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Working document in view of preparation of EU guidelines on food donation – draft for presentation to the EU Platform on Food Losses and Food Waste - 29 November 2016

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1. Introduction

1.1. Background

In the EU, ¼ of the population – 122 million people – are at risk of poverty or social exclusion and among them 55 million are not able to afford a quality meal every second day.¹ At the same time, it is estimated that around 88 million tonnes of food waste are generated annually in the EU with associated costs estimated at 143 billion euros.²

In addition to its important economic and societal impact, food waste places undue pressure on finite natural resources and on the environment. According to the Food and Agriculture Organisation of the United Nations (FAO), approximately one-third of all food produced in the world is lost or wasted.³ Food that is harvested but ultimately lost or wasted consumes about one-quarter of all water used by agriculture each year⁴ and requires cropland area the size of China.⁵ Food waste generates about 8% of global greenhouse gas emissions annually.⁶

The primary focus of food waste prevention should be to act at source by limiting the generation of surplus food at each stage in the food supply chain (i.e. production, distribution and consumption). However, when food surpluses occur, the best destination, which ensures the highest value use of edible food resources, is to redistribute these for human consumption.

Food donation not only supports the fight against food poverty but can be an effective lever in reducing the amount of surplus food put to industrial uses or sent for waste treatment and ultimately to landfill. However, even though redistribution of food surplus is a growing phenomenon and food manufacturers and retailers would be willing to donate their surplus to food banks and charities, the amount of food redistributed still represents a small fraction of the overall edible surplus food available in the EU. For instance, in 2015, members of the European Federation of Food Banks (FEBA) distributed 532 000 tons of food to 5,7 million

¹ Eurostat, October 2015

² Estimates of European food waste levels, FUSIONS (March 2016) <http://www.eu-fusions.org/phocadownload/Publications/Estimates%20of%20European%20food%20waste%20levels.pdf>

³ FAO (Food and Agriculture Organisation of the United Nations). 2011. *Global Food Losses and Food Waste – Extent, Causes and Prevention*. Rome: UN FAO.

⁴ Kummu, M., H. de Moel, M. Porkka, S. Siebert, O. Varis, and P.J. Ward. 2012. "Lost Food, Wasted Resources: Global Food Supply Chain Losses and Their Impacts on Freshwater, Cropland and Fertilizer Use." *Science of the Total Environment* 438: 477-489.

⁵ FAO. 2013. *Food Wastage Footprint & Climate Change*. Rome: UN FAO.

⁶ FAO. 2015. *Food Wastage Footprint & Climate Change*. Rome: UN FAO.

people,⁷ which represents only a small fraction of the estimated volume of food waste generated annually in the EU.

Member State (MS) and stakeholders have identified legal and operational barriers, for donors and receivers, to the redistribution of safe, edible food in the EU.⁸ The Action Plan proposed by the Commission to promote a Circular Economy⁹ therefore requires the Commission *inter alia* to clarify EU legislation related to food in order to facilitate food donation.

1.2. Purpose

This guidance aims to clarify relevant provisions in EU legislation and help to lift barriers to food redistribution within the current EU regulatory framework. More specifically, the guidelines will seek to:

- facilitate compliance of food surplus providers and recipients with the requirements laid down in the EU regulatory framework (e.g. food safety, food hygiene, traceability, liability, VAT, etc...);
- promote common interpretation by regulatory authorities in the EU Member States of EU rules applying to the redistribution of food surplus.

The EU guidelines on food donation will necessarily focus on those issues which need to be addressed at EU level, and hence seek to complement but not duplicate those existing in the EU MS. Guidelines developed at national and/or sectorial levels jointly by redistribution partners and competent authorities (at national and/or regional levels) play an important role in ensuring food safety, traceability and clarifying the roles and responsibilities of various actors.¹⁰ EU-wide sectorial guidelines¹¹ can also support food redistribution efforts. The Commission therefore recommends that relevant rules and/or guidelines on food donation are developed at national level so as to clarify for all actors the rules and operating procedures existing at national level as well as support best practice. In this regard, the EU

⁷ European Federation of Food Banks (FEBA) <http://www.eurofoodbank.eu/>. In addition, the Tafel (German "food banks" which are not member of FEBA), distribute some 220.000T of food annually to approximately 1.5 million people.

⁸ documented for instance in *Comparative study on EU Member States' legislation and practices on food donations* (EESC, 2014); *Counting the Cost of Food Waste: EU food waste prevention* (UK House of Lords, 2013-14); *Review of EU legislation and policies with implications on food waste* (FUSIONS, 2015); *Food redistribution in the Nordic Region* (Nordic Council of Ministers, TemaNord 2014-2016); as well as Commission meetings with and individual contributions received from national competent authorities and stakeholders (see http://ec.europa.eu/food/safety/food_waste/eu_actions/index_en.htm).

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. [*Closing the loop - an EU action plan for the Circular Economy*](#). COM(2015) 614 final

¹⁰ Food redistribution in the Nordic Region, phase II: identification of best practice models for enhanced food redistribution (Nordic Council of Ministers, TemaNord, 2016).

¹¹ For instance, "Every Meal Matters – Food donation guidelines", FoodDrinkEurope/EuroCommerce/European Federation of Food Banks – pending endorsement of the European Commission's Standing Committee on Plants, Animals, Food and Feed.

guidelines on food donation adopted by the European Commission could serve as a reference for Member States to take into account when elaborating national guidance.

In order to facilitate sharing of information on national food donation practices, the Commission publishes guidelines existing in the EU MS on its "food waste" website at: http://ec.europa.eu/food/safety/food_waste/library/index_en.htm. Where national and EU-wide sectorial guides of good practice related to food donation are developed in the context of EU rules on food hygiene¹² and notified to the European Commission, these are also made available in an online register.¹³

2. Scope

2.1. What is food surplus?

Food surplus may arise at any stage of the food production and distribution chain for a variety of reasons. Foods which do not meet manufacturer and/or customer specifications (e.g. variations in product colour, size, shape...) as well as production and labelling errors can generate surplus in the manufacturing sector for instance. Difficulties in managing supply and demand can lead to over-ordering and/or cancelled orders. Issues relating to date marking, such as insufficient product life remaining on delivery or national rules preventing redistribution of foods past the "best before" date, may also prevent foods from being sold and distributed through the usual retail channels.

Food surplus may consist of finished food products, partly formulated product or food ingredients that are fit for human consumption and compliant with all food safety requirements¹⁴, as specified by EU rules on food safety and food information to consumers as well as relevant national rules.

