

Ministry of Agriculture and Food

Evaluation of the application of
the provisions of the law of 11
February 2016 on the fight
against food waste, and the
implementing decree of 28
December 2016

Synthesis of the final report

November 2019

► **Background and objective of the study**

Three years after the promulgation of the law of 11/02/2016, providing a regulatory framework for the implementation of prioritized actions to combat food waste for supermarkets covering an area of more than 400m², the Ministry of Agriculture and Food has launched a study to evaluate the application of the provisions of this law. The study, for which EY was commissioned, aimed to pursue two main objectives:

1. The preparation of an assessment report on the application of the provisions of the law and more specifically paragraph 2 of Article L541-15-4 of the Environmental Code, supplemented by the decree n°2016-1962 of 28/09/2016 and
2. the provision of inputs and recommendations for extending the scope of the law to the catering and agri-food sectors provided for by article 88 of the law for the balance of trade relations in the agricultural and food sector and a healthy and sustainable food, resulting from the "Etats généraux de l'alimentation".

► **Scope and methodology**

Scope and limits

The present study focused on the food donation with reference to the decree n° 2016-1962 of 28 September 2016 relating to food donations between a food retailer and a food aid association in application of the Article L. 230-6 of the Rural Code and Sea Fisheries. Nevertheless, the effect of other actions to combat food waste (improvement of stock management, fresh food charters, expiration date extending, sticking, etc.) on the dynamics of food donation was included in the scope of the study.

The indicators used to evaluate this dynamic were determined based on the indicators monitored and defined in the framework of the PACTE working group n°1 "indicators and measures of food waste". As the work of WG1 is not yet finalized and indicator monitoring is only planned from 2020, few quantitative data could be collected during the exchanges with the various stakeholders (during May and June 2019).

Methodology

The analysis was based on 4 main steps:

- Framing of the mission (Phase 0).
- Collection of qualitative and quantitative information and data (Phase 1); through literature review, 30 interviews, administration of an electronic survey and field visits.
- Analysis of achievements and results (Phase 2) in order to determine and draft first recommendations.
- Formulation of general and specific recommendations for public authorities and other stakeholders concerned by the law (Phase 3).

► **Food waste in France: definitions, context and regulations**

Definition and context of food waste in France

To define food waste, we used the definition given in the National Pact to Combat Food Waste signed in 2013: "Food waste refers to any food intended for human consumption which, at any stage of the food chain, is lost, thrown away or damaged". For supermarkets, it corresponds to the loss of food products between the arrival of the products in the store (storage) to their departure (purchase by consumers).

According to ADEME, nearly 10 million tonnes of food products are diverted from human consumption each year in France¹. Distribution would account for 14% of this wastage, while production and processing would respectively account for 32% and 21% of waste in France in 2016. Nevertheless, households remain the main source of waste (33%) (Figure 1).

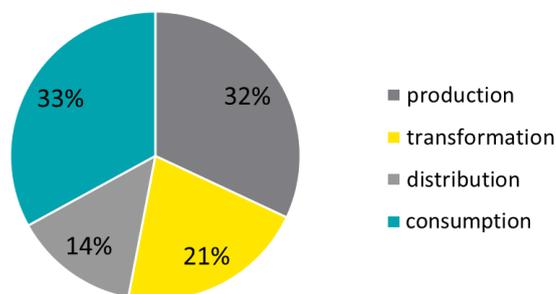


Figure 1 - Mass distribution of food waste by stage of the food chain

Source : ADEME (2016)

Some practices that can be observed in retail can have a significant impact on food waste all along the value chain:

- upstream: by imposing calibration criteria and other quality standards (visual and nutritional) on suppliers;
- downstream: by influencing consumers' purchasing behaviour (extra purchases due to a low price, a promotion or a format not adapted for single people) involving over-consumption.

Similarly, the other stakeholders also have an influence on the quantities of products wasted within the stores:

- in-store behavior and consumer demands: damage to packaging, manipulation of fruit and vegetables, unwillingness to buy damaged products...;
- multiplication of the number of products on the shelves from the agri-food industries, leading to a higher risk of unsold products.

Nevertheless, practices tend to evolve and stakeholders are implementing policies to combat food waste.

