

Stellungnahme der Einzelsachverständigen
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<p>Deutscher Bundestag Ausschuss für Ernährung und Landwirtschaft</p> <p>Ausschussdrucksache 20(10)101-A (EN)</p> <p>ö. A. "Lebensmittelverschwendg."</p> <p>11. Oktober 2023</p>
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öffentliche Anhörung

zu:

a) Antrag der Fraktion der CDU/CSU
„Lebensmittelverschwendung wirksam verringern -
Lebensmittelspenden fördern“
(BT-Drs. 20/6407)

b) Antrag der Fraktion DIE LINKE.
„Lebensmittelverschwendung durch Wegwerfverbot
von Nahrungsmitteln stoppen“
(BT-Drs. 20/6413)

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**Die Übersetzung dieser in englischer Sprache übermittelten Stellungnahme
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Lessons from the French and Californian policies against food waste

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France and California’s pioneering regulations

The French national Pact and law against food waste

In France like in other industrialised countries, the production, distribution, and consumption of food generates large volumes of waste. The Agency for the Ecological Transition (ADEME) estimated in 2016 that the French food system generated 10 million tonnes of food loss and waste (150 kilos per person and per year). The sectors of food production, processing, distribution, and consumption may represent 32%, 21%, 14%, and 33%, respectively, of this waste¹. More recent estimates using EUROSTAT standards indicate that France may waste 9 million tonnes (133 kilos per person and per year), including 34% at the primary production and 46% at the household level. The available measurement and data on food waste have not been sufficiently precise so far to rigorously track progress over time, but these numbers suggest there has been a reduction in food waste quantities.

France has taken a position of leader in the “fight” against food waste since 2012. The country made a commitment as early as 2013 to halve food waste by 2025, in line with European directives. In 2016, France became the first country to pass a national law specifically labelled as “fighting food waste”, referred to as ‘Loi Garot’. This policy was the first to adopt a formally strong and binding language, obligating supermarkets (above 400 square meters) to set up partnerships for food donation and prohibiting the voluntary destruction of edible food. It was often portrayed as a ‘ban’ on food waste because it included formally strong regulatory components and penalties for non-compliance.

The law was only one outcome of a long and collaborative process that produced many policy measures against food waste. In 2012, M. Garot, then Minister for Agrifood systems, led a National Pact Against Food Waste that gathered many food waste stakeholders from the public, private, and non-profit sectors, on a voluntary basis, in order to reach a consensus on solutions to

¹ ADEME. 2016. *Pertes et gaspillage alimentaires : l’état des lieux et leur gestion par étapes de la chaîne alimentaire*. Angers, France: ADEME. <https://librairie.ademe.fr/dechets-economie-circulaire/2435-etat-des-lieux-des-masses-de-gaspillages-alimentaires-et-de-sa-gestion-aux-differentes-etapes-de-la-chaine-alimentaire.html>.

food waste (without “stigmatising” one actor or the other). Several actors signed the “Pact” and engaged in a series of actions. The multi-stakeholder process ensured the participation of various actors, including environmental non-profits, consumer organisations, food assistance organisations, and representatives of the agrifood, retail, and food service sectors. Yet these participants did not have the same influence in the discussions. The imbalance of power between organisations with often divergent interests allowed dominant actors, such as the ones that controlled large portions of the food system, to shape the ‘apparent consensus’ in a way that favoured their own interests. Large food companies maintained the idea that consumers were responsible for the largest share of food waste and should be the target of communication campaigns. At the same time, they rejected proposals to change promotional offers or packaging formats that may lead their clients to overbuy and waste. Representatives of the retail sector also contributed to focusing the efforts on donations unsold products rather questioning the production of surplus in the first place.

The Loi Garot, a symbolic “ban” on food waste

The Loi Garot established that all large food businesses had to follow the hierarchy of preferred solutions to food waste: first, preventing food surplus, then, redistributing edible food to feed humans, after, feeding animals, and otherwise composting or using inedible food for anaerobic digestion to generate energy. Incinerating or sending food to landfill should be the last resort. But public services in charge of insuring such prioritisation have not had the capacity to actually monitor compliance.

