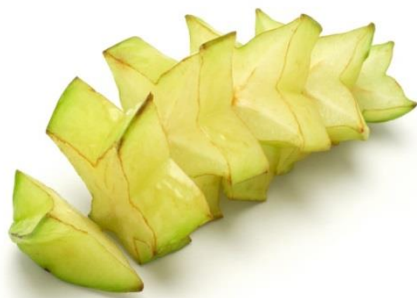


Comparative Study on EU Member States' legislation and practices on food donation

Final report

June 2014



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1. Abstract

This study provides a comparative overview of current legislation and practices concerning food donation in the EU Member States (MS) by mapping key hurdles preventing food donation, by identifying best practices in the field and by developing recommendations on how to legislate or interpret legislation in order to facilitate food donation. The study investigates five main legislative areas impacting food donation (product liability, food safety and hygiene, food durability and date marking, tax legislation, and the food waste hierarchy) in 12 Member States selected with balanced geographic representation across the EU (the United Kingdom, France, Belgium, Germany, Italy, Spain, Portugal, Greece, Poland, Hungary, Denmark and Sweden). The study illustrates that Denmark, Spain and Sweden still impose VAT on food donation and that only France and Spain have corporate tax benefits in place to incentivise food donation. The study also shows that there is a general confusion with regards to the donation of foods exceeding their 'best before' dates and a general interest for legislation limiting liability for food donors (such as the Good Samaritan Law in Italy). The study recommends clarification around VAT liability on donated food and EU guidelines for assessing additional lifetime of products.

2. Executive summary

This study responds to the [own-initiative Opinion](#) on the prevention and reduction of food loss and waste, adopted by the European Economic and Social Committee in March 2013¹, which aims to give impetus at European level to the development of a coordinated strategy to improve the efficiency of food supply and consumption, and to tackle food wastage as a matter of urgency. Food donation provides a crucial support for the most deprived and is an important tool for the reduction of food waste in Europe. There is no common EU policy on food donation; policy frameworks in Member States (MS) vary, enabling and encouraging donation to greater or lesser degrees.

The objective of this study is to facilitate food donation in the EU by providing a comparative overview of relevant legislation and practices in the Member States, mapping any hurdles they present to efficient food donation and identifying best practices. These elements are building blocks of policy recommendations that enable food donation to be the preferred management option for unsalable food, in accordance with the EU waste hierarchy.

The study comprises three main sections:

- An overview of current legislation and practices concerning food donation in 12 selected MS²;
- A comparative analysis of the main legislation and practices which impact food donation in the selected MS and illustrates the hurdles identified in each legislation area;
- The development of best practices in the main legislative areas affecting food donation and recommendations for policy makers and for food donors on how to overcome the legislative hurdles identified in the analysis.

Overview of current legislation and practices

The study provides an overview of the key EU legislation affecting food donation and illustrates key barriers to donation identified in these five legislative areas, at the EU level and in each of the selected countries.

■ **The General Food Law:** [Regulation \(EC\) No 178/2002](#) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and establishing procedures in matters of food safety.³

¹ European Economic and Social Committee (2013) *Opinion of the Civil society's contribution to a strategy for prevention and reduction of food losses and food waste (own-initiative opinion)*: <http://www.eesc.europa.eu/?i=portal.en.nat-opinions.25955>

² France, United Kingdom, Germany, Belgium, Spain, Italy, Greece, Portugal, Poland, Hungary, Sweden and Denmark.

The aim of this Regulation is to provide a framework to ensure a coherent approach in the development of food legislation across the EU. It clarifies definitions, principles and obligations covering all stages of food/feed production and distribution. Identifying food donation as a “market operation”, and food donors as “food business operators”, this Regulation underlines that all actors taking part in food donation have to comply with the EU food legislation concerning responsibility, liability, traceability, and food health and safety.

Key barriers:

- Food donors may be driven to discard surplus food instead of distributing it to food banks or charity organisations in order to avoid risks associated with liability for donated food.

■ **The Food Hygiene Package:** [Regulation \(EC\) No 852/2004](#)⁴ on the hygiene of foodstuffs, [Regulation \(EC\) No 853/2004](#)⁵ laying down specific hygiene rules for food of animal origins, [Regulation \(EC\) No 854/2004](#)⁶ laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption and [Directive 2004/41/EC](#)⁷ repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption.

The abovementioned Regulations also known as the “Hygiene Package” lay down general rules for food business operators (including food banks) on hygiene conditions for foodstuffs. The primary responsibility for food safety rests with the food business operator.

Key barriers:

- Some Member States can interpret the EU Hygiene Package rigidly (especially rules related to food safety, storage and transport), creating more difficult conditions for food donation.
- The lack of EU guidelines designed for food business operators clarifying their compliance with the EU Food Hygiene legislation when donating food. The EU could follow the example of the guides drafted by the Rhône-Alpes Region in France⁸.

■ **Food durability and date marking:** [Regulation \(EC\) No 1169/2011](#)⁹ on the provision of food information to consumers.

According to Article 9 of the above Regulation, food business operators are required to determine, based on the composition of the product, whether it is appropriate to use a ‘best before’ or a ‘use by’ date. Products past their ‘use by’ date are not marketable and thus cannot be donated, whereas products past their ‘best before’ date can still be donated if the product was properly stored.

³ Regulation (EC) No 178/2002 <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002R0178>

⁴ Regulation (EC) No 852/2004 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0003.01.ENG

⁵ Regulation (EC) No 853/2004 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0022.01.ENG

⁶ Regulation (EC) No 854/2004 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0083.01.ENG

⁷ Directive 2004/41/EC http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0128.01.ENG

⁸ DRAAF Rhône-Alpes (2013) Donner aux associations d’aide alimentaire, Guide pratique et réglementaire : Produits agricoles, available at : http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_des_dons_de_produits_agricoles_cle42dd63.pdf

DRAAF Rhône-Alpes (2013) Donner aux associations d’aide alimentaire, Guide pratique et réglementaire : Entreprises du secteur alimentaire, available at : http://draaf.midi-pyrenees.agriculture.gouv.fr/IMG/pdf/Guide_don_alimentaire_entreprises_cle878ebd.pdf

DRAAF Rhône-Alpes (2013) Donner aux associations d’aide alimentaire, Guide pratique et réglementaire : Restauration, available at : http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_dons_restaurant_sept2013_cle091e14.pdf

⁹ Regulation (EC) No 1169/2011 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>

Key barriers:

- There is a general misunderstanding and confusion across the EU about the potential to donate food that has passed its 'best before' date. There is a further concern that food donated after its 'best before' date may be of inferior quality and that the deprived benefiting from donated food should not receive inferior products.

■ **Tax legislation:** [Council Directive 2006/112/EC](#)¹⁰ of 28 November 2006 on the common system of value added tax.

The VAT Directive specifies that food donations are taxable if the donation is made by a taxable person and if the VAT on acquisition of the goods is fully or partially deductible. Tax exemptions on food donations are not allowed. The European Commission recommends, in a reply to a [Parliamentary Question](#)¹¹, setting a value of foodstuffs that are close to their 'best before' date, or which cannot be sold due to their external appearance, fairly low or close to zero.

Key barriers:

- The imposition of VAT on food donation in some MS is a difficult area. Terminology in legal texts vary such that the value of food may be considered low or zero at time of donation, VAT may be "abandoned", or "exempted". This issue is both controversial and lacks clarity.

■ **The Waste Framework Directive:** [Directive 2008/98/EC](#)¹²

According to the Waste Framework Directive, MS shall apply as a priority order the following waste management hierarchy: prevention, preparing for re-use, recycling, recovery and disposal. There is not specific EU guidance on a food waste or food use hierarchy, prioritising food redistribution to humans over feeding animals, energy or nutrient recovery via treatment methods such as anaerobic digestion (AD), in-vessel composting, land spreading, and landfilling.

Key barriers:

- A number of MS have put in place economic incentives which make lower stages of the hierarchy, including AD, more financially inviting. There is not a mechanism to enforce the proper implementation of the EU waste hierarchy in MS waste management legislation.

Comparative analysis

The EU and MS legislation overview and the identification of barriers served as a basis for comparative analysis. The table below summarises the main findings, highlighting MS that have specific issues in the following policy areas:

¹⁰ Council Directive 2006/112/EC <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0112>

¹¹ European Parliament (2013), Written questions :E-003730/13, E-002939/13

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-002939&language=EN>

¹² Directive 2008/98/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>

Member States	Liability	Food hygiene	Food durability and labelling	VAT not perceived on food donation	Tax credit	Tax deduction	The Waste Hierarchy
Belgium				x			x
Denmark		x				x	x
France				x	x		
Germany				x		x	
Greece			x	x		x	
Hungary			x	x		x	
Italy	x			x		x	
Poland		x		x		x	
Portugal				x		x	
Spain			x		x		
Sweden			x				x
UK				Zero rate			x

The General Food Law applies to all food and organisations placing food on the market, including non-profit organisations such as food banks. According to the law, food business operators are responsible for the safety of foods at all stages of the food chain and must ensure that the requirements of the General Food Law are met within their area of responsibility. This legal framework does not seem to incentivise food surplus donation in the selected Member States, as food donors are wary of jeopardising brand image and facing fines in the unfortunate case of food poisoning. As the table shows, Italy is the only EU MS which has put in place a Good Samaritan Law which recognises food banks themselves as the final link in the food chain and prevents individuals receiving food from food banks from being able to file a lawsuit against the food donor (see Chapter 7.6).

The comparative table indicates those Member States that face issues regarding the lack of knowledge and misinterpretation of the EU Hygiene Package. Polish Food Banks argued that although the EU Hygiene Package offers flexibility in terms of its transposition in national laws, the Polish [Act on Food Safety and Nutrition](#)¹³ is transposed in a more rigid way than the actual EU legislation. In Portugal, until recently, prepared food or meals were disposed of due to the consensual misunderstanding that according to the available EU legislation, it is forbidden to recover such food. A non-profit organisation responded to a lack of knowledge around the implementation of the Hygiene Package by launching a programme to educate all actors involved in the food chain, including public institutions and health and safety authorities, about the correct interpretation of the hygiene rules and of the EU General Food Law, especially in terms of responsibility and liability (see Chapters 7.9 and 7.11).

In terms of food durability and labelling, the study shows that although the donation of products past their 'best before' date is allowed under EU law, Denmark, Greece, Hungary, Spain and Sweden have introduced national provisions that present barriers to donating food which has passed its 'best before' date. Denmark is soon to change this legislation, with an expected revision in December 2014. One of the main causes is that food donors are not willing to take the risk of liability for the donated foods, or

¹³ Dz.U. 2010 nr 136 poz. 914 Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 29 czerwca 2010 r. w sprawie ogłoszenia jednolitego tekstu ustawy o bezpieczeństwie żywności i żywienia <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20101360914>

fear a reduction in quality after this date impacting their brand image. Belgium has provided guidelines for assessing the additional lifetime of food after its date of minimum durability ('best before') has been reached or exceeded (see Chapter 7).

The legislation overview also clarifies that according to the [Council Directive 2006/112/EC](#)¹⁴, food donations are taxable and that *"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"* (Article 74). The European Commission recommends in a reply to a [Parliamentary Question](#)¹⁵ setting *"fairly low or even close to zero"* the value of foodstuffs close to their 'best before' date or which cannot be sold due to their external appearance. Most of the examined Member States do not impose VAT when food is donated to food banks and charities, if certain conditions are fulfilled. One reason might be that they interpret the VAT Directive such that the value of the donated food nearing expiry is small or zero, as recommended by the European Commission. Four MS have recently introduced specific provisions in their own national tax legislation 'abandoning the imposition of VAT' on food donation: Greece, Poland, Belgium and Germany. Whether or not this is to be considered a VAT "exemption" is a question of translation and interpretation of the respective legal texts. The comparative table shows that three of the studied Member States still apply VAT on food donation: Denmark, Spain and Sweden.

The study demonstrates that fiscal incentives through tax credits and tax deductions encourage food donations. In France 60% 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. To be noted that there are discussions in Belgium to apply the same tax credit as in France in the near future. The table also shows that in most of the examined MS, food donation can be treated as a deductible tax expense and can reduce the taxable income (the income basis used to calculate the income corporate tax), within certain limits and thresholds depending on the MS. Portugal has in place an enhanced tax deduction, meaning that donors can deduct 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.

There is currently no EU legislation or specific guidance on how to apply the EU waste hierarchy to food. National approaches adapting the hierarchy to food were identified in the UK and Belgium, with the following order of preference proposed: prevention, redistribution to humans, feeding to animals, energy or nutrient recovery by methods such as Anaerobic Digestion (AD), composting, and landfilling. Although in principle such a food waste hierarchy prioritises food donation and redistribution, in practice, it is still more expensive in many MS, including the UK, to donate surplus food than to send it to AD. The recent [report](#)¹⁶ published by the House of Lords, acknowledged that AD should remain an option for unavoidable food waste, and that more efforts should be made to redistribute food before being used for energy.

¹⁴ Council Directive 2006/112/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:347:0001:0118:en:PDF>

¹⁵ European Parliament (2013), Written questions :E-003730/13 , E-002939/13

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-002939&language=EN>

¹⁶ House of Lords (2014) *Counting the cost of food waste: EU food waste prevention*: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/food-waste-prevention/154.pdf>

Best practices

Based on the legislation overview and comparative analysis, six best practice factsheets were drafted in the identified legislation areas. The factsheets support the development of specific recommendations aimed at tackling existing barriers, building on current best practice.

The following best practices were identified:

■ **Guidance on the interpretation of foodstuff minimum durability for food banks and food charities in Belgium**

Belgium has introduced in a Circular a non-limiting list of foods that can be used by food banks and charities, to serve as a guideline in assessing the conservation of food after they reached or exceeded the date of minimum durability. It is noted that the provision of food past its 'best before' date is not a preferred option, and that the Guidance may also serve as a basis on reassessing the process for setting 'best before' dates, and exempting certain stable foods from the need for a date mark.

■ **The interpretation of food traceability in Belgium**

The Belgian Royal Decree contains a derogation according to which the list of retailers/manufacturers who donated foodstuffs can serve as a record of incoming products and the list of food banks and charities can serve as a record for outgoing products, simplifying the bureaucratic burden for food donation.

■ **The Good Samaritan Law in Italy**

This legislation identifies the food bank as the final consumer of donated products. Food donors are thus liable for food safety and hygiene conditions only to food banks, rather than to individual consumers of food bank provisions. Given that the proper safety and hygiene framework is ensured by food banks upon receipt of donations, many stakeholders consider that this legislation provides an extra level of reassurance to donors that stimulates donation, without compromising necessary safeguards.

■ **The interpretation of the VAT Directive in Belgium**

A Belgian Decision clarifies the European Commission's recommendations of setting fairly low or at zero the value of foodstuffs close to their 'best before' date in order to abandon VAT liability on donated products. This clear legal interpretation of the EC recommendation makes this process easier to use and more transparent in Belgium.

■ **Fiscal incentives in France**

Food donors qualify for a tax credit equal to 60% of the value of the food donated, to a limit of 0,5% of revenue of companies subject to corporate income tax.

■ **The application of the food waste hierarchy in France**

In France, fiscal instruments have been used such that it is more expensive for companies to send unmarketable food to anaerobic digestion than to donate it to food banks, sending appropriate financial signals in relation to the EU waste hierarchy.

Recommendations

The following areas for policy development have been identified based on stakeholder consultation, the comparative analysis of EU and Member State legislation and the selection of best practice.

Food Use Hierarchy

It is recommended that the EU publish guidance on a food use hierarchy that clearly prioritises feeding humans, through food waste prevention and donation to charities of unsaleable foods, over waste management options such as composting, anaerobic digestion and landfilling. This hierarchy would provide further clarification on the existing EU waste hierarchy in the context of food and send a clear signal to businesses and governments that economic incentives, investment in infrastructure, and communication activities should prioritise food redistribution. Work being carried out by FUSIONS and the Food Loss and Waste Protocol can support the development of this hierarchy. This recommendation is supported by the UK House of Lords Committee, which proposes the EC publish guidance on the application of the waste hierarchy to food¹⁷.

It is recommended that Member States integrate the principles of the food use hierarchy into their National Waste Prevention Programmes¹⁸, identify existing incentives and investment structures that do not reflect this prioritisation, and explain actions being taken to mitigate any conflicts, such as the case where economic instruments have made anaerobic digestion cheaper in practice than donating edible food to the hungry.¹⁹ The possibility of a mechanism of review and enforcement of National Waste Prevention Programmes is raised. As the development of infrastructure and the financing of transportation/logistics are the key barriers to the expansion of food donation noted by stakeholders in the EU, it is essential that the cost signals for businesses are not distorted by political priorities for waste management options lower in the waste hierarchy.

Fiscal instruments

There are a range of fiscal tools being used successfully in the EU to support food donation, including the abandonment of VAT liability and the use of corporate tax credits for donated food. VAT liability appears to have been “abandoned” in a number of Member States, although the use of the term VAT “exemption” is controversial, and the compatibility of these policies with the EU VAT Directive is unclear. Although one option is to consider the value of donated food as fairly low or zero for tax purposes, this may negatively impact Member States that offer a (percentage) corporate tax credit to companies on the value of food they donate, nullifying the value of that tax credit. It is suggested that “abandoning” VAT on donated food, rather than valuing donated food at zero, may be a more effective incentive, given its compatibility with other (potentially more significant) fiscal incentives such as tax credits. It is noted overall that where feasible, given a Member State's economic circumstances, tax credits appear to be the most effective incentive for food donation.

¹⁷ House of Lords (2014) *Counting the cost of food waste: EU food waste prevention*, page 46: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/food-waste-prevention/154.pdf>

¹⁸ Integrated in national waste management plans as of December 2013, these programmes are evaluated at least every sixth year and revised as appropriate.

¹⁹ While the WFD requires that national waste prevention programmes be updated at least every six years, thus by 2019 for those MS who submitted their programmes on time in December 2013, these are living documents that guide MS strategy and food waste prevention is a key area for MS action.

There may be a need for a specific assessment of fiscal measures to encourage food donation in the EU and there is a clear need for transparent communication via the EC website on the application of the VAT Directive in the case of food donation.

Liability legislation

Good Samaritan legislation, as it exists in Italy and the United States, limits civil and criminal liability for good faith donation of products, known to be fit for consumption at the time of donation. In Italy, charitable organizations redistributing food are not considered food business operators, and thus the transaction between donor and charity carries the same liability conditions as retailer to consumer. In the United States, liability protection is extended to donors, persons, gleaners, and non-profit organisations distributing this food; liability being limited to acts of "gross negligence" or intentional misconduct.

In both countries, food donation follows processes developed by the parties involved, systemised via good practice guidelines. Relationships of confidence are often developed between donors and food banks regarding the proper management of donated food. While Good Samaritan legislation does not relieve donors of their legal responsibilities to deliver a good quality product, as if the product were put on the market directly to consumers, stakeholders note that the extra level of assurance that this sort of legislation provides can be critical for companies in determining whether or not to engage in donation activities. It is also considered that greater synergy between Member States, via a common position for the EU, would simplify the donation landscape for donors, avoiding a patchwork of regulations.

A common position by the EU, limiting donor liability on food that meets quality and labelling standards imposed by legislation and donated in good faith, is supported by this study, accompanied by industry-charity developed good practice guidelines along with a clear, harmonised system enabling traceability of food products that avoids excessive administrative burden.

