

EDITORIAL

EJRR Special Issue: The Future of Food Law after and Beyond the Farm to Fork Strategy

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Abstract

This Special Issue stems from some of the insights at the “Future of Food Law” Conference held at Wageningen University and Research (WUR) in 2023, prompting an examination of the Farm to Fork (F2F) Strategy’s achievements and shortcomings. With the von der Leyen Commission’s term concluding, the paper critically assesses key aspects of the F2F Strategy, laying the foundation for an in-depth discussion presented in six contributions. The exploration extends from US and EU perspectives to national considerations, moving even further and beyond the boundaries of the Strategy. It encompasses emerging views on food safety, fostering fair and sustainable agri-food production models, encouraging healthier and democratic food choices, and reevaluating decision-making distribution from EU to Member States in sustainability regulatory actions. This issue aims to probe how agri-food regulatory frameworks should adapt to current challenges, acknowledging new economic, social, and environmental expectations. As a frame to the six contributions, this paper addresses the substantial delay in implementing crucial food law interventions, with a focus on the legislative Framework for Sustainable Food Systems (SFSF). The paper concludes by outlining potential scenarios for the future of EU food law, emphasising the necessity for establishing a guiding principle of sustainability for food systems.

Keywords: food law; administrative law; European law; public policy; risk regulation; WTO law

I. Introduction

With the end of the von der Leyen Commission’s mandate approaching, it is time to take stock, reflecting on promises kept and forgotten in the agri-food sector. Among the six key ambitions outlined in the political agenda of the Commission for the period 2019–2024,¹ the EU Green Deal stands out prominently.² Through this overarching policy framework, designed to transition the EU into the world’s first climate-neutral continent by 2050, the ultimate commitment was to enshrine the climate-neutrality target into policy and legislation.

The EU Green Deal adopts a comprehensive and cross-sectoral strategy, wherein various policy domains collaborate to work towards the primary goal of net-zero emissions. This initiative encompasses policy and legal measures that span climate, environment, energy, transport, industry, agriculture and sustainable finance, recognising the strong interconnectedness of these areas. At the core of the EU Green Deal lies the

¹ Commission, “A Union that strives for more. My agenda for Europe” (Political Guidelines for the Next European Commission 2019–2024) (2019).

² Commission, “The European Green Deal” (Communication) COM(2019) 640 final (EU Green Deal).

Farm to Fork (F2F) Strategy,³ the EU policy 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”.⁴ The policy strives to develop food systems with a neutral or positive environmental impact, that contribute to climate change mitigation, reverse biodiversity loss, ensure food security, enhance nutrition and public health, preserve the affordability of food, generate fair economic returns, foster competitiveness, and promote fair trade.⁵ The F2F Communication is accompanied by an Action Plan (Annex)⁶ initially comprising 27 initiatives to be implemented between the beginning of 2021 and the end of 2023.⁷ However, it later expanded to 28, with the inclusion of the Proposal for a new Regulation on plants produced by certain new genomic techniques (NGTs).⁸ These initiatives encompass various policy and legal actions.

The “Future of Food Law” Conference held at Wageningen University and Research (WUR), the Netherlands, in 2023 served as a platform to conduct a preliminary assessment of the successes and limitations of the F2F Strategy, now at its final stage, and the role it plays (or should play) in the transition towards more sustainable food systems. This investigation laid the groundwork for the Special Issue. The contributions compiled in this issue provide valuable insights, expanding upon the outcomes of the conference and reflecting on international, EU and national dimensions of agri-food law both in the aftermath of and beyond the F2F Strategy.

This Special Issue emerged from the necessity to scrutinise the achievement of the promised goals and, most of all, explore potential solutions to address the legal voids and uncertainties resulting from the Commission’s inertia in the agri-food domain. Although it seems that the F2F Strategy has been currently put on hold, given the delay in delivering most of the proposed actions, the pursuit of a tangible sustainability transition in the agri-food sector is more pressing than ever.

