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French Legal Scheme on Food Waste and Agri-food Chain

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1. Introduction

In France, along the whole food chain, almost 20% of the food produced ends up in the bin. That means 150 kg of food per person per year, 10 million tonnes of food, 3% of the greenhouse gas emissions of national activity¹. These figures are broadly in line with those of the European Union (New Circular Economy Action Plan For a cleaner and more competitive Europe, 11.3.2020, §3.7) but seems to defer on the impact on CO2 emission (6% following the Farm to Fork Strategy, 20.5.202, § 5.2)².

Even if we must be very careful not to make a direct causal link between food waste and access to food, this Food Waste seems still to be a nonsense compared to the number of people who received food aid or who are food insecure: in France, 5.5 million people received food aid in 2017 and 8 million people were food insecure³.

To fight against food waste and try to help people who are food insecure, France developed a more and more consistent legislative arsenal. After a quick overview of the French legislation on food waste, this article will show the main elements of this field and highlight its scope and limits.

¹ See Programme national pour l'alimentation (PNA) 2019-2023, p. 20; See also: <https://www.ecologie.gouv.fr/gaspillage-alimentaire-0> (06.12.2021).

² On Food waste international issue, see: Gioia Maccioni, La legislazione sugli sprechi alimentari, in P. Borghi, I Canfora, A Di Lauro, L. Russo (eds), Trattato di diritto alimentare italiano e dell'Unione europea, Giuffrè, 2021, 694-704; Gioia Maccioni, Spreco alimentare. Regole e limiti nella transizione verso modelli agroalimentari sostenibili, G. Giappichelli Editore, 2018, 165 p.

³ <https://agriculture.gouv.fr/lutte-contre-le-gaspillage-alimentaire-les-lois-francaises> (06.12.2021).

2. Brief Overview of the French Regulation on Food Waste

Aiming to reduce food waste, and in line with the policy of the European Union (Integrated Action Plan for the Circular Economy, Dec. 2015; Framework Directive 2008/98/EC)⁴, France has developed a large legal no-food-waste Regulation. At the beginning, it was based on guiding documents (Pact to fight against food waste, 2014-2020, 14 June 2013 renewed in 2017) that set a target of 50% reduction in food waste. Then Regulation took the form of Law totally or partially focused on Food Waste: in 2016 was enacted Law No. 2016-138 of February 11, 2016 on the fight against food waste (known as the “Loi Garot”). After this first legislative stone came Law No. 2018-938 of October 30, 2018 for the balance of commercial relations in the agricultural and food sector and a healthy, sustainable and accessible food for all (known as the “loi EGALIM”) followed by the Ordinance n° 2019-1069 of October 21, 2019 relating to the fight against food waste. Finally, the current legal edifice has been consolidated by Law n° 2020-105 of February 10, 2020 relating to the fight against waste and the circular economy and the Ordinance n°2020-1142 of September 16, 2020 relating to the prevention and management of waste (known as the “loi AGECE”)⁵. In parallel with these laws focused on food waste, Law and guidelines related to Food Policy also took into account the Waste problem: Law 2014-1170 of October 13, 2014 on the future of agriculture, food and forestry contains new priorities like social justice, food education for youth, and fight against food waste (still in article L. 1 of the *Code rural*) and the French National Food Program (2014 and 2019 versions) provides measures to implement these priorities.

This French Regulation on food waste may evolve: a Law Proposal for a new step against food waste has been accepted by the Economic Affairs Commission of the National Assembly but the legislative process is not yet concluded⁶.

The following table presents the main developments of the French Regulation that involves food waste, with regard to the major stages of EU Law:

	FRENCH LAW (https://www.legifrance.gouv.fr/)	UE REGULATION (https://eur-lex.europa.eu/homepage.html)
2021	Loi n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, <i>JORF n° 0196 du 24/08/2021</i> Proposition de loi pour une nouvelle étape contre le gaspillage alimentaire, n° 3725, 5 janvier 2021	
	Arrêté du 7 janvier 2021 catégories de denrées alimentaires exclues du don, <i>JORF n°0009 du 10 janvier 2021</i>	

⁴ See also the UE Food Loss and Waste Prevention Centre platform: https://ec.europa.eu/food/safety/food-waste/eu-actions-against-food-waste/eu-platform-food-losses-and-food-waste_it (06.12.2021).

