in the Strategic Dialogue is the strong emphasis on the creation of an EU-wide *benchmarking system* for agriculture and food systems. This benchmarking system would aim to develop uniform EU-wide methodologies for on-farm sustainability assessments by defining common objectives, principles, and criteria. It also proposes incorporating monitoring and verification tools with standardized metrics and indicators. While this focus on benchmarking could help enhance the transparency of sustainability efforts in the EU food sector, it presents an important shift away from the formerly proposed development of more environmentally ambitious, EU-wide (‘horizontal’) legal frameworks as initially proposed *inter alia* through the F2F Strategy.

²⁶ European Commission, ‘A Union that strives for more. My agenda for Europe’ (Political Guidelines for the Next European Commission 2019–2024) (2019).

²⁷ European Commission, ‘The European Green Deal’ (Communication) COM(2019) 640 final (EU Green Deal).

²⁸ European Commission, ‘A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system’ (Communication) COM (2020) 381 final (F2F Strategy).

²⁹ H Schebesta et al., ‘Tour de Table: Farm to Fork Law Update’ (2022) 3 EFL 201, 202.

³⁰ European Commission, ‘Annex to Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system’ (Communication) COM (2020) 381 final (Action Plan).

³¹ European Commission, *Strategic Dialogue on the Future of Food Systems* (2024)

<https://agriculture.ec.europa.eu/document/download/171329ff-0f50-4fa5-946f-aea11032172e_en?filename=strategic-dialogue-report-2024_en.pdf> accessed 19 November 2021 [Hereinafter: Strategic Dialogue].

3. Law for sustainable food production

In this section, we will present the results of our exploration of leverage points and barriers of relevant legislation for the transition towards a sustainable food production in the EU, with a focus on the Netherlands. We will structure our findings around key identified issues, across the key categories of stakeholders detailed above.

3.1 Farmers

3.1.1 Steering towards sustainability through the Common Agricultural Policy

The EU's Common Agricultural Policy (CAP) was set up in the aftermath of the Second World War to secure a stable supply of affordable food by increasing food production.³² To achieve this objective, subsidies were established to incentivize not only farm consolidation, but also the mechanization of production methods and specialization of produce. Today, the CAP has a two-pillar structure; Pillar I governs 'direct payments' subsidies available to all farmers subject to certain requirements,³³ while Pillar II seeks to promote rural development and environmental conservation,³⁴ for instance by subsidizing environmentally friendly types of land management that go *beyond* statutory requirements.³⁵

As of 1 January 2023, the CAP 'Strategic Plans Regulation' has entered into force, outlining 10 core objectives, including environmental ones such as climate change adaptation and mitigation, ecosystem restoration added goals extend to climate change adaptation and mitigation, ecosystem restoration.³⁶ This new CAP was further meant to strongly anchor the CAP's 'green architecture', which includes:

- 1) Enhanced conditionality (previously known as 'cross-compliance') of receipt of Pillar 1 direct payments based on compliance with statutory obligations and rules of 'good agri-environmental condition' (GAEC).

³² D Harvey, 'What Does the History of the CAP Tell Us?' in JA McMahon and MN Cardwell (eds), *Research Handbook on EU Agriculture Law* (Edward Elgar 2015) 3, 7. See also: Consolidated Versions of the Treaty on the Functioning of the European Union [2016] OJ C202/1 art 39.

³³ These include obligations for public, animal, plant and general environmental health and well-being, along with a general obligation to keep all agricultural land in 'good agricultural and environmental condition'. See D Harvey, 'What Does the History of the CAP Tell Us?' in JA McMahon and MN Cardwell (eds), *Research Handbook on EU Agriculture Law* (Edward Elgar 2015) 20.

³⁴ Regulation 2021/2115 - Rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) ('CAP Strategic Plans Regulation', article 70.

³⁵ While Pillar I works on the basis of common financing out of the EU budget, Pillar II employs a method of co-financing between the EU and individual Member States. Eco-schemes are a voluntary annual scheme open to all active farmers. To qualify for payment, farmers will have to undertake specific agricultural practices on their farms, beneficial to the climate, environment, biodiversity and/or water quality.

³⁶ CAP Strategic Plans Regulation, article 6.

- 2) Increased share of direct payments of Pillar 1 dependent on farmers' (voluntary) participation in 'eco-schemes', i.e. farming practices in favor of climate, environment, and/or animal welfare.
- 3) Increased modulation of funds from Pillar 1 to Pillar 2 of the CAP (Rural Development). These funds can be used *inter alia* to compensate farmers for (voluntary) participation in agri-environmental climate schemes.

The 2023 CAP is deeply intertwined with the Farm to Fork Strategy and the EU Green Deal.³⁷ Nevertheless, several critics have questioned whether the new CAP's 'green architecture' will be able to deliver on sustainability objectives embedded in these two policy documents.³⁸ For example, the European Court of Auditors found that the approximately €100 billion of EU funds spent on climate action through the CAP has had only a marginal impact on reducing emissions, largely because the CAP currently finances measures with a low potential to mitigate climate change.³⁹ Similarly, while farmers' CAP subsidies are thus conditional on their compliance with GAEC rules, these rules have been found to again have a limited effect on improving biodiversity. Furthermore, in response to large farmer's protests, the European Commission has introduced multiple derogations for farmers in relation to the existing GAEC criteria.⁴⁰ The environmental impacts of voluntary schemes under pillar 2 of the CAP thus far also seem effective only to limit extent, as further explained in the next section.⁴¹ As such, while the CAP is on paper a key steering device for sustainability, in practice this potential remains largely untapped.

A central plank of the new CAP is the so-called focus on 'National Strategic Plans', through which Member States are given a relatively large degree of discretion in terms of decision-making, financing and implementation of agricultural policies at the national level, depending on their economic, social and structural needs. The performance of each NSP will be evaluated by the Commission through a range of indicators. In the literature, the move towards the system of National Strategic Plans has further been described as a 'double edged sword'.⁴² On the one hand, national governments are giving a new shape to the CAP, turning it from a mostly top-down, rigid policy to an instrument where each EU country can experiment and, within the constraints of common objectives, redesign its priorities. On the other hand, flexibility may lead to low-ambition implementation pathways, especially for environmental and climate goals.⁴³ Monitoring progress

³⁷ H Schebesta and JJJ Candel, 'Game-Changing Potential of the EU's Farm to Fork Strategy' (2020) 1 Nature Food 586.

³⁸ G Pe'er et al, 'How Can the European Common Agricultural Policy Help Halt Biodiversity Loss? Recommendations by over 300 Experts' (2022) 15 Conservation Letters 1.

³⁹ European Court of Auditors, *Common Agricultural Policy and Climate half of EU Climate Spending but Farm Emissions Are Not Decreasing*, (Publication Office of the European Union, 2021), at p. 36.

⁴⁰ 'Commission Allows Derogation from Certain Agricultural Rules' (*European Commission - European Commission*) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_582> accessed 15 November 2024.

⁴¹ AJ McKenzie and others, 'FORUM: Landscape-Scale Conservation: Collaborative Agri-Environment Schemes Could Benefit Both Biodiversity and Ecosystem Services, but Will Farmers Be Willing to Participate?' (2013) 50 Journal of Applied Ecology 1274, 1274.

⁴² M Alessandrini and others, 'Smallholder Farms in the Sustainable Food Transition: A Critical Examination of the New Common Agricultural Policy' (2024) 33 Review of European, Comparative & International Environmental Law 124.

⁴³ See I Rac et al, 'Does the Proposed CAP Reform Allow for a Paradigm Shift towards a Greener Policy?' (2020) 18 Spanish Journal of Agricultural Research 1.

on the indicators, for which the responsibility lies with the European Commission, is also particularly difficult and costly due to the large amount of data involved and limited measurability of set indicators.⁴⁴

Farmers can also *voluntarily* commit themselves to additional legal requirements in the form of agri-environmental climate schemes under the second pillar of the CAP. Despite the widespread use of agri-environmental schemes across the EU, thus far the ecological results are described as “underwhelming”, in large part because they often insufficiently incentivize farmers to bring about the “necessary management changes to improve biodiversity performance.”⁴⁵

Through a series of legal amendments to the CAP, a wide range of tools has been introduced to encourage ‘collective implementation of commitments by groups of farmers’ under the second pillar of the CAP.⁴⁶ Such collaborative approaches have been described by the European Commission as “key tools to cope with the new economic and environmental challenges”.⁴⁷ Collaborative approaches to agri-environmental land management are on the rise in the EU, as various initiatives in among others Belgium, Germany and Ireland illustrate.⁴⁸ In 2016, the Netherlands implemented an agri-environmental governance model that is breaking new ground, however. In brief, key responsibilities in the coordination and distribution of the state’s agri-environmental subsidies – as well as associated rule-setting, inspection and enforcement tasks - were shifted from the public domain to private ‘agricultural collectives’. The currently 40 agricultural collectives are certified partnerships of farmers and other landowners who are responsible for, coordinating and contracting agricultural nature management, among others.

To participate in the Dutch agri-environmental scheme, farmers have to be a member of an agricultural collective active in their area.⁴⁹ The scheme focuses primarily on the protection of specific species that are protected under the Birds and Habitats Directive and, to lesser extent, requirements from the Water Framework Directive. In 2023, climate was also added to the ANLb as an objective category. In the literature, it has been highlighted how this collaborative governance approach can help promote farmers’ participation in the scheme as well as compliance with the

⁴⁴ European Court of Auditors, ‘Special Report 20/2024: Common Agricultural Policy Plans’ (*European Court of Auditors*) <<http://www.eca.europa.eu/en/publications/sr-2024-20>> accessed 11 December 2024.

⁴⁵ European Court of Auditors, ‘Biodiversity on Farmland: CAP Contribution Has Not Halted the Decline. Special Report no 13, 2020’ (Publications Office of the European Union 2020) 11; See also: European Court of Auditors, *Is Agri-Environment Support Well Designed and Managed?* (Publications Office of the European Union 2011); AJ McKenzie and others, ‘FORUM: Landscape-Scale Conservation: Collaborative Agri-Environment Schemes Could Benefit Both Biodiversity and Ecosystem Services, but Will Farmers Be Willing to Participate?’ (2013) 50 *Journal of Applied Ecology* 1274, 1274.

⁴⁶ European Commission, ‘Commission Staff Working Document: Analysis of Links between CAP Reform and Green Deal’ SWD(2020) 93 final, 15-17.

⁴⁷ *ibid* 15.

⁴⁸ See: J Westerink and others, ‘Collaborative Governance Arrangements to Deliver Spatially Coordinated Agri-Environmental Management’ (2017) 69 *Land Use Policy* 176.

⁴⁹ In addition, although of less relevance here, the farmer must be located in an area that has been designated by the province as ecologically promising and therefore eligible for subsidies.

rules,⁵⁰ but can also lead to the watering down of overall environmental objectives on the ground.⁵¹ There is still the question, however, to what extent this new approach promotes the meeting of environmental objectives. It has further been emphasized in a recent evaluation that the ANLb alone will likely not be enough to halt the negative population trends of the target species, and that other policy instruments are needed including predation management policies and water level policies.⁵² It has further been stressed that more extensive land management is needed from an ecological perspective, which however, “cannot be expected from farmers on the basis of a voluntary model with compensations for income loss per hectare and short-term contracts”.⁵³

There is increasing scholarly evidence on the importance of careful regulatory design for ‘crowding in’ or ‘crowding out’ farmers in voluntary schemes. As Siebert and others note: “scheme options that insufficiently take account of variation in farm environments often lead to disdain on the part of the farmer and, sooner or later, to non-participation.”⁵⁴ This links in with broader findings by Kingston and others, who found that conservation farming schemes that have regard to the specific nature of the protected habitats or species at issue, and involve farmers, can crowd in pro-environmental motivations.⁵⁵ At the same time, stringent regulatory design and regulatory actions, for instance the “loss of autonomy induced by sanctioning”, may result in the crowding out of farmers, causing them to stop participating in a scheme.⁵⁶ Recent work by Alblas further showed how, for farmers, the possibility to couple voluntary agri-environmental land management with requirements from private standards (e.g. On the way to Planet Proof label) also showed to be a conducive factor, providing farmers with possible win-wins. Frequent policy changes, as well as regulatory complexity in the form of overly stringent rules, were found however to crowd-out farmers’ participation. Such findings highlight the importance of sensitizing agri-environmental schemes to a farmer’s ‘lived reality’.⁵⁷ In addition, empirical research show collaborative approaches such as the Dutch scheme can help promote both participation in agri-environmental schemes among farmers as well as compliance with accompanying rules, exactly because allows

⁵⁰ EC Alblas and JAW van Zeven, ‘Collaborative Agri-Environmental Governance in the Netherlands: A Novel Institutional Arrangement to Bridge Social-Ecological Dynamics’ (2023) 28 *Ecology and Society*

⁵¹ EC Alblas and JAW van Zeven, “‘Farming out’ Biodiversity: Implementing EU Nature Law through Agri-Environmental Schemes’ (2023) 17 *Earth System Governance*.

⁵² FG Boonstra and others, ‘Stelselvernieuwing in uitvoering: Tussenevaluatie van het Agrarisch Natuur-En Landschapseheer’ (Wageningen Environmental Research 2021, 3066) 11.

⁵³ *ibid* 11 (translation by the author).

⁵⁴ R Siebert, M Toogood and A Knierim, ‘Factors Affecting European Farmers’ Participation in Biodiversity Policies’ (2006) 46 *Sociologia Ruralis* 318, 332. See also: MNC Aarts and CMJ van Woerkum, ‘Nature Management, Policy Making and Communication’ [2000] *Communicating Nature Conservation* 27.