Redistribution of food surplus and engagement in food donation activities may therefore be carried out by food business operators at each stage of the food supply chain, that is: primary production, food processing and manufacturing, retail and other distribution, catering and hospitality sectors. Industry may donate surplus food through redistribution organisations (such as food banks) and other charity organisations or directly to consumers themselves (e.g. employees).

¹² Regulation 853/2004, Article 8 (para 3);

¹³ http://ec.europa.eu/food/safety/docs/biosafety_food-hygiene_legis_guidance_good-practice_reg-nat.pdf

¹⁴ UK WRAP has provided guidance on what constitutes food surplus suitable for redistribution as part of its *Framework for Effective Redistribution Partnerships*. (WRAP, 2016)
http://www.wrap.org.uk/sites/files/wrap/Redistribution%20Framework%20Version%201.0_0.pdf

2.2. Who are the actors?

The EU guidelines on food donation cover actors involved at each stage of the food supply chain, be they donors or receivers.

The surplus food redistribution network in the EU is complex, involving different types of actors and operating processes. "Receiver" organisations involved in the redistribution of surplus food can be classified either as "front-" or "back-line" organisations, with some fulfilling both functions¹⁵:

- "Back-line" organisations recover donated food from actors in the food supply chain which they transport, store and redistribute to a network of affiliated and qualified charitable organisations including charities, social restaurants, social enterprises, etc...
- "Front-line" organisations receive donated food from "back-line" organisations and/or directly from actors in the food supply chain. They, in turn, provide this food to their beneficiaries in various forms (e.g. food parcels, soup kitchens, meals served in social restaurants/café...); some may also sell food products to people in need at a subsidised price.

In many Member States, "back-line" organisations are called "food banks"; however, in some MS (e.g. NL, EE, DE), "food banks" redistribute food not only to other organisations but also provide food directly to end beneficiaries. Furthermore, the activities of both the "front-" and "back-line" organisations may vary in the Member States: some limit their work to storage, transport and distribution of food; others process and prepare food and/or meals which are provided to the end user.

This document designates "back-line" organisations as "redistribution organisations" (ROs) and "front-line" as "charity organisations" (COs).

These guidelines address the specific responsibilities and obligations of food business operators in the redistribution of surplus food. The General Food Law (Regulation (EC) No 178/2002) does not apply to primary production for private domestic use and the domestic preparation, handling or storage of food for private domestic consumption. It therefore follows that private persons who provide food on an *ad hoc* basis at community or other charity events are excluded from obligations relating to the General Food Law as are charity organisations which occasionally receive food from private donors.

Furthermore, EU rules on food hygiene and food information only apply to undertakings, the concept of which implies a certain continuity of activities and a certain degree of organisation. The scope of the EU guidelines on food donation therefore excludes

¹⁵ Classification proposed in food donation guidelines elaborated by FoodDrinkEurope, EuroCommerce and the European Federation of Food Banks, *Every Meal Matters*, June 2016, p. 16.

operations such as the occasional handling, preparation, storage and serving of food by private persons at events such as church, school or village fairs. Additional guidance in this area is provided in section 3.8 of the "Guidance document on the implementation of certain provisions of Regulation (EC) No 853/2004 on the hygiene of foodstuffs".¹⁶ National competent authorities may provide further guidance in order to clarify whether community and charity food supply requires registration under the food hygiene rules.¹⁷

3. Food redistribution: roles and responsibilities of actors

The redistribution of surplus food is covered by the General Food Law.¹⁸ Operations related to the supply of food, whether for profit or not, are clearly considered as "placing on the market" of food:

"placing on the market" means the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves (Article 3.8. Definitions).

Organisations which receive food surplus – be they redistribution (ROs) or charity organisations (COs) – are to be considered as food business operators under the General Food Law.

"food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food.

"food business operator" means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.

The General Food Law confers primary responsibility for compliance with food law on food business operators at all stages of production, processing and distribution within the businesses (or activity in the food supply chain) under their control.

Article 17(1) of Regulation (EC) 178/2002 states that: "Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.

Examples of obligations arising from Article 17(1) for organisations which handle and redistribute food surplus (ROs and COs) are, for instance, the need to ensure the proper storage of refrigerated foods to maintain the cold chain, as required by EU rules on food

¹⁶ https://ec.europa.eu/food/sites/food/files/safety/docs/biosafety_fh_legis_guidance_reg-2004-852_en.pdf

¹⁷ See for instance: [Guidance on the application of EU food hygiene law to community and charity food provision](#), UK Food Standards Agency, March 2016

¹⁸ Regulation (EC) No 178/2002 of the European Parliament and the Council 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

hygiene, and the prohibition of redistributing foods past the "use by" date, as specified by EU rules on the provision of food information to consumers in relation to safety requirements laid down in the General Food Law.¹⁹

The definition of an in-house control plan and implementation of in-house control programmes adapted to redistribution activities can support the ROs and COs in managing any operational risks as well as verifying that requirements are met, for instance, through the recording and verification of cold storage temperatures.

As for all actors in the food distribution chain, ROs and COs must ensure in particular that food placed on the market is safe in accordance with the food safety requirements laid down in Article 14 of the General Food Law. According to this article, food cannot be placed on the market if it is unsafe, that is, if it is either injurious to health or unfit for human consumption. These concepts are further explained in Articles 14.3-14.5 as well as guidance²⁰ elaborated by the Commission and Member States to support all players in fulfilling obligations related to the General Food Law.

In order to meet traceability requirements laid down in the General Food Law, organisations taking part in the redistribution of food surplus also need to keep records of where they source foods from and, if they provide foods to other businesses, they must also document to whom the food has been distributed (see section 3.2.).

3.1. Activities of redistribution and charity organisations

The nature of an organisation's activity as well as its operating model will determine the specific rules which apply under the EU regulatory framework for food safety and food information to consumers. In particular, whether an organisation redistributes food to another organisation (i.e. "business to business") or directly to an end user ("business to consumer") as well as the type of activity which it carries out (e.g. donation of food of animal origin, preparation of meals) may lead to different requirements in terms of traceability, food hygiene and food information.

It is therefore important to consider, on a case-by-case basis, the type of activity carried out by organisations engaging in food redistribution as applicable rules and related obligations may differ.

¹⁹ Article 24 of Regulation (EU) No 1169/2011 on the provision of food information to consumers specifies that "after the 'use by' date a food shall be deemed to be unsafe in accordance with Article 14(2) to (5) of Regulation (EC) No 178/2002".

²⁰ Guidance on the implementation of Articles 11, 12, 14, 17, 18, 19 and 20 of Regulation (EC) No 178/2002 on General Food Law. Conclusions of the Standing Committee on the Food Chain and Animal Health. https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_req_guidance_rev_8_en.pdf

As the activities of redistribution and charity organisations are essentially related to food distribution, they may be considered, under the General Food Law, as food business operators engaging in "**retail**" activity.