⁵ See Corinne Lepage, La loi anti-gaspillage et d'économie circulaire, Recueil Dalloz 2020 p.1288.

⁶ See below “Conclusion”.

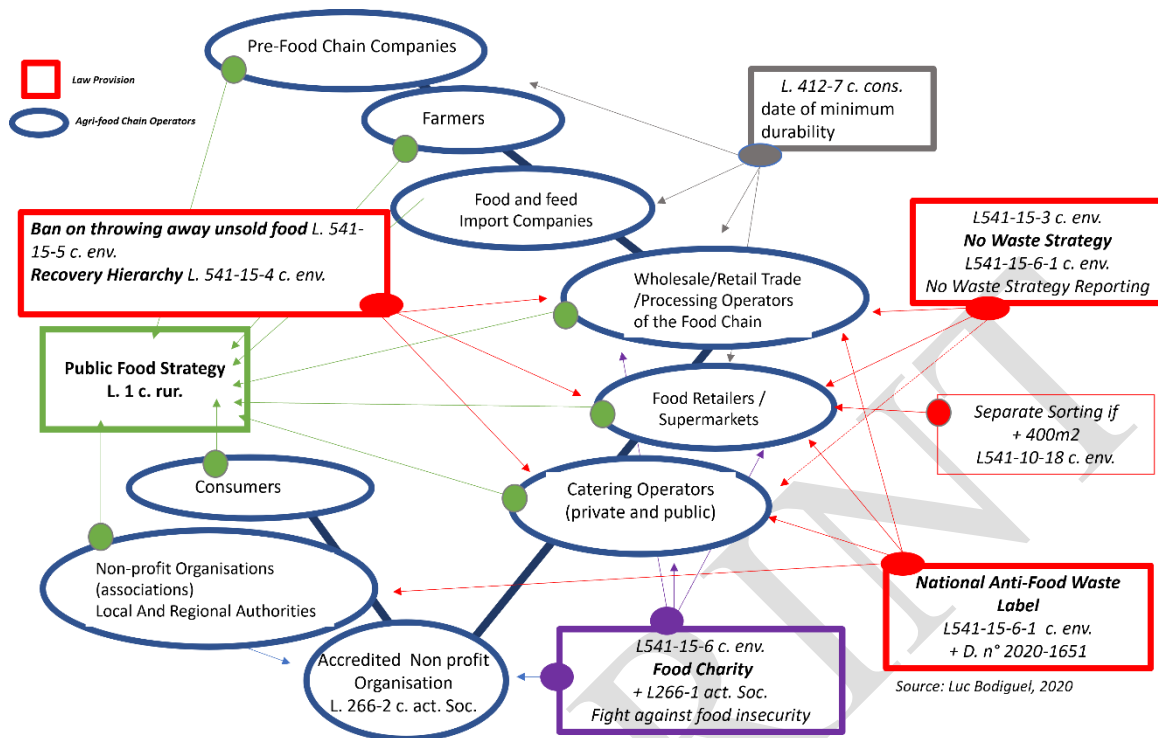
2020	Décret n° 2020-1651 du 22 décembre 2020 label national « anti-gaspillage alimentaire », <i>JORF n°0311 du 24 décembre 2020</i>	COM(2020) 381 - A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system , 20.5.2020
	Décret n° 2020-1274 du 20 octobre 2020 dons de denrées alimentaires prévus à l'article L. 541-15-6, <i>JORF n°0256 du 21 octobre 2020</i>	COM(2020) 98 - New Circular Economy Action Plan For a cleaner and more competitive Europe, 11.3.2020
	Ordonnance n° 2020-920 du 29 juillet 2020 prévention et à la gestion des déchets, <i>JORF n°0186 du 30 juillet 2020</i>	
	Loi n° 2020-105 du 10 février 2020 lutte contre le gaspillage et à l'économie circulaire (loi AGECE / Poirson), <i>JORF n°0035 du 11 février 2020</i>	
2019	Ordonnance n° 2019-1069 du 21 octobre 2019 lutte contre le gaspillage alimentaire, <i>JORF n°0246 du 22 octobre 2019</i>	COM(2019) - The European Green Deal, 11.12.2019
	Programme national pour l'alimentation (PNA) 2019-2023 Plan national nutrition santé (PNNS) 2019-2023 Programme national de l'alimentation et de la nutrition (PNAN) 2019-2023	
2018	Loi n° 2018-938 du 30 octobre 2018 pour l'équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous, <i>JORF n°0253 du 1 novembre 2018</i>	
2017	Pacte national de Lutte contre le gaspillage alimentaire 2017-2020 (https://agriculture.gouv.fr/pacte-national-de-lutte-contre-le-gaspillage-alimentaire-les-partenaires-sengagent)	
	États généraux de l'alimentation (EGA) : 20/07/2017-21/12/2017 (https://agriculture.gouv.fr/alimagri-les-etats-generaux-de-lalimentation)	
2015		Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Closing the loop - An EU action plan for the Circular Economy, COM/2015/0614 final
2014	Loi n° 2014-1170 du 13 octobre 2014 d'avenir pour l'agriculture, l'alimentation et la forêt, <i>JORF n° 238 du 14 octobre 2014</i> Programme national pour l'alimentation (PNA) 2014-2017	
2013	Pacte national de lutte contre le gaspillage alimentaire (1), 2014-2020, 14 juin 2013.	
2010	Loi n° 2010-874 du 27 juillet 2010 de modernisation de l'agriculture et de la pêche, <i>JORF n°0172 du 28 juillet 2010</i> Programme national pour l'alimentation (PNA) 2010-2014	
2008		Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, <i>OJ L 312, 22.11.2008, p. 3–30</i>

