FIT FOR FUTURE Platform Opinion

Topic title	Food waste/donation
	AWP 2022
	Regulation (EC) No 852/2004 & Commission Regulation 2021/382 Regulation (EC) No 178/2002 & Commission Implementing Regulation (EU) No 931/2011 & Regulation (EU) No 208/2013 Regulation (EC) No 853/2004 & Commission Delegated Regulation (EU) 2021/1374 *Legal reference*
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	No
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	Based on the submission through the Have your say: Simplify! portal

Have your say: Simplify!	Danish Minister for Business, Industry and Financial Affairs and Danish Business Forum for Better Regulation (18/03/2019) – administrative easing in food product ref. LtL: XI.12f – relaxation of requirements for traceability at the batch level ref. LtL: XI.18.b EU citizen (24/05/2022) - EU food supply framework Eu citizen (05/05/2022) - EU anti-food waste measures

SUGGESTIONS SUMMARY

Suggestion 1:	Easing administrative burden for food donors
Suggestion 2:	Explore how to ensure coherence of the Directive for the promotion of renewable energy (RED) with the revised waste Directive in order to ensure that waste hierarchy is fully applied to surplus food
Suggestion 3:	Better link between ESF+ (ex-FEAD, Fund for European Aid to the most Deprived) and financial instruments at Member States' level
Suggestion 4:	Encourage EU research on food packaging

SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

Regulation (EC) No 178/2002

The Regulation sets up the rules for taking track of food at any stage

Directive (EU) 2018/2001

The RED sets up criteria for the evaluation of sustainability criteria to be applied to organic waste used for energy purposes

Directive 2008/98/EC as amended by Directive 2018/851

The Waste Framework Directive defines food waste and sets obligation on food waste prevention (hierarchy, reporting, planning).

Regulation EC 1935/2004

The regulation sets the rules for material intended to get in contact with food

Council Directive 2006/112/EC

The Directive setting up the common rules for the VAT application including exemptions

Commission Notice (2020/C 199/01) providing guidance on food safety management systems for food retail activities, including food donations

Commission Notice (2017/C 361/01) - EU guidelines on food donation

Further sources of evidence:

Legislation framework webpage (food safety)

EU actions against food waste/food donation

EU Platform on Food Losses and Food Waste

PROBLEM DESCRIPTION

Existing evidence from the Platform (a Member State) suggests the following issues:

1. Administrative easing in food product

Retailers with food sales experience unnecessary stringent traceability requirements in the donation of surplus food products, such as to charitable organisations, shelters etc. This results in unnecessary food waste, as it is too expensive and complicated for the companies to donate. When delivering goods to other food product businesses, the general provisions on traceability must be upheld – i.e. requirements on traceability one step forwards and one step backwards in the chain. In addition, there are a number of additional requirements for traceability on a number of products, such as meat.

Traceability is an important tool, as food companies have a duty to withdraw products that do not meet requirements with food product safety from the market. This is usually done on the basis of invoice and IT systems. Traceability requirements are not inherently problematic for whole-sale companies, for example. But for retailers, which are not normally covered by the "one step forward" traceability requirement, it is very difficult under the current rules to donate surplus food items to charitable organisations. This is due to the fact that retailers sell to the end consumer, who only receives a receipt for purchase and thus not an invoice that can be traced to the party having purchased the product. **The companies therefore do not have electronic systems to handle traceability documentation one step forward in the chain.**

Ensuring traceability from one retail shop to another food product business must therefore rely on manual handling in the shop, i.e. an invoice must be manually drawn up and a register kept of recipients in the event of recalls. In conjunction with a recall, the shop must manually review lists of the food companies that received the goods and contact them for the purpose of recall, which can be a major administrative burden. These rules also apply if retailers choose to donate to other companies, such as organised food banks. The current traceability rules thus limit the incentive to donate surplus products to charitable organisations[1], etc.

2. Relaxation of requirements for traceability at the batch level

There are more and more requirements for traceability at the batch level. These requirements have been introduced into EU regulations[2] on the basis of food safety and recalls. But this objective can be satisfied through other methods as well.

