

Is Edeka deceiving consumers with its sustainability seal?

Q&A on the legal background

What is the case about?

The European Center for Constitutional and Human Rights (ECCHR) and the consumer organization foodwatch have discovered that the retail chain Edeka is misleading consumers with a label for sustainable palm oil. On the one hand, the seal of the Roundtable on Sustainable Palm Oil (RSPO) does not live up to what it claims because, for example, it permits the use of highly hazardous pesticides. On the other hand, palm oil cultivation for an Edeka manufacturer leads systematically to human rights violations and environmental pollution in Guatemala. The company NaturAceites supplies the palm oil from the plantations to the Walter Rau GmbH factory, which also produces store-brand products for Edeka.

Research has revealed violations of labor rights on the palm oil plantations: for example, wages are insufficient to cover living expenses. The company suppresses protests against such conditions and prevents workers from forming trade unions. In addition, the neighboring communities lack clean drinking water because it is contaminated by pesticides. Violent expulsions are also commonplace, as palm oil production takes place on plantations that the indigenous population claims as their traditional land.

Those affected are thus demanding that Edeka ensure that such violations are prevented in its supply chain. To this end, they filed a complaint under the German Supply Chain Act (LkSG). In addition, ECCHR and foodwatch issued a warning under the Unfair Competition Act (UWG) demanding that the company cease and desist from misleading advertising and remove the RSPO label from the products in question.

What do we aim to achieve with the complaint and the warning?

The cultivation and production of palm oil often harms both people and the environment. We have found examples of this in Guatemala and researched the supply chain that is connected to Germany. It is highly likely that Edeka products contain palm oil from the company NaturAceites. Despite this, the retail chain advertises these products with the RSPO logo for certified sustainable palm oil.

With our legal interventions, we aim to achieve the following:

1. The sustainable production of palm oil: for example, human rights and environmental protection must be respected on the plantations in Guatemala. Edeka and its indirect supplier must commit to this in accordance with the Supply Chain Due Diligence Act (LkSG).
2. No misleading advertising with the RSPO logo: Edeka must stop faking sustainability with questionable seals. We want to achieve this by issuing a warning under the Unfair Competition Act (UWG).

Unfortunately, the Edeka case is no exception to the rule. A number of companies use palm oil that is produced in environmentally harmful ways and in violation of human rights – in spite of sustainability labels. With our action against Edeka, we aim to fundamentally change the market: misleading sustainability seals must be prohibited and human rights must be respected on the ground.

What is the RSPO?

A palm tree with long leaves is emblazoned on products, with the slogan "contains certified sustainable palm oil" next to it. This is the logo of the RSPO, the "Roundtable on Sustainable Palm Oil."

It suggests that the palm oil in the product involves no harm to either people or the environment. Unfortunately, this remains no more than an empty promise: many reports show that catastrophic conditions prevail on the plantations. The RSPO does not appear to solve the problems within palm oil production.

It is therefore hardly surprising that the logo is backed by a business consortium. Even though the WWF initiated its establishment, roughly 97 percent of its members earn money from palm oil, and merely just under 3 percent of its members are nongovernmental organizations. At 25 percent, these NGOs have more voting power than corresponds to their numbers. However, 25 percent is nowhere near enough to push through decisions that run counter to the interests of profit.

ECCHR, foodwatch and our partners in Guatemala do not consider the RSPO logo to be trustworthy. It cannot replace laws for better palm oil production.

What does an RSPO certification signify?



The RSPO seal is supposed to signify, among other things, that on the plantations, minimum wages are paid and that labor rights are guaranteed. It also claims to certify that, after 2018, forests would not be cleared to establish palm oil plantations, and after 2005, rainforests particularly worthy of protection would not be cleared. The seal also claims that land rights of the indigenous population are to be protected.

These commitments are monitored by certifiers. They are supposed to speak to workers on the plantations, monitor deforestation and verify land ownership. However, this is not conducted adequately, as even an internal RSPO draft resolution shows. It states that violations are not reported. In a 2018 study, when external inspectors observed plantations, they reported twice as many violations. The RSPO certification is therefore not credible.

One of the reasons for this is the manner in which certifiers are paid, which invites corruption. The audited companies pay the certifiers directly and can therefore also choose between different certifiers. This creates an incentive for certifiers to express as little criticism as possible. Thus, the failure lies in the system.