Food durability and ‘best before’ dates

Under the rubric of food durability, two approaches are proposed. Firstly, an extension of the list of products that could be exempted from the requirement for a ‘best before’ date (extension of [Annex X of EU Regulation 1169/2011](#)²⁰) is suggested, facilitating both donation and the likelihood of final consumption, as misunderstandings around the importance and meaning of ‘best before’ dates persist among consumers. In supplement, the development of EU guidance is recommended for assessing additional lifetimes of products after their initial (producer indicated) date of minimum durability (‘best before’ date) has passed, based on the Belgian model.

Overall, the objective is to ensure that good quality, edible food is not going to waste because some ‘best before’ dates not linked to food safety and hygiene are excessively limiting.

²⁰ EU Regulation 1169/2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>

Other policy aspects for consideration

Other policy aspects for consideration may include: MS facilitation of supply chain donor collaboration; the removal of donor requirements that food banks provide food for free (to the exclusion of social supermarkets); a review of hygiene legislation specifically relating to the food service sector as feedback and experience suggests this may be excessive and poorly understood; and the encouragement of publication of food waste data in the food supply chain, perhaps facilitated by MS-sponsored voluntary collective action programmes.

3. Glossary

Anaerobic Digestion (AD)

Anaerobic Digestion is a natural process whereby plant and animal materials (biomass) are broken down by micro-organisms in the absence of air. This gas can be used to generate renewable heat and power.

Best before dates (minimum durability date)

The date until which the food retains its specific properties when properly stored.

Bio-waste

Biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants.

Corporate income tax

Taxes against profits earned by businesses during a given taxable period.

Food waste

Food waste refers to food intended for human consumption which is discarded, whether or not it has reached its expiry date. Often this is because food has spoiled but it can be for other reasons such as oversupply in markets, rigorous aesthetic standards for produce, or individual consumer shopping/eating habits. It does not include food diverted to animal feed or donated for redistribution.

Food surplus

The term surplus applies to any food that does not have a commercial outlet but is within date and can still be consumed. It may become surplus for various reasons including overproduction, inaccurate forecasting of stock needs, incorrect labelling and damaged packaging.

Food safety

Current EU food safety policy is applied in an integrated way from the 'farm to fork', specifically covering transparency, risk analysis and prevention, the protection of consumer interests, and the free circulation of safe and high-quality products within the internal market and with third countries.

Food bank

A non-denominational, non-profit organisation which acts as a pantry to the charities and community groups who feed the hungry. In some Member States, food banks have their own definitions and special statuses (e.g. Italy)

Shelf life

The period during which a food product maintains its microbiological safety and suitability for consumption at a specified storage temperature and where appropriate, specified storage and handling conditions.

Tax credit

A sum deducted from the total amount a taxpayer owes to the state. In case of food donation, food donors may be able to deduct a certain percentage of the value of donated food from their income corporate tax.

Tax deduction

A deductible tax expense can reduce the taxable income basis within certain limits and thresholds.

Taxable income

The income basis used to calculate the income corporate tax.

‘Use by’ date

Indicates the date until when foodstuffs can be eaten safely.

Value Added Tax (VAT)

A type of consumption tax that is placed on a product whenever a value is added at a stage of production and at final sale. A VAT-registered business charges VAT on the goods and services it provides to the final consumer and reclaims the VAT paid to buy goods and services for the business. In the case of food donation the donor generally bears the VAT cost since he cannot charge it to the final consumer.

4. Objectives

The objective of this study is to facilitate food donation in the EU by providing a comparative overview of relevant legislation and practices in the Member States, mapping the hurdles they present to efficient food donation and identifying the best practices. These elements are building blocks of policy recommendations that enable food donation to be the preferred management option for surplus food, in accordance with the EU waste hierarchy.

This study follows up on an EESC [own-initiative opinion](#)²¹ on the prevention and reduction of food waste, which was adopted in 2013 and it supports the delivery of the Roadmap towards a Resource Efficient Europe and the European Parliament's target of a 50% reduction in food waste by 2025.

Methodologically, this involves an assessment and a stakeholder consultation on the legislation impacting food donation in 12 EU Member States²², which were selected via a brief regional review to assure broad geographic coverage and diverse policy approaches. This comparative analysis identifies best practices and proposes a set of recommendations to EU Member States on how to legislate or interpret legislation in order to facilitate food donation.

²¹ European Economic and Social Committee (2013) *Opinion of the Civil society's contribution to a strategy for prevention and reduction of food losses and food waste (own-initiative opinion)*: <http://www.eesc.europa.eu/?i=portal.en.nat-opinions.25955>

²² France, United Kingdom, Germany, Belgium, Spain, Italy, Greece, Portugal, Poland, Hungary, Sweden and Denmark.

5. Background

5.1 Food waste – the scope of the problem

The issue of food waste is of high importance in the efforts to fight against climate change, combat hunger, raise income and improve food and nutrition security. Globally, about one-third of food produced for human consumption, or about 1.3 billion tonnes per year, is lost or wasted.²³ In the EU, according to the first pan-European study on food waste conducted in 2010²⁴, an estimated 89 million tonnes of food is wasted each year or about 180 kg per person, excluding the primary agricultural and fisheries production phases of the supply chain.

Food waste occurs throughout the supply chain, at all phases between agricultural production and household consumption. Its definition can be contentious, and ‘food loss’ and ‘food waste’ are often distinguished in relation to different stages of the supply chain. ‘Food loss’ is commonly used by agronomists in relation to agricultural and post-harvest processes, where food intended for human consumption leaves the supply chain due to environmental and technical limitations, such as poor weather conditions, pestilence, poor storage technologies, infrastructure, packaging, and markets while is also being wasted as a result of commodity price fluctuations, aesthetic quality standards and contractual agreements. Unconsumed food leaving the supply chain downstream (in manufacturing retail, food service and households) is governed by waste legislation and thus more commonly referred to as ‘waste’. Thus food waste overall refers to any edible food intended for human consumption that fails to be eaten.

Food is one of the most important drivers of environmental pressures, particularly in terms of water and resource use, greenhouse gas emissions (GHGs), pollution, and subsequent climate and habitat change. The FAO estimated in the study “Food Wastage Footprint. Impacts on Natural Resources” study, that the global carbon footprint of food produced and not eaten is 3.3 billion tonnes of CO₂ equivalent: as such, food loss and waste ranks as the third top emitter of greenhouse gas emissions after USA and China. Moreover, around 250km³ of water and 1.4 billion hectares of land used annually to produce food are lost or wasted.²⁵ In the EU, food production and consumption generate an estimated 20% to 30% of all EU environmental impacts.²⁶

Besides its environmental cost, food loss and waste also represents a loss of economic value. On a global scale, the economic cost²⁷ of the overall amount of food loss and waste in 2007 totalled to

²³ FAO (2011) *Global Food Losses and Food Waste*: <http://www.fao.org/docrep/014/mb060e/mb060e00.pdf>

²⁴ BIO Intelligence Service (2010) *European Commission Preparatory study on food waste across EU 27*, available at: http://ec.europa.eu/environment/eussd/pdf/bio_foodwaste_report.pdf

²⁵ FAO (2013) *Food Wastage Footprint. Impacts on Natural Resources* <http://www.fao.org/docrep/018/i3347e/i3347e.pdf>

²⁶ European Commission (2014) *Food waste*: http://ec.europa.eu/food/food/sustainability/index_en.htm

²⁷ based on 2009 producer prices

around USD 750 billion. This is approximately the GDP of Turkey or Switzerland in 2011.²⁸ In the UK, WRAP estimated in 2009 that avoidable food waste costs the average household £480 (€595) per year.²⁹

Wasting food also raises social questions, particularly given the current global financial crisis, rising food prices and international food shortages. Globally, 870 million people go hungry every day.³⁰ In the EU, 79 million EU citizens live beneath the poverty line and 16 million depend on food aid from charitable institutions.³¹ The highest rates of poverty, superior to 20%, are observed in Eastern Europe, in Romania and Bulgaria. Spain and Greece have similar poverty levels of about 20%: these two countries are seriously affected by the economic crisis.³² Rising prices of food and volatility of the market have put pressure on the access to high quality food for the lower social economic groups. Before further natural resources pressure is generated by increasing food production on a significant scale, targeted efforts are necessary to understand and counteract misdistribution and inefficient use of food resources in Europe.

5.2 Food donation – a key lever in European solutions to food waste and food poverty

The donation of food surplus has grown significantly in the EU in recent years. Surpluses arise for a number of reasons; for example, food could be incorrectly labelled, over-ordered, over-supplied or obsolete seasonal stock. These surpluses can be redirected for human consumption through donations to food banks and food charities or redistribution organisations. Nearly half of the food collected in Europe comes from the European programme of food aid for the most deprived (FEAD)³³, 22% from the food industry (manufacturers), 17% from the retail sector and 14% from individuals through national and local collections.³⁴

Food donation provides a crucial support for the most deprived. Food banks play a key role in the food donation process, recovering food from donors (food manufacturers, distributors, retailers, or individuals) and redistributing it to civil society organisations and social services that support the most deprived. They operate using a variety of models and may be run by organisations such as charities, community groups and churches as well as individuals. Although the concept has existed internationally for several decades (beginning in the US in the late 1960s³⁵), food banks have become more prevalent in the EU only in the last decade. In Europe, 253 food banks are under the umbrella of the European Federation of Food Banks, which in 2012 distributed 388,000 tonnes of food to 5.4 million people in need.³⁶

²⁸ FAO (2013) *Food Wastage Footprint. Impacts on Natural Resources* <http://www.fao.org/docrep/018/i3347e/i3347e.pdf>

²⁹ WRAP (2009) *Household Food and Drink Waste in the UK*: [http://www.wrap.org.uk/sites/files/wrap/Household food and drink waste in the UK - report.pdf](http://www.wrap.org.uk/sites/files/wrap/Household%20food%20and%20drink%20waste%20in%20the%20UK%20-%20report.pdf)

³⁰ FAO (2013) *The state of food insecurity in the world* <http://www.fao.org/publications/sofi/en/>

³¹ European Parliament (2011) *Urgent call to reduce food waste in the EU*: <http://www.europarl.europa.eu/news/en/news-room/content/20111121IPR31961/html/Urgent-call-to-reduce-food-waste-in-the-EU>

³² Inequality Watch: <http://www.inequalitywatch.eu/spip.php?article99&lang=en>

³³ The European Commission welcomed on March 11th the definitive adoption by the EU Council of Ministers of the Regulation on the new Fund for European Aid to the Most Deprived (FEAD). The main purpose of the FEAD, which will be worth €3.8 billion in the 2014 to 2020 period, is to support Member States' social emergency relief schemes. In addition Member States will be responsible for paying 15% of the costs of their national programmes, with the remaining 85% coming from the Fund.

³⁴ European Food Banks Federation (2014)

³⁵ Food Bank (Second Harvest Food Bank of Northwest NC), *The History of Food Banking* <http://www.hungernwnc.org/about-us/history%20of%20food%20banking.html> [accessed 24 Septembre 2015]

³⁶ European Federation of Food Banks (2014) http://www.eurofoodbank.eu/portail/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=10&lang=en

In the EU in 2011, in the wake of the economic and financial crisis, 24.2% of Europeans were on the brink of social exclusion.³⁷ The number of beneficiaries of the European aid programme for the most deprived (FEAD) rose from 13 million in 2008 to 18 million in 2010.³⁸ The growth in food bank networks is a response to this need. In the UK, food bank proliferation is particularly new, Trussell Trust UK indicating a 76% increase in the number of food banks launched since April 2012.

Nevertheless, at present, almost 50% of edible and healthy food gets wasted in EU households and supermarkets each year³⁹ as food donation and redistribution faces a number of legislative, administrative and practical barriers. According to FareShare UK, a charity that connects food industry surpluses with over 700 grassroots charities, if just 1% of the surplus food in the UK was donated, it could provide 70 million meals for people in need.⁴⁰

5.3 Food donation – legislative barriers and opportunities

Food donation is recognised as an effective lever in reducing food waste and counteracting against food poverty, especially in times of financial crisis. In Europe, there is no common legislation on food donation; policy frameworks in different Member States vary, facilitating donation to greater or lesser degrees some being stricter than others. Food safety, food hygiene and tax legislation have been identified as the main legal areas impacting the scale of donation. We might add that waste legislation can also play a role, as discussed below.

Food donation is often discouraged by the lack of knowledge of national food laws (especially those concerned with food safety and hygiene) and of EU hygiene and safety legislation. Food donors often do not have a clear vision of which foodstuffs are suitable for donation, and they may not have a logistical framework in place to facilitate large-scale donation while food recovery and redistribution entities may not have the logistical capacity for retrieval, storage, and/or processing. Moreover, legal liability that might arise from donations is a major concern. If in the US, food donors are protected from civil and criminal liability for any harm caused by that food by [the US Bill Emerson Good Samaritan Act](#)⁴¹, in the EU, only Italy has similar legislation which exempts food banks from liability for the storage, transport and use of donated food.

Moreover, tax legislation offers an opportunity to incentivize donation. According to the [VAT Council Directive 2006/112/EC](#), food donations are taxable if the donation is made by a taxable person and if the VAT on acquisition of the goods is fully or partially deductible. However, the European Commission recommends setting “fairly low” the value of foodstuffs close to their ‘best before’ date or which cannot be sold due to their external appearance. MS interpret differently this recommendation (see Chapter 7).

Another policy area impacting food donation is compliance with the waste hierarchy. In some MS, local authorities have taken measures to encourage and sometimes compel food-related businesses and retailers to donate the unsold or discarded food to local charities and food banks. For example, in Belgium, two laws have been adopted in the Brussels and Walloon Region which oblige supermarkets to donate surplus food in order to maintain their environmental permits (see Chapter 7.4).

³⁷ EUROSTAT, based on 2011 data http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-03122012-AP/EN/3-03122012-AP-EN.PDF

³⁸ European Commission, http://ec.europa.eu/agriculture/most-deprived-persons/index_en.htm

³⁹ European Parliament, Urgent call to reduce food waste in the EU, 2011 <http://www.europarl.europa.eu/news/en/news-room/content/20111121IPR31961/html/Urgent-call-to-reduce-food-waste-in-the-EU>

⁴⁰ FareShare UK, 2013 <http://www.fareshare.org.uk/fareshares-response-to-report-on-food-waste/>

⁴¹ PUBLIC LAW 104-210—OCT. 1, 1996 <http://www.gpo.gov/fdsys/pkg/PLAW-104publ210/pdf/PLAW-104publ210.pdf>

Food donation faces other hurdles beyond legislation. Lack of funds for the organisation of logistics, namely transportation and storage, is one of the most limiting factors in food redistribution. A growing number of initiatives around the world are providing easily replicable examples (FareShare in the UK, Last Minute Market in Italy) while economic pressures added to social and environment considerations make food businesses turn more and more towards food donations. Some charities are also looking at gleaning practices as a convenient way to introduce fresh fruit and vegetables in the diets of the poorest, as opposed to the processed and packaged food that charities have been traditionally able to access. For example, Gleaning Network UK coordinates teams of volunteers, local farmers and food redistribution charities in order to save unharvested crops which farmers waste every year.

As demand for donated food rises sharply, the dissemination of good policy practice among Member States, in the areas outlined above and surely others to be identified in this study can make donation easier while guaranteeing food safety. A clear, harmonised European legislative framework would facilitate straightforward access to food resources and offer significant joint benefits in terms of resource efficiency and food security, to which this study intends to contribute.

6. Approach and methodology

The study provides a comparative overview of the policy landscape in which food is donated, including specific practices implementing legislation, across the EU28.

In an initial scoping phase, literature review and interviews were conducted to guide research, providing the first inputs for the selection of Member States. Based on the results of this first investigation of the legislative framework for food donation, 12 Member States were selected, with balanced geographic representation across the following four regions: Northwest, Southern, Eastern and Nordic Europe, as illustrated below:

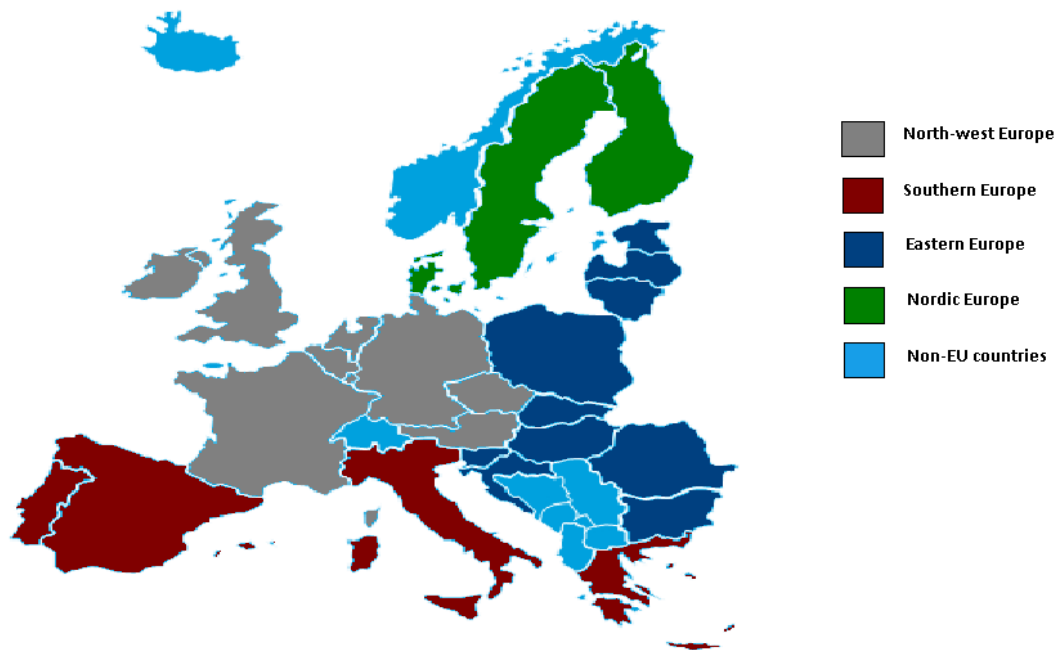


Figure 1: Geographic representation of EU Member States

The following MS were selected:

- North-west Europe: the United Kingdom, France, Belgium and Germany
- Southern Europe: Spain, Italy, Portugal and Greece
- Eastern Europe: Poland and Hungary
- Nordic Europe: Denmark and Sweden

The shortlist of Member States was defined on the basis of criteria identified in the study proposal, namely:

- Existence of relevant legislation
- Distinctive or notable legislation, contributing to broad policy coverage
- Good distribution among MS and regions
- Significance of food donation activities
- Availability and quality of relevant information and data
- Presence of known expert and stakeholders in BIO by Deloitte's network

The more detailed criteria for selection are illustrated below:

Member States	Selection criteria
North West region	
	The New Food Redistribution Industry Working Group (IWG)
United Kingdom	Significant documented debate in the House of Commons concerning food redistribution and the proposed Good Samaritan Law Best practices in redistribution such as FareShare and FoodCycle
France	Guides to clarify legal framework around food donation recently produced at initiative of French Ministry of Agriculture and the Rhône-Alpes Region The French pact against food waste has a Working Group on this topic (of which BIO by Deloitte is a participant)
Belgium	Recently abolished the VAT on food donated to food banks The Brussels and Walloon Regions have introduced laws which oblige supermarkets to donate food surplus and food banks.
Germany	Very strong and distinctive food surplus redistribution network (Die Tafeln)
Southern Region	
Italy	Notable good practices and innovation in food donation The only European country to have passed a Good Samaritan Law
Spain	The Ministry of Food and Agriculture developing comprehensive food waste strategy for Spain Innovative food bank models such as Barcelona Food Bank.
Greece	Difficult economic context creating wave of new action on food waste Socially innovative practices such as Boroume
Portugal	Good example of how misinterpretation of EU Hygiene Regulations can affect food surplus distribution

Eastern Region	
Hungary	The Hungarian Food Bank is a leading example for redistribution practices in the Eastern region and its President Balazs Cseh is an expert in the field with good access to resources (currently collaborating with BIO on a FUSIONS feasibility study on food donation from the hospitality sector)
Poland	VAT on charitable food donations was waived recently
Nordic Region	
Sweden	Innovative social enterprise for redistribution
Denmark	Different food banking needs given that welfare system reduces necessity of NGO intervention

As a second step, literature review and interviews with selected and targeted experts were conducted in each MS in order to consolidate the data gathered from the first exercise. In total, over 30 experts were interviewed (see Annex A). The legislation identified during both interviews and literature review refers to EU legislation with national impacts, as well as to national- or local-level legislation where possible. Particular attention was given to five key legal areas which affect food donation: product liability, food safety and hygiene, food durability and date marking, tax legislation, and the food waste hierarchy (see Chapter 7).