Introduction of the so-called "Garot Law"

The law on the fight against food waste, known as the "Garot Law", which is the subject of this study, has been effective in France since February 11, 2016. This law is a milestone in food waste regulation by introducing legislation to reduce food losses and waste. France is the first country in the world to adopt such strong legislation against food waste.

This law introduces:

- A hierarchy of actions to be taken against food waste
- the responsibility of all actors in the food sector, with a need to train, raise awareness and mobilize these groups and in addition to communicate regularly with consumers, particularly in the context of local waste prevention programs.

¹ ADEME, *Pertes et gaspillages alimentaires : l'état des lieux et leur gestion par étapes de la chaîne alimentaire*, 2016.

The main measure of the law consists in imposing an obligation on each retailer with a surface area of more than 400 m² to seek a partnership with a food aid association in order to give up its unsold food products for free via the implementation of a convention.

The decree n°2016-1962 of 28 December 2016², which sets out the implementing procedures for the Garot Law, specifies certain terms of the partnership between accredited food aid associations and food retailers and the requirements regarding expiration dates and labelling.

More recently, Decree No. 2019-302, which will enter into effect on 1 January 2020³, clarifies the obligation of retailers to have a food donation quality management plan that includes raising awareness among all employees about the fight against food waste and specific trainings for staff in charge of donation operations.

In order to strengthen its actions to combat food waste, France is planning new measures through the Law for a balanced trade relationship in the agricultural and food sector and a healthy and sustainable diet ("EGAlim" law). Article 88, which emerged from the Etats Généraux de l'alimentation, introduces in particular the extension of the scope of the Garot law for operators of the collective catering and agri-food sector, as well as the extension of the requirement to set up action plans to combat food waste⁴.

► Main elements of observations

The study, structured around 4 main areas of reflection, revealed several observations and lessons learned:

1. The provisions of the law have had a positive impact on the dynamics of food donation

The relationship between retailers and food aid associations has existed for many years. The fight against food waste is an issue that has historically been taken into account in retailers' strategies. From 2013, almost all major retailers formalized their commitment through the signing of the national PACT to combat food waste with the objective of reducing food waste in France by 50% by 2025. Since then, the retailers have continued their efforts and strengthened their action plans by following the hierarchy as it is defined in the law, through prevention, but also through the donation of unsold food.

Long-standing partnerships have been established with food aid associations for the donation of unsold food from stores and thus meet the dual objectives of the actors: the fight against food waste and the fight against food insecurity. According to the results of the electronic survey, 46% of the responding associations have established a partnership with a store for more than 10 years. These figures are confirmed by the Comerso 2018 study; stating that approximately 64% of the stores questioned have already been donating unsold food for more than 3 years (Figure 2). This shows in a concrete way the pre-existing dynamics of donation before the law was put in place.

² Décret n° 2016-1962 du 28 décembre 2016 relatif aux dons de denrées alimentaires entre un commerce de détail alimentaire et une association d'aide alimentaire habilitée en application de l'article L. 230-6 du code rural et de la pêche maritime.

³ Décret n° 2019-302 du 11 avril 2019 relatif aux conditions dans lesquelles les commerces de détail s'assurent de la qualité du don lors de la cession à une association habilitée en application de l'article L. 266-2 du code de l'action sociale et des familles.

⁴ Accessible

sur : https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=78A264D9554F54F18783984483F4B724.tplgfr38s_1?cidTexte=JORFTEXT000037547946&categorieLien=id . [dernier accès 19/06/2019]

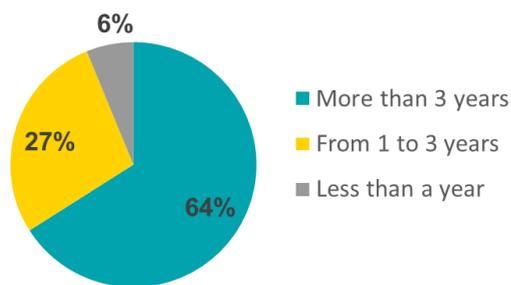


Figure 1 - Longstanding partnerships between stores and food aid associations
 Source : Comerso Ipsos (2018)

The law has enabled a dynamic and structured partnerships between retailers and associations. Since the implementation of the law in 2016, the coverage of the number of stores under convention has continued to grow. One-third of the stores surveyed in the Comerso study claim to have set up partnerships for less than 3 years, in line with the date of application of the law (2016). The Retail / Distribution study: Zero waste objective conducted by Comerso in 2019 shows that now 96% of stores declare that they practice food donation.