"retail" means the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets.

Under EU food hygiene rules, ROs and COs are considered essentially as "**retail**" or distribution centres, with activities limited to storage and transport. The application of EU food hygiene rules, including specific measures related to food of animal origin, is further explained in Chapter 5.

Under EU food labelling rules, ROs and COs which prepare food ready for consumption by the final consumer may be considered as "**mass caterers**". The implications of this status for obligations related to food information to consumers is detailed in Chapter 6.

"mass caterer" means any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools, hospitals and catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer.

3.1.1. Sorting of surplus food for redistribution

Foods shall not be placed on the market if they are unsafe. Some Member States and stakeholders have called for clarification regarding the redistribution of products which are made up of multiple units, some of which may not be fit for human consumption. These may include for instance: a bag of oranges where one of the oranges is mouldy; multi-pack yoghurts where one may have a broken seal; or a box of eggs where one may be broken. EU food safety rules do not prohibit a food business operator from sorting such foods in view of their redistribution. In particular, Article 14.6 provides that:

"Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe."

Therefore, such operations as opening up a net of oranges to separate spoiled fruit from that which is suitable for human consumption-- be this carried out by the donor (e.g. retailer) or the receiver (eg redistribution organisation/charity) -- is possible as long as, following a detailed assessment, it can be ensured that the food which is redistributed is safe to eat.

3.2. Traceability

Ensuring traceability of foodstuffs throughout the food supply chain is one of the key principles enshrined in Article 18 of the General Food Law in order to protect both animals and consumers from any risks associated with the food chain. When a risk has been identified which requires removal of a food from the market, traceability systems ensure that this process can be managed in a timely and effective manner.

Food donors, which are themselves food business operators, are required to set up a traceability system whether these foods are placed on the market for the purpose of sale or made available free of charge to redistribution and/or charity organisations. As explained in section 2.2., private persons who provide food on an *ad hoc* basis at community or other charity events and charity organisations which occasionally receive food from private donors are excluded from obligations related to traceability.

Receivers of surplus food, that is redistribution and charity organisations, as for all food business operators, must also implement traceability measures needed to ensure safety of the food supply chain. Specific rules have also been laid down at EU level for food of animal origin²¹ as well as for sprouts and seeds intended for the production of sprouts²² in order to ensure the correct application of traceability requirements to these sectors in the light of past experience in handling of food safety crises. Additional information on how to implement traceability requirements in practice is also provided in a guidance document to support all players in fulfilling obligations related to the General Food Law.²³

For instance, this guidance specifies that at least the following information should be kept in order to meet requirements laid down in Article 18:

- name, address of supplier, and identification of products supplied;
- name, address of customer, and identification of products delivered;.
- date and, where necessary, time of transaction/delivery;
- volume, where appropriate, or quantity.

With respect to the minimum time period for keeping records, the guidance specifies that a 5-year period from the date of manufacturing or delivery would be likely to meet the objectives of the Regulation.

²¹ Commission Implementing Regulation (EU) No 931/2011 of 19 September 2011 on the traceability requirements set by Regulation (EC) No 178/2002 of the European Parliament and of the Council for food of animal origin

²² Commission Implementing Regulation (EU) No 208/2013 of 11 March 2013 on traceability requirements for sprouts and seeds intended for the production of sprouts

²³ Guidance on the implementation of Articles 11, 12, 14, 17, 18, 19 and 20 of Regulation (EC) No 178/2002 on General Food Law. Conclusions of the Standing Committee on the Food Chain and Animal Health. https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_req_guidance_rev_8_en.pdf

The European Commission clarified, in 2004, traceability obligations in the context of food redistribution²⁴. In general, all operators of the food chain are required to register the suppliers of products they receive (one step back) and the recipients of the products (one step forward). However, in the case of the distribution of food to the final consumer, it is not necessary to register the recipients.

The obligations of redistribution organisations and charity organisations are therefore different in regard to traceability. Whereas redistribution organisations must keep a record both of the suppliers of products (that is the suppliers of the products they receive) as well as the organisations to which they redistribute food, charitable organisations which deliver food to the final consumer only need to keep a record of the suppliers of the foods they receive.

Some Member States also provide additional guidance to help actors fulfil traceability obligations in relation to food redistribution.

4. Legal liability

4.1. Legal context

General Food Law

Article 17 of Regulation (EC) 178/2002 aims at defining the roles of competent authorities in the EU Member States and all categories of stakeholders in the food and feed chain (i.e. farmers, feed and food manufacturers, importers, brokers, distributors, public and private catering businesses, redistribution and charity organisations...).

Given that a food business operator is best placed to devise a safe system for supplying food/feed and ensuring that the food/feed it supplies is safe, it holds primary legal responsibility for ensuring compliance with food law and in particular food safety.

The implications of that principle are as follows:

Article 17 (1) imposes on food business operators an obligation according to which they must actively participate in implementing food law requirements and verify that such requirements are met. This general requirement is closely linked to other mandatory requirements laid down by specific legislation (i.e. HACCP implementation in the field of food hygiene).

Thus Article 17 (1) implies a responsibility of the operators for the activities under their control pursuant to the classical liability rules according to which any person should be held

²⁴ E-2704/04

liable for things and acts under her/his control. It consolidates this requirement in the Union legal order applicable in the field of food law (not only food safety legislation but also other food legislation), and thus prohibits Member States from maintaining or adopting legal provisions at national level which would exonerate any food business operator from this obligation.

Though the requirement laid down in Article 17 (1) is directly applicable, the liability of food business operators should in practice result from the breach of a specific food law requirement, and from the rules for civil or criminal liability which can be found in the national legal order of each Member State. The liability proceedings will not be based on Article 17 but on a legal basis to be found in the specific infringed legislation of the national legal system.

In the event of a food safety concern (for instance food poisoning), public health authorities will investigate the whole food supply chain in order to identify the origin and cause of the problem. It may happen that the food safety problem has been found by a food business, which shall take action in accordance with Article 19 of Regulation 178/2002 (i.e. obligation to withdraw, recall or notify unsafe food).

Determining the liability of (a) given food business operator(s) requires identification of the cause of the problem and the operation/activity in the course of which the incident occurred.

- did the food poisoning result from insufficient pasteurisation (role of food manufacturer)
- was the cold chain broken during transport of food from supplier to retailer (role of logistics provider)
- was the food not stored properly at retail before donation (role of retailer)
- was the food distributed by a charity organisation after the "use by" date (role of charity organisation), etc...