Hurdles and best practices relating to these five policy areas and its implementation were extracted from the overview for analysis, forming the basis of a comparative analysis of the main identified legislation areas (see Chapter 8).

Six best practice factsheets were selected in order to gain a more complete picture of the potential effects – both negative and positive – of various legislative provision on food donation (see Section 9) and to support the development of specific recommendations aimed at tackling existing hurdles and drawing on current best practices (see Chapter 10).

The study is organised around three main sections:

- Overview of current legislation and practices concerning food donation in EU MS
- Comparative analysis of legislation/practices and hurdles
- Best practices and recommendations

7. Overview of current legislation and practices concerning food donation in EU Member States

An inventory was developed compiling available intelligence on legislation and practices relevant to food donation in the selected MS, forming the basis of an overview of the current situation in Europe and in the selected MS and providing the backbone of the comparative analysis in Chapter 8 and the policy recommendations in Chapter 10.

7.1 EU legislation related to food donation

The General Food Law

■ [Regulation EC/178/2002 \(General Food Law\)](#)⁴²

A central piece of legislation related to food donation is the General Food Law. The aim of this Regulation is to provide a framework to ensure a coherent approach in the development of food legislation. It lays down definitions, principles and obligations covering all stages of food/feed production and distribution.

Scope of the Regulation

According to Article 3.8, food donation falls under "placing on the market" operations, which are holdings 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. This definition essentially points out that all food donations have to comply with the EU General Food Law. In other words, a food business operator has to comply with the same rules whether he is selling or donating food. This piece of legislation forms the basis of all the other legislation regarding food donation and redistribution.

⁴² 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 <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002R0178>

A "food business operator" is defined as *"the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control"*. Food banks and charities are considered "food business operators".

Responsibility and liability

According to Article 17 *"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."* The food business operator is held responsible for any hygiene problem occurring only in the part of the food chain under its own control. For example, food charities are subject to food safety rules within the limits of their activities such as cold chain requirements.

In terms of liability, Article 21 of the General Food Law mentions that its provisions *"shall be without prejudice to the [Council Directive 85/374/EEC of 25 July 1985](#)⁴³ on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products."* In accordance with the abovementioned Directive, *"producers are liable for damage caused by a defect in his product."* A product is defective when it does not provide the safety which a person is entitled to expect (its presentation, use, time of circulation). However food donors and food charities do not seem to fall in its scope because the transfer of food surplus to a charity by a food business operator is not a sale in the sense of the Directive.⁴⁴

Traceability

Past food hygiene incidents have demonstrated that the ability to trace food and feed throughout the food chain is of prime importance for the protection of public health and consumers' interests.

Article 18 of the General Food Law introduces the concept of traceability as *"the ability to trace and follow food, feed, and ingredients through all stages of production, processing and distribution"*.

Article 18 requires food business operators:

- To be able to identify from whom and to whom a product has been supplied;
- To have systems and procedures in place that allow for this information to be made available to the Competent Authorities upon request.

The Regulation does not expressly compel operators to establish a link between incoming and outgoing products and does not specify what type of information should be kept by the food business operators or the minimum period of time for keeping records. It is for the businesses to decide. The European Commission issued a [Guidance Document](#)⁴⁵ on the implementation of articles 11, 12, 14,

⁴³ 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 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0374:en:HTML>

⁴⁴ Francesco Planchenstainer (2013) *They Collected What Was Left of the Scrap: Food Surplus as an Opportunity and Its Legal Incentives*, available at: http://eprints.biblio.unitn.it/4094/1/Trento_Lawtech_Research_Paper_13.pdf

⁴⁵ European Commission (2010) *Guidance on the implementation of articles 11, 12, 14, 17, 18, 19 and 20 of Regulation (EC) No 178/2002 on General Food Law* http://ec.europa.eu/food/food/foodlaw/guidance/docs/guidance_rev_8_en.pdf

17, 18, 19 and 20 of the Regulation. This document puts forward suggestions regarding the kind of information which should be kept by the food business operators (point III.3.2, I and IV).

Key barriers:

- Food producers and retailers are reluctant to donate, given that in the unfortunate case of food poisoning, they may jeopardise their reputation.
- Suppliers/retailers may be driven to dispose the food instead of addressing it to charity organizations in order to avoid liability.

Food Hygiene Package

One of the central goals of the European Commission is to ensure a high level of protection of human health and consumers' interests in relation to food. Recent crisis have undermined the public confidence in the capacity of the food industry and of public authorities to ensure that food is safe.

Since 2006, the European Commission has merged, harmonised, and simplified food safety hygiene rules, previously contained in a number of Council Directives. The new legislation innovates in making a single, transparent hygiene policy applicable to all food and all food operators right through the food chain ‘from farm to fork’ (production, processing, distribution and placing on the market), together with effective instruments to manage food safety and any future food crises throughout the food chain (such as Guidance documents). The priority is to ensure the safety and hygiene of foodstuffs, while allowing certain flexibility.

The new legal framework lays down general rules on hygiene in four legislative texts, also known as the “Hygiene Package”, relating to all foodstuffs as well as specific rules for certain food businesses:

- [Regulation \(EC\) No 852/2004](#)⁴⁶ on the hygiene of foodstuffs
- [Regulation \(EC\) No 853/2004](#)⁴⁷ laying down specific hygiene rules for food of animal origins
- [Regulation \(EC\) No 854/2004](#)⁴⁸ laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption and
- [Directive 2004/41/EC](#)⁴⁹ repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption.

These Regulations lay down general rules for food business operators (including food banks) on the hygiene of foodstuffs, in particular the following principles:

- primary responsibility for food safety rests with the food business operator;
- it is necessary to ensure food safety throughout the food chain, starting with primary production;
- it is important that food is stored safely at ambient temperatures, particularly frozen food, to maintain the cold chain;
- general implementation of procedures based on the Hazard Analysis Critical Control Point (HACCP) principles, together with the application of good hygiene practice, should reinforce food business operators' responsibility;

⁴⁶ Regulation (EC) No 852/2004 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0003.01.ENG

⁴⁷ Regulation (EC) No 853/2004 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0022.01.ENG

⁴⁸ Regulation (EC) No 854/2004 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0083.01.ENG

⁴⁹ Directive 2004/41/EC http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.226.01.0128.01.ENG

- development of guides to good practice for hygiene or for the application of HACCP principles.

To be noted that the Regulation exempts primary producers from complying with many hygiene rules (the need of a HACCP system in place being just one example of this). Food banks and charity organizations enjoy the same status and face the same regulations as any other business operators.

Key barriers:

- Member States that face issues regarding the lack of knowledge and misinterpretation of the EU Hygiene Package. Transposition of the Hygiene Package in national laws is sometimes more rigid than the actual EU legislation.
- There is no flexibility in the rules applied to retailers accommodating food donated to food banks.
- There are no EU guidelines designed for food business operators clarifying their compliance with the EU Food Hygiene legislation when donating food. The EU could follow the example of the guides drafted by the Rhône-Alpes Region in France⁵⁰.

Food durability and date marking

Confusion regarding date marking legislation has an impact on the amount of food wastage and food surplus. According to research in the Netherlands around 15% of food waste is due to the rules on product labelling.⁵¹ Products usually remain edible beyond the best before date. The ‘use-by’ and ‘best before’ dates are often misunderstood by the actors across the food chain.

According to Article 9 of the [Regulation EC 1169/2011](#)⁵² on the provision of food information to consumers food business operators are required to determine, based on the composition of the product, whether it is appropriate to use a ‘best before’ or ‘use by’ date.

‘Use by’ date is defined as the date which marks the end of the estimated period under any stated storage conditions, after which the product probably will not have the safety attributes normally expected by the consumers. After this date, the food should not be regarded as marketable. Foods must be consumed before the ‘use by’ date for safety reasons.

‘Best before’ or ‘minimum durability’ date, is defined as the date which marks the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. However, beyond the date the food may still be suitable for consumption (and therefore can still be donated) even though they might lose some aspects of their quality such as colour or taste.

Annex X of the [Regulation EC 1169/2011 on the provision of food information to consumers](#) illustrates a short list of products which do not require a ‘best before date’ such as vinegar, salt, sugar etc.

⁵⁰ DRAAF Rhône-Alpes (2013) Donner aux associations d’aide alimentaire, Guide pratique et réglementaire : Produits agricoles, available at : http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_des_dons_de_produits_agricoles_cle42dd63.pdf

DRAAF Rhône-Alpes (2013) Donner aux associations d’aide alimentaire, Guide pratique et réglementaire : Entreprises du secteur alimentaire, available at : http://draaf.midi-pyrenees.agriculture.gouv.fr/IMG/pdf/Guide_don_alimentaire_entreprises_cle878ebd.pdf

DRAAF Rhône-Alpes (2013) Donner aux associations d’aide alimentaire, Guide pratique et réglementaire : Restauration, available at : http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_dons_restaurant_sept2013_cle091e14.pdf

⁵¹ European Council (2014) Food losses and food waste in Europe and European legislation <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209755%202014%20INIT>

⁵² Regulation EC 1169/2011 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>

The marketing (and therefore the donation) of foods which exceeded the expiry of their ‘best before’ date is allowed under EU law, provided that the foods concerned are still safe and their presentation is not misleading. With the exception of table eggs, there are no EU rules which prescribe how date marketing should be established (i.e. the setting of ‘use by’ or ‘best before’ dates) and no EU guidance as to how long products can be consumed past the ‘best before’ date.

Key barriers:

- There is a general misunderstanding and confusion across the EU about the possibility of donating food that has passed its ‘best before’ date.
- The legislation allows Member States to introduce provisions in national law forbidding these products from being placed on the market.

VAT regime and food donation

According to the [Council Directive 2006/112/EC](#)⁵³ on the common system of value added tax, *“the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, shall be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible.”*

This article illustrates that food donations are taxable with two conditions: the donation is made by a taxable person⁵⁴ and the VAT paid on the acquisition of the donated goods is fully or partially deductible. 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 (Article 74). The European Commission recommends in a reply to a [Parliamentary Question](#)⁵⁵ setting fairly low the value of foodstuffs close to their ‘best before’ date or which cannot be sold due to their external appearance. Value could even go down to zero, for example when the date has been reached:

“It was agreed that where foodstuff is donated, the value on which the VAT is calculated would need to be adjusted according to the circumstances and the state the goods are in at the moment they are donated. Where the donation takes place close to the best before date or where goods are not fit for sale, that value should be fairly low, even close to zero.”

Key barriers:

- The imposition of VAT on food donation in some MS is a difficult area. Terminology in legal texts vary such that the value of food may be considered low or zero at time of donation, VAT may be "abandoned", or "exempted". This issue is both controversial and lacks clarity.

⁵³ Council Directive 2006/112/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:347:0001:0118:en:PDF>

⁵⁴ Article 9: Any person who, independently, carries out an economic activity

⁵⁵ European Parliament (2013), Written questions :E-003730/13 , E-002939/13
<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-002939&language=EN>

The Waste Framework Directive

According to the [Waste Framework Directive](#)⁵⁶ (WFD), Member States shall apply as a priority order the following waste management hierarchy: prevention, preparing for re-use, recycling, recovery and disposal. There is no EU legislation or guidance on how to apply the waste hierarchy to food at this time. Some initiatives applying the WFD to food exist in the UK, the Netherlands and Belgium.⁵⁷

These national initiatives set out a ‘food waste hierarchy’ from prevention to landfill via redistribution to humans, feeding animals, and energy or nutrient recovery by methods such as anaerobic digestion⁵⁸ (AD) and in-vessel composting. Each successive step down the hierarchy from waste prevention down towards landfilling represents a loss in food value and a less desirable option. The food waste hierarchy prioritises the diversion of surplus food to charities or animal feed, avoiding landfill.

Key barriers:

- Some MS have deployed economic incentives which do not reflect the hierarchy for waste management, which create economically favourable conditions for management options lower in the hierarchy, including AD.

7.2 United Kingdom

Background

Around 3.4 million tonnes of food in manufacturing, distribution and retail is considered to be wasted each year in the UK before it reaches people’s shopping baskets.⁵⁹ FareShare and FoodCycle are the biggest food redistribution and food waste charities in the UK. Last year, FareShare received 5,500 tonnes of food which would otherwise have gone to waste. This consisted mainly of fresh produce, such as fruit, vegetables and meat.⁶⁰ FareShare redistributed 30% more in 2013 than the previous year, due to its partnership with leading retailers (Asda, Tesco) and with food manufacturers (Nestlé, Muller Dairy). According to Lindsay Boswell CEO of FareShare, this amount only represents about 1.5% of the 300,000 to 400,000 tonnes of surplus food believed to be available in the UK annually.⁶¹

In 2012, WRAP⁶² set up a Food Redistribution Industry Working Group bringing together retailers, manufacturers and wholesalers, charities and other food industry actors to develop a set of guidance principles to help organisations redistribute food surplus. A series of good practice food surplus redistribution case studies are illustrated in the report. The research found that whilst tonnages of surplus food available at store level are small in comparison to the whole supply chain, the volumes are sufficient and the process is straightforward enough to make this a strategic target area for expansion.

⁵⁶ Directive 2008/98/EC on waste (Waste Framework Directive) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>

⁵⁷ FoodDrinkEurope (2014) *Every Crumb Counts* <http://everycrumbcounts.eu/>

⁵⁸ See Glossary

⁵⁹ WRAP (2014) Surplus food redistribution <http://www.wrap.org.uk/content/foodredistribution>

⁶⁰ WRAP(2014) Insight and action identified for food redistribution <http://www.wrap.org.uk/content/insights-and-action-identified-food-redistribution>

⁶¹ Interview, Lindsay Boswell, FareShare –

⁶² WRAP is a not-for-profit company established in 2000 and backed by government funding from Defra (Department for the Environment, Food and Rural Affairs), Scottish Government, the Welsh Government, the Northern Ireland Executive, and the European Union.

VAT on food donation: Yes, zero rate

VAT on food is generally zero-rated in the UK, as a consequence of the negotiation process prior to EU accession.⁶³ Standard-rated food products include alcoholic drinks, confectionery, crisps and savoury snacks, hot food, sports drinks, supplies of food made in the course of catering including hot takeaways, ice cream, soft drinks and mineral water.⁶⁴

Tax credits⁶⁵: No

The UK Department of Environment, Food and Rural Affairs (Defra) and the Treasury do not have plans to consider the use of fiscal instruments in encouraging the redistribution of food surplus. Defra's focus is on ensuring the retail and charity sectors can better work together to overcome barriers to redistribution, including promotion of best practice.⁶⁶

Liability

- [The General Food Regulations of 2004](#)⁶⁷

According to this law, any person who contravenes or fails to comply with the provisions of the Regulation (EC) No. 178/2002 shall be guilty of an offence and shall be liable to fine or to imprisonment.

Financial disincentives for food donors⁶⁸: Yes

Financial incentives in the UK are such that it appears to be more economically viable to dispose of food waste via anaerobic digestion (AD) rather than undertake the steps necessary to donate/redistribute this food. These incentives may contradict the principle of the EU waste hierarchy, where food donation, as part of waste prevention, is preferable to anaerobic digestion or other recovery. Increasing costs of disposal to landfill also encourages a shift towards AD, but fails to encourage waste prevention.⁶⁹

There are financial incentives in the UK for setting up AD plants. There are output incentives in the range of £68 per tonne, plus feed-in tariffs for electricity generated via AD of £10.54 per kWh, creating an environment where costs and other barriers to disposal via AD are low.

The following pieces of legislation encourage the disposal of food waste to anaerobic digestion:

- 2009 [Renewables Obligation Order](#)⁷⁰

⁶³ This exceptional VAT situation among EU MS exists in the UK, Ireland and Malta.

⁶⁴ HM Revenue & Customs (2014), Rates of VAT on different goods and services <http://www.hmrc.gov.uk/vat/forms-rates/rates/goods-services.htm#1>

⁶⁵ Food donors get a certain percentage of the value of the donated food deducted from their income corporate tax

⁶⁶ WRAP (2014) Food Connection Programme – Final Report

<http://www.wrap.org.uk/sites/files/wrap/Food%20Connection%20Programme%20Final%20Published%20Report.pdf>

⁶⁷ The General Food Regulations 2004

http://www.legislation.gov.uk/ukxi/2004/3279/pdfs/ukxi_20043279_en.pdf

⁶⁸ Policies which create disincentives to food donation

⁶⁹ FareShare urged the UK Government to stick to its promise to follow the principles of the food waste hierarchy, ensuring that when surplus food arises, it is diverted to charities and used to feed people in need. FareShare (2014), Response to the Food Waste Prevention Report <http://www.fareshare.org.uk/response-to-the-food-waste-prevention-report/>

⁷⁰ The UK Government (2009) *The Renewables Obligation Order* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/238809/130909_illustrative_draft_order_for_RO_transition.pdf

The [Utilities Act 2000](#)⁷¹ empowers the Secretary of State to require electricity suppliers to supply a certain proportion of their total sales in the United Kingdom with electricity generated from renewable sources. A [Renewables Obligation Order](#) is issued annually detailing the precise level of the obligation for the coming year-long period of obligation and the level of the buy-out price. The Renewables Obligation (England and Wales) was introduced by the Department of Trade and Industry. The RO places an obligation on licensed electricity suppliers in the United Kingdom to source an increasing proportion of electricity from renewable sources.

- 2010 [Feed-in Tariffs](#)⁷²

The Feed-in Tariff (FIT) scheme is a government programme designed to promote the uptake of a range of small-scale renewable and low-carbon electricity generation technologies.

- 2010 [Coalition Programme for Government of 20 May 2010](#)⁷³

The government made a commitment to work towards a ‘zero waste’ economy that included the introduction of measures to increase energy from waste through anaerobic digestion.

- 2011 [Anaerobic Digestion Strategy and Action Plan](#)⁷⁴

The government published their Anaerobic Digestion Strategy and Action Plan, which stated that after food waste reduction, the best way to treat food was via AD, in terms of environmental impact, given a lower carbon footprint and the generation of both renewable energy and bio-fertiliser. The strategy ensured that both the Renewables Obligation Order and the Feed-in Tariffs would provide financial incentives to use AD.

- 2014 House of Lords publish report, [“Counting the Cost of Food Waste: EU Food Waste Prevention”](#)⁷⁵

The report finds that the UK is unusual in that it treats a large portion of food waste through AD due to the UK’s AD strategy. The report acknowledged that AD should remain an option for unavoidable food waste, however more efforts should be made to ensure that food originally intended for human consumption serves its purpose, and then is used as animal feed where safe, before its use as energy is considered.