On these bases, what is the state of Law in France ?

3. Objectives of the French Law on Food Waste

From now on, the French law provides a clear framework for the policy to fight against food waste. It defines the object of this policy. It is “any food intended for human consumption that is lost, thrown away or spoiled at any stage of the food chain” (Article L. 541-15-4 Code de l'environnement). It also provides a quantified objective: the “No-Food Waste Policy” aims to reduce food waste by 50% from its 2015 level in food distribution and catering by 2025; in consumption, production, processing and commercial catering by 2030 (Article L. 541-1 Code de l'environnement). This objective is the same at the UE level: “The Commission is committed to halving per capita food waste at retail and consumer levels by 2030 (SDG Target 12.3)” (Farm to Fork Strategy, 20.5.202, § 5.2).

To reach its objective, French Law provides different measures concerning part of the agri-food chain, as summarised in the following figure:



These measures need to be further detailed.

4. Main measures of the French Law on Food Waste

The legislative choice to fight against food waste has led to the cohabitation of different types of measures integrated in diverse breaches of Law and Policy. Environmental Law constitutes the first pillar of the legislative edifice providing the principles regulating unsold food under the environmental Regulation (Code de l'environnement). Directly linked to this, rules for food aid or charity are set in the environmental Regulation (Code de l'environnement) and in the Social and Health Policy (Code de l'action sociale). It is the second pillar. Another breach of Law is involved: Information Consumer Law with the date of minimum durability issue (Code de la consommation). A fourth pillar has to be also underlined: Food Policy promotes food waste strategies (Code Rural).⁷

⁷ We won't speak about: provision on harmonized system of sorting instructions for household packaging (Article L. 541-15-10 Code de l'environnement) or for plastic that can be used for Food (Articles L. 541-15-11 and 12 Code de l'environnement); nor about the subsidies for investment in equipment that can support no-food waste strategy (see for eg. Arrêté du 6 février 2021 relatif au soutien de certaines cantines scolaires dans le cadre du plan de relance, JORF n°0033 du 7 février 2021).