This positive effect of the law is also demonstrated by a diversification of the supply sources of 3 of the main food aid associations since 2016 with a significant increase in the share of food collected from companies (including retailers) (Figure 3).

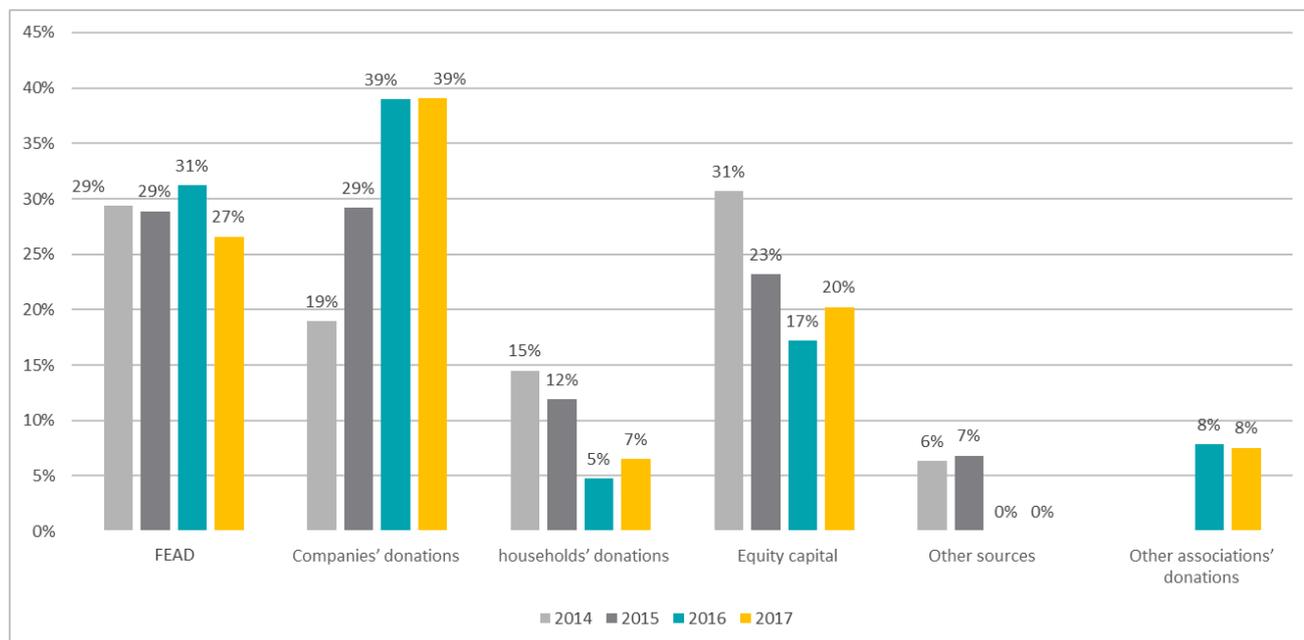


Figure 2 - Distribution of food sources - Restos du Cœur, Croix Rouge Française, Secours Populaire Français

Source : DGCS data (2018)

The deployment of the conventions and the use of the standard convention from the Ministry of Agriculture and Food has provided a legal framework for partnerships and thus have professionalized the donation activity (sorting and collection process, logistics organization, monitoring ...).

Nevertheless, difficulties in organizing and implementing partnerships persist. 55% of the associations questioned in the electronic survey consider that logistical implementation is a limit to the application of the Garot law and 56% of the retailers who replied experience difficulties in their organisational implementation (team training, traceability, etc.). The logistical constraints remain strong for the associations (lack of tools and logistical skills and volunteers), not allowing to optimize the efficiency and the frequency of the collections. According to the Comerso study, 47% of the stores polled indicate that they do not have a daily frequency of collection, which means that the destruction, energy valorization or valorization in animal feed of merchandises fit for human consumption still occurs in these stores.