1. F2F Strategy at a glance: what’s now?

The architecture of the F2F policy is founded on three vertical pillars centred on the agri-food chain concept, alongside a cross-cutting pillar emphasising the multi-dimensionality of sustainability in food systems.⁹ The Strategy advocates for a paradigm transition by prioritising the “building of a food chain that works for [1] consumers, [2] producers, [3] climate and the environment”.¹⁰ In particular, it first focuses on the development of a consumer-conscious food chain, aiming to enhance the health and nutritional attributes of food while preserving its affordability. Secondly, it seeks to benefit producers by increasing the incomes of primary producers and bolstering the EU’s competitiveness. Lastly, the policy is designed to contribute to environmental targets, including the reduction of the climate footprint and enhancement of animal welfare. Overall, the F2F

³ Commission, “A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system” (Communication) COM (2020) 381 final (F2F Strategy).

⁴ H Schebesta, *et al.*, “Tour de Table: Farm to Fork Law Update” (2022) 3 *EFFL* 201, 202.

⁵ *Supra*, note 3.

⁶ Commission, “Annex to Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system” (Communication) COM (2020) 381 final (Action Plan).

⁷ With the exception of Action n. 23 “Proposal for a sustainable food labelling framework to empower consumers to make sustainable food choices,” planned for 2024.

⁸ Commission, “Proposal for a new Regulation of the EU Parliament and of the Council on plants produced by certain new genomic techniques and their food and feed, and amending Regulation (EU) 2017/625” COM(2023) 411 final (NGT Proposal).

⁹ See F Venturi, “The Farm to Fork Strategy. A Comprehensive but Cautious Approach to “Multidimensional” Food Sustainability” (2021) 1 *Rivista quadrimestrale di Diritto dell’Ambiente* 70.

¹⁰ *Supra* note 3, p. 4.

Strategy fosters a shift from a focus on optimising inputs for maximum outputs to a holistic consideration of the interplay among various elements such as water, biodiversity, soil, crops, cultural differences, societal needs, and economic considerations.¹¹ The Action plan presents two overarching frameworks: a Contingency plan for ensuring food supply and food security,¹² presented in 2021, and a Proposal for a legislative Framework for Sustainable Food Systems (FSFS). Originally scheduled for publication by the end of 2023, its fate remains yet unknown.¹³ The other actions are distributed across four different domains: sustainable food production;¹⁴ sustainable food processing, wholesale, retail, hospitality and food services practices;¹⁵ sustainable food consumption;¹⁶ and food loss and waste reduction.¹⁷

At the core of the cross-cutting pillar of the F2F Strategy therefore lies the FSFS. The FSFS is conceived as a comprehensive legal framework aimed at fostering policy coherence, integrating sustainability into all food-related policies, and enhancing the resilience of food systems.¹⁸ Its role was envisioned as a *lex generalis* establishing overarching sustainability principles and objectives to guide upcoming and more sector-specific food legislation.¹⁹ Timely delivery of this sustainability framework was anticipated to mark the full realisation of the Strategy. However, as of now, these expectations remain unmet.

Notably, at the time of writing, other several key Farm to Fork actions remain pending. These include, for instance, the NGT Proposal,²⁰ expected in 2023 but not turned into a Regulation yet; the legal initiative for harmonised rules on mandatory front-of-pack nutrition labelling and the sustainable food labelling framework, scheduled for publication for 2022 and 2023 respectively, but which are yet to take the form of a proposal; and the Revision of the Sustainable Use of Pesticides legislation (SUR),²¹ scheduled for release in 2022. However, only a proposal for a new regulation was presented in 2023 and subsequently, the EU Commission announced its withdrawal in its proposed form at the beginning of 2024. On the contrary, the policy delivered on time on adopting recommendations to Member States addressing the nine specific objectives of the Common Agricultural Policy (CAP)^{22,23} and the three different dimensions of sustainability – environmental, social and economic –, before the draft CAP Strategic Plans were formally submitted.

In this context, we were presented with a great opportunity to reflect on key strategies for future-proofing the F2F Strategy, pondering the challenges that lie ahead. Drawing

¹¹ H Uzunov and E Marinov, “The way to Sustainability in European Agriculture: the EU Green Deal and the Farm to Fork strategy” Economic, Regional and Social Challenges in the Transition Towards a Green Economy – Conference Proceedings, Plovdiv, Bulgaria, September 2021/24, 140.

¹² Commission, “Contingency plan for ensuring food supply and food security in times of crisis” (Communication) COM (2021) 689 final (Contingency Plan).

¹³ H Schebesta, “How to Save the Farm to Fork Strategy: A Two-Phased Approach” (2023) 4 EFFL 231.