⁵⁵ S Kingston, E Alblas, M Callaghan and J Foulon, ‘Magnetic Law: Designing Environmental Enforcement Laws to Encourage Us to Go Further’ [2021] *Regulation & Governance* 17.

⁵⁶ See also: Y Feldman and O Perez, ‘Motivating Environmental Action in a Pluralistic Regulatory Environment: An Experimental Study of Framing, Crowding Out, and Institutional Effects in the Context of Recycling Policies’ (2012) 46 *Law & Society Review* 405.

⁵⁷ S Siebert, M Toogood and A Knierim, ‘Factors Affecting European Farmers’ Participation in Biodiversity Policies’ (2006) 46 *Sociologia Ruralis* 318, 344. See also: MNC Aarts and CMJ van Woerkum, ‘Nature Management, Policy Making and Communication’ [2000] *Communicating Nature Conservation* 27; S Kingston and others, ‘Magnetic Law: Designing Environmental Enforcement Laws to Encourage Us to Go Further’ (2021) 15 *Regulation & Governance* S143.

local actors to take a more central role in customizing the scheme based on a “multi-factorial, interactive understanding” of farmers in their area.⁵⁸

Collaborative approaches have also been brought forward as potential tools to address current challenges in monitoring and enforcing compliance effectively in the agricultural sector, as highlighted above. On this topic, Hagedorn describes that: “when visibility and transparency is low and costs of monitoring and supervision are high, compliance with environmental rules and norms can be improved by participation and co-operation instead of using hierarchical instruments of enforcement”.⁵⁹ Alblas adds to this literature through a case study of enforcement activities by both the NVWA and the agricultural collectives in the context of the Dutch ANLb scheme. Here, it was found that inspectors from agricultural collectives can exercise effective enforcement mechanisms such as invoking peer pressure and appealing to the loyalty of the participating farmers.⁶⁰ Yet, as was found through empirical study, farmers would be similarly inclined to enhance compliance if governmental inspectors would demonstrate a solid understanding of the ‘farmers reality’ and show a willingness to enter into a dialogue about the purpose of set rules.⁶¹ Presently, it was found that the NVWA and inspectors from the agricultural collectives do not cooperate or communicate about observations or best practices, even though coordination of inspection tasks could help fill current inspection gaps and enhance overall efficiency. In addition, uncoordinated inspections by the two inspection bodies appeared to lead to confusion and feelings of mistrust among the participating farmers, which jeopardizes their motivation to participate in agricultural nature management. Finally, the study highlights how certain rules seem to be designed more with an eye on promoting efficient monitoring of compliance, as opposed to achieving actual ecological improvements, which is a topic that warrants further attention.

Barriers	Leverage points
Pillar 1 subsidies only linked to environmental/climate objectives to limited extent, ambitions further watered down recently.	New ‘Green architecture’ of CAP provides, on paper, strong basis for increased environmental ambition, including through enhanced conditionality.
Pillar 2 rural development subsidies currently effective only to limited extent for improving environmental/climate conditions.	Increased possibilities and requirements for Member States to modulate funds from pillar 1 to pillar 2.

⁵⁸ S Siebert , M Toogood and A Knierim, ‘Factors Affecting European Farmers’ Participation in Biodiversity Policies’ (2006) 46 Sociologia Ruralis 318, 322.

⁵⁹ K Hagedorn, Environmental Co-Operation and Institutional Change: Theories and Policies for European Agriculture (Edward Elgar Publishing 2002) 17.

⁶⁰ EC Alblas, ‘Inspecteurs met voeten in de klei’ (2022) 43 Recht der Werkelijkheid 31. See also: K Prager, ‘Agri-Environmental Collaboratives for Landscape Management in Europe’, *Current Opinion in Environmental Sustainability*, 2015-12, 59-66.

⁶¹ EC Alblas, ‘Inspecteurs met voeten in de klei’ (2022) 43 Recht der Werkelijkheid 31.

National Strategic Plans provide an opportunity for Member States to adjust CAP to local priorities and needs.	Increased discretion through National Strategic Plans provides risks of further watering down of environmental objectives.
Current voluntary agri-environmental schemes often unable to promote necessary management changes to improve biodiversity performance.	Collaborative approaches can promote farmers participation in schemes and compliance with set rules.
More extensive management is needed which cannot be expected from farmers on the basis of a voluntary model with compensations for income loss per hectare and short-term contracts.	Governments could ensure long-term funding commitments and contracts.
Overtly stringent rules that do not match a farmers' business can discourage farmers from voluntarily participating.	Careful regulatory design responsive to farmers' reality can help ensure long-term commitment of farmers.
Inspection and enforcement are not always geared to ensuring ecological effectiveness, and may dissuade farmers from participating if not designed and carried out effectively.	Collaborative governance can help fill enforcement gaps, especially if coordination with public enforcement actors is enhanced.

Table 1: Barriers and leverage points of the legal framework of the Common Agricultural Policy

3.1.2 Compartmentalized agri-environmental legislation

Beyond the Common Agricultural Policy, the agricultural sector is subject to a wide range of sectoral legislation, the majority of which has its origin in Brussels - for example European directives and regulations on the use of fertilizers, water, pesticides and more. In the Netherlands, this compartmentalized approach has been adopted in specific national laws, with rules varying strongly in terms of levels of specificity and ambition. Increasingly, each sectoral legal framework seems to end up in its own 'crisis'; in addition to the Habitats Directive (nitrogen), this would apply to the Water Framework Directive (water quality of Dutch waters) and the Nitrates Directive (exceedance of nitrate values). In addition, the European Commission has recently started infringement proceedings against the Netherlands for failing to protect farmland birds and their habitats, legally protected under the Birds Directive.⁶²

⁶² 'EU Takes the Netherlands to Court over Failure to Protect Meadow Birds' (*BirdLife International*, 30 July 2024) <<https://www.birdlife.org/news/2024/07/30/eu-takes-the-netherlands-to-court-over-failure-to-protect-meadow-birds/>> accessed 22 November 2024.

In the literature, the current compartmentalized approach to the various, interrelated challenges in agriculture is described as a major barrier to finding effective solutions for the transition to sustainable agriculture.⁶³ Existing rules further often lack concrete targets for sustainability, as well as effective monitoring and enforcement mechanisms. Issues of non-compliance in the agricultural sector threatening sustainability appear widespread across topics such as fertilizers,⁶⁴ biodiversity,⁶⁵ and pesticides.⁶⁶ On this latter topic, the Netherlands Food and Consumer Product Safety Authority (NVWA) - which inspects and enforces food safety and consumer product regulation – has concluded that there is a structural issue of non-compliance with pesticides regulations by farmers.⁶⁷ The compartmentalization of regulatory frameworks adds to the complexity of monitoring compliance in the agricultural sector effectively.⁶⁸

As Backes and Alblas note, there is a need to work towards a coherent and streamlined legal framework that promotes accountability across the agricultural sector, with clear national and regional targets.⁶⁹ One way in which this could potentially be achieved is by leveraging the new Environment and Planning Act (*Omgevingswet*), which served to merge and simplify existing legislation relating to the built and living environment. While this new framework law provides for a certain level of harmonization of procedures, terminology and deadlines, it does not currently ensure substantive coordination, harmonization or integration of substantive requirements. Since its entry into force in January 2024, the functionality of the new Act has become subject to strong critique and complaints.⁷⁰ Yet, the *Omgevingswet* can also act as catalyzer of a more integral approaches at the local level, through physical environmental visions and plans (*omgevingsvisies en -plannen*) by municipalities and provinces. These instruments could in theory be used to integrate environmental requirements firmly into the planning dimensions of land use and land development. For example, local authorities can decide in their physical environment plans not to allow specific types of farming practices alongside sensitive Natura-2000 areas, and by doing so

⁶³ CW Backes & EC Alblas, 'Crises in de landbouw: van verkokerde wetten naar weidse blik? Reeks "Duurzaamheid"' (2024) 2024 Sociaal-economische wetgeving : tijdschrift voor Europees en economisch recht / Nederlandse Vereniging voor Europees Recht 58. See also: M Vink and others, 'Naar een uitweg uit de stikstofcrisis' (2021) Text <<https://www.pbl.nl/publicaties/naar-een-uitweg-uit-de-stikstofcrisis>>.

⁶⁴ "Mestfraude bestrijden blijft een uitdaging" - Jaarbeeld' <<https://magazines.nvwa.nl/jaarverslag/2020/01/mestfraude-bestrijden-blijft-een-uitdaging>> accessed 10 August 2023

⁶⁵ As the authors conclude, this means that the Netherlands is not living up to the requirements of article 5 of the Birds Directive, which requires not only the establishment of a system of prohibitions, but also effective enforcement to ensure compliance with these rules. See: Dotinga H and others, 'De Juridische Bescherming van Boerenlandvogels', *Milieu en landbouw* (Boom juridisch 2019) 101.

⁶⁶ European Court of Auditors, *Sustainable Use of Plant Protection Products: Limited Progress in Measuring and Reducing Risks. Special Report No 05, 2020* (Publications Office of the European Union 2019) <<https://data.europa.eu/doi/10.2865/349084>> accessed 25 November 2024.

⁶⁷ 'Onvoldoende naleving wetgeving gewasbeschermingsmiddelen zorgwekkend - Nieuwsbericht - NVWA', www.nvwa.nl, 7 december 2023. Zie ook: 'Open sierteelt leeft voorschriften juist middelengebruik onvoldoende na', www.nieuweoogst.nl, 22 oktober 2024.

⁶⁸ See: EC Alblas, 'Inspecteurs met voeten in de klei' (2022) 43 *Recht der Werkelijkheid* 31.

⁶⁹ *Ibid.*

⁷⁰ See, e.g.: P van den Brand, 'Gemeenteambtenaren tot nu toe teleurgesteld in Omgevingswet' (*Gemeente.nu*, 1 October 2024) <<https://www.gemeente.nu/ruimte-milieu/omgevingswet/gemeenteambtenaren-tot-nu-toe-teleurgesteld-in-omgevingswet/>> accessed 19 November 2024.

work towards target of the Nitrates Directive, Habitats Directive, among others. The current model of decentralization allows local governments to employ context-specific knowledge in planning procedures and adapt implementation processes to regional conditions.

The fact remains however that the national government is responsible for meeting overarching EU legal obligations, including those flowing from the EU Waterframework Directive, Habitats and Birds Directives, and Nitrates Directive. Considering the interlinkages between the challenges that exists in meeting EU legal obligations, it would be recommendable for the national government to take a more directive, steering role towards land use planning and legal implementation across the entirety of the Netherlands, in which current challenges can be addressed in a more integral way.⁷¹ While the Omgevingswet provides the needed instruments for the national government to take such a directive approach, this this would, however, require a recentralization of decision-making that has now been delegated to local governments.

Another way to achieve a more integral approach, and one that is increasingly gaining traction by Dutch government,⁷² is the implementation of a 'Key performance index' (*kritische prestatie index*) model.⁷³ Put simply, a KPI model could serve to set overarching targets, while giving farmers the necessary space to choose how they want to achieve these goals and develop their business within these preconditions.⁷⁴ Instead of managing individual dossiers such as nitrogen or water, a set of KPIs can be used to work on issues such as soil, water, biodiversity and climate in a coherent manner at the local level. An advantage of such a model is that, by setting binding KPIs that are fixed for the longer term, farmers can make choices that fit their local conditions, and make accompanying investments. This would reduce the risks that, like today, investments to meet one specific government requirement from one sectoral policy (for instance nitrates) and will quickly conflict with other sectoral requirements (for instance nature conservation).

The success of such a system is however heavily dependent on the possibility to closely monitor (and possibly reward or sanction) the meeting of set targets. Presently, government inspection bodies like the NVWA and, in the case of the Dutch agri-environmental scheme, agricultural collectives, monitor and enforce farmers' compliance with land management requirements. An example is farmers' legal obligations under agri-environmental schemes to not mow grassland before a certain date, to help promote the preservation of farmland birds. A farmer is not held

⁷¹ See: CW Backes and EC Alblas, 'Crises in de landbouw: van verkokerde wetten naar weidse blik? Reeks "Duurzaamheid"' (2024) 2024 Sociaal-economische wetgeving : tijdschrift voor Europees en economisch recht / Nederlandse Vereniging voor Europees Recht 58.

⁷² See: Ministerie van Landbouw, Visserij, Voedselzekerheid en Natuur, 'Kamerbrief over bedrijfsgerichte doelsturing', 21 oktober 2024.

⁷³ CW Backes and EC Alblas, 'Crises in de landbouw: van verkokerde wetten naar weidse blik? Reeks "Duurzaamheid"' (2024) 2024 Sociaal-economische wetgeving : tijdschrift voor Europees en economisch recht / Nederlandse Vereniging voor Europees Recht 58.

⁷⁴ Independent advisors can play an important role in this, as was also done until 2015 by the government agency Dienst Landelijk Gebied, which has now been abolished.

accountable for the actual preservation of farmland birds, since generally it is difficult to impossible to link an individual farmer’s actions to environmental outcomes. Indeed, if the preservation of a set number of farmland birds is set as target, and a farmer carries out all the needed land management for these species, the goal might still not be met due to external factors such as predation. This may explain why, presently, the government’s proposals on introducing a KPI system seems to focus purely on climate, water quality and nitrogen – with KPIs on nutrients and emissions – while leaving nature and landscape outside of the picture for now.⁷⁵ This would mean the suggested integral approach that could uniquely be achieved through a KPI system, would still not be achieved.

