



EUROPEAN
U N I O N
**LEGAL
GUIDE**

FOOD DONATION
LAW AND POLICY

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit www.atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/food-law-and-policy.



About The Global FoodBanking Network

The Global FoodBanking Network (GFN) supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit www.foodbanking.org.



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INTRODUCTION

Food loss and waste (FLW) is one of the greatest food system challenges the world faces today. An estimated one-third of food produced globally is lost or wasted along the supply chain.¹ This amounts to approximately 1.3 billion tons of food each year that ends up in landfills.² FLW occurs at every stage of the food system: Food is lost during the initial harvest due to low market prices, high labor costs, and demand for perfect-looking produce. Food is wasted by grocery stores and restaurants that overestimate customer demands. Food is discarded by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.³

These behaviors have significant environmental, economic, and social consequences. Food that is lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ using roughly 28% of agricultural land⁵ and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.⁶ The market value of food products lost or wasted is approximately US\$940 billion per year.⁷ Meanwhile, more than 820 million people worldwide are undernourished, and one in nine is food insecure.⁸ The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal (SDG) 12.3.⁹ (Please note that this assessment uses pre-COVID-19 data.)

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, nongovernmental organizations that recover surplus, wholesome food and redirect it to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food-insecure persons. As food insecurity and FLW continue to rise, new and innovative models of food recovery have emerged around the world. The European Union (EU) and its Member States (MS) have committed to meeting the SDG 12.3 target to halve per capita food waste at the retail and consumer level by 2030 by reducing food losses along the food production and supply chains.¹⁰ Member states have acted on this commitment in a variety of ways, many of which are highlighted in this brief.

THE EUROPEAN UNION AND ITS MEMBER STATES HAVE COMMITTED TO MEETING THE SDG 12.3 TARGET TO HALVE PER CAPITA FOOD WASTE AT THE RETAIL AND CONSUMER LEVEL BY 2030 BY REDUCING FOOD LOSSES ALONG THE FOOD PRODUCTION AND SUPPLY CHAINS.

This issue brief supplements The Global Food Donation Policy Atlas, a partnership between the Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network that promotes strong food donation policies as solutions to both hunger and FLW.¹¹ Most reports included in The Global Food Donation Policy Atlas outline the relevant laws and policy recommendations for food donation in a particular country. By contrast, this issue brief clarifies EU-wide law and policy on food waste and recovery for policymakers and stakeholders around the world. It also highlights exemplary EU MS food donation and food recovery laws, policies, and programs. The EU has made strides toward its goal of a sustainable, equitable, and healthy food supply chain, with food redistribution thoughtfully considered in many of its strategies. Further, as outlined in this issue brief, many MS have gone above and beyond the EU requirements to encourage increased food redistribution, such as by providing additional fiscal incentives; offering further protections; developing national strategies; and in some cases even mandating food donation through law.

THIS ISSUE BRIEF CLARIFIES EU-WIDE LAW AND POLICY ON FOOD WASTE AND RECOVERY FOR POLICYMAKERS AND STAKEHOLDERS AROUND THE WORLD.

After providing initial commentary on food loss and recovery in the EU, this issue brief provides an overview of the legal frameworks most relevant to food donation at the EU level. The subsequent sections look closely at the EU laws generally applicable to food donation: food safety laws and regulations, food date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, and waste diversion laws that penalize food waste or require food recovery. In addition, these sections highlight innovative policies and programs from various EU Member States.

STATE OF FOOD INSECURITY, FOOD LOSS, WASTE, AND RECOVERY IN THE EUROPEAN UNION

Food Insecurity and Waste in the European Union

In the EU, 33 million people cannot afford a quality meal every second day.¹² At the same time, about 20% of the food produced in the EU is lost or wasted, amounting to around 88 million tonnes and €143 billion in costs associated with food along the supply chain (e.g., processing, packaging, retailing costs).¹³ According to the European Commission, households generate more than half (47 million tons) of the total food waste in the EU, and 70% of food waste arises at the household, food service, and retail levels combined.¹⁴

Waste Directive and Food Donation Guidelines

The EU Platform on Food Losses and Waste, founded in 2016, brings together EU institutions, experts, and relevant stakeholders to share best practices and evaluate progress in preventing food waste.¹⁵ In 2017 the European Commission adopted the EU food donation guidelines¹⁶—part of the Circular Economy Action Plan (CEAP)¹⁷—in consultation with the EU Platform on Food Losses and Waste. The food donation guidelines facilitate compliance of providers and recipients of surplus food, with relevant requirements laid down in the EU regulatory framework (e.g., food safety, traceability, liability, value-added tax (VAT)). They also promote common interpretation by regulatory authorities of EU rules applying to the redistribution of surplus food.¹⁸ In June 2020 the European Commission published additional guidance for food business operators on food safety management systems that further facilitate food donation and support good hygiene practices to ensure the safe redistribution of surplus food.¹⁹

As described further in the sections below, in 2018 the EU also issued an amendment to the Waste Directive.²⁰ The revised directive requires EU member states to reduce food waste at each stage of the supply chain and implement measuring and monitoring systems to track and report progress.²¹

Further, recognizing the importance of mitigating food waste, the EU participates actively in the United Nations’ designated International Day of Awareness of Food Loss and Waste (IDAFLOW) on 29 September.²² Raising social consciousness and encouraging innovative solutions, the region-wide observation “promotes global efforts and collective action towards meeting the Sustainable Development Goal Target 12.3, which aims to halve per capita food waste at the retail and consumer levels by 2030 and reduce food losses along the food production and supply chains.”²³ In particular, the European Commission—in partnership with members of the EU Platform on Food Losses and Food Waste—annually organizes activities and public health campaigns in each EU language to educate and engage citizens and stakeholders on FLW prevention.²⁴

‘Farm to Fork’ Strategy Under the European Green Deal

The European Green Deal introduced a robust and multisectoral framework to transition Europe into the first climate-neutral continent by 2050.²⁵ It provides an action plan to boost the efficient use of resources by moving to a clean, circular economy; restore biodiversity and cut pollution; and provide affordable, secure renewable energy, smarter transport, and high-quality food.²⁶

THE EUROPEAN GREEN DEAL INTRODUCED A ROBUST AND MULTISECTORAL FRAMEWORK TO TRANSITION EUROPE INTO THE FIRST CLIMATE-NEUTRAL CONTINENT BY 2050.

