

DEUTSCHLAND

**Statement by Tafel Deutschland e.V. on the legal opinion
"Identification, evaluation and recommendations for action on
Legal barriers to avoiding food waste and passing on food donations"**

Food waste is and remains a major problem in Germany. For over 30 years, food banks have been working to ensure that food is not thrown away, but passed on to people living in poverty. The more than 970 food banks in Germany rescue around 265,000 tons of food every year and do this mainly on a voluntary basis and funded by donations.

We expressly welcome the fact that the topic of food rescue has received more attention in politics, business and civil society in recent years as part of efforts to reduce food waste.

We consider it positive that the Federal Ministry of Food and Agriculture is addressing the issue and that the legal opinion "Identification, evaluation and recommendations for action on legal obstacles to the avoidance of food waste and the transfer of food donations"¹ presents concrete proposals, after careful research, on how the transfer of food to food banks can be legally simplified. We also welcome the fact that, building on the comprehensive presentation of the current legal situation, the report sheds light on tax and food law aspects that currently make it difficult to pass on food.

The contribution that the proposals contained in the legal opinion can make to reducing food waste and increasing the amount of food donated can only finally be assessed once the implementation of the proposals has been further substantiated. Nevertheless, it is important at this stage to provide some information on the classification from the perspective of Tafel Deutschland.

Food banks as food entrepreneurs

We would like to point out that the legal classification described in the expert opinion of food banks as food businesses is correct and important. This legal classification is the basis for the ecological and social contribution of food bank work and guarantees that the food rescued and passed on by food banks meets all safety and hygiene standards. Food banks take these requirements extremely seriously. With the proposed introduction of the term "charitable food business operator" (KLU), it is important to note that food banks that pass on food donations to social institutions (so-called delivery or distribution boards) are also classified as KLUs. We reaffirm the position of the experts that the legal privilege should go hand in hand with both the charitable activity and the free distribution (including symbolic contributions) at the end of the chain.

⁽¹⁾https://www.bmel.de/SharedDocs/Downloads/DE/_Ernaehrung/Lebensmittelverschwendung/Rech_tsgutachtenLebensmittelverschwendung.html

Bundling of inspection obligations for the distribution of food to donation organizations with proof of expertise

With regard to the proposed certificate of competence as a prerequisite for the bundling of inspection obligations on the donor side, it should first be noted that food banks are already competent in their work. Even now, people working in food banks who come into direct contact with the rescued food must complete mandatory training on food hygiene and infection protection before or at the start of their work and at regular intervals thereafter. Proof of this can already be presented to donors. From our perspective, a newly created certificate of competence must therefore integrate or replace the mandatory training that already has to be provided and must not be an additional requirement. An additional certificate would pose unnecessary challenges for the food banks and run counter to the efforts of the new engagement strategy to reduce the burden on volunteer work.²

In terms of concrete implementation, we support the assessment of the legal opinion that the acquisition and issuing of a certificate of competence should be as unbureaucratic and low-threshold digital as possible. Cooperation with the food monitoring authorities must be standardized nationwide in this matter. As previous mandatory instructions do not require any examination modalities, we do not consider these to be necessary in the context of a certificate of competence. With regard to the food banks in Germany, we suggest offering the acquisition of such a certificate of competence via our Tafel Deutschland training academy. Since all inspection obligations remain on the part of the donation recipients and the requirements of the certificate of competence would also have to be met here, should also be ensured that there is state funding for issuing the certificate of competence and that the food banks do not incur any additional costs. It must also be defined what scope of training a desired certificate of competence should include in relation to those working in the organization. Here we suggest that the management of the food bank should be considered on behalf of the entire organization and that it should be stipulated in the quality assurance agreement that the management of the food bank is responsible for ensuring that all committed persons who come into direct contact with the donated food are competent. We believe that an additional scope of the desired certificate of competence would be too bureaucratic and ultimately not feasible in the interests of all those involved.

We also rate the proposal for a "**best-before date+**" guideline positively, with the aim of anchoring this as part of the inspection obligations. In terms of implementation, this should mean that the foodstuffs that fall within the best-before+ area meet the safety criteria and that the inspection of these donations is limited to abnormalities. In this context, however, we reaffirm that further awareness-raising work is necessary to improve consumer acceptance of food with an expired best-before date - food bank customers are no exception here.

Quality assurance agreement

We consider it to be a welcome development that the proposed quality assurance agreement to check the quality of the donations offered to them. Donors are already obliged to only make safe donations.

Donate food - i.e. not donate food that is clearly not fit for consumption to the food bank

² <https://www.zukunft-des-engagements.de/vision-ziele-massnahmen/>

to hand over. If inspection obligations are bundled, it is therefore imperative to prevent the risk of food banks being forced to take food that is of poor quality. The people who come to the food banks deserve good and safe food. This is not only a legal requirement, but also an ethical one.

Further tax relief and tax law approaches

We consider the other proposals mentioned in the report to be consistently positive: legal clarity regarding the sale of food after the best-before date and shortly before the expiry of a use-by date, the facilitation of the sale of food with labeling defects, the restriction of injunctions under competition law in the case of the free sale of food that has already been produced, the facilitation of the sale of loose goods and the clarification of the sale of food that requires sorting. At the same time, we suggest that the expected effect of the changes be scientifically substantiated both in consultation with the stakeholders concerned and, where possible in the foreseeable future.

We see the tax law proposals as an important building block for strengthening the willingness to donate. In the absence of an obligation to pass on donations, the donation of food, which is sometimes associated with additional costs on the donor side when it comes to complying with food safety, should be economically better off than destruction. The exemption from VAT for free donations to charitable food businesses proposed in the report - also for coffee - as well as the structure as a deduction item for income tax purposes can ensure that the decision to donate is also anchored economically.

Implementation - national and EU level

Various approaches already exist in other EU countries at national level to facilitate the donation of food. In view of the expected lengthy changes at EU level, the options for action proposed in the report should be applied at national level. They should be fully implemented at national level in Germany. In the event of limited implementation at national level, the interaction of the options must be taken into account so that individual national regulations do not fail to have the desired effect. One example of this would be the sole introduction of a certificate of competence without a bundling of inspection obligations. Without a clear signal from donors that such changes will lead to a greater willingness to donate, there must be no additional effort on the part of donation recipients. Therefore, when weighing up the risks, Germany should also pursue the options considered critical by the experts - bundling the inspection obligations, introducing the concept of the charitable food business operator, making it easier to dispense in the event of labeling defects, anchoring the MHD+ and retaining the simplified delivery note procedure - at national level.