These difficulties are particularly acute in the most isolated territories, which are not easily accessible to associations.

2. Different partnership modalities can be implemented

National conventions are signed between the main retailers and national food aid associations and then, deployed locally to the stores. Set up by the departments of the Ministries of Agriculture, Environment and Finance, in collaboration with representatives of retailers and the main food aid associations; this model convention clarifies the responsibilities of each party to guarantee the effectiveness of the donation as well as the safety and quality of the food supply.

It also clarifies how to enable retailers to benefit from the tax reduction associated with the donation. The main positive effect of the convention was to provide a framework for the partnership arrangements, thus reducing the competition between associations. In addition, since the model convention only covers partnerships with accredited associations, it strongly encourages retailers to set up partnerships with accredited associations.

The signing of these agreements makes it possible above all to reference the association within retailers' systems and thus simplify the deployment of local agreements with stores. It should be noted that some local conventions are based on the model convention but are simplified to ensure wider deployment and better ownership for local teams.

New partners supporting stores to fight food waste are changing how partnerships with associations operate. The Garot Law has encouraged the development and acceleration of these players' businesses, even if most of them already existed before the Law introduction: Eqosphere (2012), Comerso (2013), Phenix (2014), and Le Chaînon manquant (2014). These players offer multiple solutions for stores to prevent food waste: training, promotional strategies on short-dated products, establishment or optimization of donation procedures to associations, development of bio-waste recycling channels, etc. For retailers, the advantage of using such intermediaries is to have a single contact for the management and recycling of unsold and wasted products. They offer a global and ready-to-use solution that saves time for teams. They also provide sanitary, fiscal and administrative safety and can guarantee a frequency of collection.

We can only be delighted with the success of the prevention actions implemented by retailers. Nevertheless, the quantities of unsold products distributed to associations are sometimes, according to the various stakeholders interviewed, negatively impacted (Figure 4).

	Advantages	Disadvantages
<p>Retailers</p> 	<p>Assist stores in preventing food waste</p> <p>Optimized in-store collection frequency</p> <p>Professionalization of food unsold products management: training of store teams in charge of sorting</p> <p>Simplification of administrative management related to the donation and improving the monitoring of indicators (conventions, taxation, redistributed tonnages, reporting tools...)</p>	<p>Loss of direct link with associations</p>
<p>Associations</p> 	<p>Support on the coverage of stores in isolated areas (networking and logistics)</p> <p>Improved sorting in stores thanks to the training of store teams in charge of sorting</p> <p>These intermediary partners can sometimes serve as mediators in the relationship between the association and the store</p>	<p>Loss of direct link with local retailers</p> <p>Collecting food with shorter and shorter shelf-life for the associations</p> <p>In some cases, a questioning of the conventions for "small" local associations with low collection capacities</p>

Figure 4 - Advantages and disadvantages of these partners in the relationship between distributors and associations and in the dynamics of donation

Source : EY ⁵

3. The provisions of the law have had a contrasting effect on the quantity and quality of donations

A quantity of food products given globally in progression at the national level, but to be qualified at the store level. The overall amount of food donated to associations has been steadily increasing

⁵ (Icon made by Freepik from www.flaticon.com)

since the Law was implemented (Figure 5). The constant increase in the amount of food collected is explained by the greater coverage of the number of stores under convention. This increase is particularly significant for associations for which the collection represents one activity among many others and not the main activity (+70% in 2015, +40% in 2016 and +9% in 2017); this contrasts with the Fédération Française des Banques Alimentaires which has built its model on the collection of unsold food products for more than 30 years (Figure 6).

Nevertheless, the year-on-year growth seems to have slowed down and become more noticeably since the introduction of the Garot Act (only +9% in 2017, compared to +70% in 2015). This slowdown can be explained by a smaller number of new conventions signed, resulting from a broad coverage of stores already under convention and by better management of the fight against food waste by stores via preventive actions.

Prevention actions (optimisation of orders and stocks, use of stickers for short-lived products, etc.) are implemented as a priority in front of donation by the retail players; efforts and continuous improvement on prevention measures irrevocably contribute to reducing the quantities distributed to associations at store level.