Once again, it should be noted that **determining the facts and circumstances which may render an operator liable to criminal penalties and/or civil liability is a matter which depends very much on the structure of the different national legal systems.** Further information concerning the meaning and impact of Article 17.1 of the General Food Law Regulation in relation to the allocation of responsibilities in the agro-food chain can be found in the guidance on the implementation of General Food Law, pages 13-14²⁵.

Council Directive 85/374/EEC of 25 July 1985

Article 21 of the General Food Law states that its provisions "shall be without prejudice to Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products".

²⁵ http://ec.europa.eu/food/food/foodlaw/guidance/docs/guidance_rev_8_en.pdf

That Directive has established the principle that in case of a damage caused by the defect of (any) product (except primary agricultural products), the producer shall be liable.

The producer is defined as being the manufacturer, but also as "any person who, by putting his name, trade mark or other distinguishing feature on the product, presents himself as its producer". This means that distributors putting their name on a product would be concerned unless they prove that they are not.

However, Regulation 178/2002 is to be considered "lex specialis" which, as far as food products are concerned, should take precedence on Directive 85/374. This means that the principle of the primary responsibility of the food business for the operation under its control is always valid for food products and that only those provisions of Directive 85/374 that are not covered by Regulation 178/2002 and/or which would not be contradictory with it would apply in the case of defective food products.

4.2. Implications for redistribution of surplus food

Concerns regarding potential liability may be a barrier which restricts food manufacturers and retailers from engaging in food redistribution activities. In addition to legal concerns, food business operators also may have concerns regarding potential damage to corporate/brand reputation in the event of a food safety incident linked to food redistribution.

It should be underlined that the responsibility rules applicable to food business operators are the same, whether food products are sold or donated. Article 17 of Regulation 178/2002 continues to apply in the same way. The only difference is that one more step is added in the distribution chain (that is the redistribution organisation and/or charity) which will be responsible for the operation under its respective area of control. The other obstacle, from the point of view of food banks and charities, concerns the potential difficulties encountered to ensure compliance with food safety legislation²⁶.

Nevertheless, the best way to ensure clarity in terms of "who should be deemed liable for what" is to have in place incontestable rules for the transfer of property of donated food products, either on a contractual basis or laid down by law. That issue is one of national competence. In some Member States, formal agreements or contracts are established which clarify the transfer of ownership of goods concerned between donors and receivers as well as their respective role and responsibilities in ensuring safety, traceability and consumer information throughout the redistribution chain.

²⁶ *Comparative study on EU Member States' legislation and practices on food donations*, European and Economic Social Committee, 2014

5. Hygiene regulations and redistribution of surplus food

All consumers must be equally protected by the same food safety standards, whether food is marketed directly to consumers or redistributed to those in need by redistribution organisations and other charitable organisations. To ensure this, redistribution of food surplus, including delivery and handling of foods as well as the possible further processing and preparation of food, for instance in social restaurants, must comply with EU rules related to food hygiene which are applicable to all food business operators. Food hygiene standards which must be complied with for commercial activities also apply to the activities of redistribution and charity organisations.

5.1. General hygiene requirements applicable to all food donation activities

Redistribution organisations and charities must comply with the General Food Law and with EU rules related to food hygiene (Regulations (EC) 852/2004; 853/2004). In order to protect consumers and ensure food safety, only food which meets requirements laid down in EU food hygiene rules and is fit for human consumption may be placed on the market, including that which is donated to non-profit organisations for distribution to those in need.

The very objective of food hygiene rules – preventing contamination of foodstuffs (and therefore avoiding spoilage due to bacterial growth) – contributes to the reduction of food waste. The 'hygiene package'^[1] (Regulations 852/2004^[2], 853/2004^[3] for food business operators (FBOs) and 854/2004^[4] for competent authorities) applies to food banks being food business operators as defined in Regulation (EC) No 178/2002^[5].

EU food hygiene rules are very general and offer a large degree of flexibility to meet the specific needs of different types of establishments (e.g. restaurants). This flexibility is explained in the Commission notice: *Guidance document on the implementation of food safety management systems covering prerequisite programs (PRPs) and procedures based on the HACCP principles including the facilitation/flexibility of the implementation in certain food business*²⁷.

Regulation (EC) No 852/2004 on the hygiene of foodstuffs applies to all food establishments. The most relevant requirements related to food redistribution are:

^[1] http://ec.europa.eu/food/food/biosafety/hygienelegislation/comm_rules_en.htm

^[2] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:139:0001:0054:en:PDF>

^[3] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:139:0055:0205:EN:PDF>

^[4] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0083:0127:EN:PDF>

^[5] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF>

²⁷ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2016:278:FULL>

- registration of the activity to competent authorities (which can be a simple notification procedure)
- application of good hygiene practices laid down in Annex II of that Regulation
- implementation of procedures based on the HACCP principles.

Regulation 853/2004 does not lay down very detailed rules but rather overarching principles (e.g. avoiding contamination) which must be respected by all actors.

Food hygiene measures are less strict for retailers which supply food directly to the final consumer (including caterers: see definition in Art. 3(7) of Regulation (EC) No 178/2002) compared to the preceding stage of production (e.g. slaughterhouses, food processors and manufacturers). When the activities of retailers, redistribution organisations and charities are limited to storage or transport, and/or supply of food directly to the final consumer -- only the general hygiene rules apply. This is also the case for actors involved in the processing of food of non-animal origin (e.g. fruit, vegetables, nuts) for further redistribution.

However, the redistribution of foods of animal origin to another establishment is only allowed for food business operators that are either formally approved by national control authorities as food business operators or where the supply of such food is a marginal, localised and restricted activity. These obligations, arising from Regulation No 853/2004 of the European Parliament and Council laying down specific rules on the hygiene of foodstuffs, are further explained in section 5.2.

5.2. Hygiene requirements applicable to redistribution of food of animal origin

5.2.1. Legal context

Additional specific food hygiene rules apply when retailers and redistribution organisations deliver food of animal origin to other establishments (Regulation 853/2004 applies). In principle, retailers who wish to deliver food of animal origin to redistribution organisations or charities need to comply with all provisions of Regulation (EC) No 853/2004 including their approval by national authorities with additional administrative requirements and burden.

Nevertheless, derogation from Regulation 853/2004 applies if the supply of food of animal origin is:

- marginal, restricted and local, or

- if limited to transport and storage (however temperature conditions laid down in Regulation (EC) No 853/2004 do apply in this case).

Additional rules regarding the supply of food of animal origin by retailers may potentially be defined at national level by Member States.