A second challenge in implementing a KPI system is the setting of suited indicators for the operationalization of KPIs. Depending on the problem, this can be done largely nationally or with regional differentiation. A currently lacking (legally binding) translation of specific reduction targets for issues such as for pesticide use, or greenhouse gas emissions can provide clarity in the long term about what the future (performance) requirements will be for the sector and subsequently for individual companies. Establishing national and regional targets does not necessarily require additional legislation, although legally established requirement with a binding timeline commonly aids the realization of environmental objectives.⁷⁶ It is important however to first investigate more thoroughly how working with KPIs relates to the requirements of EU legislation. EU law regularly contains binding rules that cannot simply be replaced by a target-based KPI system, as is the case for instance for the EU Nitrates Directive.

Barriers	Leverage points
Limited coordination between sectoral legislation hampering effectiveness of agri-environmental legislation.	Environmental and Planning Act provides a certain level of coordination and can be further leveraged through local plans and national direction.
	Integral KPI system could enable target-based approach, although success of such an approach depends on effective indicators, monitoring and enforcement, and compliance with overarching EU requirements.

Table 2: Barriers and leverage points of the current system of compartmentalized agri-environmental legislation

⁷⁵ Ministerie van Landbouw, Visserij, Voedselzekerheid en Natuur, ‘Kamerbrief over bedrijfsgerichte doelsturing’, 21 oktober 2024.

⁷⁶ CW Backes and EC Alblas, ‘Crises in de landbouw: van verkokerde wetten naar weidse blik? Reeks “Duurzaamheid” (2024) 2024 Sociaal-economische wetgeving : tijdschrift voor Europees en economisch recht / Nederlandse Vereniging voor Europees Recht 58.

3.1.3 Competition in agriculture: the sustainability exemption clause

The 2023 reform of the CAP introduced several advancements to promote sustainability in agriculture while maintaining market competitiveness. One notable development is the inclusion of Article 210a of the Common Market Organisation (CMO) Regulation,⁷⁷ which provides a framework for exempting sustainability-related agreements from the strictures of EU competition law. This provision represents a shift toward encouraging collaboration in the food supply chain to achieve higher sustainability standards.

In particular, this new provision permits agreements, decisions, and concerted practices that are indispensable to achieving sustainability standards in agriculture to be exempt from EU competition rules, specifically Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). The provision requires that at least one party to the sustainability agreement must be a producer of agricultural products. Other parties can include operators from various stages of the food supply chain, such as processing, distribution, and trade.

Farmers are rewarded for their efforts and investments in sustainability practices going beyond legal requirements. Such practices aim to promote environmentally sustainable production methods, including reducing pesticide use and associated risks, minimizing antimicrobial resistance in crop and animal production, and improving animal welfare.⁷⁸ To prevent market distortion, the exemption applies only if the agreement or practice does not eliminate competition for a substantial portion of the products concerned. This condition ensures that cooperative efforts remain proportional and aligned with sustainability goals without significantly disrupting market dynamics.

However, the implementation of Article 210a of the CMO Regulation faces several barriers. Despite the publication of guidelines in 2023,⁷⁹ a lack of economic and technical incentives discourages stakeholders from engaging in sustainability agreements. The Strategic Dialogue highlights the need to clarify the provision's application and recommends pilot initiatives to test its feasibility.⁸⁰ Sustainability agreements must define clear standards (e.g. that may lead, for example, to the creation of a voluntary label, logo or brand name for products that meet the requirements of the standard), yet challenges persist. The agreements must indicate tangible or

⁷⁷ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (2013), OJ L 347.

⁷⁸ RP Baayen et al, 'Sustainability agreements in agriculture' WUR Research Report <<https://edepot.wur.nl/590740>> accessed 19 November 2024.

⁷⁹ Communication from the Commission – Commission guidelines on the exclusion from Article 101 of the Treaty on the Functioning of the European Union for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation (EU) No 1308/2013 (2023), OJ (C/2023/1446).

⁸⁰ Strategic Dialogue, 39.

describable outcomes and demonstrate their indispensability nature to achieve the sustainability standards. The absence of a precise definition for “sustainability standards” complicates implementation, as does the difficulty in measuring outcomes like pesticide reduction or antimicrobial resistance across diverse contexts. When positive environmental results cannot be quantified numerically, monitoring activities focus on whether the outcomes are observable and describable. However, this raises the question of how to determine the threshold for deeming such results as "achieved". The lack of clear criteria or limits for evaluating non-quantifiable outcomes creates uncertainty, potentially complicating the assessment of compliance and the overall effectiveness of sustainability agreements.

Effective enforcement requires regular monitoring and this is further hindered by resource constraints within the EU Commission and national authorities. While maintaining transparency without breaching competitive confidentiality remains a delicate balance. These barriers collectively limit the practical application and impact of the provision.

At the national level, the national legislator is only permitted to consolidate societal initiatives in legislation that are permissible under the EU competition legislation. In this case, the national legislator could impose on farmers and food chain actors to conclude sustainability agreements complying with the derogations in the CMO Regulation.⁸¹

Article 210a of the CMO Regulation, however, presents also significant opportunities to drive sustainability in agriculture by fostering cooperation among farmers and other actors in the food supply chain.⁸² In particular, this provision empowers small and medium-sized farms, which may lack the resources to implement impactful changes individually, to collaborate on achieving higher sustainability standards in the context of, for example, biodiversity preservation, sustainable water use, or reduced pesticide application.

By enabling joint efforts to adopt environmentally friendly practices and pursue goals beyond legal baselines, Article 210a encourages innovative approaches to sustainability while addressing critical challenges such as biodiversity preservation, soil health, and climate change adaptation. It further facilitates the exchange of knowledge, technology, and best practices, creating pathways for more sustainable and resilient food systems.⁸³

Barriers	Leverage points
The lack of economic and technical incentives hinders engagement in sustainability	Facilitates collaboration among small and medium-sized farms on sustainability

⁸¹ RP Baayen et al, ‘ Sustainability agreements in agriculture’ WUR Research Report <<https://edepot.wur.nl/590740>> accessed 19 November 2024, p11.

⁸² A Dawes, ‘Article 210a of the CMO Regulation: Supporting the Transition to a Sustainable Food System in the Union’ (2024) 22 ZWeR 1.

⁸³ Commission (n 43), 3 (Material Scope of article 210a).

initiatives, and a pilot initiative is recommended under the Strategic Dialogue for better application.	practices, which may be challenging for them to achieve independently.
Sustainability agreements must specify standards, measurable results, and the essential nature of cooperation, raising complexity in compliance and monitoring.	By allowing farmers to meet sustainability goals beyond legal requirements, it encourages the development of higher environmental standards,
The unclear definition and difficulty in quantifying environmental outcomes, such as pesticide reduction, make compliance assessment challenging.	It allows primary producers to exchange knowledge, technology, and best practices, fostering sustainable farming methods across the industry.
Limited economic resources for enforcement and the need for transparency without compromising competitive confidentiality further complicate effective implementation and stakeholder trust in these agreements	

Table 4: Barriers and leverage points of the sustainability exemption clause under article 210a CMO Regulation

3.2 Food manufacturers, processors, caterers and retailers

3.2.1. Green claims

The European Commission's proposal for a Green Claims Directive (GCD),⁸⁴ published in March 2023, marks a significant shift in environmental claims regulation in the EU. The directive introduces mandatory substantiation requirements based on scientific evidence and establishes new frameworks for claim validation and communication.

The GCD establishes an ex-ante verification system through independent authorities (i.e. 3rd party verified and certified). Companies must submit an ex-ante request to a ‘verifier’ for a certificate of conformity before making an environmental claim. Once the ‘verifier’ has verified the submitted claim, it will decide to issue (or not) a certificate of conformity. This certificate will be recognised across the EU, ensuring businesses can confidently make environmental claims in all Member States without fear of legal challenges. The certificate will be via the Internal Market Information System. It will allow companies to use the claim in commercial communication to consumers across the internal market.

⁸⁴ Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive), COM(2023) 166 final.

Currently, environmental claims fall under voluntary information for food products which are regulated loosely in the Food Information to Consumers Regulation (Regulation 1169/2011).⁸⁵ However, the GCD, when enacted, will apply to all sectors, including food, and bring stricter rules for environmental claims.⁸⁶ Read in conjunction with the recently adopted Empowering Consumers for Green Transition Directive,⁸⁷ GCD brings strict rules on the requirements and communication of environmental claims. From the date of publication, Member States will have two years to transpose the Directive into national law.

The proposal is currently undergoing the ordinary legislative procedure. In June 2024, the Council introduced a simplified procedure for certain types of explicit environmental claims that are of a less complex nature, for which verification by a third-party verifier or a full substantiation assessment would not be necessary (e.g. for claims stating that an environmental characteristic of a product or a trader exceeds minimum requirements set out in other EU acts).

One of the key barriers that can be identified in the current design of the GCD is the lack of harmonization across the EU. Without uniform guidelines, terms like "eco-friendly," "sustainable," or "carbon-neutral" are applied inconsistently, leading to confusion among consumers and difficulties in assessing the true environmental impact of products. This inconsistency weakens consumer trust and undermines the credibility of green claims.⁸⁸ Another major issue is the risk of greenwashing. Without strict substantiation requirements, companies can make vague or misleading environmental claims simply to appeal to environmentally conscious consumers. This practice undermines the effectiveness of environmental labels, allowing products that may not be genuinely sustainable to gain an unfair advantage in the market.⁸⁹ The monitoring of environmental claims also remains problematic.

Currently, environmental claims are subject to voluntary regulations, meaning there is limited oversight and enforcement from authorities. Only in extreme cases of misrepresentation do general food information or consumer protection laws come into play. This lack of accountability means that many misleading claims go unchecked. Despite being welcomed to combat the

⁸⁵ Articles 36-37, Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, OJ L 304, 22.11.2011, p. 18–63.

⁸⁶ F Cazzini et al, 'Tour de Table: Farm to Fork Law Update' (2024) 3 EFFL 110, 6.

⁸⁷ Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information (2024), OJ L 2024/825.

⁸⁸ F Cazzini et al, 'Tour de Table: Farm to Fork Law Update' (2024) 3 EFFL 110, 6.

⁸⁹ D Kolcava, 'Greenwashing and public demand for government regulation' (2023) 43(1) Journal of Public Policy 179.

misleadingness of many different and often not substantiated green claims,⁹⁰ many aspects of the GCD remain unclear. For instance, the relationship between the GCD and the Empowering Consumers for Green Transition Directive remains unclear, as does the status of existing claims and labels. Furthermore, the implementation of the GCD presents significant challenges for national authorities who are tasked with developing standardized verification systems and enforcement mechanisms. This could result in inconsistencies in enforcement across Member States, especially considering the complexities involved in verifying environmental claims, which often require detailed scientific data and life-cycle assessments. Many national authorities may also face resource constraints, making it difficult to monitor the vast array of claims made by food business operators.

For food business operators, the introduction of mandatory substantiation of environmental claims presents its own challenges. The technical complexity of providing reliable data and robust methodologies could be particularly burdensome for small and medium-sized enterprises, which may struggle to afford the necessary investments for substantiation.⁹¹ Additionally, ensuring coordination across the supply chain presents another hurdle, as many environmental claims rely on data from multiple actors along the production and distribution process.

Lastly, while the GCD aims to empower consumer choice by providing clearer, more reliable environmental information, there is concern about consumer understanding. Research into similar initiatives, such as the Nutri-Score label, shows that consumers often struggle to interpret such information,⁹² which could limit the effectiveness of the GCD.⁹³ Furthermore, consumers may experience information fatigue as they are bombarded with various claims, particularly when balancing environmental and nutritional information.

Despite these barriers, the GCD offers significant leverage points that could help overcome these challenges. First, by requiring all environmental claims to be substantiated by robust scientific evidence, the directive promotes greater accountability and transparency in environmental

⁹⁰ A Commission study from 2020 highlighted that 53.3% of environmental claims reviewed in the EU were found to be “vague, misleading or unfounded” and 40% were “unsubstantiated”. European Commission (2020), Environmental claims in the EU: Inventory and reliability assessment, Final report, available at <<https://circabc.europa.eu/ui/group/44278090-3fae-4515-bcc2-44fd57c1d0d1/library/b11ba10b-5049-4564-b47a-51a9bc9003c8/details?download=true>> accessed 19 November 2024.

⁹¹ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and Cross-border implementation creates additional complexity, while variable interpretation, implementation and enforcement of the directive across Member States threatens uniform application. The integration with existing environmental certification schemes presents another significant hurdle for both authorities and operators. The challenges in harmonizing cross-border enforcement are particularly acute in the food sector, where supply chains often span multiple countries.

medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁹² A Stiletto et al, ‘The impact of nutri-score on consumers’ preferences for geographical indications. Evidence from a non-hypothetical experiment’ (2024) *Appetite* 199.

⁹³ F Folkvord et al, ‘The effect of the nutri-score label on consumer’s attitudes, taste perception and purchase intention: An experimental pilot study’ (2021) *Food Quality and Preference* 94.

marketing. This reduces the prevalence of greenwashing and encourages businesses to engage in genuine sustainability efforts.

Moreover, the introduction of certificates of conformity, which are shared via the Internal Market Information System, reduces market fragmentation. This ensures that businesses can confidently make and market environmental claims across the EU, without facing inconsistencies between member states.