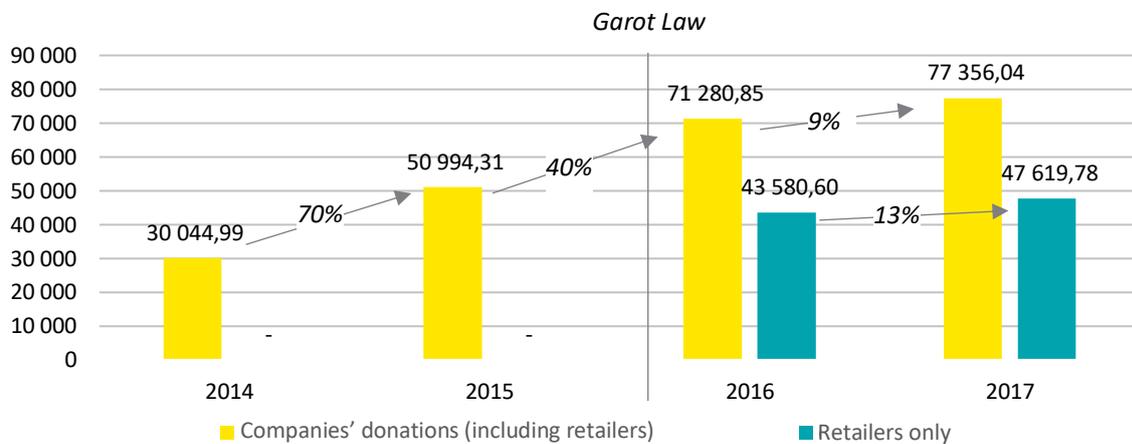


Figure 5 - Evolution of the donation quantity from companies redistributed by RDC, SPF and CRF (in tons)

Source : DGCS (2018) - Before 2016, data " including retailers " were not separated from data " company donations ".

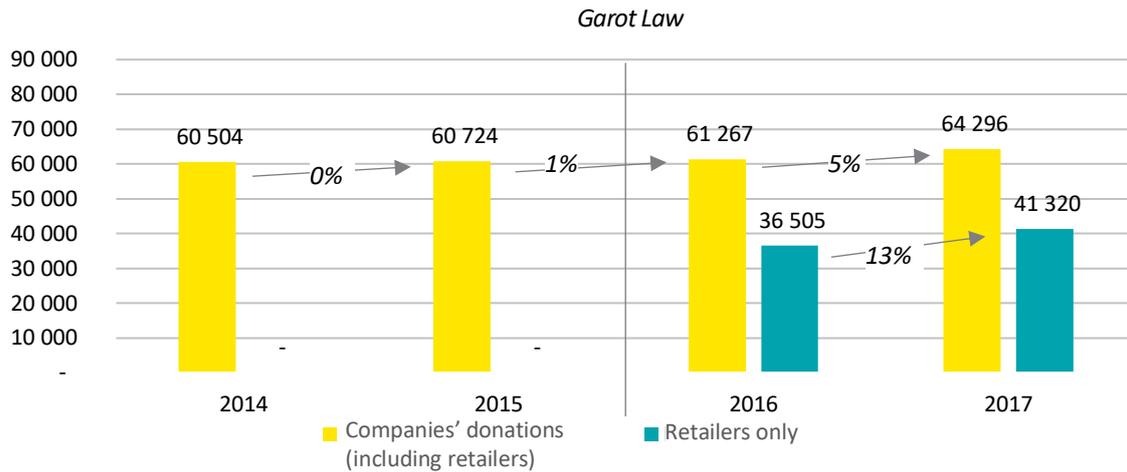


Figure 6 - Evolution of the donation quantity from companies redistributed par FFBA (en tonnes)

Source : DGCS (2018) - Before 2016, data " including retailers " were not separated from data " company donations " .

A quality of food given in evolution in recent years. The products collected are collected with a shorter and shorter expiration date; sometimes not redistributable by the associations, which can lead to a transfer of waste from retailers to the associations and therefore to the communities. The associations interviewed indicate that the vast majority of food products collected from stores have dates of less than 48 hours; contrary to the requirements of the standard agreement. This phenomenon can be explained mainly by the preventive measures put in place by the retail stores and particularly the use of promotional sales of short-dated products.