¹⁴ *Supra*, note 6, n. 3 to 12, under which the subsequent NGT Proposal can be included.

¹⁵ *Ibid.*, n. 13 to 19.

¹⁶ *Ibid.*, n. 20 to 25.

¹⁷ *Ibid.*, n. 26 and 27.

¹⁸ Commission, “Inception Impact Assessment – Sustainable food system framework initiative” (Report), 2021.

¹⁹ *Ibid.*

²⁰ *Supra*, n 8.

²¹ Commission, “Proposal for a new Regulation of the EU Parliament and of the Council on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115” COM(2022) 305 final (SUR Proposal).

²² Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing 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) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ [2021] L 453 (CAP Strategic Plans Regulation).

²³ Art 6, CAP Strategic Plans Regulation.

inspiration from this paradigm shift towards sustainability in agri-food legislation, – identified as the common foundation of this Special Issue – we delve into interconnected and essential themes. In particular, the issue covers emerging perspectives on food safety concerns, while also addressing the need of *cultivating* fairer and more sustainable agri-food production environments. Additionally, it explores avenues to promoting healthier (and more democratic) food consumption choices, addressing new challenges within the agricultural domain, and finally contemplating a (temporary) shift of decision-making back from EU institutions to the Member States, specifically concerning sustainability regulatory actions. Each aspect is contextualised within the dimensions either of the agri-food chain or the more holistic and broader concept of the “food systems”.

We, therefore, moved from the recurring traditional questions “Will the Farm to Fork Strategy deliver enough in terms of sustainability ambitions?” and “Will it deliver it on time?” to “What should we expect to happen now beyond and outside the boundaries of the Farm to Fork Strategy?”. The ultimate goal of this issue is, in fact, to explore how agri-food regulatory frameworks need to adapt to the current impasse to face new economic, social and environmental challenges and expectations.

2. Connecting the dots: a roadmap for the reader

The increasing importance of national and European regulations intended to ensure safety and security and protect health and the environment is an established trend in the EU framework. At the moment, this area of EU law represents a core part of the internal market *acquis* and makes the EU a regulatory model at the global level. The agri-food domain perfectly fits this picture, as one of the most regulated sectors, central to the internal market and with a prominent external dimension. In the food safety domain, the EU has developed many legal and policy instruments that are demonstrated to be functional to the primary aim of guaranteeing high protection of EU consumers’ health. Nonetheless, the legitimacy and independence of the EU and governmental actions have been questioned during the last decades.²⁴ In particular, regulating risk in food safety saw parallel institutional challenges for the EU governance, for instance, in the setting up of the European Food Safety Authority (EFSA) and the creation of the Rapid Alert System for Food and Feed (RASFF). However, the abovementioned changes due to the paradigm shift towards sustainability will require new strategies and the capacity to shape risk regulation approaches to a new scenario.

The six contributions to the Special Issue offer diverse insights, spanning different perspectives on food law, addressing the regulatory responses to a different set of contestations and uncertainties. In particular, the chosen order progresses from core issues related to democracy and participation in food safety and health regulation, to food sustainability in agriculture and from a US to an EU sectorial and Member States perspective, to encapsulate a holistic understanding of food law and its regulatory responses to evolving societal demands and uncertainties concerning the overall sustainability of food systems.

While the preface and the first article deeply vary in terms of perspective (EU vs US) and proposed solutions (inclusion of citizens in food policy-making vs right of action), they both argue for increasing consumer involvement and thus democratising the food system.

²⁴ For details, see M Dreyer and O Renn, “EFSA Stakeholder and Public Involvement Policy and Practice: A Risk Governance Perspective” in A Alemanno and S Gabbi (eds), *Foundations of EU Food Law and Policy Ten Years of the European Food Safety Authority* (Ashgate 2014) 173; E Vos, A Volpato, G Bellenghi, “Independence and transparency policies of the European Food Safety Authority (EFSA)” (2023) Publication for the Committee on Environment, Public Health and Food Safety (ENVI), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, 13–38.