The overarching Green Deal includes a new CEAP;²⁷ a zero pollution ambition;²⁸ and, most notably, the comprehensive “Farm to Fork” strategy, which focuses on sustainable, equitable, and healthy food systems.²⁹ Each element notes the social and environmental repercussions of FLW. Section 3.7 of the CEAP addresses the immense environmental pressure and food waste resulting from the food value chain as a major element of the circular economy strategy.³⁰ In line with the SDGs and as part of the review of Directive 2008/98/EC,³¹ the European Commission proposed a target on food waste reduction, which is further outlined in the “Farm to Fork” strategy.

The “Farm to Fork” strategy encompasses goals for progress in the sustainability of the food system, from production and processing to food security and sustainable diets.³² The strategy includes a section dedicated entirely towards addressing FLW. The commission will use new methodology for measuring food waste³³ and the data expected from EU member states in 2022 to set a FLW baseline.³⁴ Then, the commission will discuss alternative solutions to reduce FLW, which may result in legislative or nonlegislative initiatives and the proposal of legally binding targets to reduce food waste across the EU.³⁵ It will also integrate FLW prevention into other EU policies, such as date marking, and investigate food loss at the production stage in addition to food waste levels.³⁶

To accomplish these aims, the commission will leverage resources, including contributions from the EU Investment Bank, and promote a collective approach involving public authorities at all levels of governance (including urban, rural, and coastal communities), private-sector actors across the value chain, nongovernmental organizations, social partners, academics, and citizens.³⁷ With coordinated action at the EU level, the commission will reinforce action at the national level and work to implement the recommendations of the EU Platform on Food Losses and Food Waste.³⁸

Various EU Member States’ Food Waste Reduction Plans and National Strategies

Several EU member states have national food donation or food waste plans or strategies, many of which complement the European Commission frameworks under the European Green Deal. The national strategies of **Belgium, France, Italy, and the Netherlands**, which specifically include food redistribution measures, are seen as best practices, as each strategy goes beyond simply listing food redistribution as a potential course of action and specifically establishes food use hierarchies, with prevention and redistribution as first steps.³⁹

For example, in 2016 **Italy** approved Law No. 166/2016, *Provisions on the donation and redistribution of food and pharmaceutical products for social purpose and to limit waste*.⁴⁰ The law defines “food waste” and “food surplus,” clearly lists products that are eligible for donation, and establishes a hierarchy for the use of surplus food, prioritizing the prevention of surplus food followed by redistribution for human consumption.⁴¹ It also establishes a national advisory round table (called the “Table for the Fight against Food Waste and for Food Aid”), coordinated by the Ministry of Agriculture, that brings together actors across the food supply chain—including charitable organizations and competent authorities (e.g., Ministry of Health, Ministry of the Environment)—to study themes related to food redistribution.⁴² The law builds on the 2014 National Food Waste Prevention Plan (PINPAS) launched by the Ministry of the Environment, which brought food waste prevention to the center of the political agenda and raised corporate and consumer awareness about the environmental, social, and economic impacts of food waste.⁴³

The Netherlands’ national agenda, United Against Food Waste (*Samen tegen voedselverspilling*), was created in 2018 by the Circular Economy in Food Task Force, a group that comprises companies, research institutes, civil society organizations, and the government.⁴⁴ The agenda clarifies the Dutch food waste hierarchy,

launches public awareness campaigns (e.g., around date labels⁴⁵), and pushes for policy change and circular economy legislation.⁴⁶ Upon launch of the program, the Dutch Ministry of Agriculture, Nature and Food Quality committed to investing 7 million euros into innovation, research, monitoring, and education to support it.⁴⁷

In **Belgium**, the Good Food Strategy initiated by the Brussels regional government in 2016 set a 30% food waste reduction target by 2020.⁴⁸ The strategy encourages the recovery of unsold food, notably targeting the retail sector by “requiring supermarkets to partner with food aid associations to voluntarily initiate food redistribution.”⁴⁹ **Germany** implemented the National Strategy for the Reduction of Food Waste in 2019.⁵⁰ The strategy centers on creating dialogue among different food waste stakeholders (e.g., primary producers and manufacturers, retailers and catering services, civil society) and an overarching national dialogue forum that includes participation of the federal government.⁵¹

OVERVIEW OF THE EUROPEAN UNION LEGAL FRAMEWORK

The EU contains 27 sovereign, independent countries (MS), each of which delegates some of its competencies to the shared institutions of the EU, as established in the treaties. Every action taken by the EU is founded on treaties that have been negotiated and approved by all EU MS, then ratified by their parliaments or by referendum.⁵²

Several institutions are involved in EU decision making, including the EU Parliament, the European Council, the Council (also known as the Council of Ministers), and the European Commission.⁵³ Each institution is responsible for a different aspect of the law-making process. While the European Council establishes the “general political direction and priorities of the EU,” the European Commission proposes new laws and the European Parliament and Council adopt them.⁵⁴ Finally, the MS and the European Commission implement EU law.⁵⁵