5.2.2. Implications for redistribution of surplus food of animal origin

Foods of animal origin include: meat, fishery products, dairy products (e.g. cheeses), eggs and egg products, etc...

Composite products are foods that contain both **processed** products of animal and non-animal origin. They include a large variety of very different products (e.g. pizzas with ham, olives stuffed with cheese, bread or cakes with butter, pasta with egg products, etc...). They are excluded from the additional food hygiene rules applying to the redistribution of food of animal origin.

No additional food hygiene rules apply if the operator which handles food of animal origin **only** directly delivers **to the final consumer**, e.g. if the operator is a (social) restaurant, a shop or charity organisation.

Additional rules in Regulation (EC) No 853/2004 apply for operators (e.g. redistribution organisations or distribution centres) which also provide food of animal origin to other operators (not being final consumers), in particular:

1. The **temperature conditions** of the Regulation for certain food of animal origin must be respected if the activity of the operator is limited to storage and transport (e.g. redistribution organisations/distribution centres only doing such activity).
2. **All provisions in the Regulation** in case of additional activity such as cutting, slicing, packaging, cooking, other processing, including the approval of the establishment before the activity starts.

As these rules apply to **retail establishments wishing to deliver to food banks**, it may therefore happen that an operator only delivering to final consumers, e.g. butcher shop, supermarket (for which Regulation 853/2004 is not applicable), has to comply with all the provisions in that Regulation if it wants to engage in food donation activities, that is deliver certain foods to another operator, be that a redistribution organisation or a social restaurant.

In order to address this issue, Member States are allowed to derogate from the rules in Regulation (EC) No 853/2004 if these donations are a "**marginal, localised and restricted**" activity. These notions are further explained in section 3.6. of the *Guidance document on the implementation of certain provisions of Regulation (EC) No 853/2004 on the hygiene of food of animal origin*. Briefly, "marginal" must be understood to be a small part of the

activities, "restricted" refers to limitation of the activity to certain products and "localised" to the immediate vicinity of the supplier. Member States should further define these notions in national measures subject to notification²⁸ to the Commission and other Member States.

A decision tree is provided in Annex 2 in order to facilitate food donors and receivers to assess the need for compliance with Regulation EC (No) 853/2004.

5.3. Hygiene requirements applicable to redistribution of surplus food from the hospitality, catering and food service sectors

While the redistribution of surplus food from the hospitality and catering sectors is more limited due to food hygiene related issues, it is possible for food business operators to identify and assess possible opportunities to do so on a case-by-case basis. Capacity to ensure safe redistribution of surplus will vary depending on factors such as: the type of food/meal produced; the nature of the establishment; availability of receiver organisations; access to a logistics provider which can ensure safe transport of available surplus, etc...

Regulation No 852/2004 on the hygiene of foodstuffs does not prohibit, as such, the cooling of meals at the end of service in order to facilitate food donation from the food service/hospitality sector.

In order to facilitate safe redistribution of surplus food, some Member States have established or are currently developing specific guidelines related to food donation from the catering/hospitality sector.

5.4. Freezing of surplus food to facilitate redistribution

In recent discussions with Member States regarding guidance needed at EU level to facilitate food donation, experts have indicated that the practice of freezing foods before their expiration date in order to extend shelf-life and facilitate safe redistribution would merit further consideration at EU level as food received by redistribution organisations and charities cannot always be donated to the customer by the "use by" date. However, for hygienic reasons, Regulation (EC) No 853/2004 prescribes that products intended for freezing must be frozen without undue delay after production²⁹. This requirement does not apply to retailers supplying other food business operators such as food banks provided that

²⁸ Notification procedure under Directive (EU) 2015/1535

²⁹ Meat intended for freezing must be frozen without undue delay after production (Regulation (EC) No 853/2004). This excludes the possibility of freezing such products at the end of their shelf-life for reason of hygiene and quality.

such retailers' activity stays marginal, localised and restricted in accordance with its Article 1(5)(b)(ii). Member States granting such a possibility should adopt national measures accordingly and notify them to the Commission and the other Member States.

6. Food information to consumers

6.1. Legal context

Regulation (EU) No 1169/2011 on the provision of information to consumers establishes the general principles, requirements and responsibilities governing food information and in particular food labelling. It aims to ensure a high level of protection of consumers' health and interests by providing a basis for consumers to make informed choices and safe use of food. In the context of the redistribution of surplus food, it is critical to ensure that the end beneficiaries have access to the same information as that which is required and provided when they purchase food in-store.

The list of mandatory particulars which must be included in food labelling is specified under Article 9.1. of the Regulation including *inter alia*: the name of the food, the list of ingredients, the date of minimum durability (i.e. "best before") or the "use by" date; any special storage conditions and/or conditions of use; and a nutrition declaration. Other mandatory information may also be required in labelling provisions of other EU legislation (e.g. Regulation No 853/2004 laying down specific hygiene rules for food of animal origin, marketing standards) or in national legislation.

Responsibilities of food business operators

Article 8 of Regulation (EU) No 1169/2011 lays down the responsibilities of food business operators in the provision of food information to consumers. It states amongst others that:

- the food business operator responsible for the food information shall be the operator under whose name or business name the food is marketed or the importer;
- the food business operator must ensure the presence and accuracy of the food information in accordance with EU rules and any relevant measures laid down in national legislation;
- food business operators which do not affect food information shall not supply food which they know or presume, on the basis of the information in their possession as professionals, to be non-compliant with applicable food information rules;
- food business operators, within the businesses under their control, shall not modify the information accompanying a food if such modification would mislead the consumer or otherwise reduce the level of consumer protection and the possibilities

- for the final consumer to make informed choices. Food business operators are responsible for any changes they make to information accompanying food;
- food business operators, within the business under their control, shall ensure compliance with the requirements of food information law and relevant national provisions which are relevant to their activities and shall verify that such requirements are met.

How is mandatory information to be provided?

In the case of prepacked food, Article 12.2. specifies that mandatory food information must appear directly on the package or on a label attached therein. In certain instances, such information may also be presented in commercial documents related to the food, where it can be guaranteed that such documents either accompany the food to which they refer or were sent before or at the same time of delivery. Article 8.7. specifies that the provision of information by means of commercial documents is possible in instances where: prepacked food is intended for the final consumer but marketed at a stage prior to sale to the final consumer or where it is intended for supply to mass caterers (for further preparation, processing, splitting or cutting up).

"mass caterer" means any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools, hospitals and catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer.

