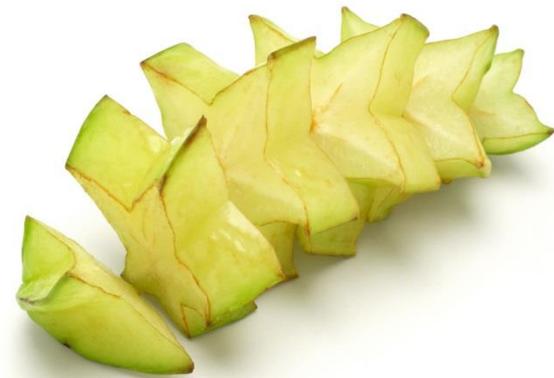


Comparative Study on EU Member States' legislation and practices on food donations



**Clementine O'Connor and Manuela Gheoldus,
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Agenda

- Objectives of the study and background
- Approach and methodology
- Overview of current legislation and practices concerning food donation in EU MS
- Comparative analysis of legislation and hurdles

Objectives of the study and background

Objectives

Provide an overview of current legislation and practices concerning food donations in selected EU Member States (MS)



Evaluate what legislative or practice hurdles are most significant in restricting food donations



Establish best practices in the field and develop recommendations on effective and well-implemented policy to facilitate food donation

The study follows up on an EESC own-initiative opinion on the prevention and reduction of food waste, which was adopted in 2013. This study is not an in-depth analysis of all related issues and is intended to provide initial thoughts on how to improve legislation enabling food donation.

Background

Food waste – an outline of the problem

Globally, about one-third of food produced for human consumption, or about 1.3 billion tonnes per year, is lost or wasted.

In the EU, an estimated 89 million tonnes of food is wasted each year or about 180 kg per person, excluding the agricultural phase of the supply chain.

At the same time, 840 million people go hungry in a world of plenty.

“Food waste’ means food (including inedible parts) lost from the food supply chain, not including food diverted to material uses such as bio-based products, animal feed, or sent for redistribution.” –European Commission definition, 2014



Background

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

Food donation, a tool in managing food waste and costs, while fighting against food poverty, hunger and exclusion.

253 food banks are under the umbrella of the European Federation of Food Banks, which in 2012 distributed 388,000 tonnes of food to 5.4 million people in need.

Food donation – legislative barriers and opportunities

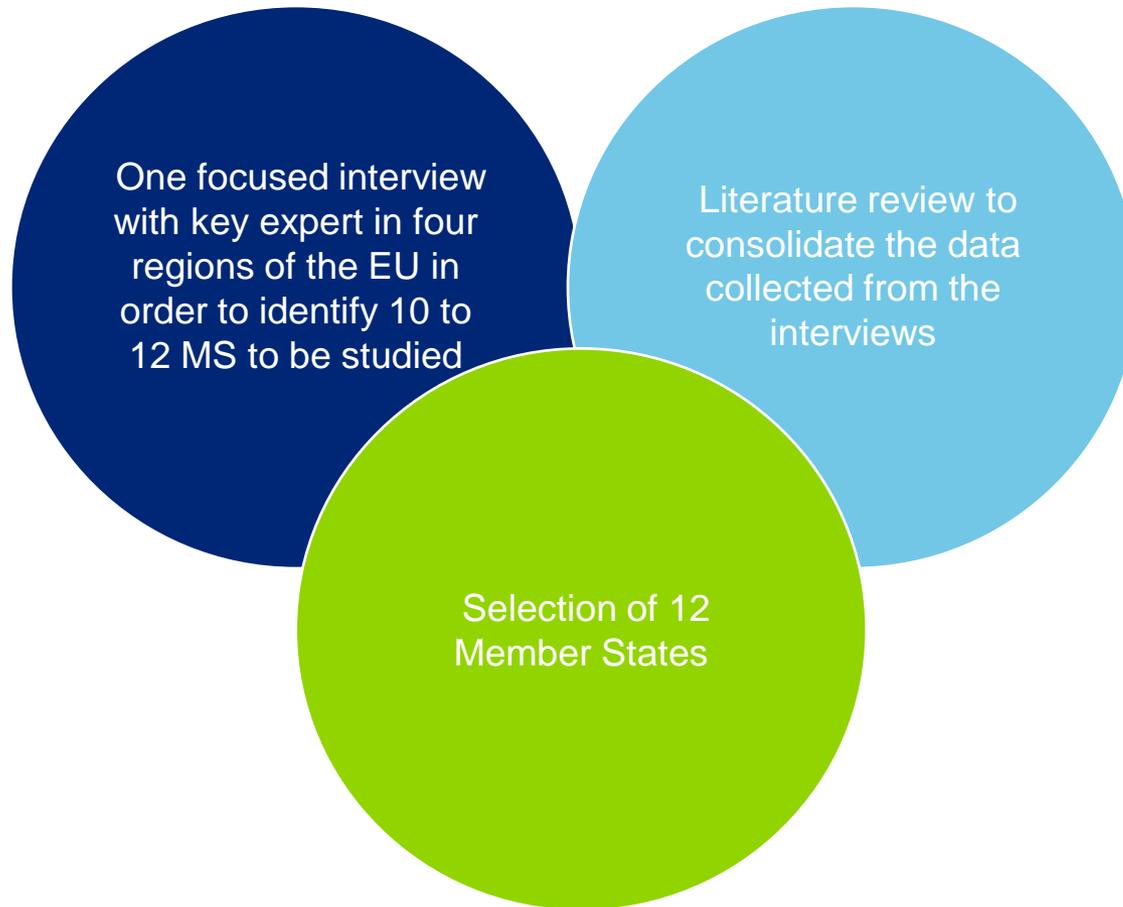
At the EU level, there is no common legislation on food donation.

