



Barriers and opportunities for the redistribution of surplus food in the EU

Findings from the questionnaire – liability and traceability aspects

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Objective of today's discussion



- To present barriers and opportunities to facilitate food redistribution regarding **liability** and **traceability**
- To share and discuss experiences from different perspectives



Primary responsibility of the Food Business Operator

Article 17(1) – General Food Law

“Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.”

Liability

Article 21 – General Food Law

“The provisions of this Chapter shall be without prejudice to Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products “

Why is liability an issue?

Liability can be a concern and an obstacle for food donation on different fronts:

- For manufacturers, processors, distributors, retailers, caterers etc.
- For food banks and other redistribution organisations

Liability in food redistribution



Responses from the questionnaire

- 11 Member States and Norway
- 14 replies from FEBA Members and other food redistribution organisations
- 3 online platforms, 2 business associations and 1 food business operator

Liability issues identified by respondents

1. General considerations and practical aspects of liability
2. Examples related to national competence: liability of food business operators in relation to final consumers
3. Identified solutions or enabling mechanisms identified in national laws or practices by respondents

1. General considerations and practical aspects related to liability

“Liability and responsibility aspects influence the number of donors, amount of donations or safe storage of products”

“Overcaution and risk-adversity, and (potential) damage to brand protection”

“Higher risk of food safety concerns when donating surplus from catering and/or restaurants or cold products from retails”

“Responsibility of food redistribution organisations for the acts of their volunteers”

2. Examples related to national competence: liability of food business operators in relation to final consumers

Concerns' regarding food donated after the 'best-before-date'

Who may be liable for a food safety issue?

- manufacturer/processor
- wholesaler or
- retailer?



3. Identified solutions or enabling mechanisms for redistribution identified in national laws or practices by respondents

a. Contractual arrangements between food donors and receivers

- however mainly between larger redistribution organisations

c. Guidance/education on liability/responsibility aspects

- distinction between 'use by date' and 'best before' date

b. Liability in national legislation

- the Italian Good Samaritan Law
- the Greek framework Law on Waste



Discussion on liability

Traceability in food redistribution



- Responses from the questionnaire
 - 19 Member States
 - 18 stakeholders
 - 13 FEBA members

What is traceability for food safety purposes?

The ability to trace and follow a food, feed, food- producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution.



What is required by Article 18?

“One step back”- “one step forward” approach, implies that food business operators shall:

- 1) have in place a system enabling them to **identify** the immediate supplier(s) and immediate customer(s) of their products.
- 2) establish a link “**supplier-product**”
- 3) establish a link “**customer-product**”. NB food business operators do not have to identify the immediate customers when they are final consumers.



Withdrawal

*Recital 28 "Experience has shown that the functioning of the internal market in food or feed can be jeopardised where it is impossible to trace food and feed. It is therefore necessary to establish a comprehensive system of traceability within food and feed businesses so **that targeted and accurate withdrawals** can be undertaken or information given to consumers or control officials, thereby avoiding the potential for unnecessary wider disruption in the event of food safety problems."*

[Regulation (EC) No 178/2002 GFL]

What is required by Article 19?

- Art.19 GFL lies down responsibilities for food business operators in case of withdrawal and recall
- Art 19 GFL aims at mitigating the problems caused when foodstuffs that do not meet the food safety requirements have left a food business's control and **at preventing, reducing or eliminating the risk, when a business has placed on the market food which may be injurious to health.**

Respondents' views on traceability as a barrier for redistribution

- Practical barriers in food redistribution put forward by respondents
- Proposed solutions for traceability put forward by respondents

Traceability as a barrier to food redistribution



Practical barriers in food redistribution as submitted by respondents

Staff shortage to register donated food

Regional discrepancies in national simplified accompanied documentation

Lack of technical support

High traceability requirements

Proposed solutions for traceability put forward by respondents

- Simplified traceability requirements
- Simpler rules for traceability with short shelf life
- Exemptions in traceability rules
- Guidelines on food withdrawals and recalls
- The use of centralised product alarms in withdrawals
- Food banks registering only bigger quantities of donated food e.g. bigger than 100 consumer units

Discussion on traceability



Questions for discussion

- Could you clarify how your members (whether commercial food business operators or receiving food banks or other redistribution organisations) ensure traceability in practice?
- What tools do you/your members have in place and how do they work?

Questions for discussion

- Have you considered how to improve the cooperation between the donating food business operator and receiving food bank, other redistribution organisation or charity, in order to facilitate operators' compliance with traceability requirements?

Questions for discussion

- Do you have national guidelines in place that further clarify traceability provisions for food donation activities?
- Have you considered how Competent Authorities could improve guidelines to make it easier for food donors and recipients to implement traceability requirements?

What is next?

- Subgroup meeting on 10 December 2024, tbc
- Topic: barriers and opportunities on labelling and hygiene provisions

Thank you



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