In the case of non-prepacked food, Article 44 provides further clarification as to which information must be provided as well as the means by which this should be done. It states that where foods are offered for sale to the final consumer or to mass caterers without pre-packaging, or where foods are packed on the sales premises at the consumer's request or pre-packed for direct sale, the provision of the particulars specified in point (c) of Article 9(1) is mandatory. This means that the consumer must be informed of the presence in the food of any ingredient or processing aid listed in Annex II of the Regulation, or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form.

Article 44 also states that Member States may adopt national measures concerning the means by which the information on allergens (and any other mandatory particulars required by national legislation) are to be made available and, where appropriate, their form of expression and presentation.

Business-to-business vs business-to-consumer

Food business operators which supply food to other food business operators not intended for the final consumer or to mass caterers, shall ensure that those other food business operators are provided with sufficient information to allow them to fulfil their obligations regarding the presence and accuracy of food information (as specified under Article 8.2.), for

instance by including such information in commercial documents, if not present on the food itself.

6.2. Implications for redistribution of surplus food

6.2.1. Information requirements for prepacked foods

Whether food is purchased by consumers or made available free of charge to end beneficiaries by means of food aid or other food redistribution mechanisms, food information must be present and provided to the end user in accordance with EU and relevant national rules related to the provision of food information to consumers. When donated food carries labelling in line with all legal requirements, obligations concerning provision of food information may be easily fulfilled. However, when food surplus is generated, for instance at manufacturing level, due to mislabelling of products and/or labelling errors prohibiting the food product's access to the usual retail channels, additional clarification and/or measures will need to be taken in order to ensure that the end beneficiary receives all the mandatory information required.

In regard to prepacked foods made available to the final consumer, EU rules require that all mandatory particulars be provided on the package or a label attached thereto. In instances where food with deficient labelling cannot be relabelled prior to its redistribution, the food business operator responsible for food information (cf Article 8.1) must provide all necessary information to the redistribution organisation and/or charity organisation in order to ensure that the latter can fulfil their obligations concerning provision of food information to the end beneficiary. Some Member States have provided guidance in order to ensure that safe, edible food which would otherwise be wasted may be redistributed whilst ensuring that the end beneficiary has access to all information which is required (cf Article 9.1), even if such information is not directly provided on the label.

6.2.2. Language requirements

Regulation (EU) No 1169/2011 requires that mandatory food information must appear in a language easily understood by the consumers of the Member States where a food is marketed.³⁰ In practice, this would be the official(s) language(s) of the country of marketing. The terms or expressions in a foreign language that are easily understood by the consumer

³⁰ Article 15 thereof. This requirement is not new; it was first laid down in Article 14 of Council Directive 79/112/EEC concerning food labelling.

are also to be accepted.³¹ In addition, the Member States where the product is marketed may require the use of a specific language.³²

There are many examples where terms or expressions can be easily understood by the consumer, although they are not in her/his language. In such cases, requiring changes to labelling would appear disproportionate. This is confirmed by the EU case law: national provisions requiring the use of a specific language for the labelling of foods without allowing for the possibility of another language easily understood by consumers to be used or for the consumers to be informed by other measures have been found incompatible with the Treaty (free movement of goods provisions) and with EU labelling requirements.

As the labelling of food products in another language may create an obstacle to the further distribution of foods, some Member States have developed guidance to facilitate such redistribution.

6.2.3. Information requirements for non-prepacked foods

It is important that consumers receive the necessary information about food which they consume also when these are not prepacked and when food is processed, prepared and cooked for further consumption by a catering service or (social) restaurant. As outlined in section 6.1, in such instances, food information required is limited to that relating to the presence of allergens and any other additional information required by national rules.

Article 44 of Regulation 1169/2011 also states that Member States may adopt national measures concerning the means through which the information on allergens (and possible other mandatory information) are to be made available and, where appropriate, their form of expression and presentation.

Consequently, Member States have the full capacity to provide all the necessary rules ensuring that information on allergens in food is made available to redistribution and charity organisations and ultimately to consumers in a convenient and efficient way. Most Member States have already adopted such measures.

³¹ Interpretative Commission communication concerning the use of languages in the marketing of foodstuffs in the light of the judgment in the Peeters case (Case C-369/89), COM(93)532 final, OJ C 345, 23.12.1993,

³² Article 15(2) of Regulation (EU) No 11639/2011.

6.3. Date marking

6.3.1. Legal context

The aim of date marking in food labelling is to help consumers make safe and optimum use of foods. The date mark is an indication that states the length of time a food can be stored under specified storage conditions. The key piece of EU legislation for date marking is Regulation (EU) No 1169/2011 on the provision of food information to consumers.

There are two types of date marking:

- the "best before" date, which is suitable for most foods and indicates the date until which the food can be reasonably expected to maintain its optimal condition if properly stored. It relates to food quality. There are some foods which are exempted from the requirement of the "best before" date, for example fresh fruit, vegetables, wines, salt, sugar, vinegar, chewing gums;
- the "use by" date, which is required for foods which from a microbiological point of view are highly perishable, and are therefore likely, after a short period of time, to constitute an immediate danger to human health. The "use by" date relates to safety; after the expiry of the "use by" date, a food cannot be placed on the market as it is deemed to be unsafe.

In cooperation with the EU Member States, the European Commission produced a leaflet³³ which provides further information on the meaning of these two dates as well as the translation of the terms in each of the national languages. The Commission has also published an infographic to help clarify the meaning of these concepts as well as recent findings regarding consumer understanding of these terms³⁴.

6.3.2. Implications for redistribution of surplus food

Certain MS restrict or even prohibit marketing of foods past the "best before" date leading to avoidable food waste³⁵. Lack of clarity regarding the possibility of donating food products after their "best before" dates may also restrict food donation.

The marketing of foods after expiry of their date of minimum durability (ie "best before") is allowed under EU rules, provided that the foods concerned are still safe and their presentation is not misleading. The establishment of both "use by" and "best before" dates is under the responsibility of food manufacturers. With the exception of table eggs, EU legislation does not prescribe how date marking should be established (either the choice of

³³ http://ec.europa.eu/food/safety/food_waste/library/docs/best_before_en.pdf

³⁴ http://ec.europa.eu/food/safety/docs/fw_eu_actions_date_marking_infographic_en.pdf

³⁵ *Comparative study on EU Member States' legislation and practices on food donations*, European and Economic Social Committee, 2014

"use by" or "best before" or length of shelf-life). Whereas eating a food past the "use by" date can pose safety concerns, foods past the "best before" date are still safe to be consumed, on the condition that storage conditions are respected and packaging is not damaged. With respect to "best before" dates, manufacturers guarantee the quality of foods (eg crispiness, colour, taste..) and compliance with any claims made in labelling (eg nutritional claims regarding the level of vitamin C in a foodstuff) is only until the end of the "best before" date.