Finally, the GCD's simplified procedure for less complex claims strikes a balance between stringent legal requirements and encouraging broader adoption of environmentally sound practices. By streamlining the process for certain claims, the GCD makes it easier for businesses, particularly SMEs, to engage with the regulation, thus fostering a more sustainable market overall.

Barriers	Leverage points
Due to the lack of harmonization across the EU, environmental terms like "eco-friendly" and "sustainable" are applied inconsistently, creating confusion among consumers and difficulty in assessing true environmental impact.	The GCD aims at preventing the risk of greenwashing; currently companies can make vague or misleading claims without needing to substantiate them, potentially undermining consumer trust.
There is uncertainty about how the Green Claims Directive and the Empowering Consumers for Green Transition Directive relate, as well as the status of existing claims and labels.	All environmental claims must be backed by scientific evidence, reducing misleading claims and promoting genuine sustainability efforts.
National authorities may face a heavy workload in implementing and verifying claims, which could lead to inconsistencies in enforcement across Member States.	Companies can confidently market their environmentally sustainable products across the EU with certificates of conformity, reducing fragmentation.
Many authorities may lack the resources (trained personnel, technology, and funds) to effectively monitor environmental claims.	The GCD introduces a simplified process for less complex claims, making it easier for businesses to engage with the legislation.
SMEs may struggle with the costs of substantiating claims (e.g., conducting life-cycle analyses, certifications) and could be at a competitive disadvantage compared to larger companies.	The ex-ante verification system by third-party verifiers ensures accountability, limiting the scope for misleading claims.

Many green claims involve multiple actors, making coordination and data-sharing difficult, especially in multinational supply chains.	Most likely, microenterprises and small businesses will be exempted from some requirements, and there is support from Member States to assist with the transition.
The large amount of information (e.g., nutritional value vs. environmental impact) may overwhelm consumers, reducing the effectiveness of environmental claims.	

Table 5: Barriers and leverage points on the Proposal for the Green Claims Directive (GCD)

3.2.2 Packaging and packaging waste

Packaging is a major contributor to environmental degradation, accounting for 40% of the EU's plastic consumption, 50% of paper use, and 36% of municipal solid waste.⁹⁴ Currently, Only 7 percent of plastic packaging in the Netherlands is reused as material for new packaging.⁹⁵

Currently, packaging manufacturing largely relies on the use of virgin materials with still limited recourse to more sustainable alternative industrial solutions, including packaging minimization during its conception, recycling and re-use. The packaging sector's growth has consistently outpaced gross national income (GNI), exacerbating its environmental footprint, including resource overexploitation, pollution of land and seas, and contributions to climate change.⁹⁶

In response to mounting public awareness and demand for action, many companies have pledged to tackle packaging waste.⁹⁷ However, these voluntary initiatives often focus on superficial or short-term solutions, such as incremental recycling improvements or cosmetic sustainability claims, rather than addressing the systemic changes needed to reduce packaging's environmental impact. Moreover, consumers are increasingly interested in information related to packaging environmental footprint, which ranks amongst the top factors influencing their food purchasing decisions.⁹⁸ Without EU action and further harmonization in this area, packaging waste is likely to significantly increase by 2030 (especially in the case of plastics with an estimated 46% more than current levels) with obvious detrimental effects on our environment.⁹⁹

⁹⁴ PM Coelho et al, 'Sustainability of reusable packaging – current situation & trends' (2020) 6 Resources, Conservation & Recycl 1.

⁹⁵ RIVM, 'Productgroep-analyse kunststof verpakkingen en drankenkartons' (2023) <<https://www.rivm.nl/publicaties/productgroep-analyse-kunststof-verpakkingen-en-drankenkartons>> accessed 20 November 2024.

⁹⁶ Commission, 'Commission Staff Working Document Impact Assessment Report: Accompanying the Proposal for a Regulation on Packaging and Packaging Waste' (SWD(2022) 384 final, 30 November 2022).

⁹⁷ Ibid.

⁹⁸ C Hermann et al, 'Consumers' sustainability-related perception of and willingness-to-pay for food packaging alternatives' (2020) 181 Resources, Conservation & Recycl 1.

⁹⁹ Commission, 'European Green Deal: New Rules Proposed to Reduce Packaging Waste' (30 November 2022) <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7155> accessed 20 November 2024.

In November 2022, the Commission tabled a Proposal for a Regulation on Packaging and Packaging Waste (PPWR) represents a significant step in addressing the environmental challenges posed by packaging in the European Union.¹⁰⁰ Overall, the PPWR provides for a wide-ranging set of sustainability requirements for all types of packaging, including food. It aims at ensuring a higher level of harmonisation across the EU market, replacing the current framework governed by a directive.¹⁰¹

The PPWR requires all packaging in the EU to be recyclable by 2030 and recycled at scale by 2035.¹⁰² EU-wide progressive targets are also foreseen to ensure greater use of recycled plastic in packaging manufacturing. In addition, some plastic packaging largely used in the food service and by retailers (e.g. packaging consisting of individual portions or used to group cans and bottles) is likely to be prohibited by 2030.¹⁰³ The PPWR has also the ambition to make packaging safer for end consumers and other users. For instance, the banning harmful chemicals, like PFAS, from food packaging is currently being considered as a result of the request of the European Parliament.¹⁰⁴

While the objectives of the PPWR are commendable, its actual impact on concerned stakeholders and the market of food packaging is still hard to determine. First of all, the proposal does not clearly define the concept or boundaries of sustainability when applied to food packaging.

In fact, as the PPWR is currently designed and drafted, several legal requirements will have to be defined more precisely by future EU tertiary legislation. This is the case, for instance, of the exact legal criteria against which packaging recyclability performance will be established and assessed.¹⁰⁵

Also, the costs of this transition towards sustainable packaging cannot be neglected. The PPWR will require significant changes in packaging manufacturing and the respective supply chain to shift away from current linear economy approaches and patterns. In the case of food packaging, this transition must take place while safeguarding its primary function, which is to guarantee food safety and quality. Overall, this will translate into an increase in costs in R&D and supply chain reorganization, which, in the short and medium term, will impact consumer prices.

¹⁰⁰ Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (2022), COM/2022/677 final [Hereinafter PPWR].

¹⁰¹ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (1994), OJ L 365.

¹⁰² PPWR, article 6.

¹⁰³ PPWR, article 6(5).

¹⁰⁴ Commission, 'European Green Deal: Pioneering Proposals to Boost Sustainable and Digital Transitions' (20 November 2024) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4763> accessed 20 November 2024.

¹⁰⁵ M Alessandrini et al, 'Farm to Fork-strategie: Teleurstelling voor duurzame etikettering – Dit is de huidige stand van zaken' (2024) <https://www.vmt.nl/68986/farm-to-fork-strategie-teleurstelling-voor-duurzame-etikettering-dit-is-de-huidige-stand-van-zaken> accessed 20 November 2024.

Another issue that the PPWR currently raises is whether national competent authorities are adequately equipped in terms of technical knowledge and equipment to enforce its requirements once it becomes law. Unlike other environmental sustainability measures targeting the environmental externalities of the agri-food chain, the PPWR will apply also to food packaging that is produced outside the EU. This considered, it is therefore likely to make harder the market access for food packaging originating from non-EU countries, qualifying as a potential trade irritant in the context of EU bilateral and multilateral relations.

In any event, this transition towards more sustainable and circular packaging solutions for food products and other consumer goods cannot be achieved without the active involvement of end consumers. In the case of reusable and recyclable packaging, in particular, consumers are in fact entrusted with key tasks to ensure that packaging is correctly returned or disposed of so that it can be effectively reused or recycled. Environmental labelling for packaging, for which the PPWR envisages harmonized rules, can certainly contribute towards this objective. However, consumer education and awareness programs and initiatives will be also necessary to maximize the resultss¹⁰⁶

Despite the communication of more sustainable packaging to consumers is problematic,¹⁰⁷ competitive pressure is driving companies to innovate, moving away from single-use plastics and non-recyclable materials, and exploring closed-loop packaging systems that allow for packaging to be reused multiple times, particularly for items like beverages, dairy, and dry goods.¹⁰⁸ Moreover, the Proposal includes a target for recycling packaging materials at scale by 2025, addressing not only the design phase but also the logistical and infrastructural aspects of recycling. This encourages the development of robust recycling systems and collaborations between packaging manufacturers, waste management companies, and municipalities. By prioritizing large-scale recycling, the regulation aims to make recycling a practical and economically viable process, leading to higher material recovery rates and reduced reliance on virgin resources.

The Proposal also introduces EU-wide progressive targets for incorporating recycled plastic in packaging manufacturing. This measure helps stimulate demand for recycled plastics, which supports the plastics recycling industry and promotes a steady supply chain of recycled materials, encouraging businesses to invest in sustainable packaging models that offer environmental and cost benefits over the long term.

¹⁰⁶ Ibid.

¹⁰⁷ Z Boz et al, 'Consumer Considerations for the Implementation of Sustainable Packaging: A Review' (2020) 12 Sustainability 6 2192.

¹⁰⁸ Ibid.

Barriers	Leverage points
Uncertainty about the impact of the proposed rules as detailed requirements (e.g. criteria for recyclability) will be defined by EU future tertiary legislation (i.e. implementing and delegated acts).	The PPWR's recycling targets and the gradual incorporation of recycled plastic promote the development of an harmonised system across the EU.
The PPWR does not clearly define the concept or boundaries of sustainability in relation to food packaging.	Competitive pressure is driving companies to innovate in sustainable packaging, moving away from single-use plastics and non-recyclable materials.
The shift to sustainable packaging involves significant costs for R&D, supply chain reorganization, and may increase consumer prices.	By incentivizing closed-loop systems and encouraging collaboration across the supply chain, the PPWR promotes a more circular economy, reducing reliance on virgin materials.
National authorities may lack the technical capacity to effectively monitor and enforce packaging sustainability requirements.	The PPWR's EU-wide approach and progressive targets will foster standardized monitoring and enforcement mechanisms, helping ensure consistency in sustainability practices across the market.
Without clear enforcement guidelines, there may be inconsistencies in how the PPWR is implemented across Member States.	
Packaging produced outside the EU will face higher market barriers, potentially complicating EU trade relations.	
Active involvement of consumers to make sure that packaging is effectively reused or recycled	

Table 6: Barriers and leverage points on the Proposal for a Regulation on Packaging and Packaging Waste (PPWR)

3.2.3 Green public procurements in food

Green Public Procurement (GPP) in the food sector is another fundamental tool for promoting environmental sustainability. GPPs are defined as “ [...] a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would

otherwise be procured”.¹⁰⁹ By leveraging the significant purchasing power of public bodies, the EU seeks to drive a transition toward greener practices, using procurement as a tool to influence the food and catering sector’s production, distribution, and consumption patterns.¹¹⁰

The GPP criteria are voluntary tools aimed at influencing key stages in public procurement processes: technical specifications, selection criteria, award criteria, and contract performance criteria. They provide green clauses for contracting authorities to use when drafting procurement documents.¹¹¹ While the GPP criteria are non-binding and not backed by a specific legal act, they serve as soft law to encourage more sustainable public procurement practices.

GPP criteria must be verifiable and it should be formulated either as Selection criteria, Technical specifications, Award criteria or Contract performance clauses.¹¹² GPP requires that public contracts consider the entire life cycle of products - from production methods and raw material sourcing to waste management and energy consumption.¹¹³ This comprehensive approach aspires to reduce the environmental impact of public spending while promoting sustainable, ethical, and ecologically conscious production systems.

In practice, the GPP criteria for food and catering services focus on aspects like organic products, fair and ethical trade, animal welfare, sustainable seafood sourcing, and environmentally responsible production practices. By setting standards and targets, such as requiring a percentage of procured food to be certified organic or sustainably produced, GPP attempts to promote the uptake of greener food practices in public institutions, such as schools, hospitals, and government offices.¹¹⁴

The Netherlands is pushing towards integrating sustainability goals within public procurement. This is reflected in the upcoming National Sustainable Public Procurement Strategy, which is being

¹⁰⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' (2008), COM/2021/400 final.

¹¹⁰ H Schebesta, 'Revision of the EU Green Public Procurement Criteria for Food Procurement and Catering Services - Certification Schemes as the Main Determinant for Public Sustainable Food Purchases?', 9 EFL 2 316.

¹¹¹ H Schebesta and MJ Plana Casado, 'Mandatory EU Public Procurement Criteria for Food after the Farm to Fork Strategy' in W Jansen and R Caranta (eds) *Mandatory Sustainability Requirements in EU Public Procurement Law: Reflections on a Paradigm Shift* (Hart Publishing, 2023).

¹¹² Selection Criteria (SC): These refer to the qualifications of the company tendering for a contract, such as financial standing and ability to implement environmental measures in service contracts. Technical Specifications (TS): Minimum compliance requirements tied to the product's subject matter, focusing on characteristics specific to the product, not general corporate practices. Award Criteria (AC): Evaluates the overall quality and cost of tenders, factoring in environmental considerations, and rewards higher environmental performance through the most economically advantageous tender (MEAT). Contract Performance Clauses (CPC): Specifies how the contract must be executed, focusing on the product's life-cycle and supply chain, with monitoring during execution and potential penalties or bonuses for compliance.

¹¹³ Commission, 'The European Green Deal: The Way Forward' (Publications Office of the European Union, 2020) <https://op.europa.eu/en/publication-detail/-/publication/f8e9fe10-ff7d-11e9-8c1f-01aa75ed71a1/language-en> accessed 20 November 2024.