What was actually ‘banned’, at least formally, was for supermarkets above 400 square metres to ‘voluntarily destroy edible food’, for example by pouring bleach or other chemical products on the food in the garbage. Breaking this rule may lead to fines of up to €3,750. However, without any surveillance of supermarkets’ garbage cans, the regulation remained only coercive in its wording. No financial sanctions have been levied as of 2023, and even if they were, their amount is negligible for most supermarkets as a proportion of their annual sales. This ban on destroying food is therefore mostly symbolic. It is nonetheless symbolically strong, as it stigmatizes businesses destroying food, as opposed to people rescuing this food through “dumpster diving”, for example. One of the strongest impacts of the law may be the media coverage it generated, as businesses dread negative reputation associated with discarding food.

The idea that the law made donations “mandatory” is also only partly true. The regulation mandates that supermarkets sign an agreement with food assistance organisations to donate their excess edible, unsold products. Yet, the obligation to sign a contract obligates neither that supermarkets donate a minimum quantity of their unsold products nor give at regular intervals. As such, a supermarket could theoretically comply by donating one box of chocolates per year. This limitation partly echoed the request of Food Bank representatives, who actually did not request mandatory donations and claimed in 2014 they did “not want to become the garbage bin

of the supermarkets by collecting low-quality products”. Food assistance organisations often receive donations that are blemished, damaged, near or past their expiration date, or just nutritionally inappropriate. As a result, they incur additional costs to cull and dispose of some of the donated food. The law did not establish mandatory inspections of supermarkets to prevent this type of ‘donation dumping’. Moreover, food redistribution organisations have received limited financial and logistical support to expand their capacity, such as staff, storage, and/or refrigeration space, for additional donations. In the following years, some food assistance organizations reported that they received up to 20 % of unusable products.

In the end, the regulatory language of the 2016 law may be formally strong and binding, but its successful implementation mostly relied on voluntary engagement from private actors—supported by strong pre-existing tax incentives. Since the 1980s, the country has indeed had significant fiscal incentives that encourage businesses to donate food to charity organisations. The tax reduction amounts to 60% of the inventory value of donated goods (up to 0.05% of a company revenue), which may be the highest incentive in Europe. These incentives have been reinforced since 2013 to include farmers, food processors, and logistics operators, who can now benefit from tax reductions when they provide free transportation services to deliver donations, for example.

The initial Garot law required food waste prevention curriculum in classrooms and in professional training programmes. Such provisions have gained less attention and resources than other measures, and have not been implemented at a large scale. Yet, if they were effectively implemented, they have the potential to prevent, and not only redistribute, food waste.

Food waste policies since 2016

In 2018, as part of a law on sustainable food, the obligation to set up partnerships with food redistribution organisations and the prohibition on voluntarily destroying edible food were extended to large food service operations (cafeterias serving more than 3,000 meals) and food manufacturers (with annual revenues exceeding 50 million euros). In 2020, the same requirements were extended to the wholesale sector (with revenues exceeding 50 million) as part of a law on the ‘circular economy’.

In an effort to improve the quality of donations, an additional ordinance (*décret*) passed in 2019 required supermarkets and other donors to sort products beforehand to avoid transferring this work to food assistance organisations, and to only donate products up to 48 hours before their expiration date. Companies have to implement training for their staff, track the quality of donated goods, and take notes of defects that recipients mention. However, almost no resources have been dedicated to the implementation and control of these measures on the ground.

In addition, the 2018 and 2020 laws required the food service and industry sectors, respectively, to measure and analyse the amount of food they waste. These mandatory ‘diagnostics’ aim at

preventing the production of excess food rather than donating it. They have generally been effective in the places where they have been implemented by local governments.

Besides, commercial restaurants must offer containers or ‘doggy bags’ for their clients to bring leftovers home. This practice is still very marginal in France.

Finally, the 2020 law established a “zero food waste label” to reward exemplary businesses. The certification process is currently being developed (as of October 2023) for the retail and food service sectors, with third-party certification entities. The label criteria will notably include the implementation of mandatory donation agreements.

An international offshoot: the California case

In the United States, California was the first state to pass regulations against edible food waste in 2016, as part of a climate law called Senate Bill 1383 (SB1383). Local policymakers took France as a case study throughout the rule-making process in the following years, which established the state-wide goal of redistributing 20% of edible food currently going to landfill by 2025.