EU law is divided into “primary” and “secondary” legislation. The treaties (primary legislation) are the basis or ground rules for all EU action. They are amended each time a new member state joins the EU as well as occasionally to reform the EU’s institutions.⁵⁶ The treaties delineate the objectives of the EU, rules for EU institutions, procedure for decision making, and the relationship between the EU and its MS.⁵⁷ The 2007 Lisbon Treaty is the last amendment of the treaty. Earlier treaties are incorporated into the current consolidated version, comprising the Treaty on European Union and the Treaty on the Functioning of the European Union.⁵⁸ Secondary legislation, including regulations, directives, and decisions, is derived from the principles and objectives set out in the treaties.⁵⁹

Several types of legal acts impact EU MS. EU *regulations* have a direct effect, binding all MS without requiring passage into national law to go into effect. However, Member States may be required to change their national laws to comply with a regulation.⁶⁰ On the other hand, EU *directives* require national transposition among MS or specific groups of MS, with the aim to achieve a particular objective, often to align different national laws. Directives must always be transposed into national law to become effective and national authorities are free to decide how to adapt their laws to meet the stated goal.⁶¹ While a *decision* by the Council—addressed to MS, groups of people, or even individuals—is binding in its entirety, *recommendations* and *opinions* lack binding legal force.⁶²

EU REGULATIONS HAVE A DIRECT EFFECT, BINDING ALL MEMBER STATES WITHOUT REQUIRING PASSAGE INTO NATIONAL LAW TO GO INTO EFFECT. EU DIRECTIVES REQUIRE NATIONAL TRANSPOSITION AMONG MEMBER STATES...WITH THE AIM TO ACHIEVE A PARTICULAR OBJECTIVE.

EUROPEAN UNION FOOD DONATION LEGAL FRAMEWORK

General Food Law Regulation

The European Parliament and the Council adopted Regulation (EC) No 178/2002 in 2002.⁶³ Commonly known as the General Food Law Regulation, this law sets the foundation for EU food law by outlining principles for matters relating to food and food safety at all stages of production and distribution.⁶⁴ In addition, it establishes requirements for food safety, traceability, import, and export and outlines operator responsibility for ensuring compliance with the law.⁶⁵ It also created the European Food Safety Authority (EFSA), which is in charge of scientific risk assessment but does not have regulatory or enforcement powers.

Hygiene Package

In 2004 the EU adopted a “new [food safety] framework” known as the Hygiene Package (hereinafter, “the Package”), which came into effect on January 1, 2006.⁶⁶ This “package” of regulations outlines specific food safety rules for the entire food chain, from production to consumption,⁶⁷ such as applying hazard analysis critical control point principles (HACCP), implementing enhanced traceability, and optimizing control of relevant health authorities.⁶⁸ The Package subjects all food business operators involved in the food chain (e.g., breeders, farmers, distributors) to the basic EU-harmonized requirements, some of which still require MS to adopt laws to implement the basic EU requirements. All food business operators must comply with these regulations, which includes the obligation to demonstrate that they have put in place appropriate control measures relating to their respective food operations.⁶⁹

Waste Framework Directive

Under the 2008 Waste Framework Directive: Directive 2008/98/EC, Member States must apply the following waste management hierarchy: prevention, preparing for reuse, recycling, recovery, and disposal.⁷⁰ Article 3.4 defines “biowaste” as “biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants.” Article 22 encourages composting and digestion of biowaste, or other environmentally safe methods to treat or repurpose biowaste.⁷¹ However, beyond this definition, the original directive did not offer specific EU guidance on food waste or outline any food use hierarchy.

The 2018 Revised Waste Framework Directive specifically requires Member States to monitor and reduce food waste at each stage of the supply chain. The revised directive requires Member States to prepare food waste prevention programs; encourage food donation, specifically by requiring the prioritization of human use over animal feed or nonfood reprocessing; and provide incentives for the application of the waste hierarchy.⁷²

Guidelines on Food Donation

On World Food Day 2017 (16 October 2017), the European Commission adopted the EU Guidelines on Food Donation⁷³ (hereinafter, “the EU Guidelines”) as part of the CEAP. Developed in consultation with the EU Platform on Food Losses and Food Waste,⁷⁴ the EU Guidelines⁷⁵ clarify relevant provisions of EU food law as they relate to the charitable donation of food. They also facilitate the compliance of donors and recipients of surplus food with EU law related to food safety, traceability, liability, and VAT, among others.⁷⁶ The EU Guidelines, discussed in more detail later in the brief, also seek to ensure a “common interpretation” by the regulatory authorities in Member States of EU laws relevant to surplus food distribution.⁷⁷

In addition to the EU Guidelines, some Member States have issued their own domestic guidance to facilitate enhanced food recovery and donation, often adding specifics that apply to their laws and regulations. For example, in 2017 the **Czech** Federation of Food Banks and Czech Confederation of Commerce and Tourism published internal guidelines for food donation to clarify their food law⁷⁸ and information on various topics relating to food redistribution, such as primary responsibility.⁷⁹ Similarly, the **Finnish** Food Authority published a guide titled “Foodstuffs Donated to Food Aid,” which outlines the requirements for food redistribution,⁸⁰ and

the **German** Federal Ministry of Food and Agriculture published a “Guidebook on Donating Food to Social Welfare Organisations - Legal Aspects” to provide guidelines on the legal framework for food redistribution in Germany.⁸¹

LEGAL ISSUES RELEVANT TO FOOD DONATION

FOOD SAFETY FOR DONATIONS

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. All donated food should be safe for consumption and comply with applicable food safety laws and regulations. Potential donors, however, are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could be redirected to populations in need is instead destined for landfills.