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[1] All consumers must be equally protected from food safety risks whether food is purchased or made available free of charge through food redistribution. Therefore, traceability requirements are a prerequisite for the safe redistribution of food. To date, the Commission has not been made aware of obstacles in this regard, as all actors have recognised the importance of ensuring traceability. In addition, some Member States have introduced legislation which requires retailers to donate food to food banks and other charity organisations, in line with food safety requirement;

[2] The only traceability requirements that have been introduced at EU level for food safety purposes are the ones laid down in Article 18 of Regulation (EC) No 178/2002 (general traceability requirement). The Commission Guidance document on the implementation of Articles 11, 12, 14, 17, 18, 19 and 20 of Regulation (EC) No 178/2002 specifies that there are no requirements for records to be kept identifying how batches are split and combined within a business. Decisions as to whether to adopt an internal traceability system as well as the level of details to be kept are left to the food business operator. The guidance indicates that whilst it would be very helpful if details are kept of any reference or batch number enabling the product to be identified, this is not compulsory https://ec.europa.eu/food/system/files/2016-12/gfl_req_implementation-guidance_en.pdf (pp. 19-21). However, more detailed traceability requirements, including batch-related requirements, are laid down in

Registration on the batch level will require investments in the double-digit millions for wholesalers. Traceability on the batch level means that the wholesaler must not only know/record what product has been sent to what shop, when and in what quantity, but also what batch (the batch must be indicated on the product, such as with a batch code, as a production date, expiry date or similar).

(**Source**: **Have your say: Simplify!**)

The Fit for Future Platform has acknowledged the issues raised by the legislation concerned as follows:

Food donation, that is recovery and redistribution of surplus food from the food supply chain, not only helps to reduce food waste but also to provide social support to the most in need. Taking into account the suggestions gathered through the consultative process as well as the recommendations delivered by the EU Platform on Food Losses and Food Waste, and by the mapping and analysis of existing regulatory and policy measures impacting food redistribution from EU Member States (2020), the Platform recognizes the relevance of the economic constraints and possible conflict with other financial schemes (i.e. incentives for renewables promotion) as among the most important obstacles in ensuring the wide spreading of food donation as a preferable choice for surplus food.

The Platform recognizes the opportunities offered by better integrating EU and national funds aimed at ensuring social security so that they act as mutual multipliers.

The Platform believes that the withdrawal of agricultural products for economic reasons (i.e. to level out the offer/demand ratio and keep the marker price up) could lead to financial food speculation and it should be prevented as much as possible. However, should those measure be taken, withdrawn products should be used for food redistribution and transformation for later food donation[3].

On the EU legislative side, the Platform is of the opinion that better integration and definition of food use hierarchy in some relevant European laws could help smooth the way towards an increase in food donation.

Considering the relevance of packaging in food preservation, in particular in the light of food donation area, the Platform considers it important to support the research for safe and sustainable food preservation materials that will not cause over packaging and be reusable and/or recyclable.

Regulation (EU) No 931/2011 for food of animal origin and Regulation (EU) No 208/2013 for sprouts and seeds intended for the production of sprouts;

[3] It should be noted that such provisions do exist under the CMO (Common Market Organisations) for fruit and vegetable sector and the EU legislation gives priority to free distribution (charity withdrawals) over other destinations by granting a higher level of financial support. Such destination of vegetables and fruits retired from the market should be reinforced, particularly when public incentives are provided for other destinations;

SUGGESTIONS

Suggestion 1: Easing administrative burden for food donors

Description: One of the main challenges of managing food donation is to ensure that food safety is guaranteed until the end recipient (i.e. final consumer/user). This can be specifically challenging in rural areas with typically long distances. Traceability obligations are needed to ensure food safety, including for safe food donation practice[4]. Tracing food throughout the food chain where problems have been identified is of paramount importance for the protection of consumers. Accordingly, any food business operator (FBO) must be able to identify **from whom** (suppliers) and **to whom** a product has been supplied (i.e. buyers apart from final consumers), when competent authorities so request ("one step back"-"one step forward" approach). For foods of animal origin (meat, fishery and aquaculture products, dairy products, eggs and egg products, etc.), FBO are obliged to more detailed traceability requirements.

The definition of food business operator is quite broad and it covers also food donors; it includes operators that carry out any undertaking, whether for profit or not or whether public or private which carry out any of the activities related to any stage of production, processing and distribution of food.

Very often, both, back-line organizations, collecting and storing food (redistribution organization) and front-line organization, providing food to final beneficiaries (charity organization), are charities and not-for-profit organizations.

Considering charities as FBO obliges any potential food donor to have a system in place enabling them to identify the immediate supplier(s) and immediate recipients. Depending on the features of such system, this may add administrative costs to the ones strictly linked with food donation (i.e. paid working time to sort food suitable for donation, packaging, and storing it, employees' training).

