

COMMISSION NOTICE**Guidelines for the feed use of food no longer intended for human consumption**

(2018/C 133/02)

CHAPTER 1

INTRODUCTION**1.1. Background, objective and scope**

The Commission established an action plan to reduce food waste as integral part of the communication on the Circular Economy ⁽¹⁾. One of the initiatives is, without competing with the sourcing of food banks ⁽²⁾, to valorise the nutrients of food ⁽³⁾ which is, for commercial reasons or due to problems of manufacturing or certain defects, no longer intended for human consumption, through its safe use in animal nutrition, without compromising animal and public health. Thus, the feed use of such food avoids that these materials are composted, transformed in biogas or disposed of by incineration or landfilling. The distinction between food, animal by-products, feed and waste has evident implications with respect to the legislative framework governing the different kinds of products concerned.

A consultation of stakeholders was undertaken in the margins of the EU Platform on Food Losses and Food Waste ⁽⁴⁾ in the fourth quarter of 2016 in order to identify the issues with respect to this initiative. The operators claimed the following significant or disproportionate burdens which might hinder or even prevent them from supplying food no longer intended for human consumption to be used as feed:

- Issues affecting the capability to ensure compliance of food no longer intended for human consumption for feed use with the feed legislation, i.e. the requirements concerning feed safety: application of procedures based on the hazard analysis and critical control points (HACCP) principles, specific labelling, segregated storage and transportation of the food no longer intended for human consumption,
- Double registration of establishment as food and feed businesses leading to additional auditing of their establishments by several different control authorities (food, animal by-products, feed, waste),
- Obligation, in several Member States, to participate in private certification schemes for Good Manufacturing Practice to deliver feed to the feed industry, even though such schemes are *de jure* voluntary,
- Lack of harmonisation of the requirements for the registration of food business operators in the Member States; some require registration as feed business operator only if food no longer intended for human consumption of non-animal origin is directly delivered as feed to farmers, whereas others require registration of all food business operators as feed business operators which deliver food no longer intended for human consumption to be used as feed.

These guidelines intend to address these issues within the existing legal framework. Thus they do not create any new legal provisions, nor do they seek to cover all provisions in this area in an exhaustive manner. It should also be noted that they are without prejudice to the interpretation of Union law provided by the Court of Justice of the European Union.

⁽¹⁾ Closing the loop — an EU action plan for the Circular Economy, COM (2015) 614 final, 2.12.2015.

⁽²⁾ For EU Guidelines on Food donation, see http://ec.europa.eu/food/safety/food_waste/library/index_en.htm

⁽³⁾ According to Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council (OJ L 31, 1.2.2002, p. 1), 'food' and 'foodstuff' are interchangeable (*not relevant for language versions that have used only one word as translation for 'food' and 'foodstuffs'*).

⁽⁴⁾ https://ec.europa.eu/food/safety/food_waste/eu_actions/eu-platform_en

The objective of these guidelines is to facilitate the feed use of certain food no longer intended for human consumption, with and without products of animal origin. The guidelines should assist the national and local competent authorities and the operators in the food chain in applying the relevant Union legislation. This objective should be achieved by:

- explaining the legislation applicable depending on the classification of a certain product,
- enhancing legal clarity, and
- presenting examples of best practices that are in compliance with the current Union regulatory framework while preventing unnecessary administrative burden.

The scope of these guidelines covers:

- products from the food manufacturing process (supplied by food producers), and
- food which has been placed on the market, packaged or in bulk (supplied by wholesalers and retailers of food).

These guidelines do not address the feed use of:

- food additives, food enzymes and food flavourings as referred to in Regulation (EC) No 1331/2008 of the European Parliament and of the Council ⁽¹⁾,
- food supplements as referred to in Directive 2002/46/EC of the European Parliament and of the Council ⁽²⁾, and
- catering waste ⁽³⁾.

1.2. Legal definitions

The general rules for introducing food into the feed chain are laid down in Regulations of the European Parliament and of the Council (EC) No 178/2002 ⁽⁴⁾, (EC) No 183/2005 ⁽⁵⁾ and (EC) No 767/2009 ⁽⁶⁾ and the rules for animal by-products not intended for human consumption in Regulation (EC) No 1069/2009 of the European Parliament and of the Council ⁽⁷⁾ (hereinafter 'the animal by-product Regulation').

For the purposes of this Notice, 'food no longer intended for human consumption' means food which was manufactured for human consumption in full compliance with the Union food law but which is no longer intended for human consumption.

Food is defined in Article 2 of Regulation (EC) No 178/2002 as 'any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans'.

Food business is defined in Article 3(2) of Regulation (EC) No 178/2002, as 'any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food'.

⁽¹⁾ Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L 354, 31.12.2008, p. 1).