The General Food Law Regulation—promulgated in 2002 as Regulation (EC) No. 178/2002—provides the overarching legal obligations and requirements for food safety in member states. It established the European Food Safety Authority to provide scientific analysis of food safety issues.⁸² It also establishes criteria for determining whether a food is “unsafe” or not, requires traceability, and places the burden of compliance with food safety regulations on business operators.⁸³ In January 2006 the EU implemented a new set of food safety regulations called the “Hygiene Package” law (discussed above) to harmonize national regulatory frameworks related to food hygiene across member states.⁸⁴

IN JANUARY 2006 THE EU IMPLEMENTED THE “HYGIENE PACKAGE” TO HARMONIZE NATIONAL REGULATORY FRAMEWORKS RELATED TO FOOD HYGIENE ACROSS MEMBER STATES.

Until recently, EU policies did not address food safety with respect to food donation. However, this changed after the adoption of the EU Guidelines.⁸⁵ These guidelines were developed in consultation with the EU Platform on Food Losses and Food Waste to facilitate the recovery and redistribution of safe, edible food.⁸⁶ The guidelines clarify which EU regulations apply to food donation (including food safety regulations), facilitate the compliance of providers and recipients of surplus food with relevant requirements set out in the EU regulatory framework, and promote a common interpretation by MS regulatory authorities of EU rules applying to the redistribution of surplus food.

The EU Guidelines clarify that all food operators must comply with EU rules related to food hygiene during any activity associated with the redistribution of surplus food. They also clarify that food redistribution organizations and charities are considered “food business operators” under the General Food Law and therefore must comply with the General Food Law and with other EU rules related to food safety, including the Hygiene Package.⁸⁷ Since the adoption of the EU Guidelines, amendments have been made to the EU food hygiene rules to facilitate enhanced food redistribution. For example, Commission Regulation 2021/382 clarifies the application of “use by” and “best by” dates, particularly during food donation.⁸⁸ Commission Delegated Regulation 2021/1374 concerns the conditions for freezing meat at retail to facilitate the redistribution of meat by food banks and other charities.⁸⁹ The food donation guidelines on hygiene should, therefore, be read in conjunction with these amendments. The EU Guidelines further note requirements that are generally applicable to all food redistribution actors, but they also highlight specific requirements for certain actors or types of food, such as

those that apply to the hospitality, catering, and food service sectors or to the redistribution of food of animal origin.⁹⁰ The EU Guidelines further clarify instances where member states may derogate from certain food safety rules.⁹¹ While the indications in the regulations are legally binding, the guidelines are not.

National laws related to food safety for food redistribution can also regulate food redistribution. Currently, only **France, Estonia, Italy, Croatia,** and **Slovenia** have outlined hygiene requirements linked to food redistribution in national law, either via food safety laws or within laws on food redistribution.⁹²

In **Estonia**, the Food Act of 1999, amended most recently in 2017, transposes EU laws for food safety and defines the hygiene and safety conditions and traceability for all food, including redistributed food.⁹³ In 2019 the Estonian Veterinary and Food Board issued additional guidelines for food donation and food safety,⁹⁴ which clarify EU hygiene requirements so donors and distributors can better understand relevant food safety issues. In **Italy**, the Stability Law of 2013 (*Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato*)⁹⁵ sets out essential safety requirements for food donation in compliance with the Package, and **Italy's** Law No. 166/2016 further outlines the general framework on food safety, food hygiene, and requisite food information to consumers for donated food items.⁹⁶ This includes standards for preservation, transport, storage, and use of donated food. The law also clarifies the General Food Law's obligations relating to traceability and recall of products.⁹⁷

In MS that have not adopted domestic legislation to regulate food donation, guidelines on hygiene in the context of food redistribution are useful tools for food redistribution actors to identify and understand the relevant procedures. For example, in **Bulgaria** the Ministry of Agriculture and Food issued an Ordinance on the List of Foods Eligible for Food Banking (Заповед № РД 09-181/09.03.2017 на министъра на земеделието и храните относно списък на храните, обект на хранително банкиране), which lists food items eligible for donation.⁹⁸ Similarly, the **German** “Guidebook on Donating Food to Social Welfare Organisations – Legal Aspects” also provides guidance on hygiene requirements for food redistribution.⁹⁹ In **Spain**, while no legislation is specific to food safety for donations, regional-level actors have issued useful guides regarding food safety best practices for food redistribution, such as “Food Safety Requirements on Food Donation” under the Catalan Food Safety Agency¹⁰⁰ or the “Good Practice Guide for the Use of Food Surplus” promulgated by the Community of Madrid.¹⁰¹

DATE LABELING (DATE MARKING)

Date labels affixed to food products are a major driver of food waste and can also be an obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. While fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, this can be difficult to gauge with packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the date passes. Intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the timeframe for dates, all of which reflect when the food will be at its “peak quality.”¹⁰² Nevertheless, global trends indicate that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.¹⁰³ Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.¹⁰⁴

IN THE UNITED KINGDOM, RESEARCHERS FOUND THAT CONSUMERS DISCARDED ABOUT 22% OF FOOD THAT THEY COULD HAVE EATEN DUE TO CONFUSION OVER DATE LABELING.