Sticking is a practice that is well established in store habits for essentially economic reasons. According to the Comerso study, 2/3 of the stores have been practicing sticking for more than 3 years. The main reasons for the use of sticking by the actors are to meet the objective of fighting food waste (98%), but also for economic reasons (74% to preserve the margin and 40% to maximize revenue)⁶. The study conducted by Comerso/Ipsos in 2018 also shows that 56% of the unsold products "sticked" by the stores are then redistributed to associations, with an ever-shorter shelf life; also confirming the observation made by the players during qualitative interviews. (Figure 7)

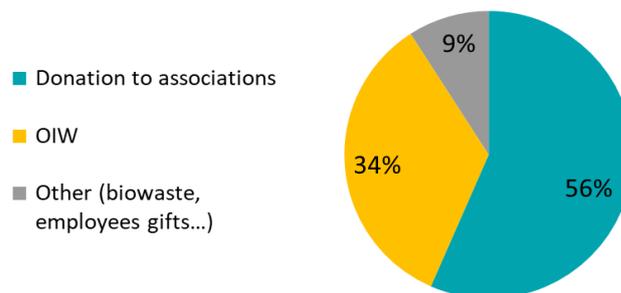


Figure 7 - Destination of unsold stucked products

Source : Comerso Ipsos, 2018

⁶ Comerso/Ipsos, Retail/Distribution Objectif Zéro Déchets, 2019.

In addition, the limited diversity of the types of products collected does not fully meet the nutritional needs of the beneficiaries. The multitude of beneficiaries' profiles and the lack of tools to obtain objective information do not allow associations to be able to respond effectively to the nutritional needs of their beneficiaries. Despite these difficulties, the associations are very attentive to the nutritional quality of the food they distribute, in the closest respect of the recommendations of the National Nutrition and Health Program (PNNS).

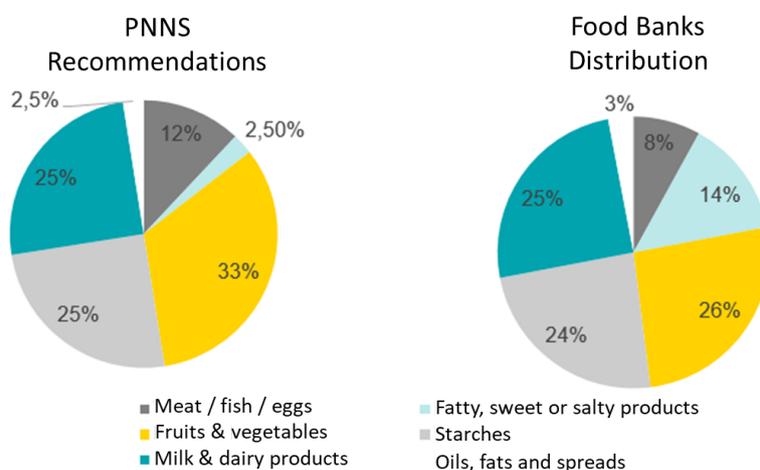


Figure 8 - Allocation of food distributed in relation to PNNS recommendations

Source : EY based on data from Fédération Française des Banques Alimentaires (2018)

According to the data collected from the Fédération Française des Banques Alimentaires on the allocation of food distributed by product type in 2018 (all sources combined, with retailers representing 41%), we can observe a allocation of food distributed that does not yet fully meet the nutritional needs of the beneficiaries (Figure 8).

According to the data collected from the Fédération Française des Banques Alimentaires on the allocation of food distributed by product type in 2018 (all sources combined, with retailers representing 41%), we can observe a allocation of food distributed that does not yet fully meet the nutritional needs of the beneficiaries (Figure 8).

Food Banks recover a significant proportion of fatty, sweet and salty products and a relative lack of fruit and vegetables and animal proteins (meat, fish and eggs) from their various sources of supply. The associations also report that they collect relatively little fresh products, and more dry and canned products.

Nevertheless, the gap between the food distributed and the needs of the beneficiaries remains to be qualified and tends to decrease.