¹¹⁴ H Schebesta, 'Revision of the EU Green Public Procurement Criteria for Food Procurement and Catering Services - Certification Schemes as the Main Determinant for Public Sustainable Food Purchases?', 9 EFL 2 316.

developed by the Dutch Ministry of Infrastructure and Water Management.¹¹⁵ Stakeholder engagement workshops held in 2024 have emphasized the importance of aligning GPP with green, circular, social, and innovation policies.¹¹⁶ The Netherlands has had several policies and a legal framework dedicated to GPP since 2007, including successful monitoring tools¹¹⁷ However, no ad hoc measures have been found for the food sector.¹¹⁸

Under the Framework for Sustainable Food Systems, the establishment of mandatory minimum public procurement requirements for food was anticipated. However, given the likely lack of implementation of such initiatives, scholars suggest that the European Commission could instead introduce binding minimum targets for public procurement in EU law.¹¹⁹ These targets would be directed at Member States, but would allow national or even regional authorities to decide on the most effective ways to achieve them.

However, despite its potential, the application of GPP in the food sector faces several critical challenges and barriers that complicate its implementation and effectiveness. One of the primary issues is the reliance on certification schemes. GPP often uses existing third-party certifications, like organic or fair-trade labels, to define what constitutes "green" food products. While this offers an efficient way to verify compliance with environmental and social standards, it raises legal and practical challenges. Certification schemes vary widely in their scope, stringency, and transparency, leading to questions about equivalence and fairness in tendering.¹²⁰ Moreover, certification can place smaller suppliers or producers who cannot afford certification processes at a disadvantage, potentially limiting market access and stifling diversity in the supply chain.

Another major challenge is the complexity of aligning GPP criteria with the EU's intricate public procurement rules, which require careful delineation between bidder selection criteria, technical specifications, award criteria, and contract performance clauses. Green procurement often falls into a legal grey area, creating uncertainties about how far public authorities can go in prioritizing environmental factors without breaching procurement rules, such as those governing non-discrimination and competition. This regulatory complexity has made many public authorities hesitant to pursue green tenders, fearing challenges and legal scrutiny over their tendering

¹¹⁵ European Commission, 'Gearing Up for a New National Sustainable Public Procurement' (European Commission, 2024) <<https://public-buyers-community.ec.europa.eu/communities/public-procurement-dialogues/news/gearing-new-national-sustainable-public-procurement>> accessed 20 November 2024.

¹¹⁶ [edit source]

¹¹⁷ United Nations Environment Programme, Global Report 2022 (UNEP 2022) https://www.oneplanetnetwork.org/sites/default/files/from-crm/300_1_UNEP_Global_Report_2022.pdf accessed 20 November 2024.

¹¹⁸ [edit source, check: <https://www.pianoo.nl/nl>]

¹¹⁹ H Schebesta and MJ Plana Casado, 'Mandatory EU Public Procurement Criteria for Food after the Farm to Fork Strategy' in W Jansen and R Caranta (eds) *Mandatory Sustainability Requirements in EU Public Procurement Law: Reflections on a Paradigm Shift* (Hart Publishing, 2023) 143.

¹²⁰ H Schebesta, 'Revision of the EU Green Public Procurement Criteria for Food Procurement and Catering Services - Certification Schemes as the Main Determinant for Public Sustainable Food Purchases?', 9 *EFFL* 2 316.

processes. As a result, there is a tension between the ambition of GPP policies and the practical limitations imposed by procurement laws.

The inherently multi-dimensional nature of food sustainability poses another barrier. Unlike other product categories, food procurement is deeply interwoven with considerations beyond the environment, including health, nutrition, social justice, and animal welfare. GPP criteria, as currently structured, tend to focus narrowly on green issues and struggle to encompass the broader notion of "sustainability," which also covers socio-ethical aspects like fair labor practices, community development, and public health. This narrow focus limits the transformative potential of GPP in shaping holistic and truly sustainable food systems, often excluding considerations that are vital to a well-rounded sustainable agenda.

Additionally, the non-binding nature of GPP criteria presents a structural barrier. While they provide useful guidance and establish benchmarks, they lack the legal force to mandate compliance. This voluntary framework results in uneven uptake across EU member states and inconsistent application within public procurement practices. Public authorities may hesitate to adopt green criteria due to perceived administrative burdens, costs, or uncertainties regarding implementation. Furthermore, the effectiveness of GPP relies heavily on the willingness and capacity of public procurers to engage with complex criteria and adapt procurement processes accordingly, which may not always be feasible given resource constraints and competing priorities.

Barriers	Leverage points
GPPs are voluntary tools based on certification schemes. Variability in third-party certifications creates challenges for smaller producers and limits market access.	EU-wide guidelines and green clauses help standardize and encourage sustainable procurement practices.
Complex sector-specific EU procurement rules cause uncertainty about how environmental priorities can be integrated.	Embedding sustainability in procurement stages ensures it influences all phases of the food production process.
GPP's limited environmental focus overlooks broader sustainability issues like health, social justice, and animal welfare.	Large-scale public procurement can drive demand for greener products, influencing conventional supply chains.
The voluntary and non-binding nature of the tool results in inconsistent application across member states and hesitant adoption.	
The complexity of implementing GPP criteria and the lack of incentives at the national level	

can deter public authorities from adopting them.	
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Table 7: Barriers and leverage points on the Green (Food) Public Procurements

3.2.4 Corporate sustainability due diligence and reporting

The Corporate Sustainability Due Diligence Directive (CSDDD), announced as part of the initiatives undertaken under the EU Green Deal and finally adopted in 2024, aims ‘to ensure that companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies’ through the identification, mitigation and remediation of human rights and environmental impacts connected with their own operations or with their business relationships.¹²¹ The CSDDD to a large extent ‘hardens’ into binding law the soft law requirements of the UN Guiding Principles on Business and Human Rights, which in 2011 introduced the concept of ‘human rights due diligence’.¹²² Although the adoption of the Directive was not uncontroversial,¹²³ the creation of binding rules was mostly welcomed by the business sector as a way to provide legal certainty, and it was saluted by NGOs and civil society actors as a way to overcome the ineffectiveness of voluntary standards.¹²⁴

The CSDDD is in many ways an unprecedented piece of legislation, in that it creates wide-ranging due diligence obligations on large companies, regardless of sector, and entails both an enforcement mechanism for non-compliance, and a civil liability mechanism, to be established at the Member State level.¹²⁵ The closest example of due diligence legislation is the groundbreaking French Law on the Duty of Vigilance, adopted in France in 2017. Since then, other European countries have started adopting or considering adopting similar rules,¹²⁶ prompting the European Commission to intervene in order to create harmonized rules across the EU and a ‘level playing field’ for companies operating in the Union market.¹²⁷ The Member States are expected to transpose the Directive into domestic law in 2026, after which the new rules will start applying to different categories of companies in different phases between 2027 and 2029.¹²⁸

¹²¹ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (CSDDD), Recital 16.

¹²² UN Guiding Principles on Business and Human Rights (2011) HR/PUB/11/04.

¹²³ B Sjøfjell and J Mähönen, ‘The story behind the torturous road towards the EU’s Corporate Sustainability Due Diligence Directive’ (University of Oslo, 2024) <<https://www.jus.uio.no/english/research/areas/sustainabilitylaw/blog/2024/story-behind-road-towards-eu-csddd.html>>.

¹²⁴ European Commission, Impact Assessment Report accompanying proposal for a Directive on Corporate Sustainability Due Diligence (2022) SWD(2022) 42 final (‘Impact Assessment CSDDD’), para 2.2.2.3 <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022SC0042>>.

¹²⁵ CSDDD, articles 27, 29.

¹²⁶ ECCJ, ‘Comparative table: Corporate due diligence laws and legislative proposals in Europe’ (2022) <<https://corporatejustice.org/publications/comparative-table-corporate-due-diligence-laws-and-legislative-proposals-in-europe-2/>>.

¹²⁷ Impact Assessment CSDDD, para. 2.2.2.2.

¹²⁸ CSDDD, article 37.

Although only binding on large EU corporations and on some large non-EU corporations with significant business in the Union market,¹²⁹ the CSDDD will also indirectly impact the work of SMEs all over the globe. It has been estimated that around 6'000 EU companies and 900 non-EU companies will be directly bound by the CSDDD.¹³⁰ In the Netherlands, this translates into 415 companies, of which 54 in the agri-food sector.¹³¹ However, the number of companies worldwide that will be indirectly affected by its provisions can hardly be calculated. Indeed, the Directive introduces a set of obligations for large companies to ensure they identify, prevent, mitigate, and account for adverse impacts on human rights and the environment within their operations, subsidiaries, and value chains. With its broad material scope, which includes human rights and environmental impacts, the Directive is likely to have wide-ranging implications for the agri-food sector, requiring in-scope companies to assess and address the risk of directly or indirectly contributing to impacts like environmental degradation (e.g., deforestation, soil depletion, water usage, etc.), labour exploitation, and greenhouse gas emissions from agriculture and food processing. In-scope companies are required to develop and publish a due diligence policy describing the company's approach to due diligence, detailing the result of their human rights and environmental risk assessments, and illustrating the measures adopted to prevent, stop, or mitigate the identified impacts. Relevant impacts are not only those directly stemming from the company's own operations, but also those caused by their subsidiaries and value chain partners (e.g., direct and indirect suppliers).

The value chain scope of due diligence obligations, referred to as 'chain of activities', also covers downstream business relationships,¹³² so for instance an in-scope food processing company should conduct due diligence not only on its suppliers of fresh produce, but also on the retailers that buy its final product. While covering distribution, transport, and storage of the product, however, the due diligence obligations do not cover product disposal, dismantling and recycling. This means, as noted with disappointment by IUCN Netherlands, that 'the negative impacts of recycling or landfills need not be investigated'.¹³³ Notwithstanding this limitation, the Directive could have the important effect of making large companies in all sectors more aware of the global impacts of their supply chains and force them to take concrete steps to prevent and address those impacts across their activities and business relationships. Possible steps include seeking contractual assurances from business partners, for instance by including due diligence clauses in

¹²⁹ CSDDD, article 2.

¹³⁰ M Vreman and I Miralles, 'CSDDD compliance requires collaboration between value chain actors on a global scale' (2024), p. 6 <<https://edepot.wur.nl/675027>>.

¹³¹ Ibid.

¹³² CSDDD, article 3.1(g).

¹³³ IUCN, 'European Parliament approves Due Diligence Directive: 'important step, but could be more ambitious' (WUR, 2024) <<https://www.iucn.nl/en/news/european-parliament-approves-due-diligence-directive-important-step-but-could-be-more-ambitious/>>.

supply contracts, or providing support, capacity-building, training, funding to SME partners in order to help them comply with the company's due diligence strategy.¹³⁴

As a last-resort option, the company might have to suspend or terminate a business relationship with a non-compliant business partner, when there is no reasonable expectation that its due diligence efforts will succeed.¹³⁵ Another important aspect of the due diligence process is the requirement of 'meaningful stakeholder engagement', which aims at ensuring that the voices of workers, local communities, indigenous peoples and civil society organizations are heard in the process of identifying, addressing and remediating the impacts.¹³⁶ Thus, if well designed, and allocated the necessary resources and expertise, the due diligence process can create collaboration, knowledge and technology sharing within the value chain partners, fostering more sustainable practices also in the operations of companies, such as SMEs, that are not directly bound by the CSDDD. This positive effect has to some extent been detected in the implementation of the French Law on the Duty of Vigilance.¹³⁷ The implementation experience of the French law also shows how due diligence obligations that also bind large non-EU subsidiaries can create transnational civil society synergies that can contribute to enhanced corporate accountability.¹³⁸ A case in point is the lawsuit filed by an alliance of Indigenous peoples from the Brazilian and Colombian Amazon and NGOs from France and the US against the retail giant Groupe Casino for allegedly selling meat products whose supply chains were linked to deforestation, as well as to human rights, indigenous peoples' rights and environmental violations.¹³⁹

As it stands, concerns have been expressed by some governments and business associations regarding the challenges of complying with the CSDDD and its alleged risks for competitiveness.¹⁴⁰ On the one hand, it is feared that the Directive will be too burdensome for in-scope businesses, especially those with complex supply chains whose monitoring and auditing will require significant resources. These fears have been echoed by the recent Draghi report, mentioning the risk of 'overregulation'.¹⁴¹ On the other hand, it is argued that SMEs not directly captured by the CSDDD

¹³⁴ CSDDD, article 10.

¹³⁵ Ibid, article 10.6(b).

¹³⁶ Ibid, article 13.

¹³⁷ Impact Assessment CSDDD, para 2.2.2.3

¹³⁸ M G Bastos Lima and A Schilling-Vacaflor, 'Supply chain divergence challenges a 'Brussels effect' from Europe's human rights and environmental due diligence laws' (2024) 15 Global Policy 260, p. 271.

¹³⁹ Asso-Sherpa, 'Amazon indigenous communities and international NGOs sue supermarket giant Casino over deforestation and human rights violations' (Press release, 2021) <<https://www.asso-sherpa.org/amazon-indigenous-communities-and-international-ngos-sue-supermarket-giant-casino-over-deforestation-and-human-rights-violations>>.