7.3 France

⁷¹ The UK Government (2000) *The Utilities Act 2000* <http://www.legislation.gov.uk/ukpga/2000/27/contents>

⁷² The UK Government (2010) *Feed-in Tariffs: get money for generating your own electricity*

⁷³ The UK Government (2010) *The Coalition: our programme for government* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

⁷⁴ DEFRA (2011) *Anaerobic Digestion Strategy and Action Plan: A commitment to increasing energy from waste through Anaerobic Digestion* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69400/anaerobic-digestion-strat-action-plan.pdf

⁷⁵ House of Lords (2014) *Counting the cost of food waste: EU food waste prevention*: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/food-waste-prevention/154.pdf>

Background

France has one of the most developed food charities network in the EU with 12 certified food charity associations at the national level, amongst which are the Red Cross and the French Federation of Food Banks.

In 2012, the French Food Bank Federation distributed 100,000 tonnes of food surplus, donated mainly by retailers (36.3%), the EU (25.2%) and food producers (21.4%). However, only a small fraction of the available food surplus is donated. For example in the Parisian region, retailers only donate 250 tonnes of fresh food per year to food banks, while there is potential for 14,000 tonnes.⁷⁶

In 2013, France signed a [National Pact against Food Waste](#)⁷⁷ with the aim of reducing food waste - by half - by 2025. One of the objectives of the Pact is to look into legislation related to responsibility and liability of food donors and to experiment during a year a digital platform which facilitates food donation. In September, the Region Rhône-Alpes, published [three guides](#)⁷⁸ aimed at clarifying legislative and logistical aspects related to food donation for all food chain actors (producers, retailers, catering services). The French Federation of Food Banks also drafted a [best practice guide](#)⁷⁹ in order to assist food donors and food charities to comply with the Hygiene Regulations.

VAT on donated food: No

There is no VAT anticipated on donated food in line with the Instruction ministérielle⁸⁰ du 14/02/84, [Finance Act No 87/571 of 07/23/87 on the development of sponsorship](#)⁸¹ and article [275.8 of the General Tax Code](#).⁸² The Instruction extends the scope of the VAT provisions applied for food donations to charities assisting war victims, the disabled, the elderly and minors outside the borders of France to food donations made in France to associations with a public general interest of humanitarian, educational, social or charitable nature.⁸³

Tax credits: Yes⁸⁴

- [The General Tax Code](#)⁸⁵

⁷⁶ Banque Alimentaire de Paris en Ile-de-France

⁷⁷ Le Ministère de l'Agriculture, de l'Agroalimentaire et de la Forêt (2013) *Guillaume Garot présente le Pacte national de lutte contre le gaspillage alimentaire*, <http://alimentation.gouv.fr/pacte-national-lutte-antigasillage>

⁷⁸ DRAAF Rhône-Alpes (2013) Donner aux associations d'aide alimentaire, Guide pratique et réglementaire : Produits agricoles, available at : http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_des_dons_de_produits_agricoles_cle42dd63.pdf

DRAAF Rhône-Alpes (2013) Donner aux associations d'aide alimentaire, Guide pratique et réglementaire : Entreprises du secteur alimentaire, available at : http://draaf.midi-pyrenees.agriculture.gouv.fr/IMG/pdf/Guide_don_alimentaire_entreprises_cle878ebd.pdf

DRAAF Rhône-Alpes (2013) Donner aux associations d'aide alimentaire, Guide pratique et réglementaire : Restauration, available at : http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_dons_restaurant_sept2013_cle091e14.pdf

⁷⁹ Banques alimentaires (2011) *Guide des bonnes pratiques d'hygiène de la distribution de produits alimentaires par les organismes caritatifs* http://www.ba38.banquealimentaire.org/sites/ba38/files/gph_20115943_0001_p000_1_texte.pdf

⁸⁰ An "Instruction" is an administrative document which directs the application of certain laws and regulations. Very similar to a circular, this paper has no legislative power.

⁸¹ Loi n° 87-571 du 23 juillet 1987 sur le développement du mécénat <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000874956>

⁸² Code général des Impôts http://legifrance.gouv.fr/affichCode.do?jsessionid=B9531B5A57A22C1C22313D226B1AA239.tpdjo02v_1?idSectionTA=LEGISCTA000006179653&cidTexte=LEGITEXT000006069577&dateTexte=20140604

⁸³ The Archives of the French Ministry of Finance (1999), <http://archives-bofip.impots.gouv.fr/bofip-A/g1/26038-AIDA/26038-AIDA/32704-AIDA/31260-AIDA/32149-AIDA.pdf>

France has one of the most attractive fiscal incentives for food donation in Europe. According to Article 238 bis of the General Tax Code, companies benefit from a tax break of 60% of the donation, with a cap of 0.5% of the company turnover. If the tax break was not fully used during its first year because of the cap, it may continue over the next five years.

The value of the donated food is equal to its net book value, meaning its original cost minus its depreciation. However, if the net book value of the food products depreciates and is estimated at zero because of its proximity with the expiration date, food donors cannot benefit from the 60% tax credit on the value of donated goods.⁸⁶ In this case, the EC recommendation of estimating the value of donated products to zero is contradictory with the French tax credit system. It is more profitable for food donors not to estimate the value of the donated food fairly low, in order to benefit from higher fiscal incentives.

Article 238 bis of the General Tax Code also applies when the company provides delivery and storage of foods for donation, considering the service delivery or storage as a gift. This is a very important aspect considering that cost transportation is a big hurdle in other Member States.

Food hygiene and safety

Several pieces of hygiene and safety legislation applicable to foodstuffs exist in France as illustrated below:

- [The Rural and Sea Fisheries Code](#)⁸⁷
- [Decree of 21 December 2009 on health rules applicable to retail, storage and transportation of animal products and foodstuffs](#)⁸⁸
- [Decree of 20/07/1998 establishing the technical and hygienic conditions for the transport of food](#)⁸⁹
- [Decree of 07.01.2008 laying down technical inspection of vehicles carrying perishable goods](#)⁹⁰
- [Note DGAL/SDSSA/N2008-8021 service procedures on 29/01/2008 updated in the field of transport](#)⁹¹

⁸⁵ Code Général des Impôts

<http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000021658127&cidTexte=LEGITEXT000006069577>

⁸⁶ DRAAF Rhône-Alpes (2013) Donner aux associations d'aide alimentaire, Guide pratique et réglementaire : Entreprises du secteur alimentaire, available at : http://draaf.midi-pyrenees.agriculture.gouv.fr/IMG/pdf/Guide_don_alimentaire_entreprises_cle878ebd.pdf

⁸⁷ Code Rural et de la Pêche Maritime

<http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006183012&cidTexte=LEGITEXT000022197698&dateTexte=vingt>

⁸⁸ Arrêté du 21 décembre 2009 relatif aux règles sanitaires applicables aux activités de commerce de détail, d'entreposage et de transport de produits d'origine animale et denrées alimentaires en contenant

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021573483&categorieLien=id>

⁸⁹ Arrêté du 20/07/1998 fixant les conditions techniques et hygiéniques applicables au transport des aliments

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000193593&dateTexte=>

⁹⁰ Arrêté du 1/07/2008 fixant les modalités de contrôle technique des engins de transport de denrées périssables

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019274476>

⁹¹ Note de service DGAL/SDSSA/N2008-8021 du 29/01/2008 sur les procédures actualisées dans le domaine des transports <http://agriculture.gouv.fr/IMG/pdf/DGALN20088021Z.pdf>

■ [Memorandum No. 2011-8117 EB modified 23/05/2011 adopted for the implementation of the aforementioned Decree of 21/12/2009](#)⁹²

■ [Note DGAL/SDSSA/N2013-8083 service on 14/05/2013 freezing animal products or animal origin](#)⁹³

■ [The decree of 29 September 1997 laying down the conditions of hygiene applicable in social catering establishments](#)⁹⁴

■ [Note DGAL/SDSSA/N2012-8247 service 3 December 2012 on exempting specific protocols for the retail sector](#)⁹⁵

In terms of traceability and responsibility, the food bank or charity has to verify the ‘use by’ dates of the products delivered, their state of preservation and the core temperature of fresh produce. Thereafter, the food donor and the food banks co-sign a transfer slip specifying the name of the products, their core temperature as well as their ‘use by’ date and the lot number, if applicable (depending on the product). This slip also marks the transfer of responsibility and ownership of the foodstuff and serves as evidence of the food donor’s compliance with the food law in terms of product durability, food storage temperatures, hygiene of foodstuff etc.

It is important to mention that the French Ministry of Agriculture is preparing at the moment a guidance document for food banks regarding the responsibility and ownership of foodstuffs in the context of food donation.

Liability

■ [Code Civil – Article 1382](#)⁹⁶

According to this law, every human being who is responsible for causing damages to another human being is obliged to fix the caused damage.

Food donors and food charities sign a partnership agreement and subscribe to liability insurance covering all the damage that might occur within its sector of activity during distribution, storage etc.

Food waste hierarchy

According to a PERIFEM study⁹⁷, 42% of the bio-waste generated by retailers is surplus food which could have been donated to a food bank or charity.

Three pilot projects led at the beginning of 2012 by Leclerc supermarkets in northern France quantified the proportion of food waste which was avoided thanks to donation. The study also compared the financial losses which the food donor bears in two case scenarios: food donation and AD

⁹² Note de service DGAL n° 2011-8117 modifiée du 23/05/2011 prise pour l’application de l’arrêté du 21/12/2009 susvisé http://agriculture.gouv.fr/IMG/pdf/DGALN20128054Z_cle878738.pdf

⁹³ Note de service DGAL/SDSSA/N2013-8083 du 14/05/2013 sur la congélation des denrées animales ou d’origine animale http://agriculture.gouv.fr/IMG/pdf/DGALN20138083Z_cle84d12d.pdf

⁹⁴ L’arrêté du 29 septembre 1997 fixant les conditions d’hygiène applicables dans les établissements de restauration collective à caractère social <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000750248>

⁹⁵ La note de service DGAL/SDSSA/N2012-8247 du 3 décembre 2012 relative à la dérogation d’agrément pour les commerces de détail http://agriculture.gouv.fr/IMG/pdf/DGALN20128247Z_cle8ed33a.pdf

⁹⁶ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006438819&cidTexte=LEGITEXT000006070721> Code Civil

⁹⁷ Analyse détaillée des expérimentations en cours dans la distribution pour la collecte et le traitement des déchets organiques (étude CONVIS-PERIFEM – 2011)

treatment. The financial loss for sending one tonne of fruit and vegetables to AD were estimated at €213.24, whereas the loss for donating the same quantity of food to charity were evaluated at €372.12 (without the 60% tax credit) and at €65.8 after the application of the tax credit. It was therefore cheaper for the retailer to donate rather than send the food surplus to AD. Food donors are incentivised financially to reduce their bio-waste quantity and to prioritise food redistribution over bio-waste treatment, because of the distinct financial incentive in place in France.

Key barriers:

- The interpretation of the value of products approaching or are past their ‘best before’ dates influences negatively how the corporate tax break is attributed. If a product which is close to its ‘best before’ date has zero value, then the tax break is also evaluated at zero. This potential conflict of incentives would benefit from clarification.

7.4 Belgium

Background

Last year, the Belgian Federation of food banks collected 11,800 tonnes of surplus food: 50% from the EU, 25% from the food industry, 15% from the distribution sector and the rest from individuals and other sources.⁹⁸ Food banks in Belgium received in 2013 around 1,846 tonnes of food from the retail sector according to Comeos, the umbrella for food industry and services in Belgium, representing 28% more than in 2012.⁹⁹

Belgium has recently passed notable legislative changes with regards to food redistribution, including in the area of VAT on food donated to food banks and legal provisions to oblige retailers to donate to food banks. In terms of food hygiene and safety, Belgium has simplified the administrative requirements of the EU Hygiene Package and has drafted a non-limiting list of foods which have passed their ‘best before’ date and can still be delivered to the consumer without any risk to public health.

VAT on donated food: No

In July 2013, the Finance Minister of Belgium, Koen Geens, adopted a [Decision](#)¹⁰⁰ which abandons the VAT provisions for food donors on donated food. Thanks to this Decision, supermarkets can donate food to food banks without having to pay VAT for donation (as opposed to considering the value of the donated food as zero for VAT purposes). However, this provision only applies for the food donated to nine food banks registered by the Belgian Food Bank Federation¹⁰¹, therefore food charities or other social organisations active around poverty reduction and the fight against food waste (such as social restaurants, social supermarkets and social services of municipalities) cannot benefit from the provisions of this Decision.

⁹⁸ The Belgian Federation of Food Banks (2014) Rapport d’activité 2013

⁹⁹ Comeos (2013) <http://www.comeos.be/menu.asp?id=11218&lng=fr>

¹⁰⁰ Décision TVA, n° E.T. 124.417, dd. 31.07.2013 <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&id=eefa7af1-3f7d-455b-8214-c3d8fb12bcf8&documentLanguage=FR#findHighlighted>

¹⁰¹ Nine food banks are registered by the Food Bank Federation in Belgium

The Decision emphasises that Article 12, § 1 (2), of the [VAT Code](#)¹⁰² is the official transposition of Article 16 of the VAT Directive Council Directive 2006/112/EC.

Tax credits: No

There are currently no fiscal incentives in Belgium regarding food donation. However, a party seems to have introduced a bill has been introduced to encourage food donations by allowing a reduction of the corporate tax (60% of the value of stock donations with a ceiling of 0.5% of company turnover), though this has not passed at time of writing.

Food hygiene and safety

■ [Royal Decree on the self, mandatory notification and traceability in the food chain](#)¹⁰³

This law introduces provisions for traceability by obliging food business operators to keep more information about their incoming and outgoing products such as the nature of the product, the identification of the products, the quantity, the date of receipt and identification of the food business operator who delivers the product. The legislation is less flexible than the General Food Law which only requires food business operators to identify the businesses they receive from/deliver to. To this respect, the Royal Decree contains a derogation according to which the list of retailers/manufactures who donated the foodstuff can serve as a record of incoming products and the list of food banks and charities can serve as a record for outgoing products. According to the Federal Agency for the Safety of the Food Chain (FASFC), this flexibility reduces the administrative burdens for food donation in Belgium.

Food durability and date marking

■ [Circular concerning provisions applicable to food banks and charities](#)¹⁰⁴

This circular letter¹⁰⁵ provides guidance regarding the interpretation of expiration dates, traceability, labelling and freezing food.

According to the circular, foodstuffs which have passed their ‘best before’ date can still be delivered to the consumer without any risk to public health. A non-limiting list of foods that can be used by food banks and charities is given in the Annex of the legislation, providing guidance assessing the longevity of food after their date of minimum durability reached or exceeded.

In this list, the food is classified in four categories, from food to long conservation to those in short-term storage (see Chapter 3). This list contains an estimate of the period during which the food may still be distributed by food banks and charitable associations after the expiration date of minimum durability. However, the circular is purely indicative; assessment on a case by case basis is still necessary. The same rules do not apply for products which exceed their ‘use by’ dates.

¹⁰² Code de la TVA, loi du 03.07.1969, dernière modification par la loi du 22 juin 2012 (M.B. 28.06.2012) <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&id=53e30e9d-6466-4426-a57c-85b118905806>

¹⁰³ Arrêté royal relatif à l'autocontrôle, à la notification obligatoire et à la traçabilité dans la chaîne alimentaire http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2003111441&table_name=loi

¹⁰⁴ Circulaire relative aux dispositions applicables aux banques alimentaires et associations caritatives http://www.favy-afscab.be/denreesalimentaires/circulaires/_documents/2013_08_02_BAetAC_FR.pdf

¹⁰⁵ A circular letter is a guidance document with no legislative power whatsoever.

This circular letter reiterates the provisions of the royal decree which allows food banks and charities to apply a flexible form of traceability as presented above. The Belgian Retail Federation argues that the increase in 2013 of food donation is due mainly to the simplification of traceability rules for food banks. It is however difficult to calculate the impact of the legislation alone on food donation. Other factors such as the new VAT regime can also contributed to the increase of the quantity donated by retailers to food banks.

One hurdle has been identified in the freezing provisions. The circular letter does not allow food chain actors to freeze the food on the same day as its 'use-by' date. Retailers have to freeze the food they wish to donate one day before its 'use-by' date. This provision impacted pilot projects led in the Brussels region aiming to use this process in order to recover more fresh surplus food from retailers.

Food waste hierarchy

Recently, two pieces of legislation were adopted in the Walloon and Brussels Regions which oblige supermarkets to donate surplus food to food banks in order to have their Environmental Permit renewed. This Permit shall explicitly mention that the unsold food whose 'use-by' date and 'best before' date has not yet been reached, but that the operator no longer wishes to sell, must always be offered to food charities and banks before being directed to treatment or disposal. This obliges food donors to comply with the food waste hierarchy.

Brussels Region

■ [Draft Ministerial Order amending the Ministerial Order of 5 June 1997 on the environmental permit](#)¹⁰⁶

The Brussels' Parliament has voted on changing the requirements of the environmental permit that apply to supermarkets larger than 1000m². This new requirement imposes obligations on supermarkets to donate unsold food products to food charities and food banks. Brussels Environment, the public administration for environmental affairs is responsible for releasing permits to supermarkets above a certain size.

Walloon region

■ [Draft decree amending Decree of 11 March 1999 concerning the environmental license to promote the distribution of food surplus to food charities](#)¹⁰⁷

The Walloon Parliament has also recently voted on adding an additional requirement for supermarkets with respect to food donations to food charities, when applying for an environmental permit. The requirement mentions that supermarkets will first need to offer unsold products to at least one food redistribution charity before they are sent to other forms of treatment. The law does not mention the size of the supermarkets that will have to apply this rule, but the Walloon government has expressed its willingness to first apply the law for hypermarkets (above 2500m²) and later include smaller supermarkets (1000-2500m²).

¹⁰⁶ Proposition d'ordonnance modifiant l'ordonnance du 5 juin 1997 relative aux permis d'environnement <http://weblex.irisnet.be/data/crb/doc/2013-14/125138/images.pdf>

¹⁰⁷ Proposition de décret modifiant le décret du 11 mars 1999 relatif au permis d'environnement en vue de favoriser la distribution des invendus alimentaires consommables aux associations d'aide alimentaire http://nautilus.parlement-wallon.be/Archives/2013_2014/DECRET/641_5.pdf

The effectiveness of these two pieces of legislation is unclear to stakeholders, mostly due to many concerns raised about the capacity of food banks. Very often food banks are only open one day a week, diminishing the chance for the delivery of fresh unsold produce from supermarkets. Nevertheless, this development may contribute to the expansion of food banks and their infrastructure. The local authorities will also have an important role to play in this process.

Key barriers:

- The lack of capacity and infrastructure of food banks and other food charities in the Walloon and Brussels region;
- The provision blocking the freezing of foods on the same day as the expiration of the 'use-by' date.
- Although the food waste hierarchy is the guideline for actions against food waste in Flanders, there is (too) little structural policy attention to the 2nd stage, namely of "applying for human food ~ redistribution to people in need".
- There are many innovative and creative activities possible for dealing in a social way with food (waste) donations, but they are too often not (yet) put in practice because of limited resources.

7.5 Germany

Background

Following the European Commission's Roadmap to a Resource Efficient Europe, Germany adopted the aim to halve the disposal of edible food waste by 2020. The Federal Ministry of Food and Agriculture launched in 2012 the "Too good for the bin!" initiative which has as an objective to reduce food waste with joint efforts along the entire food chain.