4.1 Environmental Issue: Hierarchy, Strategy and Label

This is the pillar on which rests the whole food waste Regulation. It is based on two key elements⁸:

The first is a legal ban: food distributors, wholesalers, food industry operators producing foodstuffs (according to the law, “those that can be delivered as such to a food retail outlet and institutional catering operators”) may not deliberately declare their unsold food which is still consumable to be unfit for human consumption or for any other form of recovery (Article L. 541-15-5 Code de l’environnement). This measure is reinforced with the prohibition of any advertising or commercial communication that encourages the degradation of products and prevents their reuse or recycling (L. 541-15-9 Code de l’environnement)⁹.

Faced with this legal ban, above-mentioned agri-food operators shall ensure the distribution of their foodstuffs or their valorisation in accordance with the following hierarchy (Article L. 541-15-4 Code de l’environnement):

1. the prevention of food waste;
2. the use of unsold food suitable for human consumption, through donation or processing;
3. the recovery for animal feed;
4. the use of compost for agriculture or energy recovery, in particular by methanization.

This hierarchy recalls Article 4 of the Directive 2008/98/EC that states that before eliminating a product, “The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal”.

In accordance with this hierarchy, part of the agri-food operators and catering, whether public or private, has to develop a no-food waste strategy before the first of January 2021, on the basis of a preliminary internal diagnosis of food waste (Article L. 541-15-3 Code de l’environnement). That is to say that public Authorities or private Companies have to estimate the quantities of foodstuffs wasted and their cost and the supplies of organically grown

⁸ We won’t speak about the institutional aspects of the waste policy, but we want to mention the Regional Waste Prevention and Management Plan (Articles R541-13 to R541-27 Code de l’environnement) that refers to “an inventory of measures to prevent bio-waste, including actions to combat food waste” (Article D541-16-1 Code de l’environnement).

⁹ Following the same provision: any advertising or commercial communication promoting the disposal of products must contain information encouraging re-use or recycling.

products or other quality products, known as “EGALIM” quality products”¹⁰ that the savings linked to the reduction of this waste would have enabled them to finance. Part of these operators will also have to provide their customers, upon request, with reusable or recyclable containers for taking away food or beverages not consumed on the premises (Article L. 541-15-7 Code de l’environnement).

This strategy and their results in terms of food waste and food insecurity¹¹ will have to be integrated into the extra-financial performance declarations of the companies that are subject to it (Articles L. 225-102-1 and R. 225-105-1-I2ci Code de commerce) and the companies that do not have this obligation will have to make public their commitments in this area by any means of communication (Article L. 541-15-6-1 Code de l’environnement).

The State has also set up a national label against food waste that can be granted to local public Authorities, as well as agro-food companies, retailers, catering and non-profit organizations (Article L. 541-15-6-1-1 Code de l’environnement). These can benefit from this label for three years as long as they contribute to the national objectives of reducing food waste (Reduce food waste by 50% from its 2015 level) and respect the requirement specification approved by decree not yet published (Article L. 541-15-6-2 Code de l’environnement).

4.2 Social Issue: Food Charity

There is a direct link between the fight against food waste and the fight against food insecurity, which “aims to promote access to a safe, diversified, good quality and sufficient quantity of food to people in economic or social vulnerability” (Article L. 266-1 of the Code de l’action sociale). Indeed, implementing the above-mentioned legal ban and hierarchy of the Articles L. 541-15- 4 and L. 541-15-5 of the Code de l’environnement, agri-food chain operators have to re-use their unsold products and one of the ways of re-using is to donate food to non-profit Organisations that will distribute foodstuffs to food aid recipients (Article L. 541-15-6 Code de l’environnement).