What is there to criticize about the RSPO certificate?

The RSPO standard fails on several levels. On the one hand, the requirements for plantations are not adhered to, which leads to human rights violations and environmental destruction. On the other hand, the standards are far too lax. We do not consider a voluntary and untrustworthy seal to be effective. Instead, stronger laws are needed to protect human and environmental rights, as well as to prevent greenwashing.

Poor enforcement: Our research, and that of many others, shows that catastrophic conditions prevail on a large number of RSPO plantations. Human rights are trampled flagrantly, as workers are inadequately paid and indigenous people are driven off their land. Plantations also damage the environment: they frequently consist of industrial monocultures where dangerous pesticides are employed.

Insufficient standards: Even on paper, the RSPO standards are inadequate. For example, highly hazardous pesticides may be used, which pose risks to people and the environment. An additional problem is the immense deforestation that palm oil plantations entail. Despite this, the destruction of forests was permitted for RSPO-areas until 2018.

One of the reasons for this clearly lies in the nature of the RSPO system: it is a business consortium, where palm oil producers and manufacturers can decide for themselves on such lax rules.

Better laws: This is why politicians in Germany and the EU must intervene: inadequate company labels need to be replaced by effective laws.

What role does the WWF play?

At 115 million euros, WWF Germany has the largest annual revenue of any environmental organization in Germany. The WWF receives a substantial proportion of this through corporate donations and partnerships. The most important partnership even has a designated position in the WWF organization plan: the WWF-Edeka Cooperation. The Edeka Group and the environmental organization have been in a "Partnership for Sustainability" for 15 years. For consumers, the WWF panda is emblazoned on Edeka store-brand products as a symbol of quality-assurance.

There is no panda on the palm oil products but, rather, a joint statement: "Edeka and the WWF are committed to ensuring that palm oil is produced more sustainably." The RSPO logo appears next to it. The RSPO was established 20 years ago by the WWF, together with large companies and associations. A WWF representative sits on the "Board of Governors," the highest executive committee after the General Assembly.

For foodwatch and ECCHR, the question thus arises as to whether this joint advertising is a form of greenwashing or whether Edeka is actually making significant improvements. In this case, we consider the advertising to be misleading because the RSPO logo is inadequate to the task of guaranteeing sustainability. In addition, manufacturers of Edeka's store-brand products use palm oil from plantations where human rights and environmental violations have been identified.

Who are the complainants?

Affected people from Guatemala are leading the complaint. They live in the two indigenous communities of Palestina Chinebal and Chapín Abajo in the district of El Estor (Department of Izabal). The communities are represented by their

traditional community leaders, but are also lodging the complaint in their own name.

For security reasons, some of the complainants have chosen to remain anonymous, as trade unionists and community members who demonstrated in the past have already endured rights violations and repression. Three traditional community leaders from Chapín Abajo decided to lodge a public complaint. They have already been threatened with arrest warrants, bounties and public defamation for their involvement in previous protests and have had to rely upon protection by their communities for some time. They are supported by ECCHR and foodwatch.

What are the affected communities in Guatemala demanding?

The communities adjacent to the NaturAceites plantations endure various human rights and labor protection violations, which they are opposing. For example, the palm oil plantations are located on indigenous communal land. Those affected are thus demanding the recognition of their claim to the land, as well as its protection. The appropriate participation of those affected is central to land rights settlement proceedings. They are only opposing the company in areas where their land rights are disregarded.

Many of those affected also report violations of labor rights and the right to free association. They are therefore demanding that their labor rights be protected, that they receive appropriate wages for the work they perform and that they can organize themselves into unions without fear of repression or dismissal. Pesticides are also used on the plantations that pollute the drinking water. Therefore, access to clean drinking water is an additional demand.

They are also demanding that the misleading RSPO label for sustainability no longer be used. They rely on critical consumers who can recognize whether Edeka products containing palm oil are associated with human rights violations and environmental pollution. The RSPO seal obscures this and inhibits the transparency that is necessary to enable consumers to make an informed decision.

How can companies take action against the alleged abuses in their supply chains?

What companies can – or really must – do is primarily regulated by the German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz – LkSG). Here, a distinction must be made as to whether the grievances pertain to the company's own business operations or, rather, to those of a direct supplier or, as in the case of palm oil suppliers from Guatemala, an indirect supplier. What can be expected of companies also depends on how much influence the German

company can exert on improving the abusive circumstances. Of course, more can be expected from a company when it comes to its own business practices.