Food donation is seen as one approach towards achieving this goal. In November 2012, a guideline for the transfer of food to social facilities was established by the Federal Ministry of Food and Agriculture to provide stakeholders with an overview of legal aspects linked to food donation. The biggest German food charity, Die Tafeln, distributed several thousand tonnes of food in 2012.¹⁰⁸ A report carried out on behalf of the Federal Ministry of Food and Agriculture estimates that from 2.73 to 3.54 million tonnes of discarded food are still edible at the time of their disposal or would have been edible with timely use.¹⁰⁹

VAT on donated food: No

Until mid-2012, food donation was taxable according to §3 (1b) of the German VAT law¹¹⁰, and the input VAT for the individual ingredients was deductible from the corporate income tax. After a court case between the tax office and a baker who had been donating his excess bread without paying tax (instead of throwing it away), the highest state (Länder) and national German finance authorities decided, given reasons of equity, to abstain in such cases from VAT as long as no donation receipt is

¹⁰⁸ Die Tafeln, 2012 *Info-Faltblatt* available at http://www.tafel.de/fileadmin/images/OEffentlichkeitsarbeit/Flyer/Flyer_Tafel_2012.pdf

¹⁰⁹ Instituts für Siedlungswasserbau, Wassergüte- und Abfallwirtschaft der Universität Stuttgart, 2012 Ermittlung der weggeworfenen Lebensmittelmengen und Vorschläge zur Verminderung der Wegwerfrate bei Lebensmitteln in Deutschland available at https://www.zugutfuerdietonne.de/uploads/media/Studie_Langfassung.pdf

¹¹⁰ Umsatzsteuergesetz http://www.gesetze-im-internet.de/bundesrecht/ustg_1980/gesamt.pdf

issued ([Fiscal Code](#)¹¹¹). Since this court ruling, VAT on food donation is either zero or it has a very symbolic rate.

Tax deduction¹¹²: Yes

Donations in cash as well as donations in kind (e.g. food donation by a supermarket) may be tax deductible expenses. The tax deduction has a limitation of 20% of the corporate's income or 0.4 % of revenue plus wages and salaries in the respective year.

Tax credits for food donors: No

Food hygiene and safety

European legislation regarding hygiene is implemented in [German Regulation on hygiene requirements for the manufacture, treatment and supply of food](#)¹¹³

[Lebensmittelhygiene-Verordnung](#)¹¹⁴ (LMHV). All the provisions of the General Food Law such as traceability were transposed in the German legislation. The Guide drafted by Federal Ministry of Food and Agriculture to provide stakeholders with an overview of legal aspects linked to food donation focuses, in part, on food hygiene and safety legislation.

Food durability and date marking

The donation of goods with an expired 'use by' date is illegal in Germany. However, goods past their 'best before' date are allowed to be donated to charities or other social organisations if it's indicated in a clear and intelligible manner. The product may still be put into circulation, if the company that delivers the goods thinks that the food is safe and if the food was properly stored.

However, while food banks, producers, and manufacturers of donated goods can certainly differentiate between 'use by' and 'best before' dates, consumers, however, often do not know the difference. This ignorance and equation of the two dates leads to many valuable and usable groceries being thrown away. For example, Die Tafeln raises awareness among consumers that foodstuffs remain enjoyable even after expiration of the 'best before' date. They support efforts to make the difference between the two dates more apparent.

Key barriers:

- Logistic hurdles such as high costs of transports have been often mentioned by stakeholders

7.6 Italy

Background

¹¹¹ *Abgabenordnung* § 163 http://www.gesetze-im-internet.de/bundesrecht/ao_1977/gesamt.pdf

¹¹² Food donation is a deductible tax from the tax income basis

¹¹³ Lebensmittelhygiene-Verordnung http://www.gesetze-im-internet.de/bundesrecht/lmhv_2007/gesamt.pdf

¹¹⁴ Verordnung über Anforderungen an die Hygiene beim Herstellen, Behandeln und Inverkehrbringen von Lebensmitteln (Lebensmittelhygiene-Verordnung - LMHV) http://www.gesetze-im-internet.de/bundesrecht/lmhv_2007/gesamt.pdf

The Italian [Legislative Decree of December 4, 1997, n. 460](#)¹¹⁵ recognizes a specific category of non-profit charitable organizations: the O.N.L.U.S (Organizzazioni non Lucrative di Utilità Sociale). The O.N.L.U.S. that recover and distribute surplus food benefit from a “special status” in comparison to all the other non-profit organizations thanks to the acknowledgement of their social value. The Fondazione Banco Alimentare O.N.L.U.S has a network of 21 food banks in Italy which recover daily surplus food from the food supply chain and redistribute it to 8,898 charitable organisations that assist almost 2 million deprived people¹¹⁶

VAT on donated food: No

No VAT is perceived on food donation if the foodstuff is donated to an O.N.L.U.S¹¹⁷, as recognized by the [Legislative decree on 4 December 1997, n.460](#).¹¹⁸

According to Article 6, last paragraph, of the [Law of 13 May 1999, n. 133](#)¹¹⁹, “the free supply to an O.N.L.U.S of food products no longer marketed or not suitable for market due to a lack or error of packaging, labelling, weight or for other similar reasons such as the proximity to expiration date, shall be VAT exempted”.¹²⁰

Tax deduction: Yes

■ [Legislative decree of 14 March 2005, n. 35](#)¹²¹

According to Article 14 of this Decree, donations in kind to particular entities (O.N.L.U.S, foundations etc.) providing charity and social services are fully deductible up to 10% of their taxable income, but up to 70,000€ per year.

Liability

■ [Law of 25 June 2003, n. 155](#)¹²² (the Good Samaritan Law)

Preceding the EU Hygiene Package which only came into force in 2004, the Good Samaritan Law is composed of one article:

¹¹⁵ Decreto Legislativo No.460/1997

http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2003-07-01&atto.codiceRedazionale=003G0174&normativi=false&tipoVigenza=originario&tipoSerie=serie_generale&Page=1

¹¹⁶ Position statement of the Fondazione Banco Alimentare Onlus

¹¹⁷ Italian NGOs which have a special status

¹¹⁸ Decreto legislativo 4 dicembre 1997, n. 460 *Riordino della disciplina tributaria degli enti non commerciali e delle organizzazioni non lucrative di utilità sociale*

http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1998-01-02&atto.codiceRedazionale=097G0489&normativi=false&tipoVigenza=originario&tipoSerie=serie_generale&Page=1

¹¹⁹ Legge 13 maggio 1999, n. 133 *Disposizioni in materia di perequazione, razionalizzazione e federalismo fiscale*

http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1999-05-17&atto.codiceRedazionale=099G0208&normativi=false&tipoVigenza=originario&tipoSerie=serie_generale&Page=1

¹²⁰ Art. 6, ultimo comma Legge n.133 del 13 maggio 1999: “La cessione gratuita ad Onlus di derrate alimentari non più commercializzati o non idonei alla commercializzazione per carenza o errori di confezionamento, di etichettatura, di peso o per altri motivi similari nonché per prossimità della data di scadenza, si considerano distrutti agli effetti dell'imposta sul valore aggiunto”.

¹²¹ Decreto legislativo 14 marzo 2005, n. 35 *Disposizioni urgenti nell'ambito del Piano di azione per lo sviluppo economico, sociale e territoriale* <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2005-03-14:35/vig=>

¹²² Legge 25 giugno 2003, n. 155 *Disciplina della distribuzione dei prodotti alimentari a fini di solidarietà sociale* http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2003-07-01&atto.codiceRedazionale=003G0174&normativi=false&tipoVigenza=originario&tipoSerie=serie_generale&Page=1

“Non-profit and social utility organizations recognized as such by Law No 460, 4 December 1997, Art. 10, and amended later, that carry out for charity purposes a free distribution of food products to those in need, have an equal status to that of final consumers, within the bounds of the service provided, in order to meet the required standards of preservation, transport, storage and use of food.”¹²³

The assimilation of a food bank to that of a “final consumer” relieves the O.N.L.U.S from the principle of liability arising from food safety and hygiene rules and prevents those receiving food from banks from filing a lawsuit against the food donor, as the charity organization is considered the final link in the food chain.¹²⁴

Although Italy is the only Member State in the EU to have passed this sort of legislation, the Good Samaritan Law follows the example of [the US Bill Emerson Good Samaritan Act](#)¹²⁵, a federal law, which limits the liability exposure of companies that make good-faith donations of products that they know to be fit for consumption at the time of the donation. A food business operator “*shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a non-profit organization for ultimate distribution to needy individuals*”.

Food hygiene and safety

The Fondazione Banco Alimentare O.N.L.U.S wrote recently a Position Paper¹²⁶ highlighting the compatibility of the Good Samaritan Law with the EU Hygiene legislation. The Paper reflects that the Italian regulatory framework has proven to be effective in promoting food donation while ensuring at the same time food safety and that no safety concern has been raised in more than a decade in Italy. One of the main reasons being that all actors, including food banks, involved in the distribution of food products shall ensure proper conditions for conservation, transport, storage and use of the food products, each according to its food sector in line with the General Food Law.

Moreover, the [Law of 27 December 2013 no. 147](#)¹²⁷ has recently set essential safety responsibilities for food donation:

“Organizations recognized as O.N.L.U.S in accordance with Art. 10 of Legislative Decree No. 460, 4 December 1997, and later amendments, which for solidarity purposes distribute for free to the most deprived food products that are supplied by operators of the food supply chain, including hospital, charitable and school canteens, and food business operators supplying food products for free shall ensure a proper state of conservation, transport, storage and use of the food products, each according to its responsibility. This objective is also achieved through the arrangement of specific national guides of good practice as referred to in Article 8 of Regulation (EC) No. 852/2004 and later modifications, after a positive assessment by the Ministry for Health.”

¹²³ Le organizzazioni riconosciute come organizzazioni non lucrative di utilità sociale ai sensi dell'articolo 10 del decreto legislativo 4 dicembre 1997, n. 460, e successive modificazioni, che effettuano, a fini di beneficenza, distribuzione gratuita agli indigenti di prodotti alimentari, sono equiparati, nei limiti del servizio prestato, ai consumatori finali, ai fini del corretto stato di conservazione, trasporto, deposito e utilizzo degli alimenti.

¹²⁴ Francesco Planchenstainer (2013) *They Collected What Was Left of the Scrap: Food Surplus as an Opportunity and Its Legal Incentives*, available at: http://eprints.biblio.unitn.it/4094/1/Trento_Lawtech_Research_Paper_13.pdf

¹²⁵ PUBLIC LAW 104-210—OCT. 1, 1996 <http://www.gpo.gov/fdsys/pkg/PLAW-104publ210/pdf/PLAW-104publ210.pdf>

¹²⁶ The Paper will be soon published by the Fondazione Banco Alimentare Onlus

¹²⁷ LEGGE 27 dicembre 2013, n. 147 Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (Legge di stabilità 2014) <http://www.gazzettaufficiale.it/eli/id/2013/12/27/13G00191/sg;jsessionid=CKPzq3H+GtwaV2z726hhsw...ntc-as1-guri2a>

The first part of the Article makes it explicit that all actors (both O.N.L.U.S and food donors) involved in the distribution of food products shall ensure proper conditions for conservation, transport, storage and use of the food products, each according to its food sector. This provision may be understood in light of the food business operator's responsibility as laid down in Regulation (EC) 178/2002.

The second part of the Article gives food donors the possibility of elaborating national guides of good practice about food hygiene. As referred to in Article 8 of [Regulation \(EC\) No. 852/2004](#), these national guides are developed on a voluntary basis by individuals, operators or consortia, etc. as good practices of hygiene, and then assessed by the Ministry of Health.

Last but not least, the Fondazione Banco Alimentare O.N.L.U.S also suggests in the Position Paper that the EU Hygiene Package contains several flexibilities with regards to the interpretation of the definition of the “food business operators”, which are not fully explored by Member States in line with the principle of proportionality. For example, Regulation (EC) 852/2004 on the hygiene of foodstuff applies only to undertakings, the concept of which implies a certain continuity of activities and a certain degree of organisation. Therefore there is the question whether a charity organization without a stable organisation, supplying food received from a food bank may be considered a food business operator.

Key barriers:

- In accordance with Reg. (EC) 178/2002 of the General Food Law, the O.N.L.U.S is recognized as a food business operator. However, relying on recognized at national level, the O.N.L.U.S. that recover and distribute surplus food can benefit from a preferential treatment by national public authorities enforcing European Food Law. This status can create confusions for some public health authorities.

7.7 Spain

Background

According to the ‘Responsible Food Consumption’¹²⁸ study published by the Catalan Waste Agency in 2013, which attempts to quantify food waste, more than 260,000 tonnes of food are wasted in Catalonia every year, which is 7% of the food bought by families, restaurants and businesses. Households (58%) are responsible for the most wasted food, followed by supermarkets (16%), catering (12%), retail trade (9%), catering (4%) and municipal markets (1%).¹²⁹

In 2013, the Spanish Ministry of Agriculture, Food and Environment (Magrama) launched the ‘More food, less waste’¹³⁰ initiative. The strategy aims to decrease the amount of waste and to encourage dialogue and coordination between stakeholders within the food chain and public authorities. One of the aims of this strategy is to develop legal measures and incentives to encourage food donation to charitable bodies. The Ministry is expected to publish by July 2014 a series of four studies on the quantity of food waste generated by the primary production, industry, food retail and catering sectors, as well as on the shelf life of foods.

VAT on donated food: Yes

The donation of goods is considered as placing them on the market, and therefore the goods are subject to VAT. During a commercial activity, the food receiver (the consumer) would normally bear the cost of the VAT, but in the case of donation it is most often that the donor bears this cost. In Spain, the tax rate for most types of food is 10%, however certain foods are taxed at 4% (for example, bread, flour, milk, cheese, eggs, vegetables, fruits, vegetables, legumes, tubers and cereals). One of the main demands of food banks in Spain is to apply a zero or at least a reduced rate of VAT on donated foods.

Tax credits: Yes

Currently in Spain, food donors can apply for a corporate tax credit of 35% of the net book value of the donated food.

Food hygiene and safety

The following legislation applies the EU Hygiene Package:

■ [Royal Decree 1945/1983, of June 22 establishing fines and penalties related to consumer protection and food production](#)¹³¹

■ [Royal Decree 1334/1999, of July 31, adopting General Standard for labelling, presentation and advertising of foodstuffs](#)¹³²

¹²⁸Catalan Waste Agency (2013) *Responsible Food Consumption*:

[http://www20.gencat.cat/docs/arc/Home/LAgencia/Publicacions/Centre%20cata%20del%20reciclatge%20\(CCR\)/guia_consum_responsable_ES.pdf](http://www20.gencat.cat/docs/arc/Home/LAgencia/Publicacions/Centre%20cata%20del%20reciclatge%20(CCR)/guia_consum_responsable_ES.pdf)

¹³⁰Magrama (2013) *More food, less waste*:

http://www20.gencat.cat/docs/DAR/DE_Departament/DE02_Estadistiques_observatoris/27_Butlletins/02_Butlletins_ND/Fitxers_estatics_ND/2013_fitxers_estatics/0117_2013_IA_MalbaratamentA_Malbaratamentalimentaria.pdf

¹³¹ Real Decreto 1945/1983, de 22 de junio, por el que se regulan las infracciones y sanciones en materia de defensa del consumidor y de la producción agro-alimentaria. <https://www.boe.es/buscar/doc.php?id=BOE-A-1983-19755>

¹³² Real Decreto 1334/1999, de 31 de julio, por el que se aprueba la Norma general de etiquetado, presentación y publicidad de los productos alimenticios <http://www.boe.es/boe/dias/1999/08/24/pdfs/A31410-31418.pdf>

■ [Royal Decree 3484/2000 of December 29, establishing rules of production, distribution and trade of ready meals](#)¹³³

■ [Royal Decree 1202/2005, of October 10, on the transport of perishable goods and special purpose vehicles used in these transport](#)¹³⁴

Stakeholders have not reported any issues related to the transposition of this package in relation to food donation. However some hurdles were identified in the food service sector. The same regulations apply whether the food is donated or it is being sold to a commercial food business operator, in accordance with EU legislation.

Food durability and date marking

The following laws refer to food labelling:

■ [Royal Decree 1334/1999, of July 31, adopting General Standard for labelling, presentation and advertising of foodstuffs](#)¹³⁵

This Royal Decree regulates the life span, labelling and advertising of foodstuff. In particular, Article 5 specifies the labelling requirements with regards to the ‘use by’ and ‘best before date’. The Decree defines the date of minimum durability, equal to the *"date until which foodstuff retains its specific properties under conditions of appropriate conservation"* (Article 3, Section 5).

■ [Royal Decree 1945/1983, of June 22 establishing fines and penalties related to consumer protection and food production](#)¹³⁶

A good deal of food waste in Spain is generated at the distribution and consumption level in relation to expiry dates (‘use-by’ and ‘best-before’ dates). This might be due to MAGRAMA’s interpretation of the current rules on the marketing and donation of foods, that donation after ‘best before’ date is not allowed. This position is based on the Royal Decree 1945/1983 of 22 June, which regulates the offenses and penalties relating to consumer protection and food production.

In 2012, MAGRAMA prepared the first survey within the framework of the Climate of Confidence Barometer for the Agri-Food Sector¹³⁷. The survey shows that 78.8% of distributors withdraw an average of 5.6% of their products because they have passed their ‘use by’ dates. Some 64.7% of consumers said they understood the differences between the ‘use by’ date and the ‘best before’ date, and 75.1% of consumers and 80.8% of distributors approved of the idea to extend the ‘use by’ dates of some products to reduce the number of tonnes of food in good condition that is wasted every year.¹³⁸

Key barriers

¹³³ Real Decreto 3484/2000, de 29 de diciembre, por el que se establecen las normas de higiene para la elaboración, distribución y comercio de comidas preparadas <http://www.boe.es/boe/dias/2001/01/12/pdfs/A01435-01441.pdf>

¹³⁴ Real Decreto 1202/2005, de 10 de octubre, sobre el transporte de mercancías perecederas y los vehículos especiales utilizados en estos transportes http://www.boe.es/diario_boe/txt.php?id=BOE-A-2005-17345

¹³⁵ Real Decreto 1334/1999, de 31 de julio, por el que se aprueba la Norma general de etiquetado, presentación y publicidad de los productos alimenticios <http://www.boe.es/boe/dias/1999/08/24/pdfs/A31410-31418.pdf>

¹³⁶ Real Decreto 1945/1983, de 22 de junio, por el que se regulan las infracciones y sanciones en materia de defensa del consumidor y de la producción agro-alimentaria. <https://www.boe.es/buscar/doc.php?id=BOE-A-1983-19755>

¹³⁷ Spanish Ministry of Agriculture (2012) The Climate of Confidence Barometer http://www.magrama.gob.es/es/alimentacion/temas/estrategia-mas-alimento-menos-desperdicio/Monog_Desperdicio_Alimentario_1er_trim_2%C2%BA_trim_y_4%C2%BA_Trim_2012_tcm7-287271.pdf

¹³⁸ Spanish Ministry of Agriculture (2013), More food, less waste <http://www.magrama.gob.es/es/alimentacion/temas/estrategia-mas-alimento-menos-desperdicio/bloque1.aspx>

- In the light of how the Ministry is interpreting the Royal Decree 1945/1983 it is not permitted to sell or donate food past its 'best before' date.

7.8 Greece

Background

Currently there is no concrete and detailed data available for food wasting in Greece and public discussion about food waste was virtually non-existent until a few years ago. However this phenomenon is nowadays more important due to the effects of the economic crisis on the Greek society. According to 2010 data, the percentage of the population at risk of poverty had reached 27,7%, (1.3 million people). The discussion that has occurred was not sponsored by the government like most industrialized countries, rather it was initiated by individuals mainly through non-governmental organizations (NGOs) and academic institutions.