¹⁰ Since Law EGALIM 2018 (reviewed), following Articles L. 230-5 and L. 230-5-1 Code rural, by January 1, 2022 at the latest, the meals served in collective restaurants for which Public Authorities or Private Companies are responsible must include at least 50% of products that meet one of the following conditions, among which products mentioned in point 2 have to be at least 20%: 1° Products taking into account the costs imputed to environmental externalities during their life cycle; 1° bis Products whose acquisition was based primarily on performance in terms of environmental protection in compliance with the code of public procurement; 2° Or from organic farming; 3° Or benefiting from other official quality signs; 3° bis Or from fair trade; 4° Or benefiting from the sustainable fishing ecolabel; 5° Or benefiting from the graphic symbol specific to the outermost regions; 6° and 7° Or benefiting from an “High Environmental Value” (HVE) label; 8° Or satisfying in an equivalent manner the requirements defined by these signs, labels, ecolabels or certification within the meaning of EU Law on public procurement.

¹¹ See below 4.2.

Relationships between food-chain operators and non-profit Organisations are organised on the basis of an agreement. To contract (and to receive financial subsidies from EU or French State), these non-profit Organisations have to be accredited in accordance with Article L. 266-2 of the Code de l'action sociale (amended by Law No 2021-1104).

The scope of operators required to give their unsold foodstuffs has grown significantly in recent years. In 2016 only food retailers with a sales area of more than 400 square meters were concerned (origin: Law "Garot" of 2016). Since Law No. 2020-105 of 10 February 2020 (Law "AGEC"). Now, it also applies to public or private collective catering operators who produce more than 3,000 meals per day and to food distributors, wholesalers, food industry operators whose annual turnover exceeds fifty million euros (Article L. 541-15-6 Code de l'environnement). Other operators that are not obliged to give their unsold foodstuffs to non-profit Organisations are able to do it anyway: it concerns food retailers whose sales area is less than 400 square meters and also non-sedentary traders, caterers and reception organizers (Article L. 541-15-6 Code de l'environnement).

4.3 Consumer Information Issue: Date of Minimum Durability

It seems that consumers have difficulty to understand the difference between the 'use by' date and the date of minimum durability¹² on food labelling. This confusion would be a source of food waste since foodstuffs including a date of minimum durability are thrown away while they are still healthy and consumable¹³.

This is why the French legislator introduced a provision in 2020 (Law 2020-105) that aims to remind consumers that products with a date of minimum durability can still be consumed: when a food product includes a date of minimum durability, it can be accompanied by a note, informing consumers that the product remains consumable after this date (Article LM. 412-7 Code de la consommation).

Even if this provision still provides a facility and not an obligation, it completes the legal toolbox of the fight against food waste.

¹² In France, it was called the date of optimal consumption (DLUO) until the Law 2020-105 of February 10, 2020 on the fight against waste and the circular economy.

¹³ More generally, this question of the expiration date and/or edibility of food refers to the problem of changing consumer practices with regard to food waste: see for eg. A. Di Lauro, *Lo sprecho alimentare: il ruolo della norma sulle determinanti personali e sociali dei comportamenti alimentari*, in R. Budzinowski (ed.) *Contemporary Challenges of Agricultural Law: among Globalisation, Regionalisation and Locality*, UAM ed., 2018431-437.

Provisions registered within the framework of the French Food Policy go in the same direction.

4.4 Food Policy Issue: No-food Waste Strategy

Food policy, expressed under the French Food National Program (programme national pour l'alimentation – PNA) and the National Food and Nutrition Program (programme national de l'alimentation et de la nutrition – PNAN), aims in particular to provide guidelines, incentives and concrete measures focused on fighting against food waste (Article 1 Code rural).

For example, it promotes a national challenge co-financed by the State and private operators, called “zero food waste”, which aims to get students to work on a concrete project related to the fight against food waste (défi national « zéro-gaspi »)¹⁴. There is also a “gourmet bag” brand, launched in 2014 by the Ministry of Agriculture and Food, that can be used by commercial catering establishments and drinking establishments which are obliged to provide re-usable or recyclable containers or recyclable containers to take away food or beverages not consumed (Article L. 541-15-7 Code de l'environnement).