Since 2022, the largest ‘commercial edible food generators’ (supermarkets exceeding 930 square metres or two million dollars in sales, food service providers, wholesalers, and distributors) have to sign formal partnerships with food redistribution organisations. In 2024, the same requirements will apply to restaurants (with more than 250 seats or larger than 460 square metres or with revenues exceeding 2 million dollars), hotels (with more than 200 rooms), health facilities (with more than 100 beds), large venues and events (stadiums, concert halls, etc. hosting more than 2 000 visitors), and public cafeterias in the governmental or school sectors.

As opposed to the French law, which does not have any quantitative requirement, the Californian law requires businesses to donate the ‘maximum amount’ of their surplus edible food that would otherwise be thrown away. It also has a much larger scope by including smaller restaurants and hotels, even though it does not include food manufacturing businesses. The implementation process differs from the centralised French approach, as it places the burden on cities and local counties to ensure that businesses in their jurisdiction comply with these requirements. Local jurisdictions are therefore in charge of educating regulated businesses, making sure that they are in compliance, and issuing sanctions if necessary. The counties are also required to provide financial and logistical resources to increase food redistribution capacity, for example by increasing storage space or refrigerated transportation. Through these additional requirements, California policymakers aim at avoiding some shortfalls of the French policies, which did not establish local implementation and enforcement mechanisms and do not guarantee that food recipient organisations have sufficient capacity to redistribute donations.

Policy impacts: a focus on redistribution at the expense of prevention

After several years of implementation, it is possible to draw lessons from these policies. The French National Assembly and Ministry of Agriculture have carried out evaluations of the law's impact², while food redistribution companies in search of business opportunities have also tried to assess how public policies changed the new 'market' for food redistribution intermediaries.

The development of food donations and redistribution networks

Despite limited financial and logistical support, donation quantities seemed to have increased by up to 30% in the wake of the Garot law. A study led by a food redistribution start-up showed that the percentage of supermarkets donating unsold products rose from 66% prior to 2016 to 96% in 2019. More than half of them donated every day, thus reducing both supermarkets' and food banks' need to discard highly perishable products³.

The regulations—and increased awareness on food waste—have also spawned new food redistribution start-ups that charge food companies a fee to find donation recipients, while optimising logistical resources to collect and redistribute even small quantities of fresh and prepared food. Some organizations charge businesses to redistribute their food by hiring drivers already on the road, like the ones working for food delivery services or even regular transportation vehicles. These food redistribution intermediaries often offer staff training, operational strategies to minimise losses, and logistical and fiscal assistance with donations. Still, more than 90% of food businesses do not pay for this type of redistribution services and rely on the main food bank network, local food assistance organisations, or food redistribution non-profits (in competition with for-profit ones). In the meantime, more and more organisations have created innovative ways to rescue and process products such as “ugly” or blemished fruits and vegetables, stale bread, or even by-products that were not considered edible and that are now “upcycled” into new products (jams, beer, etc.).

Quantity over quality

Unsurprisingly, managing large quantities of food remains a challenge for food assistance organisations, which have received only limited financial support to manage the additional food donated in response to the law. Despite the French ordinance aimed at improving the quality of

² Melchior, Graziella, and Guillaume Garot. 2019. “Rapport d’information sur la mise en application de la loi n° 2016–138 du 11 février 2016 relative à la lutte contre le gaspillage alimentaire ” In *Commission des affaires économiques*. Paris: Assemblée Nationale. www.assemblee-nationale.fr/dyn/15/rapports/cion-eco/115b2025_rapport-information ; Ministère de l’Agriculture et de l’Alimentation. 2019. “Évaluation de l’application des dispositions de la loi du 11 février 2016 relative à la lutte contre le gaspillage alimentaire, et du décret d’application du 28 décembre 2016.” Synthèse. Paris, France. <https://agriculture.gouv.fr/gaspillage-alimentaire-evaluation-de-lapplication-des-dispositions-prevues-par-la-loi-garot>.

³ Comerso. 2019. *Distribution/Retail: Objectif Zéro-Déchet*. Paris, France: Comerso/Ipsos.

donations, the French food banks indicated in 2019 that most products were donated less than 48 hours before their expiration date, and that they had to discard 11 % of donations. Even if it is too soon to assess results, the California implementation scheme, relying on counties to educate businesses and to provide sufficient food redistribution capacity to food assistance organizations, may partly overcome this limitation. Nonetheless, the nutritional and gastronomic quality of the donations may remain an issue. For example, bread and pastries are among the products that food assistance organisations receive in too large quantities relative to their clients' need, and often have to throw away themselves. It is all the more problematic as taxpayers are indirectly paying food businesses for these donations of products that end up being discarded.