Within this framework, Greece is reacting to food waste rather by means of social innovative actions initiated by individuals and NGOS such as BOROUME, a non-profit organisation that fights food waste by organizing the distribution of surplus food for charity throughout Greece. BOROUME's concept is to be a link between those that wish to donate leftover food and those that distribute food to the needy, without BOROUME receiving, storing or distributing the food. In 2014, BOROUME has provided over 1,000,000 meals to charitable organizations and provides over 2,500 meals a day on average.¹³⁹

VAT on donated food: No

According to [Art. 46 of law 4238/2014](#)¹⁴⁰, which has recently changed the VAT Code, the supply free of charge (donation) of food, medicine, clothes and other goods to non-profit Greek-based legal entities of public or private law with a charity or public welfare scope, for the coverage of needs or relief of people suffering, is not viewed as a self-supply in terms of VAT (and thus no VAT is due), provided that this supply does not threaten the public health.

The donated goods should not be suitable for sale due to a default, a packaging/weight problem, withdrawal from market, or the approach of the expiration date. A relevant Ministerial Decision that will set out the procedure to be followed and the documentation that will have to be kept for audit purposes as regards the subject matter is expected to be issued shortly.

Tax credits: No

Fiscal incentives are not anticipated in the near-term given the very difficult economic situation in Greece.

Food durability and date marking

¹³⁹ Interview with Alexander Theodoridis, Borume on 28.03.2014

¹⁴⁰ Άρθρο 46 Τροποποίηση διατάξεων του Ν. 2859/2000, του π.δ.113/2010 και του Ν. 3986/2011 <http://www.e-forologia.gr/lawbank/document.aspx?digest=1BF72D34FECFF3F8.28B4F588A6A8&version=2014/02/17>

In 2012, the Greek Ministry of Development tried to introduce a disposition in Article 5 of the [Regulation](#)¹⁴¹ revising the rules of distribution and marketing of products which allowed to place on the market products which are past their minimum durability date ('best before' date).

Unfortunately this initiative was poorly transmitted by the media, presenting this as an issue of expired goods, something that the new regulations forbid. As a result of this distortion many have mistakenly countered the new regulations without fully understanding their scope. In order to protect themselves against negative press coverage, commercial enterprises that sell food decided not to follow the new regulation and not to donate food past their 'best before' dates.

Responsibility

Boroume created a small draft memorandum of understanding regarding liability. As in France, this serves as a signed transmission slip providing evidence of the hygiene and safety of the food at the moment of donation.

Key barriers:

- There are no fiscal incentives or financial aid for donation, while there is a substantial demand for food.
- Liability of donated food blocks donations in Greece.

7.9 Portugal

Background

Twenty Food Banks are affiliated to the Portuguese Federation of Food Banks. They bring together 606 volunteers and 56 employees distributing 23,803 tonnes of food to charities assisting thus 355,794 people in need.¹⁴²

VAT on donated food: No

According to the [Article 64 of the Portuguese Tax Benefit code \(EBF\)](#)¹⁴³ VAT is not charged on food donation (and other goods) to specific entities (e.g., the State and non-profit organizations) when those goods are to be delivered to the needy. Generally, food donors set close to zero the value of foodstuffs close to their 'best before' date.

Enhanced tax deduction¹⁴⁴: Yes

As a general rule, under [Article 62 of the Portuguese Tax Benefit code \(EBF\)](#)¹⁴⁵, food donations may be deductible from the taxable income basis plus 20%, 30% or 40% depending on the type of the

¹⁴¹ ΚΑΝΟΝΕΣ ΔΙΑΚΙΝΗΣΗΣ / ΕΜΠΟΡΙΑΣ ΠΡΟΪΟΝΤΩΝ ΚΑΙ ΠΑΡΟΧΗΣ ΥΠΗΡΕΣΙΩΝ (Δ.Ε.Π.Π.Υ.) http://gge.gov.gr/wp-content/uploads/2012/10/DIEPPY_FINAL_12_10_12.pdf

¹⁴² Portuguese Federation of Food Banks (2013) <http://www.bancoalimentar.pt/article/9>

¹⁴³ ARTIGO 64.º - IVA - Transmissões de bens e prestações de serviços a título gratuito https://www.igf.min-financas.pt/inflegal/codigos_tratados_pela_IGF/EBFiscais/EBF_ARTIGO_64.htm

¹⁴⁴ Enhanced tax deduction is equal to the adjusted taxable income basis plus a certain percentage.

¹⁴⁵ ARTIGO 62.º - Dedução para efeitos da determinação do lucro tributável das empresas https://www.igf.min-financas.pt/inflegal/codigos_tratados_pela_IGF/EBFiscais/EBF_ARTIGO_62.htm

institution, with the limit of the 8/1000 of the turnover. The enhanced tax deduction is equal to the adjusted tax basis of the products at the moment of the donation, plus a certain percentage.

Food hygiene and safety

A key issue in Portugal with the EU Food Hygiene Law was its misinterpretation by all actors involved in the food chain, including public institutions and health and safety authorities. This issue was identified and remediated by DariAcordar, as presented below.

DariAcordar, a Portuguese non-profit and volunteer membership organisation, conducted an assessment showing that 50,000 prepared meals are discarded by restaurants across the country every day, while 60,000 people have insufficient food to eat in Portugal. Much of this waste was linked to a misunderstanding and lack of awareness of the EU Food Hygiene legislation and the assumption that such prepared meals could not be redistributed.¹⁴⁶

In 2008, António Costa Pereira, founder of DariAcordar, was in close contact with the civil and governmental authorities, in order to develop an operational model for the DariAcordar project, define a structure for partnerships between operators, as well as the requisite documents/protocols for food redistribution in the food service sector.

In 2012, DariAcordar launched a national campaign against food waste, known as the Zero Waste Movement. This model established a network of relationships and communication between existing bodies, donors and recipients guaranteeing swift, safe transfers of foodstuffs to the institutions supporting people in need.

After a pilot phase beginning in January 2012, the project was implemented in the municipalities of Lisbon, Loures, Cascais and Sintra. Since 2012, DariAcordar recovered and distributed more than 1 million meals to those in need.¹⁴⁷

Amongst the legislative hurdles identified by DariAcordar was the misinterpretation and lack of knowledge of the General Food Law in terms of responsibility and liability. For example, it has been noticed that food business operators do not profit from the flexibility of its provision even if the text is often marked by semantic structures such as "when it's necessary", "if necessary", "if applicable" etc¹⁴⁸. With regards to food durability and labelling, food donors were not aware that foodstuff which exceeds its 'best before' date can still be donated according to the EU and national legislation.

This example illustrates that actors outside the food chain, such as DariAcordar, can eliminate food donation barriers especially in terms of lack of awareness of the legislation, by optimizing the food redistribution network and connection public actors, with donors (restaurants, canteens, hotels, supermarkets) and food charities. DariAcordar worked very closely with the national food safety and hygiene authority (ASAE) in order to develop best practices and guidelines for food donors. The objective of this NGO is to replicate their food redistribution model in Portugal, but also in other European countries which face the same hurdles.

Key barriers:

¹⁴⁶ Interview António Costa Pereira, DariAcordar

¹⁴⁷ Interview Paola Policaropo, DariAcordar

¹⁴⁸ Interview Paola Policaropo, DariAcordar

- The lack of awareness of EU Hygiene Package and of the General Food Law by actors involved in the food chain.

7.10 Hungary

Background

The Hungarian Food Bank Association, a not-for-profit organisation which makes a link between surplus food and deprived persons in Hungary, have distributed since 2005 over 33 000 tonnes of food surplus, to more than 200 000 people, in partnership with almost 120 non-governmental organisations and municipalities. Only in 2012, the Association collected 411 tonnes of surplus food from manufacturers and 286 tonnes from distribution chains (supermarkets). Most of this was canned vegetables (27%), milk products (16%) and fresh vegetables (12%).¹⁴⁹

VAT on donated food: No

According to Article 11 (3) of the Hungarian [VAT Act](#)¹⁵⁰ no VAT is applicable to charitable donations to public use organisations¹⁵¹. The conditions and administrative requirements for donations are listed in the VAT Act.

Tax deduction: Yes

In the light of the [Corporate Tax](#) law¹⁵², Article 7(z), based on the value of the donation to public use organisations, 20% can be deducted from corporate tax base – in case of donation to the Hungarian Disaster Fund or Hungarian Cultural Fund it is 50%. An additional 20% can be deducted in case of long term donation agreement of at least 3 years.

Food durability and date marking

It is forbidden by Article 15, section 2 of the [law](#)¹⁵³ [on food chain and its official control](#), to donate food which is past its ‘use by’ and ‘best before’ date.

Key barriers:

- Misinterpretation of the EU legislation regarding the marketing of foods which passed the ‘best before’ dates.

7.11 Poland

¹⁴⁹ The Hungarian Federation of Food Banks (2014) <http://www.elelmiszerbank.hu/>

¹⁵⁰ 2007. évi CXXXVII. törvény az általános forgalmi adóról <http://jab.complex.hu/doc.php?docid=WKHU-QJ-XML-000000A0700127TV>

¹⁵¹ Legal NGO status in Hungary

¹⁵² 1996. évi LXXXI törvény a társasági adóról és az osztalékadóról http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99600081.TV

¹⁵³ 2008. évi XLVI. törvény az élelmiszerláncról és hatósági felügyeletről http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0800046.TV

Background

The Federation of Polish Food Banks brings together 31 food banks operating in the country. Food banks provide free food to more than 36,000 social organisations and charities, feeding nearly 1,700 million people in need (although another 2.5 million live in extreme poverty and more than 6 million struggle with financial difficulties and in many cases need food support). In 2012, the Federation collected 70,000 tonnes of food by cooperating with the food industry.¹⁵⁴

VAT on donated food: No

Since October 2013, Polish food donors have been released from VAT when donating food. The Finance Committee of the Polish Parliament amended the law on VAT for donations made to charitable organisations and public benefit organisations according to Art. 43 (1)(16) of [the Act of 15 February 1992 on Corporate Income Tax and amendment of some Acts on tax regulation](#)¹⁵⁵. This article determines the categories of products and the entities which fall under the scope of this VAT amendment.

The Polish law determined that, in spite of the VAT regime change, donors will not lose the right to reclaim input VAT on the food purchased which is subsequently donated. This decision is expressed in Art. 86 (8) (3) of the Act on VAT.

Tax deduction: Yes

If specific requirements are met, food donations could be treated as tax-deductible costs or could be deducted from a taxable basis (up to 10% of taxable income).

Food hygiene and safety

The [Act on Food Safety and Nutrition](#)¹⁵⁶ sets out the legislative framework on food safety and nutrition. It establishes:

- sanitary requirements applicable to food
- hygienic conditions to be fulfilled by foodstuffs as well as materials and products intended to come into contact with food
- properties of institutions responsible for the official control of food, pursuant to Regulation (EC) No. 882/2004
- provisions on food inspection.

According to the Polish Federation of Food Banks, the Polish [Act on Food Safety and Nutrition](#)¹⁵⁷ is transposed in a more rigid way than the actual EU legislation. Also, in the light of Art. 52 of this Act it is unacceptable to donate food after the expiry period ('use by') or minimum durability date ('best before').

¹⁵⁴ The Polish Federation of Food Banks (2013), <http://www.bankizywnosci.pl/42/obecnie.html>

¹⁵⁵ Dz.U. 1992 nr 21 poz. 86 Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych oraz o zmianie niektórych ustaw regulujących zasady opodatkowania <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19920210086>

¹⁵⁶ Dz.U. 2010 nr 136 poz. 914 Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 29 czerwca 2010 r. w sprawie ogłoszenia jednolitego tekstu ustawy o bezpieczeństwie żywności i żywienia <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20101360914>

¹⁵⁷ Dz.U. 2010 nr 136 poz. 914 Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 29 czerwca 2010 r. w sprawie ogłoszenia jednolitego tekstu ustawy o bezpieczeństwie żywności i żywienia <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20101360914>

Key barriers:

- The Polish [Act on Food Safety and Nutrition](#)¹⁵⁸ is transposed in a more rigid way than the actual EU legislation. Donation of foodstuff passed their ‘best before’ date is forbidden by law, reducing possibilities for donation.
- Despite the fact that VAT for food donation is abandoned and deducted, the administrative procedures in order to obtain them are not very clear.

7.12 Sweden

Background

The retail sector throws away 30 to 100 kilograms of surplus food every day. Every month, Sweden could redistribute more than 60 000 tonnes of food generated by retailers.¹⁵⁹ However, the food donation and the food bank concepts are fairly new in Sweden. Currently there is only one food bank/social enterprise, Allwin, which connects surplus food generated by producers and retailers with those in need via its own infrastructure.

Allwin charges the same amount as the public waste management service (100 euros/tonne of surplus food on average) to recover surplus food from different sources and deliver it to charities. Edible food is thus redirected to people who need it rather than being disposed of.

VAT on donated food: Yes

Tax credit: No

Financial disincentives for food donors: Yes

The Swedish Government has defined national environmental goals to be fulfilled by the year 2020. One of these goals is to increase the production of biogas by sending at least 35% of food wastes from households, restaurants and shops to biological treatment. In 2009, 21% of food waste was treated biologically in various compost and biogas plants. In addition, disposal of organic waste in landfills was banned in Sweden in 2005.¹⁶⁰

Food durability and date marking

Products past their ‘best before’ date are not recovered from supermarkets by Allwin because of a perceived health hazard and given supermarkets reluctance.

On May 13th 2014, the Swedish and Dutch delegations wrote a letter to the European Council, asking the European Commission to take some actions in order to reduce the amount of food waste caused by the labelling system.¹⁶¹ More specifically, Sweden and the Netherlands ask the Commission to

¹⁵⁸ Dz.U. 2010 nr 136 poz. 914 Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 29 czerwca 2010 r. w sprawie ogłoszenia jednolitego tekstu ustawy o bezpieczeństwie żywności i żywienia <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20101360914>

¹⁵⁹ AllWin (2013)

<http://ostfoldforskning.no/uploads/dokumenter/Food%20Waste%20juni%202012/Actions%20to%20tackle%20Foodwaste-Allwin.pdf>

¹⁶⁰ Swedish Gas Association (2011) *Biogas in Sweden*

http://www.biogasportalen.se/~media/Files/www_biogasportalen_se/Sidhuvud/BiogasInSweden.ashx

¹⁶¹ European Council (2014) <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209755%202014%20INIT>

prolong the shelf life of products which can retain their quality for a long time by exempting them from the requirement to provide a ‘best before’ date.

Key barriers:

- Responsibilities lay heavily on food donors and in the case of hygiene issues the media can be very critical. Thus food businesses are not at all incentivised to donate.
- The incentives to send food waste to anaerobic digestion are more attractive than those to donate.

7.13 Denmark

Background

The Danish food sector annually wastes approximately 303,000 tonnes of fresh surplus foods.¹⁶² A lot of this food is edible and recoverable. The Danish food bank, a voluntary-based non-profit association, was founded in 2009. In 2012, the Danish food bank recovered 320 of fresh surplus food and distributed it amongst 150 NGOs feeding more than 750,000 meals to those in need. By the end of 2013, the food bank collected and redistributed over 1,000 tonnes of surplus food.¹⁶³

Launched in 2008, Stop Wasting Food Denmark is the biggest consumer movement against food waste in Denmark, and one of the biggest in Europe. The movement is supported by several thousands of consumers, MP’s and MEP’s, as well as leading personalities. Among the many results and awards, the Stop Wasting Food movement inspired food chain actors to reduce the quantity of food surplus in Denmark. For example, the supermarket chain Rema started selling buy-per-weight vegetables and products close to their ‘use by’ date at discounted rates.

VAT on donated food: Yes

Tax credits: No

Tax deduction: Yes

In Denmark, a donation or a charitable contribution is a deductible tax expense with a deductible limit of DKK 14,800, if the company in question is listed as an endorsed association by the Danish Tax Authorities.

Food hygiene and safety

The EU Hygiene Package is transposed effectively in Denmark. However, Danish food safety legislation is often more stringent than that of other EU Member State. Often in advance with new food safety legislation, strict controls have been a hallmark of the Danish food safety approach. With regards to food donation, specific strict national rules were identified in certain areas, such as temperature control requirements.

Food durability and date marking

¹⁶² University of Copenhagen (2013) Communicating the obvious (<http://communicatingtheobvious.dk/wp-content/uploads/2013/05/KATALOG-communicating-the-obvious.pdf>)

¹⁶³ The Danish Food Bank (2014) <https://foedevarebanken.dk/om-os/foreningens-historie.html>

There is no Danish legislation which enables donation of food which has passed its 'best before' date. However, a new piece of legislation which will facilitate the donation of this type of products will apply as of December 2014.¹⁶⁴

Key barriers:

- Lack of fiscal incentives for companies to donate identified as a barrier by stakeholders.
- The stringent approach of the food safety legislation.

¹⁶⁴ Interview with Selina Juul

8. Comparative analysis of legislation and hurdles

This Chapter uses the inventory of national legislation and practices developed in Chapter 7 to identify policies and practices that hinder or encourage the efficient and widespread donation of food. A comparative analysis of the identified main legislation areas is made, listing at the same time key hurdles.

General socio-economic context

Five years after the beginning of the current economic crisis, there is a general rise in social need among existing as well new vulnerable groups. According to Eurostat, in 2011, a quarter of the EU's population was at risk of poverty or social exclusion, having increased by 6 million since 2009 to 120 million people in total.¹⁶⁵ The European Commission's Europe 2020 Strategy mid-term review¹⁶⁶ illustrates that unemployment has increased sharply in Europe as a result of the crisis, from a rate of 7.1% in 2008 to a peak of 10.9% in 2013. The situation varies very significantly across countries and regions, with unemployment rates ranging from 5.0% in Austria to 27.6% in Greece in 2013.

An increasing number of Europeans now rely on food aid; more than 18 million people in 20 Member States benefitted from the European Programme of Food Aid to the most Deprived (FEAD) in 2011.¹⁶⁷ Increased reliance on food banks has followed; 450,000 Belgians depended in 2012 on the meals distributed by food banks.¹⁶⁸ This number has doubled in the past ten years.

This socio-economic context has impacted food donation and its policy framework in each of the Member States studied in this report. For example, the austerity measures in Greece and increases in taxes explain the impossibility of fiscal incentives for food donations at this time. Nevertheless, a lack of state incentives combined with an increase in demand for food aid has propelled a variety of social innovations to help connect food surplus with those in need. On the other hand, in Member States less impacted by the economic crisis such as Sweden, social enterprise has stepped in to help manage food surplus, responding to a business opportunity as much as a social need.

¹⁶⁵ László ANDOR (2013) Europe's social crisis: Is there a way out? http://ec.europa.eu/deutschland/pdf/s13_309_en.pdf

¹⁶⁶ European Commission (2014) *Taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth* http://ec.europa.eu/europe2020/pdf/europe2020stocktaking_en.pdf

¹⁶⁷ European Federation of Food Banks (2013)

http://www.eurofoodbank.eu/portail/index.php?option=com_content&view=category&layout=blog&id=26&Itemid=45&lang=en

¹⁶⁸ Proposition de résolution visant à encourager au niveau de la TVA le don d'excédents alimentaires <http://www.senat.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=5&NR=2205&VOLGNR=1&LANG=fr>

8.1 General Food Law

Responsibility and liability of the food donor

Under the General Food Law, *“food operator has to 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.”* In other words, food manufacturers, retailers and charities handling food are responsible for its safety within the limits of their activity.

Countries such as France and Greece have developed a transfer slip system, marking the transfer of responsibilities and providing proof that the food donor complies with hygiene regulations. A similar system could be considered in other Member States or recommended at EU level.