Some national authorities in Member States have provided additional guidance to donors on foodstuffs which can be utilized / distributed by food banks past the "best before" date³⁶. Public authorities emphasise however that such timeframes are only indicative and the possible distribution of foods past a "best before" date must be assessed on a case-by-case basis. If there is reason to believe that a food could no longer be fit for consumption, then it should not be distributed further. Proper storage conditions and integrity of packaging must always be guaranteed.

7. Fiscal rules

Value added tax can have implications for the transfer of food surplus from industry to food banks and other charity organisations.

Other fiscal instruments (such as tax deductions and corporate tax breaks) can provide economic incentives for food donation and thereby support the redistribution of surplus edible food and prevention of food waste.

7.1 Value Added Tax (VAT)

Value added tax (VAT) is governed at EU level by the VAT Directive³⁷ and must be implemented into national law. VAT legislation as applied in the EU Member States can sometimes have implications for food donation, as it is perceived as an obstacle to the transfer of food surplus between industry and food banks³⁸. In adapting the rules applicable to goods handed out for free (under Articles 16 and 74 of the VAT Directive), Member States can facilitate the donation of surplus food for charitable purposes.

³⁶ See for instance: Belgian food safety agency http://www.favv-afsca.fgov.be/denreesalimentaires/circulaires/documents/2013_08_02_BAetAC_FR.pdf; Italy - Guide to good practice for charitable organisations, Caritas Italiana, Fondazione Banco Alimentare Onlus, March 2016

³⁷ Council Directive 2006/112/EC on the common system of value added tax

³⁸ Comparative study on EU Member States' legislation and practices on food donations, EESC, 2014

The EU VAT Committee agreed on 7 December 2012 on guidelines³⁹ to ensure the uniform application of the VAT Directive across EU Member States. The guidelines specifically give guidance on the application of Articles 16 and 74 in relation to food donation:

"The VAT Committee unanimously agrees that the donation of foodstuffs to the poor, made by a taxable person free of charge, shall be treated as a supply of goods for consideration, in accordance with the first paragraph of Article 16 of the VAT Directive, unless this donation meets the conditions laid down by the Member State to be considered as a gift of small value within the meaning of the second paragraph of Article 16 of the VAT Directive.

The VAT Committee also agrees unanimously that, in cases where such a donation must be treated as a supply of goods for consideration, the taxable amount shall be the purchase price of the goods (or of similar goods or, in the absence of a purchase price, the cost price of the goods) donated, adjusted to the state of those goods at the time when the donation takes place, as provided for in Article 74 of the VAT Directive."

Applications of VAT rules to food redistribution in the EU MS

In certain Member States little or no VAT is paid when food is donated to food banks as the national authorities consider, according to Article 74 of the VAT Directive as implemented into national law, that the value of the donated food close to its "best before/use by" date is small or zero. Conversely, other EU Member States consider the price of a product ready to be donated to be at the same level as its purchase price through usual commercial transactions. Thus, the VAT is also calculated based on the commercial price with negative consequences for food donation⁴⁰.

Findings from the EESC comparative study indicate that most of the Member States considered⁴¹ do not impose VAT when food is donated to food banks, provided that certain conditions are fulfilled. According to the EESC study as well as further input to the Commission from Member State experts, Belgium, Germany, Greece, the Netherlands, Poland and Portugal, have introduced specific provisions in their own national tax legislation to address the issue of VAT in relation to food donation. In the UK, most food items are zero-rated but there are exceptions which are standard rated (ie 20% VAT) such as confectionary, chocolate biscuits, crisps etc... In practice, most foods donated to charities in the UK will be zero-rated which means that a company can donate them without having to account for tax. Denmark, Spain and Sweden have no particular provisions on VAT in relation to food donation.

³⁹ Agreed VAT Committee guidelines are published at:

http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf

⁴⁰ Review of EU legislation and policies with implications on food waste, EU FUSIONS, 15 June 2015

⁴¹ Belgium, Denmark, France, Germany, Greece, Hungary, Italy, Poland, Portugal, Spain, Sweden and UK

Further clarification of EU legislation

In answer to a question from the European Parliament⁴², the Commission has expressed its view that tax barriers should not prevent the donation of food to food banks and other charitable organisations. The Commission, in line with the guidelines agreed by the EU VAT Committee, recommends that, in the determination of VAT for the donation of foods, the value of those goods should be adjusted according to the circumstances and the state of the goods at the time of donation. When food donations are made close to the "best before" date or the goods are not fit for sale but can be safely consumed, these circumstances should be taken into account by Member States when determining the VAT due, which could even be zero in cases where the food genuinely has no value⁴³. This recommendation may also apply to food donated close to the "use by" date for redistribution and consumption prior to its expiration.

7.2 Fiscal incentives

Some Member States seek to stimulate food donation by offering tax deductions and/or tax credits in support of redistribution schemes.

Corporate tax incentives in place in a few Member States (eg France, Spain and Portugal) have demonstrated their effectiveness in encouraging donation of surplus food by industry. In France 60%⁴⁴ and in Spain 35% of the net book value of donated food can be claimed as a corporate tax credit, meaning that food donors are able to deduct that percentage of the value of the donated food from the corporate tax on their revenue. The comparative study carried out by the EESC also shows that in most of the examined Member States, food donation can be treated as a deductible tax expense and can reduce the taxable income (within certain limits and thresholds depending on the Member States. The EESC specifies that Portugal has in place an enhanced tax deduction, meaning that donors can deduct up to 140% of the value of the food at time of donation, provided that the food will be used for a social purpose (such as supplying food banks) and limited to 8/1000 of the donor's turnover.

⁴² E-009571/2014 (<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-009571&language=EN>)

⁴³ This recommendation follows on from Commission discussions with Member States regarding determination of VAT for foods donated to those in need.

⁴⁴ with limit of 0.5% of the company's turnover

8. Other EU Programmes

8.1. Fund for European Aid to the Most Deprived (FEAD) and food donations

The Fund for European Aid to the Most Deprived (FEAD) has the specific objective to contribute to alleviating the worst forms of poverty in the EU through the provision of non-financial assistance to the most disadvantaged persons in the EU. Assistance from the FEAD may take the form of food support or basic material assistance (clothing, footwear, hygiene items, etc.). The Fund may also finance actions to promote the social inclusion of the most deprived persons.

In every Member State the FEAD is implemented with the help of partner organisations – public bodies or non-profit organisations in charge of distributing the assistance or undertaking the social inclusion activities.