The analysis of existing regulations and policies at the Member States' level recognized the role played by the administrative easing of the primary responsibility and legal liability rules for food donors.

For example, the Italian "Law of the Good Samaritan" was introduced in the country in order to promote the donation of food by giving the legal status of final consumers to non-profit charities (both redistribution organization and charity organization) that carry out the free distribution of food.

[4] In its opinion on Hazard analysis approaches for certain small retail establishments and food donations, EFSA advises that traceability requirements are needed to ensure safe food donation practices. Explicit reference to traceability is made under PRP 15 (handling returned foods) and PRP 16 (evaluation for food donation and allocation of remaining shelf-life);

In doing so, Italian national authorities relieved donors of some administrative burdens (i.e. a diminishing traceability record) and legal liability to end users, while ensuring that strict regulatory measures to ensure food safety (i.e. proper, conservation, transport and use) are granted to final consumers[5].

This experience has prompted other countries (e.g. Austria and Spain) to consider introducing similar facilities in their legislation to promote food donation.

In order to ensure effective and efficient process of food redistribution, in line with legal and technological developments, without, however, compromising food safety, , the Commission should explore the possible benefits of updating the EU Guidelines on Food Donation (2017/C 361/01).

Furthermore, in the context of regulations on food contact materials, charity organization must not modify the packaging of the food stuff as if they do so they might fall under the conditions of FCM Converter or producers. In this case they would be obliged to prove the safety of the modified packaging.

Finally for food labelling, labels on prepackaged food must not be changed as this might compromise their safety.

Expected benefits: Easing administrative and liability burdens on food donors could help in creating favorable conditions for food donation.

The incentives granted to the production of renewables could push FBOs to send their surplus food to anaerobic digestion plants for the production of biogas[6].

The removal of unnecessary burdens to food donation may level out in part those incentives by making it easier and less risky for FBOs to donate their surplus food instead of treating it as waste.

Suggestion 2: Explore how to ensure coherence of the Directive for the promotion of renewable energy (RED) with the revised waste Directive in order to ensure that waste hierarchy is fully applied to surplus food

Description: The Directive for the promotion of renewable energy (Directive 2018/2001 - RED) sets up the conditions for a source to be deemed to be treated as renewable and thus benefit from financial support.

The Commission mapping and analysis of existing regulatory and policy measures impacting food redistribution from EU Member States (2020), identifies incentives to anaerobic digestion for the production of biogas as one of the key barriers to food redistribution.

It is worth stressing that food donators have to incur an economic burden when giving their food surplus to redistribution organizations or charity organizations (i.e. sorting, packaging for

[5] See: "Food redistribution in the EU: Mapping and analysis of existing regulatory and policy measures impacting food redistribution from EU Member States" , p. 171;
[6] See: https://www.sciencedirect.com/science/article/pii/S1462901121002665;

transport, storing). Treating it as simple organic waste is already now easier and less financial and bureaucratic burdensome than donating it.

The Platform believes that the respect for waste hierarchy should be ensured for surplus food in order to guarantee that food distribution could prevail over industrial use.

To this end, the Platform believes that ensuring coherence of the Renewable Energy Directive so to minimize the risk that food surplus being treated as food waste to feed anaerobic digester (i.e. asking for the respect of food use hierarchy for food surplus destined for energy production already addressed in the revised Waste Directive) could help to reduce the competition between renewable energy production and food redistribution.

Expected benefits: Reducing the possibility to gather financial support for biogas production, potential food donors could be more prone to food redistribution especially if other measures (i.e. fiscal incentives at a national and local level, VAT exoneration for donated food) are equally in place.

Suggestion 3: Better link between ESF+ (ex-FEAD, Fund for European Aid to the most Deprived) and financial instruments at Member States' level

Description: The ESF+ is aimed at helping Member States to reduce social exclusion by providing food and basic essential goods to the most deprived.

According to the final report for the programming period 2014-2020, the EU contributed with €3.8 billion to the funding of the FEAD program, with total funding of €4.5 billion including national contributions.

While 23 Member States chose programs focusing on food or basic material assistance support, providing more than 1.6 million tonnes of food between 2014 and 2018, during the 2014–2020 programming period, only Luxembourg, Estonia and Croatia have taken advantage of this provision to pilot and implement FEAD-funded activities in the area of food donations.