Food donation seems to be more and more diversified with an increasing share of fresh products, and fruit and vegetables. In the space of 5 years, the proportion of fruit and vegetables increased from 18% to 26% of the total distributed.

4. Conditions for implementing the law that are more or less relevant.

The scope of the law does not fully address the global issue of food waste in France. Of the 10 million tonnes of food wasted each year, distribution would represent 14%, while production and processing would respectively represent 32% and 21% of waste in France in 2016. Households

remain the main source of waste (33%)⁷. It therefore appears that all sources of food waste at the national level are not included in the scope of the law.

Nevertheless, the law on the balance of trade relations in the agricultural and food sector and healthy and sustainable food comes in a complementary way to the Garot law in the fight against food waste by extending its scope to operators in the collective catering and agri-food sector.⁸

Moreover, although distributors feel that this law has been able to pinpoint their sector, amplifying in the public's eyes their contribution to food waste, which is relatively low, the law has given strong visibility to the fight against food waste for the entire society.

The contradictions between the associations' expectations and the retailers' objectives make relationships more complex. Retailers are committed to fighting food waste and economic optimization, while associations are committed to fighting food insecurity (Figure 9). The emergence of new prevention solutions calls into question the objective of the law on food donation: these solutions have a significant impact on the decrease in the quantity and quality of food collected by associations.

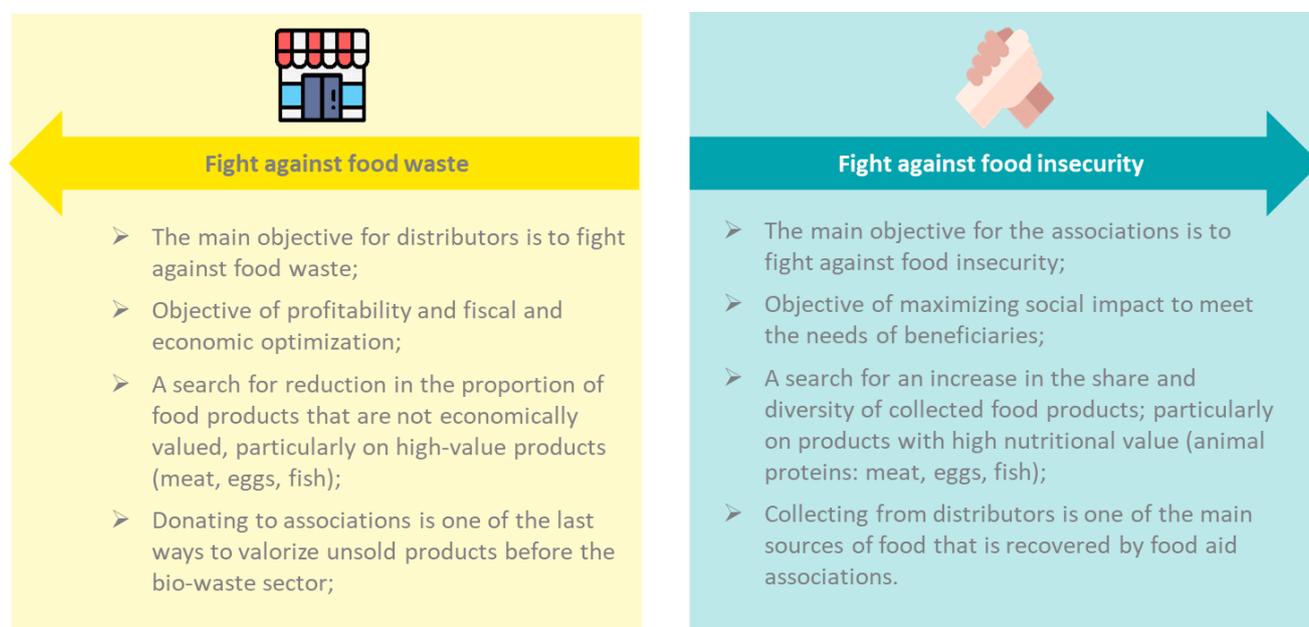


Figure 3 - Summary of the objectives of food aid distributors and associations since the Garot law

Source : EY⁹

The law does not provide enough requirements to ensure the accountability of retailers on the management of sorting. The unequal management of sorting between the stores leads to a necessary effort of "over-sorting" at the expense of the associations. It is difficult for them to refuse donations from large retailers, even when the food cannot be redistributed. There are two main reasons for this:

⁷ ADEME, *Pertes et gaspillages alimentaires : l'état des lieux et leur gestion par étapes de la chaîne alimentaire*, 2016.