Several stakeholders noted manufacturer and retailer reluctance to donate, especially where food is close to its ‘use by’ or ‘best before’ date, given that in the unfortunate case of food poisoning, they jeopardise their reputation. In the United Kingdom, not only do they put at stake their reputation but they are also liable to fines or imprisonment. The General Food Regulations of 2004 foresee a fine up to £ 20,000 for an organisation guilty of an offence under the General Food Law.¹⁶⁹

Italy provides an interesting example with regards to liability. Italy passed Good Samaritan legislation in 2003, which protects food donors and the charitable organization collecting food surplus, by recognizing the latter as final consumers. Thus liability is transferred from industry to charity in the same way as at point of sale to consumers, preventing individuals receiving food from banks from being able to file a lawsuit against the food donor.

Member States have divergent views on the replicability of this law in their own legislative framework. Some high profile stakeholders, such as Lindsay Boswell, CEO of FareShare in the UK, have furthermore changed their position on the issue, Mr. Boswell now supporting it in light of retailer feedback this would provide them with an extra level of assurance.

8.2 Food hygiene and safety legislation

Rules related to product durability

There is a general misunderstanding and confusion across the EU about the possibility of donating food which has passed its ‘best before’ date. The marketing of products (including donation of food) which are no longer within their ‘use by’ date limit is forbidden at EU level. However, there is no EU legislative guidance regarding donation and ‘best before’ dates. Member States have thus approached this issue in different ways. Some countries such as Hungary have introduced provisions in national law forbidding these products from being placed on the market. Others, such as Greece, have tried to draft legislation clarifying for food donors that they can in fact market food which has passed its ‘best before’ date, but this legislation was finally withdrawn due to media criticism around providing products of inferior quality to the needy. Finally, Belgium has provided guidelines for assessing the additional lifetime of food after its date of minimum durability has been reached or exceeded. The same guidelines are considered helpful at EU level in order to facilitate food surplus redistribution.

¹⁶⁹The General Food Regulations 2004, http://www.legislation.gov.uk/ukxi/2004/3279/pdfs/ukxi_20043279_en.pdf

The EU Hygiene legislation

In general, it has been pointed out that the EU Hygiene rules and the General Food Law could be interpreted in a more flexible way, in line with the principle of proportionality. German stakeholders underlined that the EU Hygiene legislation should be simplified only by reflecting best practices.

Also, the European Commission is planning to include in the revision of the EU Hygiene Package, provision to simplify – without compromising food safety – rules which apply when retailers provide food to food banks.

8.3 Tax legislation

The transposition of the EU VAT Directive

It has been pointed out by the majority of stakeholders interviewed that one hurdle for food donation is food donor liability for the VAT on donated items, which otherwise would have been the burden of the consumer. This leads to situations where it is cheaper (as well as significantly easier) to discard food to donate it, as it used to be the case in Belgium before the Ministerial [Decision](#) abandoned the VAT provisions.¹⁷⁰

The legislation overview clarifies that according to the [Council Directive 2006/112/EC](#)¹⁷¹, food donations are taxable and that “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” (Article 74). However, in most of the selected MS, (except for Denmark, Sweden and Spain), food donors are not liable to VAT, if certain conditions are fulfilled. One reason might be that they interpret the VAT Directive such that the value of the donated food nearing expiry is small or zero, as recommended by the European Commission in a reply to a [Parliamentary Question](#). Whether or not this is to be considered a VAT “exemption” is a question of translation and interpretation of the respective legal texts.

The different interpretations and transposition of the EU VAT Directive can impede the transfer of food surplus between industry and food banks. The main identified problem is the uncertainty on whether food nearing its ‘best before/use by’ date retains its original commercial value or is considered to have a small or zero value, as VAT will be imposed on this final value however it is determined. Estimating a very low value for the donated food can pose problems for food donors benefiting from tax credits calculated on the basis of the book net value. They will not be able to benefit anymore from the tax credit if this value is estimated to be zero or close to zero.¹⁷²

Further research needs to be conducted to ensure that this approach does not encourage companies to hold onto stock until it is near expiry in order to avoid VAT liability, given that the earlier food is donated, the greater the chance that it will reach its end goal of human consumption. The case of seasonal stock might be considered, as it is not necessarily nearing expiry when it is removed from supermarket shelves.

¹⁷⁰ Proposition de résolution visant à encourager au niveau de la TVA le don d'excédents alimentaires <http://www.senat.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=5&NR=2205&VOLGNR=1&LANG=fr>

¹⁷¹ Council Directive 2006/112/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:347:0001:0118:en:PDF>

¹⁷² DRAAF Rhône-Alpes (2013) Donner aux associations d'aide alimentaire, Guide pratique et réglementaire : Entreprises du secteur alimentaire, available at : http://draaf.midi-pyrenees.agriculture.gouv.fr/IMG/pdf/Guide_don_alimentaire_entreprises_cle878ebd.pdf

National fiscal incentives and tax deductions

Fiscal incentives for food donors can facilitate food redistribution. Only two MS offer fiscal incentives to food donation in the EU. In France, food donors benefit from a 60% tax credit from their income corporate tax, whereas in Spain they benefit from a 35% credit. To be noted that there are discussions in Belgium to apply the same tax credit as in France in the near future. Moreover, in most of the examined MS, food donation can be treated as a deductible tax expense and can reduce the taxable income (equal to the income basis used to calculate the income corporate tax), within certain limits and thresholds depending on the MS. Portugal has in place an enhanced tax deduction, meaning that donors can deduct 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.

8.4 Food waste hierarchy

According to the Waste Framework Directive¹⁷³, waste legislation and policy of the EU Member States shall apply as a priority order the following waste management hierarchy: prevention, preparing for re-use, recycling, recovery and disposal. In the case of food waste, food surplus redistribution takes precedence over composting, the use of food to create renewable energy, and finally landfill. There is currently no EU legislation or specific guidance on how to apply the EU waste hierarchy to food.

Financial incentives at the lower stages of the food waste hierarchy (such as anaerobic digestion) were identified as a major barrier to food donation, particularly in Member States with significant or rapidly expanding biogas generation infrastructure, such as Sweden, Denmark, Germany and the UK. In these countries, incentives for AD include investment subsidies (up to 40%) and reduced interest on bank loans (up to 4% units).¹⁷⁴ There is concern that this waste management hierarchy is being implemented poorly in some MS in the case of food waste, where financial incentives make AD more economically viable than donation. WRAP estimates for example that 1.1m tonnes of food waste go to AD plants each year (while it is acknowledged that not all food waste is suitable for redistribution, this contrast is nevertheless significant).¹⁷⁵

National approaches adapting the hierarchy to food were identified in the UK and Belgium, with the following order of preference proposed: prevention, redistribution to humans, feeding to animals, energy or nutrient recovery by methods such as Anaerobic Digestion (AD), composting, and landfilling. Although in principle such a food waste hierarchy prioritises food donation and redistribution, in practice, it is still more expensive in many MS, including the UK, to donate surplus food than to send it to AD. The recent [report](#)¹⁷⁶ published by the House of Lords, acknowledged that AD should remain an option for unavoidable food waste, and that more efforts should be made to redistribute food before being used for energy.

New innovative ways to prevent the loss of edible food surplus at every stage of the production and supply chain is still necessary. For example, France has fiscal incentives which makes food donation

¹⁷³ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>

¹⁷⁴ Legislation in different European countries regarding implementation of anaerobic digestion http://agrienvarchive.ca/bioenergy/download/europe_ad_legislation.pdf

¹⁷⁵ WRAP (2014) Food and Drink Circular Economy,

<http://www.wrap.org.uk/sites/files/wrap/WRAP%20Food%20and%20Drink%20-%20Circular%20Economy%20Jan%202013%20v2.pdf>

¹⁷⁶ House of Lords (2014) *Counting the cost of food waste: EU food waste prevention*: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/food-waste-prevention/154.pdf>

cheaper than AD. Also, retailers can be incentivized in other ways, such as by the social return and perceived brand integrity generated by food donation, as noted by Tesco in the UK and retailers in Sweden or Germany.

9. Best practices and recommendations

9.1 Best practices factsheets: policy and measures to facilitate food donation

This Chapter presents six good practices of legislation or policy implementation that facilitates food donation, identified in Member States across the EU. The factsheets serve as a basis for MS and EU institutions in improving the policy framework for food donation.



Guidance on the interpretation of foodstuff minimum durability for food banks and food charities in Belgium

In Belgium, the safety of the food chain is the responsibility of the Ministry of Public Health. Within this ministry, tasks are divided over the Federal Public Service of Public Health, Food Chain Safety and Environment and the Federal Agency for the Safety of the Food Chain (FASFC). The former is an autonomous entity dealing with normative tasks and checking compliance with various regulations.

In 2013, FASFC drafted a Circular on the provisions applied to food banks and charities. The objective of the circular is to provide guidelines regarding the interpretation of minimum durability, traceability, labelling and storage of food. These guidelines target specifically food banks and charities, in order to facilitate food donation.



Exploring solutions for a better management of 'best before' dates

[Circulaire relative aux dispositions applicables aux banques alimentaires et associations caritatives](#)

Foodstuffs which have reached or exceeded the date of minimum durability ('best before' date) can, in some cases, still be delivered to the consumer without any risk to public health. Foods are still safe in the condition that storage instructions are respected and packaging is not damaged.

The FASFC provides a non-limiting list of foods that can be used by food banks and charities to serve as a guideline in assessing the conservation of food after they reached or exceeded the date of minimum durability.

Four foodstuff categories were identified in the circular:

- Foods with a very long conservation period
- Foods with long conservation period
- Foods with limited conservation period
- Foods with short conservation period

For each of these four categories, FASFC created guidelines for food banks on the interpretation of 'best before' dates. For example, products with a long conservation period can be donated up to one year after its 'best before' date.



The FASFC recommends food banks not to accept foods with shorter conservation dates such as meat, eggs and yogurts if their 'best before' or 'use by' date is exceeded and if the conservation of the cold chain is not guaranteed.

Impact on food donation

The misinterpretation of 'best before' dates hampers food redistribution in some Member States.



The interpretation of food traceability in Belgium

Tracing food through the production and distribution chain to identify and address risks and protect public health is essential.

Under the General Food Law, “traceability” means the ability to track any food, feed, food-producing animal or substance that will be used for consumption, through all stages of production, processing and distribution.

It requires that all food and feed operators (including food donors) implement special traceability systems.



Facilitating food donation with more flexible traceability systems

Arrêté royal relatif à l'autocontrôle, à la notification obligatoire et à la traçabilité dans la chaîne alimentaire

The European General Food Law requires food business operators:

- To be able to identify from whom and to whom a product has been supplied;
- To have systems and procedures in place that allow for this information to be made available to the Competent Authorities upon request.

The EU legislation is thus very flexible and it allows member states to design their own procedures in terms of traceability. In 2003, Belgium transposed the EU General Food Law provisions related to traceability in the *Royal Decree on self-checking, notification requirement and traceability in the food chain*.

According to the Royal Decree, food business operators are obliged to keep records of their incoming and outgoing products (such as the nature of the product, the identification of the products, the quantity, the date of receipt etc.)

This transposition is less flexible than the EU provisions on traceability. This is why, the Royal Decree contains a derogation according to which the list of retailers/manufactures who donated the foodstuff can serve as a record of incoming products and the list of food banks and charities can serve as a record for outgoing products.

This derogation is also illustrated in the *Circular on the provisions applied to food banks and charities* drafted by the Federal Agency for the Safety of the Food Chain (FASFC), in 2013.



Impact on food donation

According to the FASFC, the flexibility in traceability reduces the administrative burdens for food donation in Belgium without impacting on food hygiene and safety.



The application of the food waste hierarchy in France

According to the Waste Framework Directive, Member States shall apply as a priority order the following waste management hierarchy: prevention, preparing for re-use, recycling, recovery and disposal.

In accordance with the waste hierarchy, it is required by the same Directive to facilitate the separate collection and proper treatment of bio-waste in order to produce environmentally safe compost and other bio-waste based materials.

However, financial incentives creating a low cost for redistribution of food waste to energy recovery (anaerobic digestion) was identified as a major barrier to food donation.



Aligning economic incentives with the food waste hierarchy

[LOI n° 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement \(Grenelle 2\)](#)

In France, the obligation for food industry actors to separate at the source and recycle organic bio-waste was transposed by the Article 204 of the Act of 12 July 2010, known as the Grenelle 2.

The legislation sets objectives for the upcoming years regarding the quantity of bio-waste to be separated at the source and treated organically thorough anaerobic digestion as follows:

2012	120 tonnes/year
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2013	+ 80 tonnes/year
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2014	+ 40 tonnes/year
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2015	+ 20 tonnes/year
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2016	+ 10 tonnes/year
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This obligation which targets mainly retailers and food services (restaurants, canteens etc.) encourages food waste prevention before food waste treatment. Almost half of the bio-waste generated by retailers in France is composed of food surplus which could have been redistributed to food banks and charities.

It is currently cheaper for food retailers to reduce the amount of bio-waste in order to avoid storage, transportation and treatment costs.

Three retailers led pilot projects comparing the costs which the food donor bears in two case scenarios: food donation and AD treatment. The costs for sending one tonne of fruit and vegetables to anaerobic digestion were estimated at 213.24 €, whereas the costs for donating the same quantity of food to charity were evaluated at 372.12 € (without the 60% tax credit) and at 65.8 € after the application of the tax credit.



Impact on food donation

High costs of bio-waste treatment privilege food surplus redistribution and its donation to food banks and charities. Fiscal incentives also play an important role in ensuring that food surplus redistribution takes precedence over food waste treatment.



Fiscal incentives for food donation in France



Food retailers and producers donate more than half of the total quantity of food surplus distributed by the French food banks.

Food donations allow food retailers and distributors to engage in environmental and social issues while limiting unnecessary costs.

Thanks to financial incentives, donating food is also more financially attractive than discarding it.

Incentivising food donors to donate rather than discard

Article 238 bis of the Code Général des Impôts

According to Article 238bis of the French General Tax Code, “bodies of general interest having a philanthropic, educational, scientific, social, humanitarian, sports, family or cultural objective qualify for a tax reduction equal to 60% of the amount of the donation, in the limit of 5 per thousand of sales, made by companies subject to corporate income tax”.

In order to benefit from this tax credit, food donors are responsible of evaluating and declaring the amount of the donation. The value of the donated food is estimated at net book value, meaning its original cost minus its depreciation. If the foodstuff is close to its ‘best before’ or ‘use by’ date, then the net book value is zero and the donor cannot benefit from the tax credit anymore.

If the tax credit exceeds the amount of total tax due, the unallocated balance may be used for payment of tax in the following five years.

Article 238bis of the General Tax Code applies also when the food donor takes responsibility for the delivery and storage of foodstuffs, considering the operation of delivery or storage as a gift.



Impact on food donation

The 60% tax credit on the net book value of the donated food and on its transportation and storage incentivizes food business operators to donate rather than send food surplus to landfill. For example, if a retailer has in its possession one tonne of surplus food estimated at 1000€ and landfill taxes are 100€, the retailer will lose 1100€ in order to discard the food. However, if the retailer donates the surplus food, not only will it save landfill costs, but it will also benefit from a tax credit of 600€. In this case, the retailer will only lose 400€ instead of 1100€.



The interpretation of the VAT Directive in Belgium

According to the VAT Directive Council Directive 2006/112/EC, food donations are taxable.

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 (Article 74).

The European Commission recommends setting at zero or close to zero the value of foodstuffs close to their 'best before' date or which cannot be sold due to their external appearance.



Guiding food business operators to pay zero VAT on donated food

[Décision TVA, n° E.T. 124.417, dd. 31.07.2013](#)

In July 2013, the Finance Minister of Belgium, Koen Geens, adopted a Decision which abandons the VAT provisions for donors who give for free surplus food to food banks redistributing it to needy people in Belgium.

This Decision applies to large supermarkets and retailers with three conditions:

- Surplus food is donated for free to food banks
- Food banks are recognized by the authority (at the moment only nine food banks have this status)
- Surplus food is redistributed for free by food banks to those in need

The donated food has to be suitable for human consumption but unsaleable under normal marketing conditions, given the food sectors under the responsibility of the concerned taxable person. The donation can be, amongst other, overstocks, products which approach their 'use by date' or products with faulty packaging.

This Decision is in line with the European Commission's recommendations of setting fairly low or close to zero the value of foodstuffs close to their 'best before' date in order to benefit from a zero VAT on the donated food.

Article 12, § 1, paragraph 1 and 2 of the VAT Code is the transposition of Article 16 of the EU VAT Directive.



Impact on food donation

Result of several years of political negotiations, the Decision incentivises retailers and manufacturers to donate their surplus food without having to pay the VAT.

It is still early to find concrete impacts of this Decision on the food donation. The Decision should also consider including under its scope smaller food charities.



The Good Samaritan Law in Italy

Under the EU General Food Law, all actors in the food chain shall ensure that food satisfies the requirements of the Food Law.

Food business operators are thus held responsible and are liable if a hygiene problem occurs in the part of the food chain under its own control.

Therefore a food donor may be held liable toward final consumer who receives food from a charity organization as the foodstuff is placed "on the market" and the food donor is a food business operator in the sense of the General Food Law.



Facilitating food donation by limiting the liability exposure of food donors

[Legge 25 giugno 2003, n. 155 \(the Good Samaritan Law\)](#)

Law No. 155, the so-called Good Samaritan Law entered into force in 2003 in Italy, one year before the General Food Law.

According to the Italian Good Samaritan Law, non-profit and social utility organizations (O.N.L.U.S) that carry out for charity purposes a free distribution of food products to those in need, have an equal status to that of final consumers, in order to meet the required standards of preservation, transport, storage and use of food.

This legislation assimilates a food bank to that of a "final consumer" instead to that of a "food business operator". The equivalence relieves the charities and social organisations from the principle of liability arising from food safety and hygiene rules. For example, in case of food poisoning, food beneficiaries cannot file a lawsuit against the food donor, as the food banks or NGO is the final link of the food chain.

The Good Samaritan Law follows the example of the US Bill Emerson Good Samaritan Act, a law which limits the liability exposure of companies that make good-faith donations of product that they know to be fit for consumption at the time of the donation.



Impact on food donation

Studies and interviews have shown that manufacturers and retailers are often reluctant to donate, given that in case of food poisoning, not only do they jeopardise their reputation, but they may also face fines or imprisonment.

The Italian regulatory framework has proven to be effective in promoting food donation while ensuring food safety. According to the Fondazione Banco Alimentare Onlus, no safety concern has been raised in more than a decade with regards to food donation.

9.2 Recommendations

The following areas for policy development have been identified based on stakeholder consultation, the comparative analysis of EU and Member State legislation and selection of best practice.

Food Use Hierarchy

It is recommended that the EU publish guidance on a food use hierarchy that clearly prioritises feeding humans, through food waste prevention and donation to charities of unsaleable foods, over waste management options such as composting, anaerobic digestion and landfilling. This hierarchy would provide further clarification on the existing EU waste hierarchy in the context of food and send a clear signal to businesses and governments that economic incentives, investment in infrastructure, and communication activities should prioritise food redistribution. Work being carried out by FUSIONS and the Food Loss and Waste Protocol can support the development of this hierarchy. This recommendation is supported by the UK House of Lords Committee, which proposes the EC publish guidance on the application of the waste hierarchy to food.¹⁷⁷

It is recommended that Member States integrate the principles of the food use hierarchy into their National Waste Prevention Programmes, identify existing incentives and investment structures that do not reflect this prioritisation, and explain actions being taken to mitigate any conflicts, such as the case where economic instruments have made anaerobic digestion cheaper in practice than donating edible food to the hungry.¹⁷⁸ The possibility of a mechanism of review and enforcement of National Waste Prevention Programmes is raised. As the development of infrastructure and the financing of transportation/logistics are the key barriers to the expansion of food donation noted by stakeholders in the EU, it is essential that the cost signals for businesses are not distorted by political priorities for waste management options lower in the waste hierarchy.