The food distributed by the partner organisations may be purchased with FEAD resources, but it may also be donated. A FEAD operational programme may foresee the financing of food donations, whereby food is donated to a partner organisation free of charge. The costs of the partner organisations for the collection of the donated food from the donor, its transportation, storage, and distribution to the most deprived persons may be covered with FEAD funds. Awareness-raising activities of the partner organisations among potential donors may also be supported by the FEAD.

The possibility for the financing of food donations has to be foreseen in the corresponding FEAD operational programme. The partner organisations are reimbursed on the basis of their actual costs incurred and paid⁴⁵.

The Commission has set up the FEAD Network for exchange of experience and good practice among the FEAD stakeholders. This is a forum where partner organisations may share their experiences with donated food: <http://ec.europa.eu/feadnetwork>.

⁴⁵ The Commission has proposed several amendments to the FEAD Regulation as part of the proposal for revision of the Financial Regulation, adopted on 14/09/2016 (COM (2016) 605 final). One of these amendments, if approved, will offer the possibility for Member States to also use simplified cost options when financing food donations.

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(NL) *Food Safety Handbook*, Association of Dutch food banks, 2016.

See also additional national/sectorial food donation guidelines published at:

http://ec.europa.eu/food/safety/food_waste/library/index_en.htm

Annex 1: Identification of policy issues impacting on food donation and food waste prevention

Legal issues and implications for different actors:

- Responsibility and product liability for food business operators (including donors and receivers of food surplus). In accordance with the General Food Law, what are the respective areas of responsibility of actors in the food supply chain to ensure food safety and traceability? How are responsibilities linked to the General Food Law transferred along the food chain? How is product liability addressed in the context of food donation?
- Requirements of food safety and hygiene standards: concerns have been expressed that EU food safety and hygiene regulations can in some instances restrict the possibilities for surplus food to be redistributed thereby contributing to food waste in the supply chain.⁴⁶
- Fiscal rules: VAT rules in the EU MS may hinder the transfer of food surplus from industry to food banks and other charity organisations.

Legal background: summary table⁴⁷

General Food Law	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	<ul style="list-style-type: none"> • This Regulation applies to all food business operators placing food on the market, including redistribution organisations and other charity organisations (Art. 3.2.). • All actors in the food chain shall ensure that food satisfies the requirements of the General Food Law (Art. 17.1.). • A food business operator is held responsible for compliance with all food law requirements (e.g. food safety, food hygiene, food information for consumers) for activities occurring in the part of the food chain under its own control (Art. 17). • Article 14 lays down essential food safety requirements to be adhered to by all actors. • Article 18 of the General Food Law introduces the concept of traceability. • Activities related to private domestic use and consumption of foods are excluded from the scope of the Regulation (Art. 1.3.).
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⁴⁶ *Counting the cost of food waste: EU food waste prevention*. UK House of Lords, 2013-14.

⁴⁷ Table based on presentation of the European Economic and Social Committee's *Comparative study on EU Member States' legislation and practices on food donations*, (Bio by Deloitte, 7 July 2014).

Food Hygiene Package	<ul style="list-style-type: none"> •Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs •Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin 	<ul style="list-style-type: none"> •All food business operators have to comply with EU rules related to food hygiene. •It is necessary to ensure food safety throughout the food chain, starting with primary production. •It is important for food that cannot be stored safely at ambient temperatures, particularly frozen food, to maintain the cold chain. •Good hygiene practices and procedures based on HACCP principles, where applicable, need to be complied with throughout the food chain. •Specific requirements apply for distribution/donation of foods of animal origin. •Hygiene rules should apply only to undertakings, the concept of which implies a certain continuity of activities and a certain degree of organisation (recital 9).
Food labelling and durability	Regulation EC 1169/2011 on the provision of food information to consumers	<ul style="list-style-type: none"> •Food business operators are required to indicate a 'best before' or a 'use by' date. •The marketing of foodstuffs after expiry of its 'best before date' is allowed under EU law (but distribution of foods past the "use by" date is considered unsafe and therefore prohibited). •Rules on the provision of food information to consumers shall apply only to undertakings, the concept of which implies a certain continuity of activities and a certain degree of organisation (recital 15).
Tax on food donation	<p>Council Directive 2006/112/EC on the common system of value added tax</p> <p>VAT Committee guidelines resulting from its 97th meeting⁴⁸</p>	<ul style="list-style-type: none"> •According to Council Directive 2006/112/EC, VAT has to be paid on food intended for donation if the VAT paid by the donor upon purchase has been deducted (Art. 16). •The taxable amount is the purchase price at the moment of the donation adjusted to the state of those goods at the time when the donation takes place (Art. 74). •COM recommends that – for foods which are close to the 'best before' date, Member States should consider the value

⁴⁸ Included in the list of guidelines (see p. 165) to be found at:
http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf

		on which the VAT is calculated to be fairly low, even close to zero in cases where the food genuinely has no value.
Official Controls	Regulation (EC) 854/2004 Regulation (EC) 882/2004	<ul style="list-style-type: none"> •Controls of establishments producing products of animal origin intended for human consumption •Controls to ensure compliance with food and feed legislation, animal health and welfare rules
Waste Framework Directive (WFD)	Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives	<ul style="list-style-type: none"> •Establishes waste prevention as the first step of the waste hierarchy and requires Member States to set up waste prevention programmes. •Proposal to amend WFD [COM(2015)595 final] strengthens food waste prevention as part of overall waste prevention policy. Calls on Member States to reduce food waste at each stage of the supply chain, monitor food waste levels and report on biennial basis. • The Commission will adopt methodology to measure food waste based on favourable opinion of Member States.
Common organisation of the markets in agricultural products	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	Art. 34(4) on Charity withdrawals. These withdrawals are at present a form of organised donation for 'free' to final recipients. The related legislation provides a higher support for free distribution (charity withdrawals) than for withdrawals for other destinations. A specific labelling is also foreseen to promote the source and the use of the EU funding. The priority allocation of market withdrawals is clearly that aid is given to the needy through charities and other institutions approved by Member States. Other uses of withdrawn products take place as alternatives to free distribution.
FEAD	REGULATION (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived	<p>A FEAD operational programme may foresee the financing of food donations, whereby food is donated to a partner organisation (public body or non-profit organisation) free of charge.</p> <p>The costs for the collection of the donated food from the donor, its transportation, storage, and distribution to the most deprived persons may be covered with FEAD funds.</p> <p>Awareness-raising activities among potential food donors may also be supported.</p>

Annex 2: Decision tree: Do I need to comply with Regulation EC (No) 853/2004 as a retailer supplying to charity organisation/food bank or as charity organisation/food bank?