As relatively high tax incentives play an important role in encouraging donations, French representative Garot advocated for additional regulations that would tie such incentives to the quality of the food so that it is not blemished or expired. One of his proposed provisions was to reduce fiscal incentives for products donated closer to their expiration dates. But this regulation was rejected and tax incentives are still based on quantity rather than quality. Both in France and in the United States, donors and food assistance organisations estimate the financial value of their donations, for tax purposes, based on a formula applied to the weight of the food and not its cost. Food bank representatives in the two countries pointed to donations of soda as an example of a 'heavy food' that generated high incentives for donors regardless on its impact on the populations receiving the 'food'.

Many food justice advocates have criticised policies linking food waste reduction efforts to food assistance, as a "philantrocaptalist"⁴ approach that promotes the supposedly "charitable" efforts of donors (yet receiving financial compensation for what is so-called "donated") and maintains overproduction, without challenging power imbalances and unequal distribution of resources. In the United States, the ties between the main food bank networks and large food corporations, which donate food but also fund most charitable operations, have been described as a 'hunger industrial complex' that perpetuates not only overproduction and waste but also malnutrition, and obesity⁵. In France too, food waste policies have prompted discussions about the appropriateness of charitable donations, supported by generous tax reductions, that do not guarantee a dignified and equitable access to food. Besides, the push to generalise and formalise food redistribution through formal agreements tends to exclude small-scale organisations or grassroots groups, which have been particularly important in fighting for food justice and supporting their local communities.

An unexpected outcome: selling at all cost before donating

Even if French policies largely focused on donations, many businesses have actually begun selling more of their soon-to-be-wasted products at a discounted price before donating them.

⁴ Bishop, Matthew, and Michael Green. 2008. *Philantrocaptalism: How the Rich Can Save the World*. 1st ed. New York: Bloomsbury Press.

⁵ Fisher, Andy. 2017. *Big Hunger: The Unholy Alliance Between Corporate America and Anti-Hunger Groups*. Cambridge, MA: The MIT Press.

This practice is now much more common despite initial hindrances from businesses (especially fearing the cannibalization of other sales), and more socially accepted by customers in search of sustainable consumption practices. Platforms and apps that help businesses sell their products at a discount have been widely successful in France and Europe in general, and are growing in many cities in the U.S. In 2019, more than 90% of French supermarkets reported discounting soon-to-expire products⁶, along with many bakeries, restaurants, and hotels.

The success of these new discounted food markets may increase access to affordable food as they are used by low-income consumers (students, etc.) that may not necessarily turn to food assistance, but it also contributes to the decline in the overall quantity and quality of food donations. Businesses are now more likely to try to sell their commodities to the last minute, especially fresh products like fruits, vegetables, dairy, meat, and fish. If these are generally expensive, they would also be of great nutritional value for food assistance organisations. Meanwhile, the unsold products they donate are less good. Many representatives of food solidarity organization have therefore denounced the competition of food discount apps and services.

A difficult shift towards prevention

While discount sales and efficient redistribution operations are appealing, they fail to prevent unnecessary production in the first place, as they create a new market for the surplus and paradoxically make it profitable to overproduce. They also perpetuate a norm of abundance, in which supermarket shelves are always full and food is conveniently accessible at all times, in countries where the quantities of available food (more than 3,500 calories per person daily in France and the U.S.) almost double what would be nutritionally appropriate (on average 2,000 calories per day). Re-using surplus is not enough. In order to conserve resource inputs and minimise environmental and social negative externalities along the food supply chain, reducing excessive production is necessary.

To promote prevention among food system actors as well as consumers, the French 2016 law required professional training programs and schools to provide curricula addressing food waste. But these measures have rarely been implemented. Some environmental organizations are advocating for more mandatory (and enforced) food waste education and trainings. Along with consumer awareness campaigns, the risk is that they may remain a ‘weak’ form of prevention compared to structural changes that target the generation of surplus at the root⁷.

As early as 2015, a French regulation required large companies to include actions to fight food waste as part of their Corporate Social Responsibility public reports, but there was no obligation of quantified results—especially because data on food waste still remain highly confidential. During the National Pact, activists and citizen groups advocated for concrete requirements on

⁶ Comerso, op. cit.