The lack of adequate linkage between ESF+ (ex-FEAD) and food redistribution has been identified in the analysis of measures put in place at Member States' level to facilitate surplus food redistribution. According to the survey of FEAD managing authorities conducted in 2019, a vast majority of them reported facing multiple obstacles to the implementation of Article 26(2)(d)[7]. These range from concerns over the capacity of partner organisations and logistical challenges, to administrative burden, issues concerning the eligibility of costs, accounting and audits, food safety and other legal issues.

The Platform is of the opinion that better coordination of actions undertaken at the national level to supply food to the most in need could give the opportunity to leave more funds under ESF+ to support alleviating other sources of social divide (i.e. housing, less favored children schooling, elders care, sports access, etc.), while contributing to preventing food waste generation. Therefore, the Platform invites the Commission to explore any form of

[7] Transport and distribution of food donations;

simplification or further burden reduction to reach a better level of integration between ESF+ and food donation.

Expected benefits: Using the ESF+ funding system to optimize and support food surplus donation might help reduce food waste and increase the number of people reached with healthy foods while potentially leaving more resources for funding other forms of poverty.

Suggestion 4: Encourage EU research on food packaging

Description: Increasing the performance of preservation techniques and materials could ensure a longer-lasting of good nutritional and organoleptic properties of packaged food.

Increasing the shelf life of products by better preservation measures, in full compliance with the regulations[8] on food additives and preservatives, could lead to a reduction in food waste while the application of the most advanced packaging material – compliant with the EU rules on food contact materials[9] - could help to check the state of conservation of the contained food.

Considering the relevance of packaging in food preservation to improve consumer safety including by reducing the use of most hazardous substances in food contact materials, which can have a tangible impact on the effectiveness of food donation framework, the Platform encourages the Commission and the Member States to continue funding research for smart, safe and sustainable packaging materials and methods while at the same time avoiding over-packaging and the environmental impact of the lack of recyclability and reusability of certain types of food packaging and materials, in line with the food systems approach laid down in the Farm to Fork Strategy [10].

It should also be recognised, that effective and safe models of selling food without packaging also exist and in fact could play a role in minimising food waste generation. Consumers buy exact amount of bulk food they need using their own reusable containers or bags. Bulk logistics

[8] Substances used as food additives (i.e. meeting the definition of a food additive laid down in Article 3(2)(a) of Regulation (EC) No 1333/2008) have to comply with the provisions of the EU food additive legislation. This also includes preservatives (e.g. sorbic acid) or glazing agents (e.g. carnauba wax), two functional classes of food additives also used to extend the shelf-life of food. The EU legislation on food additives requires that any authorized food additive use does not, on the basis of the scientific evidence available, pose a safety concern to the health of the consumer. When authorising food additive, advantages and benefits for the consumer are taken into account However, other legitimate factors, including environmental factors, where relevant, are taken into account as well;

[9] EU food contact materials legislation under the framework Regulation (EC) 1935/2004 requires that all materials and articles in contact with food, including food packaging, recycled and reusable materials, must be safe. Article 3 of the Regulation states that any material or article shall be manufactured in compliance with good manufacturing practice so that, under normal and foreseeable conditions of use, they do not transfer their constituents to food in quantities which could (a) endanger human health, (b) bring unacceptable change in the composition of the food or (c) bring a deterioration to the organoleptic properties of the food. This includes smell, texture and taste;

[10] It should be noted that environmental impacts of both food and its packaging should be considered when assessing possible trade-offs between reduction of food waste and excessive packaging. In most instances, the environmental impact of losing food due to insufficient and/or badly designed packaging is far greater than that of the packaging itself. However, the usefulness, for instance, of additional packaging depends on the type of food, as different foods have different environmental impacts. A report of the Flemish Environmental Agency on food loss and packaging found, for example, that if additional packaging helps to save 2% of cheese, it will be environmentally beneficial; however, for lettuce, additional packaging would need to save at least 19% in order to achieve a beneficial impact. Any trade-offs between packaging use and food waste need to be considered on a case-by-case basis, using a Life Cycle Assessment approach;

are also more effective in later distribution of unsold goods, without generating additional packaging

Expected benefits: Any advancement in better food preservation and increasing capacity of guaranteeing food safety in order to reduce the amount of surplus food ending up as food waste could help food redistribution.

ANNEX 1 - HAVE YOUR SAY: SIMPLIFY! SUBMISSIONS


XI.12f-Danish-administrative easing in


XI.18.b-DK gov-relaxation of re


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