Fiscal instruments

There are a range of fiscal tools being used successfully in the EU to support food donation, including the abandonment of VAT liability and the use of corporate tax credits for donated food. VAT liability appears to have been “abandoned” in a number of Member States, although the use of the term VAT “exemption” is controversial, and the compatibility of these policies with the EU VAT Directive is unclear. Although one option is to consider the value of donated food as fairly low or zero for tax purposes, this may negatively impact Member States that offer a (percentage) corporate tax credit to companies on the value of food they donate, nullifying the value of that tax credit. It is suggested that “abandoning” VAT on donated food, rather than valuing donated food at zero, may be a more effective incentive, given its compatibility with other (potentially more significant) fiscal incentives such as tax credits. It is noted overall that where feasible, given a Member State’s economic circumstances, tax credits appear to be the most effective incentive for food donation.

¹⁷⁷ House of Lords (2014) *Counting the cost of food waste: EU food waste prevention*, page 46: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/food-waste-prevention/154.pdf>

¹⁷⁸ While the WFD requires that national waste prevention programmes be updated at least every six years, thus by 2019 for those MS who submitted their programmes on time in December 2013, these are living documents that guide MS strategy and food waste prevention is a key area for MS action.

There may be a need for a specific assessment of fiscal measures to encourage food donation in the EU and there is a clear need for transparent communication via the EC website on the application of the VAT Directive in the case of food donation.

Liability legislation

Good Samaritan legislation, as it exists in Italy and the United States, limits civil and criminal liability for good faith donation of products, known to be fit for consumption at the time of donation. In Italy, charitable organizations redistributing food are not considered food business operators, and thus the transaction between donor and charity carries the same liability conditions as retailer to consumer. In the United States, liability protection is extended to donors, persons, gleaners, and non-profit organisations distributing this food; liability being limited to acts of "gross negligence" or intentional misconduct.

In both countries, food donation follows processes developed by the parties involved, systemised via good practice guidelines. Relationships of confidence are often developed between donors and food banks regarding the proper management of donated food. While Good Samaritan legislation does not relieve donors of their legal responsibilities to deliver a good quality product, as if the product were put on the market directly to consumers, stakeholders note that the extra level of assurance that this sort of legislation provides can be critical for companies in determining whether or not to engage in donation activities. It is also considered that greater synergy between Member States, via a common position for the EU, would simplify the donation landscape for donors, avoiding a patchwork of regulations.

A common position by the EU, limiting donor liability on food that meets quality and labelling standards imposed by legislation and donated in good faith, is supported by this study, accompanied by industry-charity developed good practice guidelines along with a clear, harmonised system enabling traceability of food products that avoids excessive administrative burden.

Food durability and ‘best before’ dates

Under the rubric of food durability, two approaches are proposed. Firstly, an extension of the list of products that could be exempted from the requirement for a ‘best before’ date (extension of Annex X of EU Regulation 1169/2011) is suggested, facilitating both donation and the likelihood of final consumption, as misunderstandings around the importance and meaning of ‘best before’ dates persist among consumers. In supplement, the development of EU guidance is recommended for assessing additional lifetimes of products after their initial (producer indicated) date of minimum durability (‘best before’ date) has passed, based on the Belgian model.

Overall, the objective is to ensure that good quality, edible food is not going to waste because some ‘best before’ dates not linked to food safety and hygiene are excessively limiting.

Other policy aspects for consideration

As the key barrier to the expansion of food donation is the financing of logistics and infrastructure for storage and transportation, EU funding mechanisms may be considered. Government facilitation of supply chain-donor collaboration is encouraged, such as the Food Connection Programme developed in the UK that enabled the identification of good practice.

National or business requirements for donated food to be provided to the needy for free may be reconsidered, given the significant added value in terms of social employment, poverty reduction, and

healthy eating behaviour that can be supported by social supermarkets, which charge a nominal fee for food sold to those in need.

While hygiene legislation was not underlined by stakeholders as a major barrier to donation, it is considered to have a greater impact on donation from the food service sector, and further exploration of this area is recommended.

The publication of food sector food waste volumes is also supported, as a means to enable companies to understand the volumes of edible food waste they are generated, as an important first step in developing strategies to prevent and donate as much of this as possible.

10. Bibliography

ANIA (2009) *Guide de bonnes pratiques de l'aide alimentaire* available at : http://www.ania.net/sites/default/files/guide_don_alimentaire_ania_fcd_fnsea_solaal_18_10_13.pdf

Anne-Iris Romens (2014) *DarIAcordar, the anti-waste association*, available at: https://respondingtogether.wikispiral.org/tiki-read_article.php?articleId=389

Belgian Senat (2013) *Proposition de résolution visant à encourager au niveau de la TVA le don d'excédents alimentaires*, available at: <http://www.senat.be/www/?MIval=/publications/viewPub.html&COLL=S&LEG=5&NR=2205&VOLG NR=1&LANG=fr>

BIO Intelligence Service (2010) *Preparatory study on food waste across EU 27*, available at: http://ec.europa.eu/environment/eussd/pdf/bio_foodwaste_report.pdf

Bruxelles Environnement (2013) *Benchmarking, Invendus & aide alimentaire*, available at: http://www.fdss.be/uploads/Publications/FdSS/Aide%20Alimentaire/Table_ronde_Invendus_151013-Compte_rendu.pdf

Catalan Waste Agency (2013) *Responsible Food Consumption*, available at: [http://www20.gencat.cat/docs/arc/Home/LAgencia/Publicacions/Centre%20catala%20del%20reciclatge%20\(CCR\)/guia_consum_responsable_ES.pdf](http://www20.gencat.cat/docs/arc/Home/LAgencia/Publicacions/Centre%20catala%20del%20reciclatge%20(CCR)/guia_consum_responsable_ES.pdf)

Comeos (2013) *28% de dons en plus aux banques alimentaires*, available at: <http://www.comeos.be/menu.asp?id=11218&lng=fr>

DEFRA (2011) *Anaerobic Digestion Strategy and Action Plan: A commitment to increasing energy from waste through Anaerobic Digestion* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69400/anaerobic-digestion-strat-action-plan.pdf

DRAAF Rhône-Alpes (2013) *Donner aux associations d'aide alimentaire, Guide pratique et réglementaire: Produits agricoles*, available at: http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_des_dons_de_produits_agricoles_cle42dd63.pdf

DRAAF Rhône-Alpes (2013) *Donner aux associations d'aide alimentaire, Guide pratique ET réglementaire: Entreprises du secteur alimentaire*, available at: http://draaf.midi-pyrenees.agriculture.gouv.fr/IMG/pdf/Guide_don_alimentaire_entreprises_cle878ebd.pdf

DRAAF Rhône-Alpes (2013) *Donner aux associations d'aide alimentaire, Guide pratique et réglementaire: Restauration*, available at: http://draaf.rhone-alpes.agriculture.gouv.fr/IMG/pdf/Guide_dons_restaurant_sept2013_cle091e14.pdf

European Council (2014) *Food losses and food waste in Europe and European legislation*, available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209755%202014%20INIT>

European Economic and Social Committee (2013) *Opinion of the Civil society's contribution to a strategy for prevention and reduction of food losses and food waste* (own-initiative opinion): <http://www.eesc.europa.eu/?i=portal.en.nat-opinions.25955>

European Federation of Food Banks (2014) *Our results*, available at: http://www.eurofoodbank.eu/portail/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=10&lang=en

European Parliament (2011) *Urgent call to reduce food waste in the EU*, available at: <http://www.europarl.europa.eu/news/en/news-room/content/20111121IPR31961/html/Urgent-call-to-reduce-food-waste-in-the-EU>

European Parliament (2011) *Urgent call to reduce food waste in the EU*, available at: <http://www.europarl.europa.eu/news/en/news-room/content/20111121IPR31961/html/Urgent-call-to-reduce-food-waste-in-the-EU>

European Parliament (2013), Written questions: E-003730/13, E-002939/13 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-002939&language=EN>

FAO (2011) *Global Food Losses and Food Waste*: <http://www.fao.org/docrep/014/mb060e/mb060e00.pdf>

FAO (2013) *Food Wastage Footprint. Impacts on Natural Resources*, available at: <http://www.fao.org/docrep/018/i3347e/i3347e.pdf>

FAO (2013) *The state of food insecurity in the world*, available at: <http://www.fao.org/publications/sofi/en/>

Food Bank (Second Harvest Food Bank of Northwest NC), *The History of Food Banking*, available at: <http://www.hungernwnc.org/about-us/history%20of%20food%20banking.html> [accessed 24 September 2013]

Francesco Planchenstainer (2013) *They Collected What Was Left of the Scrap: Food Surplus as an Opportunity and Its Legal Incentives*, available at: http://eprints.biblio.unitn.it/4094/1/Trento_Lawtech_Research_Paper_13.pdf

House of Lords (2014) *Counting the cost of food waste: EU food waste prevention*: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/food-waste-prevention/154.pdf>

Institut für Siedlungswasserbau, Wassergüte- und Abfallwirtschaft der Universität Stuttgart, (2012) Ermittlung der weggeworfenen Lebensmittelmengen und Vorschläge zur Verminderung der

Wegwerfrate bei Lebensmitteln in Deutschland, available at:
https://www.zugutfuerdietonne.de/uploads/media/Studie_Langfassung.pdf

La Croix Rouge française et all. (2011) *Guide des bonnes pratiques d'hygiène de la distribution de produits alimentaires par les organismes caritatifs*, available at:
http://agriculture.gouv.fr/IMG/pdf/GBPH_Aide_alimentaire_final_cle021c9a.pdf

László ANDOR (2013) *Europe's social crisis: Is there a way out?* available at:
http://ec.europa.eu/deutschland/pdf/s13_309_en.pdf

Le Ministre des Finances (2013) *Un appui pour les banques alimentaires*, Communiqué de Presse, available at:
http://cdn.nimbu.io/s/1jn2gqe/channelentries/4fryjr3/files/14_01_22_banques_alimentaires.pdf

Magrama (2013) *More food, less wast*, available at:
http://www20.gencat.cat/docs/DAR/DE_Departament/DE02_Estadistiques_observatoris/27_Butlletins/02_Butlletins_ND/Fitxers_estatics_ND/2013_fitxers_estatics/0117_2013_IA_MalbaratamentA_Malbaratamentalimentaria.pdf

Swedish Gas Association (2011) *Biogas in Sweden*, available at:
http://www.biogasportalen.se/~media/Files/www_biogasportalen_se/Sidhuvud/BiogasInSweden.ashx

The Archives of the French Ministry of Finance (1999), available at: <http://archives-bofip.impots.gouv.fr/bofip-A/g1/26038-AIDA/26038-AIDA/32704-AIDA/31260-AIDA/32149-AIDA.pdf>

WRAP (2009) *Household Food and Drink Waste in the UK*, available at:
http://www.wrap.org.uk/sites/files/wrap/Household_food_and_drink_waste_in_the_UK_report.pdf

11. Annex A: List of interviewed stakeholders

Expert	Organisation
North West region	
UK	
Vikki Scott/Andrew Parry	WRAP
Tristram Stuart	Feeding the 5k
Lindsay Boswell	FareShare
France	
Gaetan Lassale	Banques alimentaires
Joel Duc	Banques alimentaires
Perrine Coulomb	Ministry of Food and Agriculture
Angelique Delahaye	Solaal
Thomas POCHER	Greentag c/o Leclerc Templeuve
Belgium	
Elisabeth Taupinart	Bruxelles Environnement /Green Cook
Rob Buurman	OIVO - CRIOC
Deborah Myaux	Fédération des services sociaux
Etienne Rubens	Komosie
Kris Roels	Flemish Government
Mees Eva	AFSCA/FAVV
Germany	
Ryan Harty	Die Tafeln
Katja Brzezinski	Research Centre for Food Law, University of Bayreuth
Steffen Ortwein	German Federal Institute for Agriculture and Nutrition
Sarah Hermges	Federal Office for Food and Agriculture
Southern region	
Italy	
Matteo Guidi/Silvia Marra	Last Minute Market
Antonio Oliva	Banco Alimentare
Angela Frigo	Banco Alimentare
Paolo Azzurro	Italian expert
Spain	
Alicia Crespo Pazos	Ministry of Food and Agriculture
Jordi Peix	Barcelona food bank
Portugal	
Antonio Costa Pereira	DariAcordar

	Isabel Jonet Paola Almeida Policarpo	Portuguese Federation of Food Banks DariAcrodar
Greece		
	Alexander Theodoridis	Boroume
EU		
	Patrick Alix Anne-Laure Gassin Marije Cornelissen Tove Larsson Chabanel Lucille	European Federation of Food Banks DG SANCO MEP FoodDrinkEurope Deloitte France
Eastern region		
Hungary		
	Balazs Cseh	Hungarian Federation of Food Banks
Poland		
	Maria Gosiewska	Polish Federation of Food banks
Nordic region		
Sweden		
	Åsa Stenmarck Simon Eisner	Swedish Environmental Research Institute Allwin AB
Denmark		
	Selina Juul Kristina Skov Olsen	Stop Wasting Food Movement Ministeriet for Fødevarer, Landbrug og Fiskeri

12. Annex B: Comparative table of VAT regimes in MS

Countries	VAT on food donation	Specific incentive on food donation	Tax deduction
Belgium	NO	NO	NO / very limited
	<p>There are no VAT provisions for food business operators donating to food banks. This provision only applies for the food donated to nine food banks registered by the Belgian Food Bank Federation</p> <p>Note that in the forthcoming elections in late May, a party seems to have introduced a bill to encourage food donations by allowing a reduction of ISOC (60% of the value of stock donations with a ceiling of 0.5% of company turnover it seems)</p>		
Denmark	YES	NO	YES to some extent
			In Denmark, a donation or a charitable contribution is a deductible tax expense with a deductible limit of DKK 14,800, if the company in question is listed as an endorsed association by the Danish Tax Authorities.
France	NO	YES	NO
	<p>There is no VAT anticipated on donated food in line with the Instruction ministérielle¹⁷⁹ du 14/02/84, Finance Act No 87/571 of 07/23/87 on the development of sponsorship¹⁸⁰ and article 275.8 of the General Tax Code.¹⁸¹</p> <p>Tax credit : 60% of the donation</p>		
Germany	YES	NO	YES

¹⁷⁹ An "Instruction" is an administrative document which directs the application of certain laws and regulations. Very similar to a circular, this paper has no legislative power.

¹⁸⁰ Loi n° 87-571 du 23 juillet 1987 sur le développement du mécénat <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=JORFTEXT000000874956>

¹⁸¹ Code général des Impôts http://legifrance.gouv.fr/affichCode.do;jsessionid=B9531B5A57A22C1C22313D226B1AA239.tpdjo02v_1?idSectionTA=LEGISCTA000006179653&cidTexte=LEGITEXT000006069577&dateTexte=20140604

Donations are in general tax (limited) deductible expenses in Germany. They reduce the taxable income up until a limitation of 20 of hundreds of the corporate's income or 4 of thousands of revenues plus wages plus salaries in the respective year. Donations in cash as well as donations in kind (f.e. food donation by a supermarket) could be tax deductible expenses.

Greece	NO	NO	YES (to be done with care)
	Please note that by virtue of article 46 of law 4238/2014, which has changed the VAT Code respectively, the free of charge supply (donation) of food, medicine, cloths and other goods to non-profitable Greek based legal entities of public or private law with a charity or public welfare scope, for the coverage of needs or relief of people suffering, is not viewed as a self-supply in terms of VAT (and thus no VAT is due), provided that this supply does not threaten the public health.		As per the Corporate Income Tax Code effective as of 1.1.2014, any donation can be deductible as long as it serves the benefit of the Company (donor). Although the term "benefit" is rather broad and no clarifications have been provided to this end, the issue should be viewed ad hoc whether any donation has a direct or indirect favourable effect to the donor (e.g. reputation wise, economic potential benefit, etc.).
Hungary	NO	NO	YES
	According to Article 11 (3) of the Hungarian VAT Act ¹⁸² no VAT is applicable to charitable donations to public use organisations. ¹⁸³ The conditions and administrative requirements for donations are listed in the VAT Act.		In the light of the Corporate Tax law ¹⁸⁴ , Article 7(z), based on the value of the donation to public use organisations, 20% can be deducted from corporate tax base – in case of donation to the Hungarian Disaster Fund or Hungarian Cultural Fund it is 50%. An additional 20% can be deducted in case of long term donation agreement of at least 3 years.
Italy	NO	NO	YES

¹⁸² 2007. évi CXXVII. törvény az általános forgalmi adóról <http://jab.complex.hu/doc.php?docid=WKHU-QJ-XML-000000A0700127TV>

¹⁸³ Legal NGO status in Hungary

¹⁸⁴ 1996. évi LXXXI törvény a társasági adóról és az osztalékadóról http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99600081.TV

Free supplies of goods produced or distributed by a company towards public entities, recognized associations or foundations with exclusive assistance, charity, education, instruction, study and scientific research purposes and towards ONLUS are exempt for Italian VAT purposes (with possible deduction limitations on purchases for the company who makes the donation).

As a general rule the donations in kinds performed by companies could be deductible for CIT purposes for an amount that does not exceed 2% of their taxable income. Moreover donations in kind to particular entities (ONLUS) performing charity and social activities are fully deductible up to 10% of their taxable income but within 70 k/€ per-year.

Poland	NO	NO	YES
	<p>Since October 2013, Polish food donors have been released from VAT when donating food. The Finance Committee of the Polish Parliament amended the law on VAT for donations made to charitable organisations and public benefit organisations according to Art. 43 (1)(16) of the Act of 15 February 1992 on Corporate Income Tax and amendment of some Acts on tax regulation¹⁸⁵</p>		<p>If specific requirements are met, food donations could be treated as tax-deductible costs or could be deducted from taxable basis (up to 10% of taxable income).</p>
Portugal	NO	NO	YES
	<p>According to the Article 64 of the Portuguese Tax Benefit code (EBF)¹⁸⁶ VAT is not charged on food donation (and other goods) to specific entities (e.g., the State and non-profit organizations) when those goods are to be delivered to the needy. Generally, food donors set close to zero the value of foodstuffs close to their 'best before' date.</p>		<p>As a general rule, under the Portuguese tax law, food donations may be deductible for tax purpose fulfilling some requirements namely the eligibility of the beneficiary institutions. The donations can also be majored with 40% with the limit of the 8/1000 of the companies' turnover.</p>

¹⁸⁵ Dz.U. 1992 nr 21 poz. 86 Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych oraz o zmianie niektórych ustaw regulujących zasady opodatkowania <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19920210086>

¹⁸⁶ARTIGO 64.º - IVA - Transmissões de bens e prestações de serviços a título gratuito https://www.igf.min-financas.pt/inflegal/codigos_tratados_pela_IGF/EBFiscais/EBF_ARTIGO_64.htm

Spain	YES	YES	NO
	<p>Unless the VAT on its acquisition was not previously deducted. Provided the entity that receives the donation is a non-profit organization. The deduction would be calculated at a 35% (tax credit against CIT)</p>		
Sweden	YES	NO	NO
UK	Zero rate	NO	NO
	<p>VAT on food is generally zero-rated in the UK, as a consequence of the negotiation process prior to EU accession</p>		

Source: Various Sources (Deloitte, Stakeholder interviews)