Food safety, food hygiene and tax legislation have been identified as the main legal areas impacting the scale of donation.



Approach and methodology

Research methodology: phase I



Selection of Member States

North-west Europe

The United Kingdom, France, Belgium and Germany

Southern Europe

Spain, Italy, Portugal and Greece

Eastern Europe

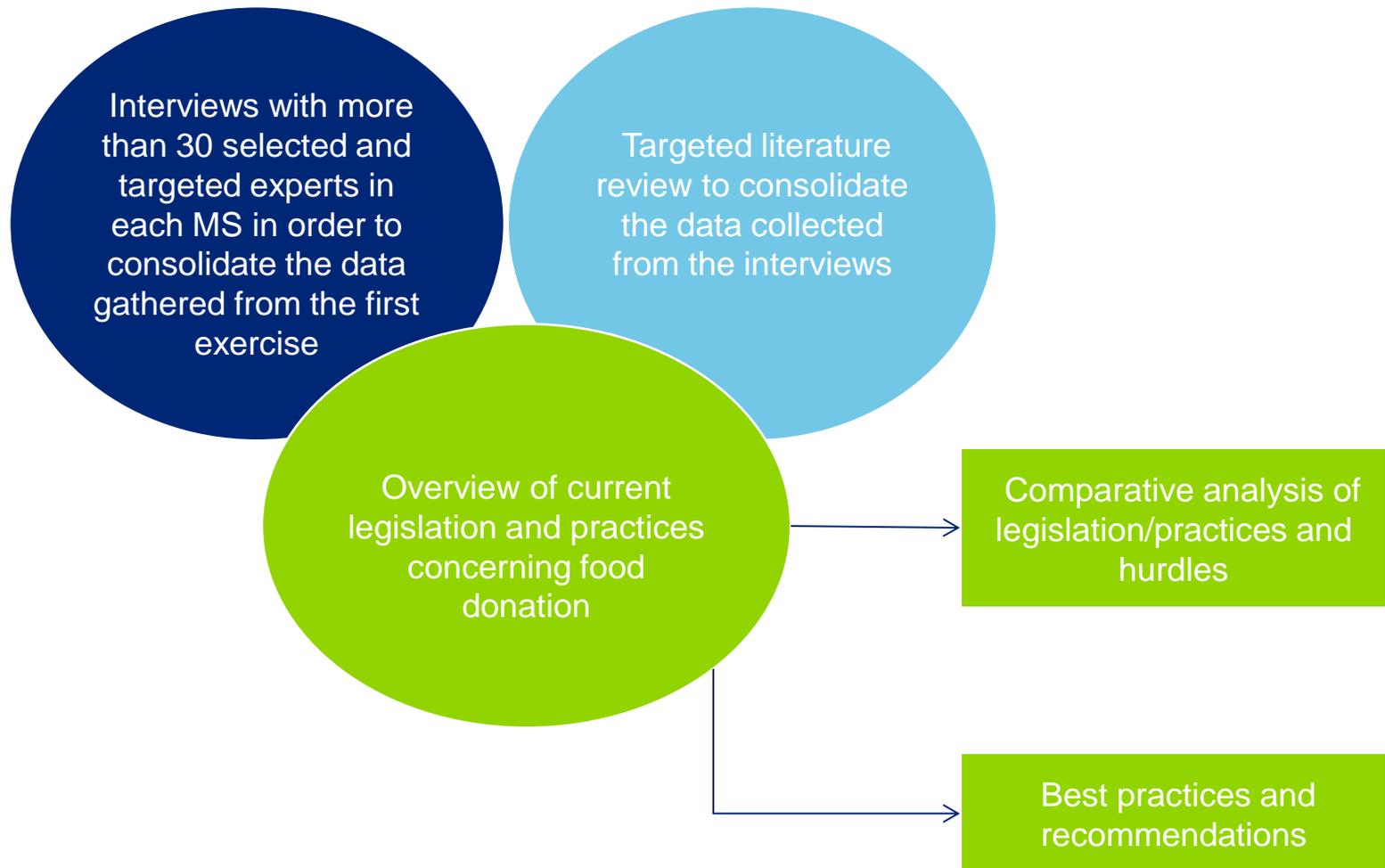
Poland and Hungary

Nordic Europe

Denmark and Sweden



Research methodology: phase II



Overview of current legislation and practices concerning food donation in EU MS

Key EU legislation related to food donation

General Food law

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

Food Hygiene Package

Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs

Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin

Regulation (EC) No. 37/2005 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption

Food labelling and durability

Regulation EC 1169/2011 on the provision of food information to consumers

Tax on food donation

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

Regulation (EC) No. 178/2002 (General Food Law)

- This regulation applies to **all food business operators** placing food on the market, including food banks (Art. 3.2);
- **All actors** in the food chain shall ensure that food satisfies the requirements of the General Food law (Art. 17.1);
- A food business operator is **held responsible** for a hygiene problem occurring in the part of the food chain **under its own control** (Art. 17);
- Article 18 of the General Food Law introduces the concept of **traceability**.

Food Hygiene Package

- All food business operators have to comply with EU rules related to food hygiene.
- It is necessary to ensure food safety throughout the food chain, starting with primary production;
- It is important that food is stored safely at ambient temperatures, particularly frozen food, to maintain the cold chain;

Rules related to product durability and date marketing

- Food business operators are required to indicate a **'best before'** or a **'use by'** date.
- The marketing of foodstuff after expiry of its 'best before date' is **allowed** under EU law.