⁸ Accessible sur : https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=78A264D9554F54F18783984483F4B724.tplgfr38s_1?cidTexte=JORFTEXI000037547946&categorieLien=id . [dernier accès 19/06/2019]

⁹ (Icon made by Freepik from www.flaticon.com)

1. In practice, associations rarely have the time to check the quality of the sorting (sorting, which according to the provisions of decree n°2016-1962 is the responsibility of retailers) of the food products onsite;
2. There is an inequality in the balance of power between retailers and associations. This imbalance is due to the significant share (between 25% and 40% depending on the associations) that retailers represent in the associations' sources of supply.

These food products finally thrown away by the associations end up in the household waste management circuit provided by local authorities, whereas they are initially waste from economic activities.

In addition, stakeholders report a lack of control over the implementation of the law on the ground.

► Recommendations

Based on observations and consultation with national and local stakeholders, 12 recommendations were made, 6 aimed at promoting the quantity of donations and 6 aimed at promoting the quality of donations.

<i>Recommendations to promote the quantity of donations</i>	
Guarantee the tax exemption ceiling	<ul style="list-style-type: none"> • Continue to guarantee the tax exemption mechanism currently in place for food donations. • Promote and deploy the sponsorship of logistics stakeholders by ensuring the continuity of an attractive tax system on services provided to food aid associations in the context of the logistics of collecting.
Strengthen logistical resources available to stakeholders	<ul style="list-style-type: none"> • Encourage the implementation of financing mechanisms dedicated to logistics tools (maintenance and acquisition of logistics resources or vehicle conversion bonus). • Provide training tools for food aid associations volunteers about food donations logistics.
Ensure compliance with the ban on making unsold products unfit for consumption	<ul style="list-style-type: none"> • Readjust the amount of penalties that penalize supermarkets over 400 m² that make unsold products unfit for consumption, by defining a penalty proportional to the store's turnover; • Associating with penalties the operational implementation of controls (responsible entity, form, regularity, etc.)
<i>Recommendations to promote the quality of donations</i>	
Facilitate the identification of partner associations	<ul style="list-style-type: none"> • Draw up an exhaustive list of authorised associations in web format; updated annually and at each accreditation campaign at regional level • Propose an adapted support guide to better inform and facilitate the accreditation process of food aid associations.
Promote the quality of the donation	<ul style="list-style-type: none"> • Encourage the dissemination of good practices for the delimitation of spaces in the store reserve dedicated to the quality control of food sorting with easy access for associations (guides and booklets of good practices to stores). • Encourage professional federations to build and distribute awareness, information and training kits to be distributed to stores. • Officially define the operational procedures to control retailers on the quality of donations and the implementation of processes in stores.
Ensure better monitoring of donations	Develop an electronic platform allowing the actors to dematerialize donation certificates and to follow the evolution of donations in an operational way, with financial support for the associations.

In addition, the evaluation has allowed to identify recommendations about the extension of the scope of the Garot law to other sectors:

<i>Recommendations about the extension of the scope of the Garot law to other sectors</i>	
Develop awareness campaigns	<ul style="list-style-type: none">• Support and develop new consumer awareness campaigns about food waste, like the campaign already implemented by the Ministry of Agriculture and Food " Stop au gaspillage alimentaire" and relayed by food aid associations and private actors.
Encourage food donation in the agricultural sector	<ul style="list-style-type: none">• Apply regulatory and fiscal frameworks relating to agricultural donations to all sectors more broadly, based on existing systems for eggs, milk or processed fruits and vegetables.
Extend the scope of the law to collective catering and the food industry	<ul style="list-style-type: none">• Rely on the recommendations made for the evaluation of the Garot law, while keeping the specificity of the sectors of collective catering and the food industry (level of maturity, type of products and actors of donations different from those of retail sector, need to define adapted thresholds, etc.).

