

FOOD DONATION POLICY REPORT

Document addressed to the European Commission by SAFE – Safe Food Advocacy Europe ASBL

Introduction to food waste

In the EU, an estimated **20% of the total food produced is lost or wasted**, while globally it reaches almost one third. In the EU, around 88 million tonnes of food are wasted every year for a value of 143 billion euros¹. Of this quantity, 11 million tonnes (12%) come from food service and 5 million tonnes (5%) come from wholesale and retail. These numbers clearly show the dimension that the food waste issue developed during the past few years.

Thus, the **definition of food waste has a wide impact** on the way policies are shaped and on the way food waste is quantified across the different sectors of the food supply chain. FUSIONS has been working on providing a definition to harmonise the current definition within the 27 European countries. According to FUSIONS², *“Food waste is any food, and inedible parts of food, removed from the food supply chain to be recovered or disposed (including composted, crops ploughed in/not harvested, anaerobic digestion, bio-energy production, co-generation, incineration, disposal to sewer, landfill or discarded to sea)”*.

Therefore, drink and liquid waste, fish discarded to sea and waste of any materials ready for harvest, but which are not harvested, are included in FUSIONS’s definition of food waste, giving a broader definition of the matter compared to other existing definitions. FUSIONS also considers inedible parts of food as food waste in order to support the development of resource-efficient and sustainable food systems in the EU.

Undoubtedly, the best way of avoiding, or at least reducing, food waste is to implement preventive measures. These measures range from the primary production level, shortening the food supply chain, to the consumer level, buying responsibly. With regard to retail and shops food waste, food redistribution is seen as one of the most effective solutions, when food waste prevention is impossible or unsuccessful.

¹ FUSIONS, (2020). *Estimates of European food waste level*.

² FUSIONS, (2020). *Definition of food waste*. <http://www.eu-fusions.org/index.php/about-food-waste/280-food-waste-definition>

Food redistribution

Food redistribution consists of redirecting food surpluses for human consumption through donations to food banks, food charities or redistribution organisations and this activity increased significantly in recent years.

The reason is that this practice is recognised as an effective tool in reducing food waste, particularly in tackling food poverty in times of financial crisis. Considering the on-going **COVID-19** crisis that is exacerbating the current economic problems, food redistribution could play a great role. Food waste numbers are intended to rise following the increasing amount of food left unsold in supermarkets, and farmers are not always able to sell their fresh products entirely.

However, food donation actions have encountered some difficulties, as both food donors and intermediary food recipients (mainly food banks and charity organizations) face a number of barriers and constraints in the donation process. These barriers are summarized below:

- **Liability of donors over food safety:** It is a common situation within the EU countries, except for Italy, that donated food is still required to meet compulsory standards and requirements (food safety, hygiene, and labelling) after its donation, this could drive donors to discard surplus food in order to avoid risks associated with liability for donated food. For instance, donors could fear that if the final consumer of the donated food gets sick, the donors may face prosecution and compensation claims. The risks of criminal and civil liabilities may cause prospective donors to discard the edible food, instead of starting a food donation procedure;
- **Confusion over date labelling on food products:** Food manufacturers or distributors are required to put date marks on food products to meet food labelling regulations and standards, but these marks could cause confusion to food donors. For example, "use by" date refers to food safety and health risks, while the "best before" date to food quality. The result is that some countries, such as Spain, have no rights to donate food surplus after the "best before" date and other countries, Belgium for instance, can donate exceeded food after this date. Therefore, a poor understanding of the use of these date marks may not encourage food donation³;
- **Logistics challenges:** The "*lack of funds for the organization of logistics*" is considered as "*one of the most limiting factors in food redistribution*"⁴. Particularly, there are three important logistic constraints. Firstly, donors need to spare resources to store the food

³ Research Office Legislative Council Secretariat. (2017). *Food donation policies in selected places*.

⁴ European Economic and Social Committee. (2014). *Comparative study on EU Members States' legislation and practices on food donation*.

before delivery. Storage could be costly, especially for highly perishable food. Secondly, the transportation of donated food can encounter issues related to costs and human resources and general logistic. Often, organisations may not have the financial and human capacity to overcome the logistic challenges in transportation, worsen in case of large quantities. Thirdly, stated that the donated food is usually close to the expiry of "best before" date, both donors need to deliver the food to the needy under a very tight schedule;

- **Lack of tax incentives for donation:** Because of the high operating cost and potential liabilities, food businesses have little incentive to donate surplus food. Offering fiscal incentives, as tax concessions, for instance, could enhance the success of donation related to other options in the hierarchy of food waste management. However, not many places across European countries offer such tax incentives to food donors⁵.

Food donation regulatory framework

In the last few years, the EU has mobilised to tackle food waste through a set of regulations and policies, which mainly aim at **preventing food waste** in the food supply chain.

The European Commission published **official guidelines on food donation**⁶ in October 2017. These guidelines are very general, since they mostly refer to the **General Food Law Regulation**⁷. Indeed, operations related to food supplies, including food donation, are considered as "placing on the market" of food, and they have to ensure a high level of food safety, hygiene, traceability, and liability.

In addition, **EC Directive 2018/851 on waste**⁸ stresses the need to achieve 50% food waste reduction by 2030 and it suggests Members States to "*encourage food donation and other redistribution for human consumption, prioritising human use over animal feed and the reprocessing into non-food products the European Commission provided general guidelines on how to deal with food donation procedures*". Consequently, a few European countries allocated funds and developed sensibilisation actions with the purpose of enhancing food donation activities.