VAT on food donation

- According to the [Council Directive 2006/112/EC](#), **VAT has to be paid on food intended for donation** (Art.16).
- The taxable amount is the **purchase price** at the moment of the donation adjusted to the **state of those goods** at the time when the donation takes place (Art. 74).
- The EC recommends that – for foods which are close to the ‘best before’ date, Member States should consider the value on which the **VAT is calculated fairly low, even close to zero.**

The Waste Framework Directive

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

Donation is considered part of waste prevention

Comparative analysis of legislation and hurdles

Comparative analysis

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

Comparative analysis

Liability

- Interview question: ***What is your opinion of the usefulness of the Good Samaritan legislation?***
 - Experts from Denmark, UK and Germany claim that food businesses are risk adverse around distributing that food, especially food close to its 'best before' date
 - Portugal, Poland and Greece pointed to a lack of understanding about the law but they have a keen interest in clarifying liability for food donors at the national and EU level
 - UK: [The General Food Regulations of 2004](#): any person who contravenes or fails to comply with the provisions of the Regulation (EC) No. 178/2002 shall be guilty of an offence and shall be liable to fine or to imprisonment.
 - Italy: the Good Samaritan Law which recognises food banks as final link in the food chain and prevents individuals from being able to file a lawsuit against the food donor

Member States	Liability
Belgium	
Denmark	
France	
Germany	
Greece	
Hungary	
Italy	X
Poland	
Portugal	
Spain	
Sweden	
UK	X

Comparative analysis

Food hygiene

- Poland: the [Act on Food Safety and Nutrition](#) is transposed in a more rigid way than the actual EU legislation of food hygiene;
- Portugal: misunderstanding that according to the available EU legislation, it is forbidden to redistribute such food;
- Belgium: freezing provisions. Food chain actors cannot freeze the food on the same day as its 'use-by' date.