⁷ Mourad, Marie. 2016. “Recycling, Recovering and Preventing ‘Food Waste’: Competing Solutions for Food Systems Sustainability in the United States and France.” *Journal of Cleaner Production* 126 (July): 461–77. <https://doi.org/10.1016/j.jclepro.2016.03.084>.

food businesses, such as clarifying expiration dates and involving third parties (currently, food manufacturers set up the dates on their own products), reducing portion sizes at restaurant and cafeterias, or even stopping ‘buy one get one free’-like promotions that push consumers to buy more than they need. However, most of these proposals were rejected and not included in later regulations.

The most recent French regulations in 2018 and 2020 suggest a potential shift towards prevention measures, with the anti-food waste labels and mandatory ‘diagnostics’ and measurement of food waste in the food service and food processing sectors, as long as they are implemented. The French food service sector exemplifies the possibility of improving food quality while reducing waste. Many cafeterias have already committed to improving the taste and nutritional content of their meals, which contributes to reducing waste as clients are more likely to finish their plates, and establishments can in turn reinvest savings from food waste reduction in higher quality products. The 2018 food sustainability regulation also required large food service operations to source a minimum proportion of organic and local products and to offer more vegetarian alternatives. While shorter supply chains may reduce the amount of waste generated by successive intermediaries and additional transportation, going away from animal products is also an indirect form of food waste reduction as fewer resources are needed to produce the same number of calories. These pioneering efforts, still out of the policy agenda across the Atlantic, not only reduce waste but also progressively re-value food.

The path ahead

In order to measure progress, it is key to better measure food waste, in line with recent European directives. Food companies should also be pushed to make data more transparent, as a way to break the stigma on existing waste and to share best practices. In addition, without controls and sanctions, requirements that rely on the voluntary commitment of businesses are not always implemented effectively. National and local governments need to appropriately enforce food waste regulations, especially to improve the quality of donations, with appropriate resources for food redistribution (through public funds and/or fees on businesses).

Overall, the French and Californian food waste policies strongly emphasised food donation and led to an increase in food redistribution, at the expense of prevention. Yet, redistribution may solve neither food waste nor food insecurity, which requires its own “fight” and public policy for an equitable access to food, and even a right to food. While there are synergies between the fight against food waste and the fight for an equitable food access, it is important to disconnect the two issues in order to address them appropriately.

In terms of food waste prevention, French policies have so far encouraged optimisations of current business practices, while sidelining structural changes in the food system that would reduce waste at the source. One solution could be to significantly increase taxes on food going to waste, in order to encourage prevention, rather than incentivizing low-quality donations. Such

taxes would generate funding, potentially mobilizable for food redistribution as well as waste prevention and recycling.

It is also time to address a large and overlooked proportion of our waste that happens on the farm (more than a third). Agricultural producers often overproduce to ensure they meet the strict requirements of large retail companies, who may reject their products based on esthetic criteria or market conditions. If sales prices are too low and retailers reject the food, it can be more profitable for farmers to not even harvest their products. Some of them donate them, but they cannot always benefit from tax incentives, as their revenues are too low to be taxable. To really tackle agricultural waste, public policies must support more local food systems, with fewer intermediaries, more sustainable but also more equitable.

Public policies will thus need to further regulate company practices. Following the EU Directive on Unfair Trading Practices, national governments need to address unequal power relationships between retailers and suppliers that still generate waste. Most business models also still rely on producing and wasting large volumes of cheap food, pushed onto the consumer through advertising, packaging, large portions, and promotional offers.

At a time where consumers are further and further disconnected from food producers, with a significant rise of online purchases and food delivery, it is important to foster grassroots initiatives and local networks. In France, dedicated regional “networks to fight food waste” (REGAL) have successfully promoted more sustainable food systems, with less waste at the local level. Collaboration between regions and countries at the European and global levels is also key, as food companies are in competition with one another on global markets. Multi-stakeholder collaboration is essential in order to further promote sustainable food production practices and alternative systems of distribution, with fewer intermediaries, that help revalue food and the resources and people that it takes to produce, distribute, and prepare it.

Finally, preventing food waste may require changing social norms towards less food consumption and abundance. We may need to revisit the over-convenience that leads to waste, to the benefit of food quality and authenticity. The French and Californian experiences encourage policymakers globally to re-value, rather than just redistribute, our food.