¹⁴⁰ J Janssen, 'The Corporate Sustainability Due Diligence Directive would ensure a level playing field and enhance necessary corporate sustainability' (European Law Blog, 2024) <<https://www.europeanlawblog.eu/pub/1b121767/release/1>>; K Haeusgen, 'The proposal on due diligence is a threat to Europe's competitiveness' (Euractiv, 2023) <<https://www.euractiv.com/section/economy-jobs/opinion/the-proposal-on-due-diligence-is-a-threat-to-europes-competitiveness/>>; ECCJ, 'The CSDDD is at a make-or-break moment: from fake news to businesses support' (2024) <<https://corporatejustice.org/news/the-csddd-is-at-a-make-or-break-moment-from-fake-news-to-businesses-support/>>; S Giraldo, 'Perché Confindustria critica la direttiva Ue sulla sostenibilità delle aziende' (Start Magazine, 2024) <<https://www.startmag.it/economia/direttiva-csddd-impatto-ue/>>.

¹⁴¹ Stibbe, 'The Draghi Report: a reality check for ESG regulation in the EU' (2024) <<https://www.stibbe.com/publications-and-insights/the-draghi-report-a-reality-check-for-esg-regulation-in-the-eu>>.

are nevertheless at risk of being pushed out of important markets and value chains for their failure to comply with the sustainability due diligence demands of their in-scope business partners.¹⁴² A related risk is that of shifting the burden of sustainability compliance from the large in-scope company to the smaller segments of the value chain by means of contractual assurances, placing disproportionate operational and liability risks on the business partners.¹⁴³ Importantly though, these risks have been recognized by the drafters,¹⁴⁴ and safeguards have been included in the Directive.

In particular, Directive places certain burdens, such as the costs of independent third-party verification, on the in-scope company. This cost cannot be shifted to value chain partners. Moreover, large companies, besides the obligation to ensure fair contracts, must provide ‘targeted and proportionate support’ to SME partners, such as capacity building, training and financial resources to support SMEs’ compliance efforts.¹⁴⁵ Member States, as well, are called upon to put in place online resources, through dedicated platforms or portals, giving access to support and guidance materials.¹⁴⁶ They are also recommended (although not mandated) to provide financial support to SMEs when needed.¹⁴⁷ Moreover, companies may avail themselves of the guidance provided by multi-stakeholder initiatives,¹⁴⁸ of the independent guidance that is being developed by different organizations (for instance, the Responsible Contracting Project),¹⁴⁹ and of the guidance that European Commission itself is committed to delivering, which will include sector-specific guidelines.¹⁵⁰ Importantly, companies could also make use of existing guidance, such as the OECD Due Diligence Guidance for Responsible Business Conduct, the OECD-FAO Guidance for Responsible Agricultural Supply Chains and private-sector-led initiatives like the Sustainable Agriculture Initiative Platform.¹⁵¹ The European Commission, aware of the possible unintended consequences of the Directive’s requirements trickling down to the weaker segments of the value chain, is committed to periodically assessing its impacts on SMEs.¹⁵²

Barriers	Leverages
Due to the lack of harmonization across the EU, corporations are subjected to different due	The CSDDD creates a ‘level playing field’ among large companies based or with significant operations in the EU market.

¹⁴² R Mares, ‘The Unintended Consequences of Mandatory Due Diligence’ (Verfassungsblog, 2024) <<https://verfassungsblog.de/csddd-the-unintended-consequences-of-mandatory-due-diligence/>>.

¹⁴³ Vreman and I Miralles, 2024, p. 18.

¹⁴⁴ Impact Assessment CSDDD, para 3.2.2.6.

¹⁴⁵ CSDDD, article 10.1(e).

¹⁴⁶ Ibid., article 20.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Responsible Contracting Project, <<https://www.responsiblecontracting.org/>>.

¹⁵⁰ CSDDD, Arts. 18-19.

¹⁵¹ OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016) <<https://mneguidelines.oecd.org/oecd-fao-guidance.pdf>>.

¹⁵² CSDDD, article 36.2(a).

diligence standards across different EU jurisdictions.	
Global value chain risk dumping environmental and human rights externalities on Global South countries, marginalized and vulnerable workers and communities.	The CSDDD requires big actors in the Union market to take responsibility for the environmental and human rights impacts of their operations and business relationships worldwide.
There is debate over the risk of excessive reporting requirements on corporations.	The CSDDD does not create new reporting requirements , but rather cross-references existing requirements under EU law (such as the CSRD).
The CSDDD is a horizontal instrument which does not address the specificities of the agri-food sector.	Due diligence guidance is available from other sources (e.g., the OECD-FAO Guidance for Responsible Agricultural Supply Chains) and the Commission will issue general and sector-specific guidelines. In addition, there are private sector initiatives like the Sustainable Agriculture Initiative (SAI) Platform.
SMEs will be indirectly reached by the CSDDD as part of the value chains of large corporations. This might: create excessive compliance costs for them.	<p>The CSDDD requires:</p> <ul style="list-style-type: none"> • large company to bear the costs of independent third-party verification. • large companies to provide fair contracts, capacity building, financial resources to support SMEs' efforts. • Member States to adopt supporting measures (websites, information portals). They 'may' provide financial support. <p>The European Commission will periodically assess impact on SMEs.</p>
The chain of 'contractual assurances' required by the due diligence obligation risks shifting responsibility for compliance onto SMEs.	The European Commission will produce guidance to support compliance, including on contractual approaches across value chains. Independent guidance is being developed by projects such as the Responsible Contracting Project (RCP).

Table 8: Barriers and leverage points of the CSDDD.

3.2.5 Corporate sustainability reporting

The Corporate Sustainability Reporting Directive (CSRD), effective from 5 January 2023, establishes extensive reporting obligations for companies operating in the EU to improve transparency regarding their environmental, social, and governance (ESG) impacts.¹⁵³ It replaces the Non-Financial Reporting Directive (NFRD)¹⁵⁴ and expands both its personal and material scope, while mandating adherence to uniform reporting standards. The CSRD, unlike the CSDDD, does not only bind large companies, but also publicly-traded SMEs. In addition, it is directly binding on non-EU companies with significant turnover in the EU and having at least one EU subsidiary or branch.¹⁵⁵ The CSRD requires companies, including those in the agri-food industry, to report on environmental and social impacts throughout their value chains. Reporting requirements under NFRD were found to be too imprecise, leaving room for interpretation by companies and, therefore, to inconsistent reporting quality and scarce comparability.¹⁵⁶

To ensure uniform application and overcome the inconsistencies of the previous directive,¹⁵⁷ the CSRD requires adopting the European Sustainability Reporting Standards (ESRS), developed by the European Financial Reporting Advisory Group (EFRAG). These more detailed and comparable reporting standards are expected to improve usability of the disclosed information by interested stakeholders, including investors, consumers and civil society actors, creating a positive pressure on companies to put in place sound sustainability policies and reporting practices.¹⁵⁸ The CSRD is based on the ‘double materiality’ approach, meaning it covers both financial materiality (how ESG issues affect the company) and impact materiality (how the company’s operations impact the environment and society). The double-materiality assessment allows a company to identify the environmental and sustainability issues that are most relevant to its business and its stakeholders.¹⁵⁹ As concerns the agri-food companies, for instance, these are likely to include emissions, deforestation, and water use, which are key environmental impacts in farming and food production. Importantly, companies are required to report not only on the impacts, but also on the policies, actions and targets it has adopted to manage each material sustainability matter.¹⁶⁰

¹⁵³ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (CSRD).

¹⁵⁴ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (NFRD).

¹⁵⁵ M Brans, R Bloemberg and F Felder, ‘Reporting under the ‘E’ of the CSRD. An Overview of Legal Requirements and a Comparison With Existing Obligations under Environmental Law, Focussing on the Netherlands’ (2024) 33(5) European Energy and Environmental Law Review 232, p. 233 <<https://www.houthoff.com/-/media/houthoff/publications/esg/reporting-under-the-e-of-the-csrd.pdf>>.

¹⁵⁶ Impact Assessment CSDDD, para 2.

¹⁵⁷ European Parliament, ‘Non-financial Reporting Directive – Implementation appraisal’ (2021) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI\(2021\)654213_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654213_EN.pdf)>.

¹⁵⁸ Impact Assessment CSDDD, para 1.

¹⁵⁹ Brans et al, 2024, p. 233.

¹⁶⁰ Ibid, p. 235.

Sustainability reports must also undergo third-party auditing and assurance to ensure accuracy and reliability, aligning with financial reporting standards.¹⁶¹

SMEs in the agri-food sector are affected by the CSRD directly when they are listed companies, and indirectly as part of the value chains of in-scope companies, such as retailers. These larger companies may require their business partners in the value chain, including farmers, to provide detailed sustainability data to meet their own reporting obligations, thereby incentivizing them to adopt better sustainability practices and reporting systems to remain competitive.¹⁶² For instance, as the ESRs cover Scope 3 emissions (in addition to Scope 1 and Scope 2 emissions), large companies such as retailers will need to collect information from their value chain partners about their greenhouse gas emissions.¹⁶³ Such pressure, however, also comes with challenges, as explained in the next paragraph.

Given the complexity of agricultural supply chains, companies will need to gather data on everything from farming practices to resource usage and emissions. This could create particular challenges for farmers and smaller agri-food businesses, which ‘often do not have the technical expertise nor resources necessary to prepare reports in accordance with state-of-the-art, sophisticated standards.’¹⁶⁴ Such difficulties might cut them out from important value chains and even from access to sustainable finance.¹⁶⁵

Several options are in place to mitigate these challenges. First of all, EFRAG is about to publish a draft of the simplified standard for listed SMEs that it was tasked with developing by the CSRD.¹⁶⁶ Therefore, the ESRs will apply to SMEs in a tailor-made version which should ease the administrative and technical burden they face. Secondly, the need to comply with CSRD incentivizes large companies, such as retailers, to work closely with suppliers, including farmers and manufacturers, to enhance their capacity to collect and report sustainability information. Finally, support to SMEs, including to non-listed SMEs who decide to follow the Voluntary Reporting Standards developed by EFRAG,¹⁶⁷ must also be provided by Member States, which will obtain guidance from the EU, in this respect, under the 2025 Flagship Technical Support Project.¹⁶⁸ Support measures might include the development of reporting templates, the ‘designing of public

¹⁶¹ Accounting Directive (Directive 2013/34/EU), Art 34.

¹⁶² OECD, Platform on Financing SMEs for Sustainability, Activity Report (2024), p. 11 <<https://www.oecd.org/content/dam/oecd/en/about/programmes/cfe/oecd-platform-on-financing-smes-for-sustainability/Platform-activity-report-2024-Vf.pdf>>.

¹⁶³ Ibid.

¹⁶⁴ European Commission, Impact Assessment Report accompanying proposal for a Directive on Corporate Sustainability Reporting (2021) SWD(2021) 150 final, para 5.2.1

¹⁶⁵ OECD, 2024, p. 11

¹⁶⁶ EFRAG, ‘SMEs’ <<https://www.efrag.org/en/sustainability-reporting/esrs-workstreams/smes>>.

¹⁶⁷ EFRAG, ‘Voluntary reporting standard for SMEs (VSME)’ <<https://www.efrag.org/en/projects/voluntary-reporting-standard-for-smes-vsme/exposure-draft-consultation>>.

¹⁶⁸ European Commission, ‘2025 Flagship Technical Support Project’ <https://reform-support.ec.europa.eu/our-projects/flagship-technical-support-projects/tsi-2025-flagship-implementation-sustainability-reporting-framework-companies-including-smes_en>.

data hubs as single access points for ESG information’, cross-sectoral capacity-building initiatives, free online training packages, etc.¹⁶⁹

Barriers	Leverages
The personal and material scope of the Non-Financial Reporting Directive was limited. Leaving excessive discretion to companies, it led inconsistencies and gaps in reporting. Investors, stakeholders, and regulators struggled to assess a company’s ESG performance. No third-party audits.	The CSRD expanded the personal and material scope of the reporting obligations. Reporting is now aligned with the European Sustainability Reporting Standards (ESRS). Double-materiality approach (impact materiality + financial materiality). Third-party assurance.
Financial and logistical burden of compliance, especially for listed SMEs.	Opportunity to connect due diligence processes under the CSDDD with reporting processes. ESRS tailored to SMEs & simplified timeline (first report due in 2026). Voluntary reporting options for unlisted SMEs. Commission to provide sector-specific guidelines (EFRAG). Financial support by Member States (?)
Challenges in collecting and managing data.	Companies encouraged to embed sustainability (technical reporting) knowledge in their organization. Technical support and trainings on sustainability data collection and reporting methodologies could support compliance. Digital tools and templates to help automate data collection.

Table 9: Barriers and leverage points of the CSRD.

3.2.6 Towards an ‘Omnibus regulation’?

Notwithstanding concerns about the costs of compliance and the need to fill technical expertise gaps, especially in support of SMEs directly and indirectly affected by the new legislations, the recently-adopted EU instruments on sustainability due diligence and reporting represent an opportunity to streamline sustainability and reporting processes within small and large companies. It is recent news (November 2024) that the European Commission might consider consolidating

¹⁶⁹ Ibid.

the CSDDD, CSRD and the EU Taxonomy¹⁷⁰ into a ‘omnibus regulation’ in order to minimize the reporting burden on companies.¹⁷¹ As underlined by Rasche, the initiative is controversial for several reasons, including its questionable timing (with the CSDDD not implemented, yet, it is difficult to make cost-benefit calculations), and its misrepresentation of the alleged overlap between the CSDDD and the CSRD.¹⁷² Crucially, the CSDDD does not create new reporting requirements, but rather requires large companies to put in place substantive due diligence processes - including impact assessment, monitoring, stakeholder engagement, acquisition of data - that will inform those companies’ reporting processes under the CSRD. Thus, while the need to re-open the legislative process is questionable, there are fears that starting a re-negotiation process might have the further consequence of putting in question the hard-won policy agreements that these instruments represent.¹⁷³ While the future of this initiative is still uncertain, it is important to highlight the complementarity and synergies of the three instruments analyzed in this section.