Food durability and labelling

- Donation of food products past their 'best before' date is allowed under EU law
- However, Denmark, Greece, Hungary, Spain, Sweden and Poland have introduced national provisions that present barriers to donating food which has passed its 'best before' date

Member States	Food hygiene	Food durability and labelling
Belgium	X	
Denmark	X	
France		
Germany		
Greece		X
Hungary		X
Italy		
Poland	X	X
Portugal		
Spain		X
Sweden		X
UK		

Comparative analysis

Tax legislation

- Most of the examined Member States do not impose VAT when food is donated to food banks and charities, if certain conditions are fulfilled
- Greece, Poland, Belgium and Germany: recently introduced specific provisions in their own national tax legislation ‘abandoning the imposition of VAT’ on food donation
- Denmark, Spain and Sweden still impose VAT on donated food

Fiscal incentives

- Fiscal incentives through tax credits and tax deductions encourage food donations
- In France 60% and in Spain 35% of the net book value of donated food can be claimed as a corporate tax credit

Member States	VAT not perceived on food donation	Tax credit
Belgium	X	
Denmark		
France	X	X
Germany	X	
Greece	X	
Hungary	X	
Italy	X	
Poland	X	
Portugal	X	
Spain		X
Sweden		
UK	Zero rate	

Comparative analysis

Tax deduction

- In most MS food donation can be treated as a deductible tax expense and can reduce the taxable income within certain limits and thresholds depending on the MS
- In Portugal, food donations may be deductible from the taxable income basis plus 20%, 30% or 40% depending on the type of the institution, with the limit of the 8/1000 of the turnover.

The Waste Hierarchy

- There is currently no specific EU guidance on how to apply the EU waste hierarchy to food
- Some initiatives applying the WFD to food exist in the UK, the Netherlands and Belgium for example.

Member States	Tax deduction	The Waste Hierarchy
Belgium		X
Denmark	X	X
France		
Germany	X	
Greece	X	
Hungary	X	
Italy	X	
Poland	X	
Portugal	X	
Spain		
Sweden		X
UK		X

Good practice

Good practice in food donation legislation

- Guidance on the interpretation of foodstuff minimum durability for food banks and food charities in Belgium
- The interpretation of food traceability in Belgium
- The Good Samaritan Law in Italy
- The interpretation of the VAT Directive in Belgium
- Fiscal incentives in France
- The application of the food waste hierarchy in France

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

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

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




Exploring solutions for a better management of 'best before' dates
Circulaire relative aux dispositions applicables aux banques alimentaires et associations caritatives

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

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



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

Four foodstuff categories were identified in the circular:

- Foods with a very long conservation period: salt, sugar, flour
- Foods with long conservation period: biscuits, cereals, chips, butter
- Foods with limited conservation period: bread, soft cheese,
- Foods with short conservation period: fresh meat, pasties, eggs

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

Impacts on food donation

A considerable fraction of food waste is due to the rules on product labelling. [Guidance on the interpretation of product labels, especially 'best before' dates, can improve food surplus management.](#)




Key aspects covered

- Name of legislation
- Policy context that gave rise to its development
- Description of the legislation
- Specific implementation issues that contribute to its impact on food donation

Going forward

Issues for further consideration

A number of persistent issues arose during the development of the study, where further clarity or discussion is merited.

- VAT

- Conflict between EC recommendation that value on which VAT is calculated should be low or close to zero and use of corporate tax credits for donated food

- Good Samaritan legislation

- While Good Samaritan legislation does not relieve donors of their legal responsibilities to deliver a good quality product, as if the product were put on the market directly to consumers, stakeholders note that the extra level of assurance that this sort of legislation provides can be critical for companies in determining whether or not to engage in donation activities.

- Hygiene regulations relating to donation from the food service sector

- (Annex 9 Chapter 9 Article 6) Food cannot be cooled and then reheated – barrier to donation
- Confusion & lack of expertise relating to the impact of EU food safety and hygiene leading to excessive caution; lack of guidance.

- Lack of coherent implementation of EU waste hierarchy noted in relation to food waste management choices



Thank you for your attention!

Any questions?

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Interviews

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

Interviews

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