Within the EU, Regulation No. 1169/2011 on Food Information to Consumers governs the use of date labels on food products.¹⁰⁵ For the majority of packaged food products, this regulation requires either a date mark specifying a “use by” date—indicating safety—or a “date of minimum durability” (or “best before” date)—indicating quality.¹⁰⁶ The regulation clarifies that the date of minimum durability is considered a quality date, or “the “date until which the food retains its specific properties when properly stored” and should be the default label.¹⁰⁷ The date of minimum durability must be replaced by a “use by” date for foods “which, from a microbiological point of view, are highly perishable and therefore likely after a short period to constitute an immediate danger to human health.”¹⁰⁸ Food products are considered unsafe for consumption after their “use by” date passes.¹⁰⁹ The regulation aligns with the model language set forth in the *Codex Alimentarius*’s General Standard for the Labeling of Prepackaged Foods.¹¹⁰

Regulation No. 1169/2011 mandates that all mandatory food information, including any special storage conditions or conditions of use,¹¹¹ be marked in an easily visible location.¹¹² It also lists food products that are not required to have a “best before” date mark, which include fresh fruit and vegetables, wines, beverages with 10 percent or more alcohol, pastries, vinegar, cooking salt, sugar, confectionary products, and chewing gum.¹¹³ While date labels are not required for these products, they are not prohibited, which could result in differing labeling practices for these products. Nonetheless, minimum legal requirements must be respected, such as ensuring that labels do not mislead or confuse the customer and that specific food information is included on voluntary labels.¹¹⁴ This reduces the differences in labeling practices for this category of products. The regulation further states that most of its provisions do not apply to nonprepacked goods “unless Member States adopt national measures,”¹¹⁵ giving member states the authority to implement more extensive labeling requirements.

While not addressed in Regulation No. 1169/2011, the donation of food past its label date is covered in the EU Guidelines. The EU Guidelines¹¹⁶ clarify that, while food past its “use by” date can pose safety concerns, food past its “best before” date is still safe to consume “on the condition that storage conditions are respected and packaging is not damaged.”¹¹⁷ The guidelines also state that when food labeled with a “use by” date is donated, the donor should “ensure that there is sufficient shelf-life available upon the delivery of such products to ... organizations in order to allow for their safe distribution and use by the final consumer prior to the indicated ‘use by’ date.”¹¹⁸ The guidelines do not provide specific instructions on donated food with “best before” date labels. However, in the case of eggs, the guidelines allow eggs to be donated and redistributed after the 21-day consumer sales limit as long as the charitable organization receiving them processes the eggs with heat treatment before giving them to consumers.¹¹⁹

THE EU GUIDELINES CLARIFY THAT, WHILE FOOD PAST ITS “USE BY” DATE CAN POSE SAFETY CONCERNS, FOOD PAST ITS “BEST BEFORE” DATE IS STILL SAFE TO CONSUME “ON THE CONDITION THAT STORAGE CONDITIONS ARE RESPECTED AND PACKAGING IS NOT DAMAGED.

While the EU rules allow the redistribution of products after the “best before” date and most MS follow suit, some MS still do not permit food donation after the “best before” date, including **Bulgaria, Croatia,**¹²⁰ **Cyprus, Hungary, Poland, and Romania.**¹²¹ Most Member States, however, have donation requirements in line with EU recommendations on allowing redistribution after the “best before” date. For example, in the **Czech Republic**, according to Law 180/2016, food past its “best before” date can be donated and marketed as long as the product is separated from food that is not past the “best before” date and its safety and hygiene are guaranteed.¹²² Similarly, **Denmark** repealed § 36(3) of “Order on labelling etc. of foodstuffs” to permit the donation and sale of food past its “best before” date as long as the food donor informs the receiver that the food has passed its “best before” date.¹²³ The **French** Anti-Waste Law for a Circular Economy n°2020-105 (known as the AGECL Law) recently confirmed that when a food product has a “best before” date, a manufacturer may include an accompanying statement, specified by decree, informing consumers that the product remains edible after this date.¹²⁴

Beyond laws expressly permitting the donation of food past the “best before” date, many countries also offer guidance to increase consumer and donor awareness about the meaning of date labels. As mentioned previously, a major objective of the **Dutch** United Against Food Waste national campaign is education about date labels and the effect on food waste, with large-scale public awareness campaigns.¹²⁵ Further, while no longer a member of the EU, the United Kingdom’s Waste and Resources Action Programme (WRAP) has issued exemplary and effective guidance around date labeling for both consumer use and food donation.¹²⁶

LIABILITY PROTECTION FOR FOOD DONATION

A significant barrier to food donation is the fear among donors that they may be liable if someone becomes sick after consuming donated food and, as a result, may face civil or criminal consequences.

The General Food Law of the EU lays out definitions, principles, and obligations covering all stages of food production and distribution in the EU. Article 21 of the General Food Law provides that MS should act in accordance with Council Directive 85/374/EEC when issuing laws, regulations, and administrative provisions concerning liability for defective products.¹²⁷ MS are required to enforce food laws, and food business operators must ensure their food adheres to the food law requirements. MS cannot adopt laws at the national level that would relieve food business operators from their responsibility to ensure compliance with both EU and national food laws under Article 17 of the General Food Law.¹²⁸ The Liability Directive provides that producers are liable for damage caused by defective products.¹²⁹ The definition of “producers” includes “manufacturers,” but also “any person who, by putting [their] name, trade mark, or other distinguishing feature on the product, presents himself as its producer.”¹³⁰ Food redistribution organizations and charities are considered “food business operators” under the General Food Law and therefore must comply with the General Food Law and other EU rules related to food safety.¹³¹

Neither the EU nor many MS provide liability protection for food donors. Indeed, “Good Samaritan” laws are the exception, not the rule. In some Member States without Good Samaritan laws in place for food donation, donors and nonprofits accepting donated food have established formal partnership agreements to document the transfer of ownership of goods between them as well as to clarify their respective roles and responsibilities.¹³²

NEITHER THE EU NOR MANY MEMBER STATES PROVIDE LIABILITY PROTECTION FOR FOOD DONORS. INDEED, “GOOD SAMARITAN” LAWS ARE THE EXCEPTION, NOT THE RULE.