As stated earlier, sustainability reporting under the CSRD is based on uniform standards, the ESRS, which align with the due diligence frameworks outlined in the CSDDD. At the same time, accurate due diligence processes under the CSDDD can improve the quality of evidence-based reporting under the CSRD and lower the risk of ‘greenwashing’ allegations by increasing the companies’ ability to substantiate their sustainability claims. Under both directives, companies have an incentive to put in place effective mechanisms of supply chain due diligence and detailed reporting on supply chain-related risks and sustainability practices. Unlike the CSDDD, the CSRD is directly binding upon listed SMEs and provides for voluntary reporting options for unlisted SMEs, which might encourage SMEs to embed sustainability and technical reporting knowledge into their own organization. In turn, this increased understanding of sustainability issues and the allocation of (proportionate) resources to their identification could make SMEs more prepared to comply with sustainability demands from large companies subjected to the CSDDD. Indeed, as mentioned above, as part of the value chains of large corporations operating in the EU market, SMEs might be requested to comply with certain due diligence requirements, including through binding contractual clauses. In addition, SMEs who produce EUDR-relevant commodities may need to provide information to downstream operators to help them comply with the EUDR’s due diligence requirements.

¹⁷⁰ A classification system defining environmentally sustainable economic activities to guide investments, support the EU Green Deal, and promote climate-neutrality by 2050 (Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088).

¹⁷¹ J McGowan, ‘What Is An Omnibus? How The EU Could Reshape Sustainability Reporting’ (Forbes, 2024) <<https://www.forbes.com/sites/jonmcgowan/2024/12/10/what-is-an-omnibus-how-the-eu-could-reshape-sustainability-reporting/>>.

¹⁷² A Rasche, ‘The EU’s “CSRD-CSDDD-Taxonomy” Omnibus - Four Arguments Why This Bus Should Never Depart’ (2024) <<https://www.linkedin.com/pulse/eus-csrd-csddd-taxonomy-omnibus-four-arguments-why-bus-rasche-owiaf/>>.

¹⁷³ Ibid.

While EUDR reporting and due diligence requirements are more granularly defined than under the CSDDD – in that they tackle a very specific issue and mandate precise technical steps, such as geolocation – the data collected to comply with the EUDR could also become an integral part of impact assessments under the CSDDD.¹⁷⁴ This is all the more so because due diligence requirements under the EUDR will be more stringent for operations taking place in high-risk countries, where large companies will be required by the CSDDD to conduct due diligence checks taking into consideration contextual factors (e.g. the presence of conflict or prevalence of illicit trades) and the severity of the potential impacts. In this sense, due diligence requirements under the EUDR, while certainly demanding, constitute good guidance to effective data collection and impact assessment that will allow companies to move towards increased sustainability in their global operations. Enhanced due diligence and reporting processes will eventually also shield companies from liability under the CSDDD and under consumer protection legislations, as well as from reputational damage.

The synergy among these three instruments, therefore, can spur progress in impact assessment, data collection, sustainability reporting and due diligence practices on the part of all segments in the agri-food supply chain. At the same time, regulatory bodies can use CSRD and EUDR disclosures to assess compliance with CSDDD requirements, creating synergies in enforcement. The extent to which this fruitful synergy will be realized will depend on national implementation of the directives, resource allocation, policy guidance and technical support.

3.2.7 Deforestation

The EU Deforestation Regulation (EUDR), which entered into force on June 29, 2023, was adopted with the aim to combat global deforestation and forest degradation by ensuring that products sold in or exported from the EU are deforestation-free and comply with the laws of their country of origin.¹⁷⁵ In several respects, it goes beyond previous initiatives, such as the EU Timber Regulation (EUTR, repealed by the new Regulation)¹⁷⁶ and the FLEGT Plan of Action,¹⁷⁷ possibly allowing to take stock of those experiences and overcome some of their limitations. The EUDR also aims at

¹⁷⁴ European Commission, Impact Assessment Report ‘Minimising the risk of deforestation and forest degradation associated with products placed on the EU market’ (2021), SWD(2021) 326 final, p. 63 <https://environment.ec.europa.eu/document/download/7ab29a87-09a1-45f9-b83b-cd80765de10f_en?filename=SWD_2021_326_1_EN_impact_assessment_part1_v4.pdf>.

¹⁷⁵ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 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 and repealing Regulation (EU) No 995/2010 (‘EUDR’).

¹⁷⁶ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

¹⁷⁷ More on this in the next section.

creating ‘a level playing field for companies, both in terms of requirements to be met before placing products on the EU internal market, and in terms of the information supplied to customers’.¹⁷⁸

The EUDR creates due diligence obligations for companies - including actors along the supply chain, from importers to manufacturers and retailers - that place a range of commodities on the EU market or export them from the EU. Unlike previous initiatives, the EUDR is not limited to trade in timber, but rather addresses a range of commodities, and, therefore, of deforestation drivers. The nine in-scope commodities, whose trade is linked to deforestation worldwide, are soy (used in animal feed and processed foods), palm oil (used in various food products), cocoa (used in chocolate and other foods), coffee, rubber, cattle and wood. This focus makes the Regulation particularly relevant to the agri-food sector. Interestingly, similarly to what happened for the CSDDD discussed above, the EU reports that an overwhelming majority of qualified stakeholders (business associations and NGOs) involved in public consultations supported a mandatory due diligence regime.¹⁷⁹ Besides creating a level-playing field in the EU market, the new approach based on mandatory due diligence aims at overcoming the documented limits of voluntary labelling and certification schemes.¹⁸⁰

The EUDR goes beyond the EUTR in addressing deforestation and forest degradation *worldwide*, and not only, like the previous regulation, in the countries of origin of exported timber. Importantly, the EUDR creates a strict deforestation-free standard. Whereas the EUTR focused only on illegally harvested timber, the EUDR targets both legal and illegal deforestation, emphasizing ‘deforestation-free’ supply chains regardless of the legality in the country of origin.¹⁸¹

The EUDR is binding on companies of all sizes, although it creates differentiated obligations for smaller operators. Operators (the entities that first place products on the market or export them) and traders (entities who buy and sell relevant products already on the EU market) are required to perform due diligence to ensure their commodities and products are not associated with deforestation or forest degradation. EU-based companies exporting the regulated commodities to markets outside the EU are also bound by the EUDR and, similar to importers, are required to provide proof of compliance. Large operators placing covered products on the EU market (whether as raw materials, semi-finished goods, or final products), have extensive obligations, including the adoption of detailed due diligence procedures, the performance of risk assessment and mitigation

¹⁷⁸ Executive Summary of Impact Assessment Report ‘Minimising the risk of deforestation and forest degradation associated with products placed on the EU market’ (2021) <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021SC0327>>.

¹⁷⁹ Ibid.

¹⁸⁰ S Alecci, ‘As new EU law looms, researchers find many ‘green labels’ fall short of sustainability promises’, (ICIJ, 2024) <<https://www.icij.org/investigations/deforestation-inc/as-new-eu-law-looms-researchers-find-many-green-labels-fall-short-of-sustainability-promises/>>.

¹⁸¹ European Commission, ‘Traceability and geolocation of commodities subject to EUDR’ (‘Legality requirement’) <https://green-business.ec.europa.eu/deforestation-regulation-implementation/traceability-and-geolocation-commodities-subject-eudr_en#legality-requirement>.

and the collection of geolocation data of production areas. In order to verify if the geolocation of commodities and products is linked to deforestation, companies may use ‘remotely sensed information (air photos, satellite images) or other information (e.g. photographs in the field with linked geotags and time stamps)’.¹⁸² Compliance is verified through due diligence statements submitted to national authorities, statements whose key elements are detailed in Annex II of the Regulation.¹⁸³ While the EU Commission will put in operation an information system containing the due diligence statements, these datasets will be disclosed to the public only in an anonymized form.¹⁸⁴

The European Commission has delayed implementation of the EUDR in order to provide in-scope businesses with a longer ‘phasing in’ period and clarify, in the meantime, certain features of the Regulation. Large companies will have to comply by 30 December 2025, while micro- and small enterprises by 30 June 2026. Retailers and farmers will be affected by the EUDR either directly or indirectly, depending on their role in the supply chain. They could be directly bound by the due diligence obligations if they qualify as operators under the regulation. This could apply also to farmers as members of cooperatives or producer groups exporting regulated commodities,¹⁸⁵ as well as to retailers first placing products on the EU market via online sales. The EUDR could also place indirect pressure on both EU and non-EU farmers, which might be required from buyers (importers and retailers) to provide them with data certifying that their products meet the EUDR criteria, even if they are not directly bound by it.

In many ways, the EUDR, with its emphasis on traceability, legality, and sustainability of commodities, builds on lessons learned from Voluntary Partnership Agreements (VPAs) under the FAO-EU Forest Law Enforcement, Governance, and Trade (FLEGT) programme.¹⁸⁶ FLEGT aims to combat illegal logging by promoting sustainable and legal timber trade while enhancing forest governance. The VPAs established under the programme involve agreements between the EU and timber-exporting countries to ensure that only legally produced timber enters the EU market.¹⁸⁷ Several lessons stem from implementation of VPAs. Firstly, they demonstrated the importance of fostering collaboration with producing countries and multistakeholder processes to build trust and implement sustainable practices.¹⁸⁸ Assistance to partner countries in improving governance and

¹⁸² Ibid (‘Information on geolocation data’).

¹⁸³ EUDR, Annex II.

¹⁸⁴ Ibid, article 33.5.

¹⁸⁵ T Ifwanga, ‘EUDR: Practical insights into cocoa cooperatives’ challenges and costs’ (Fern, 2024) <<https://www.fern.org/publications-insight/eudr-practical-insights-into-cocoa-cooperatives-challenges-and-costs/>>.

¹⁸⁶ Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan /* COM/2003/0251 final.

¹⁸⁷ R L Rutt, et al, ‘FLEGT: Another “forestry fad”?’ (2018) 89 Environmental Science & Policy 266, p. 267 <<https://www.sciencedirect.com/science/article/pii/S1462901118304878>>.

¹⁸⁸ C Luttrell, E Fripp, ‘Lessons from voluntary partnership agreements for REDD+ benefit sharing’ (CIFOR Occasional Paper 134, 2015), pp. 9-12 <https://www.cifor-icraf.org/publications/pdf_files/OccPapers/OP-134.pdf>.

enforcement systems is key to ensure the effectiveness of regulations.¹⁸⁹ Particularly important is capacity-building in relation to timber traceability, data management and monitoring systems.¹⁹⁰ At the same time, involving civil society, local communities, and businesses helps secure broader support and compliance.¹⁹¹ There is evidence that VPAs enabled NGOs in some partner countries to have better engagement with local governments.¹⁹² Thirdly, the FLEGT and other sustainable forest management programmes show that stakeholder compliance is enhanced by the adoption of phased approaches that take into consideration the barriers faced by small-scale operators,¹⁹³ allow for gradual capacity building and, in some cases, legal reforms in producer countries.¹⁹⁴ Implementation of the EUDR should take stock of these lessons learnt and, where possible, as one study suggests, build on existing data sets and organisational frameworks created under the FLEGT VPA impact monitoring.¹⁹⁵

While the EUDR can learn from the FLEGT experience, it also has the potential to overcome some of the limitations of the FLEGT. Indeed, the EUDR constitutes a broader commodity-specific framework which extends beyond timber to include additional commodities linked to deforestation. It also goes beyond the narrow issue of illegal logging to address deforestation more broadly, whether stemming from legal or illegal activities. Most notably, since it creates specific due diligence obligations directly binding on in-scope companies (which was not the case under the FLEGT), the EUDR reduces reliance on voluntary entrance into bilateral partnerships and entails sanctions for non-compliance.

As shown above, the EUDR overcomes, in several respects, the limitations of previous instruments and initiatives, and has a strong potential to contribute to decoupling trade in certain commodities and products from deforestation and forest degradation. However, the choice of the EU to delay its full implementation by 12 months follows concerns expressed by the business sector about the complexity of complying with the Regulation's obligations. Indeed, the due diligence requirements under the law are robust, and while the business sector, as mentioned above, appreciates the creation of a level playing field through uniform legal guidance, it is also concerned about the financial penalties and market exclusion that might result from non-compliance.¹⁹⁶ Reputational

¹⁸⁹ Rutt et al, 2018, p. 268.

¹⁹⁰ FAO-EU FLEGT Programme: Results, impacts and lessons learned from designing and implementing timber legality verification systems (2022), p. 3 <<https://openknowledge.fao.org/server/api/core/bitstreams/770ac693-f50a-4172-863f-f27a8e27ea93/content>>.

¹⁹¹ Luttrell and Fripp, 2015, pp. 9-12.

¹⁹² Rutt et al, 2018, p. 269.

¹⁹³ CIFOR, 'Collecting Evidence of FLEGT-VPA Impacts for Improved FLEGT Communication. Desk Review-Indonesia' (2020), p. 2 <https://www.cifor-icraf.org/publications/pdf_files/Reports/FLEGT-VPA_Indonesia.pdf>; Fern, 'Lessons learned from FLEGT for REDD' (2010), p. 7 <<https://www.fern.org/fileadmin/uploads/fern/Documents/Lessons%20from%20FLEGT%20to%20REDD.pdf>>.