Moreover, it promotes the development of local policies (“territorial anchoring” says the Law). Among the key tools of this policy are the Local Food Plans (projets alimentaires territoriaux – PAT, Article L. 111-2-2 Code rural)¹⁵. These are collective projects developed by and with all the actors of a territory, whose main objective is to create a territorial food system that promotes the economic and environmental resilience of local sectors and guarantees national food sovereignty. Today there are around 200 PAT in France and part of them provides measure to fight against food waste, like food education events (zero waste cooking workshops, for example.)¹⁶. But above all, each PAT creates a space or forum where private and public actors concerned with food have the opportunity to build partnerships and networks in order to improve the local circulation and consumption of local Food¹⁷.

¹⁴ Programme national pour l'alimentation (PNA) 2019-2023, Action 15 and 16, p. 21.

¹⁵ L. Bodiguel, Le développement des projets alimentaires territoriaux en France : quel droit pour quelle relocalisation de l'agriculture et de l'alimentation ?, in R. Budzinowski (ed.) *Contemporary Challenges of Agricultural Law: among Globalisation, Regionalisation and Locality*, UAM ed., 2018, 409-415.

¹⁶ PAT network : <https://rnpat.fr/projets-alimentaires-territoriaux-pat/presentation-banque-pat/> (06.12.2021). See also <https://agirpourelimentationlocale.fr/> on tools for Local Public Authority to act for Local Food Governance (06.12.2021).

¹⁷ C. Darrot, G. Maréchal, T. Bréger, Rapport sur les Projets Alimentaires Territoriaux (P.A.T.) en France : Etat des lieux et analyse, Document de travail pour l'Institut Hanseo-Agrico, Séoul, République de Corée, 4 octobre 2019 diffusion restreinte ; G. Maréchal, J. Noël et F. Wallet, Les projets alimentaires territoriaux (PAT) : entre rupture, transition et immobilisme ? Pour 2018/2-3 (N° 234-235) Pages 261 à 270 [on : <https://www.cairn.info/revue-pour-2018-2.htm#>].

5. No-food Waste French Regulation Scope and Gaps

In light of the preceding developments, it can be seen that French Law and Policy to fight against food waste now covers a large part of the actors and sectors of the agri-food-chain. Restaurants and caterers, wholesalers and retailers, processors and distributors are all subject to increasing requirements: a ban on throwing away unsold food; an obligation to promote re-use, in particular through food donation, and recycling; an obligation to implement strategies to fight against food waste and to communicate on them; the possibility of additional information on the date of minimum durability to avoid consumer confusion; the provision of doggy bags. Consumers are also directly concerned by the educational and awareness actions carried out or not under the PNA and the PNAN.

The regime of sanction if an agri-food chain operator fails to comply with the different provisions on fighting against food waste is, on the whole, satisfactory. The main rule concerns people who deliberately declare unfit for human consumption unsold foodstuffs that are still consumable (Article L. 541-15-47 Code de l'environnement). This infringement of the article L. 541-15-5 of the Code de l'environnement is punished by a fine of up to 0.1% of the turnover excluding tax (based on the last financial year). Within this limit, judges can apply the amount of the fine proportionately according to the seriousness of the facts established, in particular to the number and the volume of the products in violation. They also can decide to accompany the fine with the additional penalty of publication of the decision pronounced. A second rule aims to limit the influence of marketing: as has been already mentioned, any advertising or commercial communication that encourages the degradation of products and prevents their re-use or recycling is prohibited (L. 541-15-9 Code de l'environnement). And if an agri-food chain operator does not conclude an agreement with accredited non-profit Organisation when it has to do it, it is punishable by a fine for a "fifth-class infraction"¹⁸ (L. 541-15-6 V Code de l'environnement). Last rule, if an operator does not comply with its reporting obligation, it falls under the scope of Article L. 225-102-1 VI of the Code de commerce : any interested person may ask the president of the court to order the board of directors or the management board, to communicate the required information, including that concerning the fight against food waste.