At the time of this writing, **Italy** is the only EU member state with a Good Samaritan law (L.155/2003).¹³³ Italy provides legal protection to food donors by designating nonprofit organizations that redistribute food for charitable purposes as “final consumers.”¹³⁴ By doing so, the Good Samaritan law recognizes these organizations as the final link in the food chain (i.e., the final consumers of donated products), thereby protecting food donors from legal action by the food donation recipients.¹³⁵

While lacking a Good Samaritan law, many Member States have issued guidance to assuage concerns about liability for food donations. **Austria, Belgium, Estonia, France, Ireland, the Netherlands, and Spain** have each issued formal guidance to clarify the transfer of primary responsibility and liability throughout the food product redistribution. In turn, this helps donors and food redistribution organizations better understand the process and operate in line with respective national food safety laws and EU rules.¹³⁶ These guidelines generally clarify that the food redistribution organization assumes responsibility for food once it has accepted the donation, meaning the end recipient would not have a claim against the food donor.

TAXES

Reducing FLW results in sizable economic benefits to society, as it minimizes the environmental costs associated with producing food ultimately sent to landfills. Food donation also helps mitigate the costs of hunger and stimulates the economy. Food recovery organizations provide jobs or sponsor community development, and recipients of donated food can spend limited financial resources on other basic goods and services. Yet food donation can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded. As a result, it is often easier and less expensive for farmers, businesses, and private individuals to throw away food rather than donate it. Designing policies that offer tax incentives and remove tax barriers to food donation can ameliorate this issue.

INCENTIVES

Tax incentives for potential food donors help reframe food donation as a cost-effective and economically beneficial endeavor, or at least serve as an offset to the cost of donation. Incentives can include tax deductions or credits for food donation. While the EU does not provide tax incentives for food donation, some MS have incorporated tax incentives into their national legislation.

For example, fiscal incentives are available in **France**, where a tax deduction of 60% of the value of donated food is available, with a cap of 0.5% of the company turnover.¹³⁷ If a taxpayer does not fully use the tax break during the first year because of the low cap, they may continue to claim the benefits over the next five years.¹³⁸ According to the Income Tax Act (EStG §10b)¹³⁹ and the Corporate Tax Act (Section 9)¹⁴⁰ in **Germany**, donations in cash or in kind are tax-deductible expenses, within the limit of 20% of corporate income or 0.4% of the company's total sales, wages, and salaries spent in the calendar year.¹⁴¹ As food donations are “in-kind,” they are tax deductible for donors up to the specified cap. **Portugal** has an enhanced tax deduction, meaning donors can deduct up to 140% of the value of the food at the 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, depending on the type of receiving institution.¹⁴²

In addition to providing tax incentives, providing guidance to navigate the often-complex tax environment can help facilitate increased food donation. For example, national guidelines can assist actors in understanding how to consider, apply, and maximize fiscal and tax opportunities. The **Dutch** Food Bank published an information sheet in 2015 on “Food donation and fiscal consequences for food companies and food banks”¹⁴³ to clarify the fiscal implications of food donation. The Ministry of Taxation in **Denmark** issued VAT reduction guidelines in 2015 that provide information on the fiscal aspects for food businesses donating surplus food to food banks.¹⁴⁴ Additionally, **Slovakia**, the **Czech Republic**, and **Lithuania** have each issued guidelines providing information on the fiscal consequences or opportunities of food redistribution.¹⁴⁵

BARRIERS

While certain tax schemes may encourage food donations, tax schemes may also be potential deterrents. In many countries, the VAT in particular creates a financial barrier to donating food. VAT is levied on a good (or service) at each stage of the supply chain, often through a system of debits (an output VAT) and credits (an input VAT). The output VAT is the amount that a VAT-registered business, or vendor, will charge on its own sale of the good, whereas the input VAT is the amount invoiced to the vendor upon the good's purchase.

The Council Directive 2006/112/EC of 28 November 2006¹⁴⁶ sets out the framework for VAT in the EU. The EU's institutions do not collect the tax. Instead, EU Member States are each required to adopt and collect a VAT that complies with the EU VAT rules.¹⁴⁷ Each EU MS has a standard rate that applies to most goods and services. According to the directive, this rate cannot be less than 15%.¹⁴⁸ According to Annex III of the directive,¹⁴⁹ food in general is eligible for a reduced VAT rate, which cannot be less than 5%.¹⁵⁰

Article 16 of the directive specifies that VAT must be paid on food intended for donation if the VAT paid by the

donor upon purchase is fully or partially deductible.¹⁵¹ However, because the taxable amount is the purchase price at the moment of the donation—adjusted to the state of those goods at the time of donation, as defined in article 74—the European Commission recommends that, for foods close to the “best before” date, MS should consider the value on which the VAT is calculated to be fairly low, even close to zero in cases where the food genuinely has no value.¹⁵² Several EU MS have clarified that food items close to their expiry date have a “purchase price” of zero or close to zero so they do not incur VAT liability when donated.¹⁵³ However, other EU MS consider the price of a donated product the same as its commercial purchase price when calculating the VAT. As a result, the food bank or recipient organization would indeed incur VAT liability on the product at the time of transfer.¹⁵⁴