The preface (Fortin, “*Democratizing Food Safety: Why Government Regulation and Tort Law Fail to Provide the Protection Consumers Desire and Why a Citizen Right of Action is Needed*”) starts with the assumption of market failure for food safety in the US context. Then, it highlights the limits of tort law in compensating the victims of unsafe food and those of government regulators. The proposed innovative solution is to give access to the courts, as an effective measure for US citizens to participate directly in food safety decisions. Therefore, a private cause of action in national food safety is suggested. The first contribution (Delhomme, “*Beyond consumer empowerment: acceptability of food lifestyle changes in the EU*”) examines, in the context of the transformation of the EU food system, how consumers’ empowerment will not be sufficient to accept this green transition. The article addresses concerns about changes in consumption habits, and societal impacts, and states the need to define new ways to integrate citizens in the making of food policy, through participation and the empowerment of local communities.

Progressing from food safety and health protection to sustainability, and at the core of the EU-centric segment of this analysis, the following three contributions zoom in on different sustainability components in agriculture in the broader frame of the F2F Strategy. The second and third contributions focus on the Common Agricultural Policy (CAP), while the fourth on Biological Control Agents (BCAs) in primary production, providing reflections on how to better reconcile legal approaches to sustainability with agricultural and food dimensions. In particular, the second contribution (Canfora and Leccese, “*Social Sustainability as the Milestone for a Sustainable Food System: the Essential Role of People Working in Agriculture*”) focuses on a social approach to agricultural law and policy, emphasising fair revenue for farmers, workers’ rights protection, and rural areas development, all essential aspects for ethical and safe food production. These elements are deemed essential to building a “social sustainability model” for the agri-food chain. The third contribution (Mezzacapo, “*Bridging the Gap: Assessing Member States’ Implementation of Farm to Farm-to-Fork Targets within the 2023–2027 Common Agricultural Policy*”) evaluates Member States’ implementation of F2F targets within the CAP National Strategic Plans. The article aims to assess the consistency and coherence between the CAP 2023–2027 and the F2F Strategy in achieving social, economic, and environmental objectives. Moving from a general to a specific agriculture-related perspective, the fourth contribution (Paganizza, “*Biocontrol agents: risks and opportunities from farm to fork*”) presents us with the dilemma of introducing innovative and potentially more sustainable solutions for pest and pathogen control, concurrently acknowledging potential food safety risks, all within the constraints of an outdated regulatory framework. In particular, this article discusses the fragmented EU regulatory framework for Biological Control Agents (BCAs) in primary production and subsequent food chain stages. It highlights opportunities and challenges in this area of law and provides detailed suggestions to move forward.

Finally, transitioning from an EU to a national context, given the stalemate on the FSFS Proposal, the last contribution (Schebesta, “*The Member States in the EU Food System: national regulatory options for sustainable food offer, food consumption and food environments*”) explores the types of legal measures Member States could take for making domestic food systems more sustainable, exploring their legal viability. The article further argues that, currently, Member States are to some extent wary or afraid of taking measures at national level, fearing that these measures might infringe EU law.

II. Conclusion

As shown in the previous sections and considering the great variety of contributions, the Special Issue timing is quite crucial, especially given the recent adoption of the 2024 Work

Programme by the European Commission.²⁵ As mentioned in the introduction, most of the very much awaited reforms concerning the implementation of the Green Deal objectives first, and consequently the Farm to Fork action plan, were disregarded. When the Conference took place, a sentiment of hope and resignation was widespread among the scholars. There was hope for a potential surprise despite rumors about the fate of the FSFS and resignation considering the overall delay in legislative implementations of most of the F2F actions.

The work programme confirmed that there is not going to be a definition of “sustainable food systems”, at least for the current year and nothing specific is indicated for the ones to come. The Commission Work Programme is structured as a discursive and explanatory document, followed by Annexes detailing new initiatives (Annex 1), significant proposals and initiatives that need an evaluation and fitness check (Annex II), pending proposals (Annex III) and withdrawals (Annex IV). It seems that the initiatives outlined in the work programme aim to deliver on previous commitments or address “emerging challenges”.²⁶ Consequently, it becomes increasingly difficult to comprehend why the legislative framework for sustainable food systems is not mentioned among the legislative interventions expected in 2024 and is absent from all the Annexes.