Finally, the **Farm to Fork Strategy**⁹ released by the European Commission on the 20th of May 2020 included food donation promotion, proposing binding targets to be presented in 2023 to halve EU consumers and retail food waste by 2030. Nevertheless, it mainly focuses on reducing food waste and preventing it, through the revision of the date marking legislation within the EU.

⁵ Research Office Legislative Council Secretariat. (2017). *Food donation policies in selected places*.

⁶ European Commission. (2017). *EU guidelines on food donation*.

⁷ Eur-Lex. (2002). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002R0178&qid=1604677585098>

⁸ Eur-Lex. (2018). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L0851&qid=1604672706783>

⁹ European Commission. (2020). *Farm to Fork Strategy: For a fair, healthy, and environmentally-friendly food system*

EU Platforms

The European Commission established the **Platform on Food Losses and Food Waste (FWL)**¹⁰ in 2016, with the view of meeting the **Sustainable Development Goals (SDG) 12.3**¹¹. The aim is to clarify EU legislation related to waste, food and feed, examining ways to improve the use of date marking by actors in the food chain. Also, it seeks to make consumers understand and facilitate food donation and the use of food no longer intended for human consumption.

The platform is used to share best practices and evaluates progress made over time. In December 2019, the platform published recommendations on the food donation topic, stressing the promotion of surplus food donation, and the innovation of food redistribution through incentives.

Food donation liability in Italy

The objective of food policies and the FWL platform is to break food donation barriers and fight food waste. One of these is the F2F strategy, which tries to avoid confusion on date marking, and the EC directive on waste and FWL encourage incentives for the food waste issue, even though this is not perfectly harmonised on the European territory.

Nevertheless, the liability issue remains the most difficult to tackle. In **France**¹², **it is common practice for food donors and food charities to sign a partnership agreement** and subscribe to liability insurance covering those damages occurring within the activities of distribution and storage. In other countries, issues related to liability are not addressed by any national legislation, making food redistribution practices risky and unattractive for most of the food donors.

Italy is the only country that acted practically to address the issue of food donation, introducing the so-called **Good Samaritan Law**¹³ in 2003. According to this law, non-profit and social utility organizations conducting **charity activities 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 recognizes food donors as “final consumers” rather than as “food business operators”. In this way, charities and social organisations are exempted from the principle of liability arising from food safety and hygiene rules.

¹⁰ European Commission. (2020). *EU Platform on Food Losses and Food Waste*. <https://webgate.ec.europa.eu/flwp/>

¹¹ FAO. (2020). *Sustainable Development Goals*. <http://www.fao.org/sustainable-development-goals/indicators/1231/en/>

¹² European Economic and Social Committee. (2014). *Comparative study on EU Members States' legislation and practices on food donation*.

¹³ Gazzetta Ufficiale. (2003). <https://www.gazzettaufficiale.it/eli/id/2003/07/01/003G0174/sg>

In 2016, Italy enacted the **Gadda law**¹⁴, with the purpose of facilitating food donation. The law launched new initiatives on the food donation topic:

- Simplification of food recovery procedures, and donation of food surpluses;
- The distribution of doggy bags in restaurants;
- The reduction of the tax on waste for those who donate food;
- Introduction in schools of teaching on food education and the fight against waste;
- Communication campaigns on food education and waste reduction to encourage companies to donate surpluses and raise consumer awareness;
- Funding for those developing research projects in the sector;
- The use of recovered food to feed the animals, if they can no longer be used by humans.

Italy – Food donation best practice

Between September 2016 and the end of the year 2017, Fondazione Banco Alimentare¹⁵, the largest Italian food recovery and support organization for the people in need, reported a **20% increase in surplus recovery** from large-scale distribution thanks to an increase in volumes of donations and a growth of points of sale.

Due to the Gadda Law, the foundation has also started a new agreement with Costa Crociere, to ensure the recovery of food from the kitchens of large ships. Moreover, Fondazione Banco Alimentare reached other agreements, including the one with the Turin zooprophyllactic institute to pursue the recovery of healthy and intact food portions that stay in the laboratories after the analysis runs. Finally, it reached an agreement with Italian fish districts, for the donation of fish confiscated from charitable associations¹⁶.

Conclusions

Certainly, Europe is working on food redistribution, which is one of the sustainable activities that are meant to keep our world more liveable in the next years. However, European law lacks in having proper legislation on food donation to set binding rules for Member States. The establishment of compulsory economic incentives could be fundamental for the growth of this activity. Besides, the Italian situation on food donation liability paves the way for a drastic change at the EU level.

¹⁴Gazzetta Ufficiale. (2016). <https://www.gazzettaufficiale.it/eli/id/2016/08/30/16G00179/sg>

¹⁵ Banco Alimentare. (2020). <https://www.bancoalimentare.it/en/node/5>

¹⁶ La Repubblica (2017).

https://www.repubblica.it/politica/2017/09/14/news/spreco_alimentare_un_anno_dopo-175461997/

We believe that Italy should be considered the European country bearing the best practice in food redistribution. Thus, the European Commission should harmonise at the EU level the Italian legislation in matter of food donation liability, giving access to food donation activities to all food donors, without the risk of incurring criminal sanctions.