A number of EU MS have specific provisions in their own national tax legislation to address the issue of VAT in relation to food donation. In addition to subjecting food to reduced VAT rates as mentioned above, EU MS have handled VAT concerns in two different ways: (1) exempting redistributed food from VAT (i.e., the goods are not VAT-taxable) or (2) considering such food “zero-rated” (i.e., the goods are still VAT-taxable but the rate of VAT charged to the food recovery organization is 0%).¹⁵⁵ A separate question is whether donor businesses can claim a credit for the input VAT paid to acquire raw materials along the supply chain. In general, if a good is VAT-exempt, the food business cannot claim a credit, but if a good is “zero-rated,” the food business can claim a credit for the input VAT paid on raw materials it acquired. However, details vary, as VAT exemptions can be either “exemptions with a right to deduct” or “exemptions without a right to deduct.”¹⁵⁶

Examples of VAT exemptions include **Italy**, **Belgium**,¹⁵⁷ **Bulgaria**,¹⁵⁸ **Croatia**,¹⁵⁹ and **Greece**,¹⁶⁰ all of which have exempted charitable donations of food from their national VAT. To be eligible for exemption, the donated food must meet specific requirements. For example, in **Bulgaria**, the value of one unit of food must be negligible, the food bank must be registered, the item must be labeled “Donation, not for sale,” and the food must not be past the expiration date.¹⁶¹ In **Italy**, the VAT legislation allows exemption from VAT of food surpluses donated to socially beneficial, nonprofit charitable organizations (*organizzazioni non lucrative di utilità sociale*, or ONLUS),¹⁶² considering the food “destroyed” for the purposes of VAT. Donors can therefore deduct the VAT paid on the purchased products.¹⁶³ This applies to any unsold food products as long as they comply with health and safety requirements.¹⁶⁴ Food donations in **France** made to charitable organizations within the country are not subject to VAT.¹⁶⁵

In other MS, donated food is “zero-rated” for VAT purposes. In the **Czech Republic**, the law set a zero rate of VAT on donated food¹⁶⁶ instead of the usual 15% paid on staple foods.¹⁶⁷ In addition, to clarify the issue of VAT for donations, the Directorate of Finance issued guidelines explaining how to apply VAT when donating goods to food banks.¹⁶⁸ Similarly, in **Estonia**, food donated to charities benefits from a zero-rated VAT as long as the donor “writes off” the products in a report by declaring its inability to sell the food.¹⁶⁹

Other MS that do not offer exemptions for VAT may enable donors to recoup the cost through tax incentives. For example, while **Cyprus** does not offer a VAT exemption, the Income Tax Law offers tax deductions for donations to municipal authorities or approved charity organizations.¹⁷⁰

DONATION REQUIREMENTS OR FOOD WASTE PENALTIES

Some countries influence business behavior and reduce needless waste through food donation requirements or monetary penalties for sending food to landfills (often known as organic waste bans or waste diversion requirements).

EU Directive 2008/98/EC (hereinafter, the “Waste Management Initiative”) requires that MS adopt waste management plans and waste prevention programs.¹⁷¹ It also provides conceptual frameworks and definitions for EU countries to utilize while implementing these initiatives.¹⁷² Foremost is the “waste management hierarchy” (pictured to the right) to be used when considering potential waste-



reducing national policy.¹⁷³

EU Directive 2018/851 dated 30 May, 2018, which entered into force in the EU MS on 5 July, 2020, modified the Waste Management Initiative to specify its scope of application.¹⁷⁴ The 2018 directive strengthens rules on waste prevention and defines the concepts of “non-hazardous waste, municipal waste, construction and demolition waste, food waste, material recovery, backfilling and extended producer responsibility regime.”¹⁷⁵ Under recital 32 of the directive, MS are encouraged to take actions to prevent food waste, including providing incentives for the collection and safe redistribution of unsold food products at all stages of the food supply chain.¹⁷⁶ Recital 32 also advocates for improved consumer awareness of the meaning of “use-by” and “best-before” dates to reduce food waste.¹⁷⁷

EU MS are encouraged to reduce food waste by 50% at both distribution and consumption stages and reduce food losses along production and supply chains to contribute to the United Nations’ 2030 SDG.¹⁷⁸ The 2018 directive also gives examples of incentives for the application of the waste management hierarchy as mentioned above, such as the implementation of charges for the landfilling and incineration of waste or, among others, waste volume-based charging systems.¹⁷⁹

EU MEMBER STATES ARE ENCOURAGED TO REDUCE FOOD WASTE BY 50% AT BOTH DISTRIBUTION AND CONSUMPTION STAGES AND REDUCE FOOD LOSSES ALONG PRODUCTION AND SUPPLY CHAINS TO CONTRIBUTE TO THE UNITED NATIONS’ 2030 SDG.