The Commission addresses “challenges and opportunities”, mentioning, among others, the climate and biodiversity crisis while pointing out that compared to the beginning of the mandate the world has changed.²⁷ It is reaffirmed that the EU Green Deal objectives are an important part of the Commission’s work and the commitment to the 2030 Agenda for Sustainable Development remains unchanged.²⁸

Regarding food and agriculture, the “Commission will launch a strategic dialogue on the future of agriculture in the EU, further engaging with farmers, stakeholders in the food chain and citizens, working together on the transition towards sustainable food systems.”²⁹ While referring to the launch of the dialogue and in particular to the need to “foster sustainable farming and food security,”³⁰ with a reference to the F2F Strategy, it is stated that is “imperative to swiftly reach agreement on the remaining proposals,”³¹ explicitly referring to the “proposals on plants obtained by certain new genomic techniques and the sustainable use of plant protection products.”³² Attempting to find a ratio to justify the exclusion of the definition of food sustainable systems proves therefore to be quite challenging.

The contributions to the special issue are key to starting a reflection to provide an answer to the introductory question. “What should we expect to happen now beyond and outside the boundaries of the Farm to Fork Strategy?”.

As also reaffirmed by most of the contributions, the F2F Strategy has succeeded in generating discussions surrounding “food systems” and the re-conceptualisation of sustainability within this context. A new strong emphasis has been placed on

²⁵ Commission, “Delivering today and preparing for tomorrow” COM(2023) 638 final 17 October 2023.

²⁶ COM(2023) 638 final, p 1.

²⁷ *Ibid.* The Communication refers to “the climate and biodiversity crises to the digital revolution and artificial intelligence; from Russia’s brutal invasion of Ukraine to the ensuing energy price and cost of living crises; from migration to ensuring economic growth and competitiveness.”

²⁸ COM(2023) 638 final, p 4.

²⁹ COM(2023) 638 final, p 8.

³⁰ *Ibid.*

³¹ *Ibid.*

³² The Proposal on plants obtained by certain new genomic techniques and their food and feed COM(2023)411 final 2023/0226 (COD) 05.07.2023, and the Proposal the sustainable use of plant protection products COM(2022)305 final 2022/0196 (COD) 22.06.2022. It is also worth mentioning that the communication also refers to bringing to law the nature restoration proposal (COM(2022)304 final 2022/0195 (COD) 22.06.2022) and the ecodesign requirements for sustainable products (COM(2022)142 final 2022/0095 (COD) 30.03.2022). COM(2023) 638 final, 8 and Annex III.

incorporating the social dimension into the ongoing discourse, which has traditionally been predominantly focused on environmental and economic aspects. What has not been fully delivered is the implementation of the majority of the announced legal interventions. Nevertheless, this has provided food for thought for scholars, the public and the private sector, encouraging them to reflect on what the current main challenges are and how to address them.

It seems there could be multiple answers to what expect in relation to the different topics addressed. From a regulatory standpoint, accurately predicting the most likely scenario for this intricate shift toward sustainability poses a considerable challenge. While, on the one hand, the prospect of imminently introducing the FSFS, as a horizontal regulation establishing fundamental principles, obligations, and rules related to food sustainability, seems remote; on the other hand, maintaining the *status quo* is not deemed desirable. In such a scenario, it could be plausible to predict the integration of food sustainability requirements into specific sectorial legislation, posing the risk of generating fragmentation in agri-food regulation across the EU. This would result in a dichotomy: a centralised framework for food safety regulation, governed by the General Food Law Regulation (GFLR),³³ counterposed to a decentralised set of legal criteria for food sustainability specific to sectorial legislation. Another reasonable option that emerges is the definition of a principle of sustainability in the food systems from an EU perspective. A new principle would ensure more flexibility in interpreting current legislation – a positive asset, particularly when considering the potential drawbacks of unnecessary and confusing legislative abundance, as is the case of the food sector. The principle could help adjust the current legislative frameworks instead of needing constant interventions. In a historic moment such as the one we are currently in – and as emerged from the contributions of this special issue – where technological, digital, and innovation-driven changes are pervasive, it would be ideal to have a reference guiding principle that would help to rapidly adapt legislation to emerging practices that are not yet regulated. Moreover, it would serve the purpose of a lighthouse at the international level, achieving one of the very first purposes declared by the Commission when presenting the Green Deal, which is making the EU the global leader in the transition towards sustainability.

Competing interests. The authors declare none.

³³ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety OJ [2020] L 31 [Hereinafter General Food Law Regulation (GFLR)].