¹⁹⁴ R Jonsson et al, 'Assessment of the EU Timber Regulation and FLEGT Action Plan' (EFI, 2015), pp 13-15 <https://efi.int/sites/default/files/files/publication-bank/2019/efi_fstp_1_2015.pdf>; A J van Bodegom et al, 'Strengthening Effective Forest Governance Monitoring Practice', 29 Forestry Policy and Institutions Working Paper (2012), p. 16 <<https://edepot.wur.nl/211949>>.

¹⁹⁵ Van Bodegom et al, 2012, p. 17.

¹⁹⁶ N Robinson, 'EUDR Disaster awaits as industry "underprepared"' (2024) <<https://www.foodnavigator.com/Article/2024/09/16/Delay-EU-food-industry-faces-crisis-as-EUDR-looms/>>.

damage is also a risk to businesses, since there are signals that public awareness about deforestation is growing.¹⁹⁷

Compliance with the EUDR may involve significant investments in technology, auditing processes, and staff training, as well on tight vigilance over the in-scope company's supply chain. For retailers, for instance, obtaining accurate data from suppliers, particularly in regions with limited transparency or governance, might be challenging. Moreover, the need to exclude non-compliant suppliers or shift to sustainable sourcing could disrupt established supply chains, with impacts on both the retailer and its business partners.

The EUDR requirements are feared to be particularly burdensome for SMEs. For instance, there is concern about whether smallholder farmers, which account for a large share of the production of the in-scope commodities (e.g., 40% of global palm oil production), will be able to adapt their processes in time, considering they are already falling behind on some of the existing certifications.¹⁹⁸ For SMEs the risk is not only to be excluded from high-value supply chains, but also to receive 'inadequate price premiums to cover the costs of complying with this regulation' and face an increased 'risk of land conflicts between large-scale and small-scale agriculture', which might push smallholders and indigenous peoples and local communities out of their lands.¹⁹⁹ In general, SMEs, which constitute '90% of operators that are importing products in scope of EUDR',²⁰⁰ might lack in-house expertise and access to technology to ensure the collection of geolocation and deforestation data. More than large companies, they might struggle to replace non-compliant suppliers due to limited sourcing options or cost implications. Business and civil society organizations stress that, while a delayed implementation of the EUDR will help in this respect, much more is needed to guide these small market players,²⁰¹ considering some of them are barely aware of the Regulation's existence.²⁰²

The EUDR itself contains some features that are meant to differentiate obligations and assist companies in complying. First of all, the EUDR's risk-based due diligence standard reduces the

¹⁹⁷ GlobeScan, 'EU Legislation Opinion Poll Measuring opinions on proposed EU legislation for deforestation-linked products' (2022) <https://www.fern.org/fileadmin/uploads/fern/Documents/2022/Meridian_Institute_EU_Legislation_Opinion_Poll_Report_310822_FINAL__1_.pdf>.

¹⁹⁸ K Melati, P Jintarith and H Lee, 'Finding a place for smallholder farmers in EU deforestation regulation' (SEI, 2024) <<https://www.sei.org/publications/smallholder-farmers-eu-deforestation/>>.

¹⁹⁹ E. Zhunusova et al, 'Potential impacts of the proposed EU regulation on deforestation-free supply chains on smallholders, indigenous peoples, and local communities in producer countries outside the EU',

2022 Forest Policy and Economics 143, <<https://www.sciencedirect.com/science/article/abs/pii/S1389934122001307>>.

²⁰⁰ European Commission, 'Obligations for SMEs operating under EUDR - Factsheet' <https://green-business.ec.europa.eu/deforestation-regulation-implementation/factsheet-smes_en>.

²⁰¹ Solidaridad, 'A longer phasing in period should be used to make sure the EUDR supports smallholders' (2024) <<https://www.solidaridadnetwork.org/news/a-longer-phasing-in-period-should-be-used-to-make-sure-the-eudr-supports-smallholders/>>.

²⁰² A Gabay, 'Smallholders offer mixed reactions to calls for delay in EU deforestation law' (Mongabay, 2024) <<https://news.mongabay.com/2024/11/smallholders-offer-mixed-reactions-to-calls-for-delay-in-eu-deforestation-law/>>.

burden on businesses sourcing from low-risk regions, while it requires more robust measures for high-risk areas.²⁰³ By the same proportionality approach, SMEs are subject to lighter compliance requirements compared to large companies, such as simpler record-keeping rather than full-scale supply chain traceability. SME operators, besides being exempt from certain requirements, such as the appointment of a compliance officer, do not need to exercise due diligence or submit a due diligence statement when it was already done by the operator that first put the relevant product on the market ('upstream operator').²⁰⁴ Also, they are not subjected to the annual reporting obligations of their due diligence system, which reduces the administrative burden they face.²⁰⁵ SME traders, which will also be subject to lighter checks by the competent authorities, are not subjected to the obligation to exercise due diligence or submit a due diligence statement, although they still need to collect relevant information regarding their suppliers (by contrast, non-SME traders must verify that due diligence has been carried out).²⁰⁶ The EUDR also recommends non-SME operators to support compliance from their suppliers, 'in particular smallholders, through capacity building and investments'.²⁰⁷ If consistently implemented by both the EU institutions and the Member States, the EUDR also provides further opportunities for stakeholder participation (civil society, private sector, local communities) through partnership and cooperation with producer countries, which should prioritize 'the development of integrated land use planning processes, relevant legislation of producer countries, multi-stakeholder processes, fiscal or commercial incentives and other pertinent tools'.²⁰⁸

In addition to this differentiated and gradual approach, the European Commission has published a guidance document,²⁰⁹ which clarifies the EUDR's key concept and tries to dispel some common misunderstandings. One such point concerns the compatibility of agroforestry and sustainable farming practices with the EUDR, which is ensured under the Regulation. The Commission clarifies that, since agroforestry systems, agricultural plantations and other environmentally friendly agricultural use do not fall under the FAO definition of 'forests', they are not captured by the EUDR either.²¹⁰ Further opportunities might stem from the EUDR's interplay with other relevant EU instruments, as explained further below.

Barriers	Leverages
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²⁰³ EUDR, article 13 ('Simplified due diligence').

²⁰⁴ EUDR, article 4.8.

²⁰⁵ Ibid., article 12.3.

²⁰⁶ For an overview of this differentiated approach, see: European Commission, 'Obligations for SMEs operating under EUDR - Factsheet'.

²⁰⁷ EUDR, article 11.1.

²⁰⁸ Ibid., article 30.3.

²⁰⁹ European Commission, Annex to the Communication to the Commission Approval of the content of a draft Commission - Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products, C(2024) 7027 final ('Guidance Document').

²¹⁰ European Commission, Guidance Document 2024, Section 11.

<p>Trade in soy, palm oil, cocoa, coffee, rubber, cattle and wood is linked to deforestation worldwide.</p>	<p>The EUDR aims at decoupling trade in these commodities in the EU market from deforestation, carbon emissions and excessive agricultural expansion, particularly in Global South countries.</p>
<p>Previous instruments had limited geographical and material scope. Some relied on voluntary partnerships.</p>	<p>EUDR creates due diligence obligations for a range of commodities and products placed on the EU market, regardless of their country of origin. Non-compliance can lead to sanctions. Its deforestation-free standard encompasses both legal and illegal deforestation.</p>
<p>Challenges for in-scope companies: Increased costs for monitoring and traceability. Adjustments in sourcing practices to exclude non-compliant producers. Risk of losing access to the EU market for non-compliant entities. Concerns for SMEs.</p>	<ul style="list-style-type: none"> • Deferred application to SMEs (now 2026). • No due diligence requirements for SMEs when they are downstream operators and the upstream operator has performed due diligence. • Lighter mitigation measures for all SME operators (e.g., no need to appoint a compliance officer); no reporting obligations. • SME traders are only obliged to collect relevant information regarding their suppliers • Guidance from the European Commission and industry groups to help businesses navigate compliance • Companies may invest in traceability technologies and partnerships with suppliers to ensure compliance • Agroforestry systems are not incompatible with the EUDR (they are not considered ‘forests’)
<p>EUDR indirectly affects farmers who produce relevant commodities, as they may need to provide information to downstream operators to help them comply with the due diligence requirements (e.g., need to document land use practices, compliance with environmental laws): fear of excessive costs, especially for SMEs.</p>	

Table 10: Barriers and leverage points of the EUDR.

4. Conclusion & directions for future research

This report served to explore the leverage points and barriers in existing legislation that impact the sustainability of the food and agricultural system. As was explained, law is often understood in an instrumental sense and, as Korhonen-Kurki et al describe, something that can “easily be adapted according to the political will and needs of a desired transformation”.²¹¹ Yet, as increasingly recognized in the literature, legal systems are complex and path-dependent systems, containing legal forces that both support and hinder sustainability transitions.²¹²

By analyzing relevant legal instruments, their implementation, and enforcement challenges, this study aimed to identify pathways to support the transition to a more sustainable food production system, providing an agenda-setting foundation for further research. Below, we have condensed the main routes for future research based on our findings per actor category and identified core topics.

Farmers (chapter 3.1)

Steering through Common Agricultural Policy (3.1.1)

- How can progress on national strategic plans (NSPs) be effectively monitored / enforced to ensure progress on sustainability commitments?
- What is the potential of further employing the agri-environmental scheme for meeting broader sustainability goals, e.g. in the fields of pesticides reduction and nitrates?
- How can monitoring and enforcement mechanisms be designed that promote compliance and ecological effectiveness, not just in agri-environmental schemes but for legislation more broadly?

Compartmentalized agri-environmental legislation (3.1.2)

- How can the new instruments of the Omgevingswet be leveraged to achieve integral approaches towards sustainability at a regional and national level?
- How does the national implementation of a KPI system relate to overarching EU obligations, what is legally (not) possible (yet), also with regard to ‘green KPIs’?

Competition in agriculture: the sustainability exemption clause (3.1.3)

- How can environmental outcomes be better quantified in order to enhance compliance assessments?
- How can the sustainability exemption clause under article 210 CMO Regulation be effectively leveraged to not just allow but also encourage farmers to go beyond legal requirements?

²¹¹ K Korhonen-Kurki and others, ‘Transformative Governance: Exploring Theory of Change and the Role of the Law’ (2025) 23 Earth System Governance 100230, 2.

²¹² Ibid.

Food manufacturers, processors, caterers and retailers (chapter 3.2)

Green Claims (3.2.1)

- What are trade-offs between claims regarding different aspects of food products and ways to prevent information fatigue?
- In what ways can small and medium-sized enterprises (SMEs) meet the stringent substantiation requirements without facing undue financial burdens, including support mechanisms?
- What are institutional challenges of the Green Claims Directive, in particular in relation to:
 - The effectiveness and efficiency of scientific substantiation processes for environmental claims.
 - The technical expertise of national bodies to handle complex environmental claims.
 - Linkages with existing labelling schemes under Green Claim Directive.

Packaging and packaging waste (3.2.2)

- How can we establish clear, universally accepted definitions and criteria for sustainability in food packaging, particularly in relation to recyclability, material sourcing, and environmental impact across the entire lifecycle?
- What are the legal and economic implications of the transition to sustainable packaging, including the cost-effectiveness of different strategies, potential consumer price increases, and the long-term financial benefits for both manufacturers and consumers?
- What are the challenges of applying EU packaging regulations to food packaging produced outside the EU, including with regard to potential trade tensions, and with attention for how non-EU producers can comply with sustainability standards?
- How can legal frameworks link in with the role of consumer education in encouraging correct disposal and recycling behavior, the effectiveness of environmental labeling, and how can this feed into strategies to promote public engagement with sustainable packaging initiatives?

Green public procurements in food (3.2.3)

- How are green public procurement rules applied in the Netherlands and what is the further potential of this for enabling sustainability transitions?
- What are ways to reconcile green public procurement criteria with the EU's complex public procurement rules, focusing on defining clear boundaries between environmental considerations and competition law to reduce legal uncertainties?
- How can green public procureent criteria integrate more comprehensive sustainability aspects beyond environmental impact, including health, nutrition, social justice, and fair labor practices?

- What is the potential impact of introducing binding minimum public procurement targets in EU law, and how could they overcome the current voluntary nature of green public procurement to encourage broader adoption?
- What are the resources, training, and support needed for public authorities to effectively implement GPP in national context, particularly in smaller jurisdictions or regions with limited procurement expertise?

Corporate sustainability due diligence and reporting (3.2.4 – 3.2.7)

- What would be effective guidance for large and small businesses for effective implementation of the EUDR, CSRD, and CSDDD (as applicable), which could entail assessing EU-level and national guidance, existing sectoral guidance, as well as the possible role of the International Responsible Business Conduct Agreements?
- Which steps are Dutch companies taking to comply with the CSDDD, the EUDR and the CSRD (as applicable)?
- How is the Netherlands transposing the CSDDD into Dutch law?
- Depending on the outcome of the current debate, what are the potential effects of the proposal for an EU 'omnibus' regulation aimed at optimizing reporting requirements?

To conclude, it is clear that the transition to a sustainable food system, and the role of law in this transition, remains a pressing topic within the Netherlands, the EU and beyond. The questions stipulated above can serve as a guide for future research in this field, advancing understanding of law's role and potential in either blocking or enabling sustainability transitions in the food system. These questions, although legal in nature, commonly also link to economic, social and environmental aspects. In this context, we emphasize the benefit of interdisciplinary collaboration for finding joint answers to the highlighted challenges. Finally, while we have specifically focused on two actor categories, namely 1) farmers and 2) food manufacturers, processors, caterers and retailers, for future research it would also be worthwhile to include a third category in future research, namely actors involved in the supply of agri-food inputs, including seeds, pesticides, fertilizers, and food packaging.