But the legal system to fight against food waste is not perfect and has to be improved in the future:

¹⁸ Based on Article 131-13 Code pénal, a fifth-class infraction consists of a fine of 1 500 € to 3 000 €.

Firstly, some actors of the agri-food chain have been forgotten: farmers, logistics and transport companies, and all the “Pre-Food” Chain Companies (Chemicals, Grain and seed...) are not targeted by the fight against food waste. However, they should be involved, when they are directly concerned with Food Products. And it is not only a problem of semantics between Food Waste (“*decrease in the quantity or quality of food resulting from decisions and actions by retailers, food service providers and consumers*”) and Food Loss (“*decrease in the quantity or quality of food resulting from decisions and actions by food suppliers in the chain, excluding retailers, food service providers and consumers*”) that can justify these gaps¹⁹.

Secondly, food charity is organised as the final outlet for the surpluses of supermarkets and other operators in the long supply chains of the dominant economic model. If this organisation seems very useful and rational, some authors, interested by the Care Approach, criticized it because it does not take into consideration culture and individuals²⁰.

Thirdly only the biggest operators are really concerned because of the effect of thresholds (400 m²; 50000 euros). It is not to say that the others operators cannot act but Law is not encouraging for nor binding on them.

Fourthly, the regime of sanction should be improved because some uncertainties remain: what about the sanction if agri-food chain operators do not develop a binding food strategy? And is the limitation for advertising enough to balance the impact of food marketing on consumer consent and on waste²¹: if “Legislator” tries to fight against food waste requiring good practice from agri-food chain operators but leaves them free to communicate for more consumption, maybe the balance will be negative. Another point has to be underlined: it is not sure that the facility to add a note informing consumers that the product remains consumable after date of minimum durability (Article LM. 412-7 Code de la consommation) is efficient. It should be discussed.

¹⁹Definition from FAO: <https://www.fao.org/food-loss-and-food-waste/flw-data> (06.12.2021).

²⁰ D. Paturel, M. Ramel, Éthique du care et démocratie alimentaire : les enjeux du droit à une alimentation durable : Rev. fr. éthique appliquée, n° 4, 2017-2, 49-60.

²¹ On the consumer consent issue, see A. Di Lauro, La scelta consapevole del consumatore di alimenti: una chimera?, in A. Di Lauro (a cura di) *NutriDialogo. Il Diritto incontra le altre Scienze su Agricoltura, Alimentazione e Ambiente*, Ets, 2015, p. 215-221 ; A. Di Lauro, Marketing sensoriel et normativité alimentaire : quel défi pour les juristes in D. Paturel et P. Ndiaye (eds) *Le droit à l'alimentation durable en démocratie*, Champ Social Editions, 2020, p. 176-190 ; A. Di Lauro, Neuroscienze e diritto. Ripensare il libero arbitrio in campo penale, civile ed alimentare, *Rivista italiana di Medicina Legale e del Diritto in campo sanitario*, n. 4/2018, 1429.

6. Conclusion

Despite these various criticisms, there is no doubt that since the last Law n° 2020-105 of 10 Feb. 2020, the French legal regime to fight against food waste has been strongly consolidated.

This trend of increasing standards to combat food waste should continue: in this way, a new Law Proposal for a new step against food waste (n° 3725, January 5, 2021) is still in discussion at Parliament. The proposal is far from having completed its legislative course and it is difficult to predict what will remain. At this stage, it essentially includes measures that will contribute to the completion of the legislation on consumer information (compulsory mention of the date of minimum durability; experimentation of a smart label that changes colour or texture when the perishable food approaches its expiration date), on reporting requirement for agri-food operators (more and better quantified) and, for the first-time, measures that concerns farmers in the no-food waste Regulation with the possibility of a harvesting agreement. Two important keys points of the proposal have already been excluded from parliamentary debates: the obligation to integrate food education in the school programmes and the introduction of value-based aid to combat food insecurity.

includes measures that will