Multiple MS—including **France, Italy, and the Netherlands**—have codified a food recovery hierarchy in national law, promoting food redistribution above any other valorization routes for surplus food.¹⁸⁰ **Spain** also recently passed a law in April 2022 promoting a circular economy and outlining the recovery hierarchy for organic waste, from food donation for human consumption, to use in animal feed, to recycling nutrients through composting or alternative energy.¹⁸¹ **Austria, Belgium, and Ireland** also prioritize food donation and redistribution, though they do not have a formal food use hierarchy.¹⁸²

With respect to food donation requirements, most include mandates for supermarkets to donate surplus food items to food banks. In **Belgium**, two laws in the Brussels¹⁸³ and Walloon¹⁸⁴ regions oblige supermarkets to donate surplus food that remains safe for human consumption in order to maintain their environmental permits. The laws also require supermarkets to compost any unsuitable food waste.¹⁸⁵ In the **Czech Republic**, amended Law no. 180/2016 on foodstuffs and tobacco requires food retailers with supermarkets of more than 400 square meters to redistribute food.¹⁸⁶ **France’s** n°2016-138 Law on Fighting against Food Waste similarly obliges supermarkets more than 400 cubic meters to establish contracts with relevant charitable organizations to donate retailer food surplus.¹⁸⁷ The donation requirement was extended to institutional feeding/mass catering entities (those preparing more than 3,000 meals a day) and the food industry (whose annual turnover exceeds €50 million) in 2019,¹⁸⁸ and the penalty was increased.¹⁸⁹ In 2020, LOI n° 2020-105 (*relative à la lutte contre le gaspillage et à l’économie circulaire*) strengthened fines in France for destroying unsold food products fit for consumption, increasing fines to up to 0.1% of the annual turnover from €3,750 previously.¹⁹⁰ Further, the Council of Ministers in **Spain** approved the first law against food waste, entering into force in early 2023, which will require supermarkets to lower the price of products that are about to expire and donate or dispose of surplus food in line with the recovery hierarchy.¹⁹¹

GOVERNMENT GRANTS AND INCENTIVES

Grants and incentive programs offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts. For example, government grants can help food

donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. Government funding can also support innovations and emerging technologies that will make food donation more efficient and sustainable.

While most government grants and incentives are disseminated on the national level, EU-wide funding is available for research and innovation for sustainable food systems.¹⁹² As previously discussed, the EU Green Deal “Farm to Fork” strategy references access to public and private funds, including contributions from the EU Investment Bank.¹⁹³ Further, EU-wide innovation funds exist, such as InnovFin¹⁹⁴ and European Circular Bioeconomy Fund¹⁹⁵ (both through the EU Investment Bank) as well as various topical EU funding programs for sustainable food systems, environmental protection, food security, and more.¹⁹⁶

There are also many examples of government funding for food waste prevention and food redistribution on the national level in MS. For example, the initiative “United Against Food Waste” in **the Netherlands** included a total of €7 million from the Dutch Ministry of Agriculture, Nature and Food Quality between 2018 and 2022 to invest in innovation, research, monitoring, and education.¹⁹⁷ In the **Czech Republic**, the Ministry of Agriculture offers subsidies as an economic solution for food redistributors that may not have enough resources to cover increased operational and logistical costs, nor the storage capacity and means to handle higher levels of food surplus as food redistribution activity increases throughout the country.¹⁹⁸ Specifically, in response to Law no. 180/2016 requiring food retailers to donate food, thus driving increased redistribution activity, the regions of Prague and Central Bohemia financed a 450,000 Czech koruna (CZ) subsidy to offset increased maintenance costs for the Food Bank Prague and Central Bohemia.¹⁹⁹ This financing, called the individual noninvestment subsidy, allows the food banks to fund increased energy, fuel, housing, wages, and more that result from increased levels of food surplus donated by retailers.²⁰⁰ There are myriad innovative examples of government-supported initiatives, from the “too good for the bin” consumer app and national award developed by the Federal Ministry of Food and Agriculture in Germany,²⁰¹ to government vouchers for innovations against food waste in the Netherlands,²⁰² all of which are hosted on the European Commission’s EU Food Loss and Waste Prevention Hub online platform.

ADDITIONAL RESOURCES

The following resources provide additional information and details on the landscape of food redistribution in the EU.

- Recommendations for Action in Food Waste Prevention (December 2019): Developed by the EU Platform on Food Losses and Food Waste, this issue brief offers analysis and key recommendations for MS policymakers to strengthen their social and legal landscape to meet FLW reduction targets. Recommendations address actions required at each stage of the food supply chain (including food redistribution) and involve all key players from the public and private sectors.²⁰³
- Food Redistribution in the EU: Mapping and analysis of existing regulatory and policy measures impacting food redistribution from EU Member States (June 2020): This comprehensive analysis was published by the European Commission to track laws and policies relating to food donation across Europe, including tax laws, food hygiene requirements, traceability, legal measures, communication initiatives, and more. The brief creates a ranking system to measure the performance of each MS in established categories.²⁰⁴
- Deloitte Comparative Study on EU Member States’ legislation and practices on food donation (June 2014): This comparative overview maps key hurdles preventing food donation, identifies best practices, and develops recommendations on how to legislate or interpret legislation to facilitate food donation. The study investigates five main legislative areas (product liability, food safety and hygiene, food durability and date marking, tax legislation, and the food waste hierarchy) across 12 MS selected with balanced

geographic representation across the EU: Belgium, Denmark, France, Germany, Greece, Hungary, Italy, Poland, Portugal, Spain, Sweden, and (previous MS) United Kingdom. Portions of the study are no longer accurate, as MS laws have changed since the publication date.²⁰⁵

CONCLUSION

This issue brief provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies as well as begin a dialogue about FLW prevention and the value of food recovery to the EU's food security, economic stability, and environmental sustainability. Food donors and food recovery organizations should consider the laws, policies, and legal issues discussed in this issue brief when donating or distributing food to those in need. To understand the regulation of food donation in the EU, donors, intermediaries, and policymakers should investigate the laws identified in this issue brief and seek additional legal counsel, if necessary. The topics covered in this issue brief are the same as those analyzed in all of the country-specific materials of the Atlas project. This enables comparison between the EU and other project countries and helps identify areas where the EU or MS may provide a model for other countries.

ENDNOTES

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