However, German companies are also responsible for grievances more distant from their direct operations. In the case of an indirect supplier, the company is required to develop a plan for how to remedy grievances, in which it formulates measures for the direct supplier that the latter can then use to influence its business partners. The company can also ask the direct supplier to place it in contact with the indirect supplier.

It is not sufficient to rely solely on inspections and certification by private third parties – especially not when, as in the case of the RSPO, there are justified doubts as to their validity and reliability due to inadequate standards.

Possible measures for suppliers include training, changes to supply contracts and underlying codes of conduct, discussions with affected individuals and communities, and negotiations concerning who will fund all these measures. In all of this, the company should involve complainants and affected people and prioritize their perspectives in addressing grievances.

Can the Supply Chain Act (LkSG) change the situation?

This depends very much on the company's willingness to introduce changes and – in the event that they are unwilling – on the Federal Office for Export Control (BAFA), which monitors the implementation of the law and can require companies to take certain measures.

In principle, the declared aim of the LkSG is to improve the legal position of those affected by abuses in the supply chain. Adapting the policies and practices of (in)direct suppliers and, as a result, preventing violations of the law can and should lead to an improvement in the situation on the ground. This individual case also highlights weaknesses in the LkSG. For example, the catalog of protected legal positions is inadequate, as the collective land rights of indigenous peoples are not explicitly protected by the LkSG, even though they are adversely impacted by agricultural activities on a regular basis.

What is the legal basis for the complaint and the UWG warning?

The complaint against EDEKA is made under Section 9 (1) LkSG, according to which persons who wish to complain about grievances with indirect suppliers can take recourse to an internal complaints mechanism that is to be established by the companies. This is possible in the event that their complaint pertains to human rights risks as defined by Section 2 (2) LkSG. A human rights risk exists, for

example, if the right to unionize or other labor rights are threatened. The unlawful seizure of land is also prohibited if its use ensures a person's livelihood.

If the information provided by the complainants demonstrates that the company exhibits factual indications of a breach of the above obligations, it is required under Section 9 (3) to develop and implement a plan to prevent, minimize and put an end to the abuses.

The warning against the Edeka retailer is based on the Unfair Competition Act (UWG). In particular, the retailer is accused of violating various provisions of the Unfair Competition Act by using the RSPO seal on certain products and thus suggesting that the palm oil used is sustainably produced. On the one hand, the retailer is accused of acting unfairly towards consumers on the basis of Sections 3, 5a (1), (2) and (3) UWG, as not enough information is provided to consumers. Such information, however, is necessary in order to reach an informed business decision and not be misled into making a decision that they would not otherwise have made, due to lack of information. In addition, the warning letter pursuant to §§ 5 (1), (2) asserts that the use of the RSPO seal is based on false or otherwise misleading information, as the claim that the palm oil used is sustainably produced does not actually obtain.

Why is the case relevant?

The RSPO seal has been criticized for years for not guaranteeing credible certification and thus deceiving consumers. The UWG warning now gives this criticism a legal framework and takes it to a new level. The aim is to prevent the use of the deceptive RSPO seal.

This is an emblematic case for the implementation of the German LkSG. As one of the first company-internal complaints under the LkSG, the case illustrates the hurdles faced by those affected when demonstrating actual indications of violations with regard to indirect suppliers. The emergent complex of socio-cultural land conflicts and disregard for indigenous land rights in agricultural activities for consumer goods sold in this country provides an opportunity to clarify some open legal questions that are relevant beyond this specific case. The extensive and also misleading use of labels and audits to implement corporate due diligence obligations highlights a central issue in the implementation of the LkSG. At best, such audits function as a building block of corporate due diligence measures, but they can never replace them. At the same time, certification companies themselves must also conduct their own work using human rights due diligence. Negligent or fake certifications cannot be allowed to conceal abuses.

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



Palm oil is the most widely used vegetable oil in the world and is contained in food products from the Edeka retail chain. The poor working conditions and negative environmental impacts of palm oil production have been widely known for years. German companies not only benefit from the disregard of land rights and lax enforcement of occupational health and safety, but also contribute directly to the exploitation of workers and environmental pollution by failing to implement their due diligence obligations and merely referring to meaningless labels.

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