⁽²⁾ Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

⁽³⁾ According to Commission Regulation (EU) No 142/2011 (OJ L 54, 26.2.2011, p. 1), 'catering waste' means all waste food, including used cooking oil originating in restaurants, catering facilities and kitchens, including central kitchens and household kitchens.

⁽⁴⁾ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

⁽⁵⁾ Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene (OJ L 35, 8.2.2005, p. 1).

⁽⁶⁾ Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (OJ L 229, 1.9.2009, p. 1).

⁽⁷⁾ Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1).

Food business operator is defined in Article 3(3) of Regulation (EC) No 178/2002, as 'the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control'.

Feed is defined in Article 3(4) of Regulation (EC) No 178/2002, as 'any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used for oral feeding to animals'.

Feed business is defined in Article 3(5) of Regulation (EC) No 178/2002, as 'any undertaking whether for profit or not and whether public or private, carrying out any operation of production, manufacture, processing, storage, transport or distribution of feed including any producer producing, processing or storing feed for feeding to animals on his own holding'.

Feed business operator is defined in Article 3(6) of Regulation (EC) No 178/2002, as 'the natural or legal persons responsible for ensuring that the requirements of food law are met within the feed business under their control'.

Establishment is defined in Article 3(d) of Regulation (EC) No 183/2005 as 'any unit of a feed business' and by Article 2(1)(c) of Regulation (EC) No 852/2004 of the European Parliament and of the Council ⁽¹⁾ as 'any unit of a food business'.

Establishment (or plant) is defined in Article 3(13) of the animal by-product Regulation as 'any place where any operation involving the handling of animal by-products or derived products is carried out, other than a fishing vessel'.

Retail is defined in Article 3(7) of Regulation (EC) No 178/2002 as 'the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets'.

Placing on the market is defined in:

- (a) Article 3(8) of Regulation (EC) No 178/2002 as 'the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves'; and
- (b) Article 3(14) of the animal by-product Regulation as 'any operation the purpose of which is to sell animal by-products or derived products to a third party in the Community or any other form of supply against payment or free of charge to such a third party or storage with a view to supply to such a third party'.

Animal by-products are defined in Article 3(1) of the animal by-product Regulation as 'entire bodies or parts of animals, products of animal origin or other products obtained from animals, which are not intended for human consumption, including oocytes, embryos and semen'.

Derived products are defined in Article 3(2) of the animal by-product Regulation as 'products obtained from one or more treatments, transformations or steps of processing of animal by-products'.

'Former food' is defined in point 3 of Part A of the Annex to Commission Regulation (EU) No 68/2013 ⁽²⁾ as 'foodstuffs, other than catering reflux (catering waste), which were manufactured for human consumption in full compliance with the Union food law but which are no longer intended for human consumption for practical or logistical reasons or due to problems of manufacturing or packaging defects or other defects and which do not present any health risks when used as feed'.

⁽¹⁾ Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

⁽²⁾ Commission Regulation (EU) No 68/2013 of 16 January 2013 on the Catalogue of feed materials (OJ L 29, 30.1.2013, p. 1).

'Feed materials' are defined in Article 3(2g) of Regulation (EC) No 767/2009 as 'products of vegetable or animal origin, whose principal purpose is to meet animals' nutritional needs, in their natural state, fresh or preserved, and products derived from the industrial processing thereof, and organic or inorganic substances, whether or not containing feed additives, which are intended for use in oral animal-feeding either directly as such, or after processing, or in the preparation of compound feed, or as carrier of premixtures'.

Waste is referred to in the Waste Framework Directive 2008/98/EC of the European Parliament and of the Council ⁽¹⁾ (Waste Framework Directive) as 'any substance or object which the holder discards or intends or is required to discard'. Clarifications with respect to the key term 'discard':

- Discard includes both recovery and disposal of waste. However, this does not mean that any substance which undergoes a recovery/disposal operation is waste per se,
- Discard may involve any substance with a positive, neutral, or negative commercial value,
- Discard may be legally required, intentionally decided by the holder or unintentional,
- The storage location of a material does not predetermine its classification as waste.

'Recovery' is defined in the Waste Framework Directive as any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy.

1.3. Classification of food no longer intended for human consumption

Foodstuffs no longer intended for human consumption

- (a) products not consisting of, containing or contaminated with products of animal origin; those products of non-animal origin can:
 - (i) directly become feed within the definition and scope of Regulation (EC) No 178/2002, if they are by-products arising from the food manufacturing process; or
 - (ii) become waste within the definition and scope of the Waste Framework Directive (before becoming feed), if they are final products;
- (b) products consisting of, containing or contaminated with products of animal origin; those products of animal origin become animal by-products within the definition and scope of the animal by-product Regulation (before becoming feed).

To withdraw a product from the food supply chain and ensure that it is no longer destined for human consumption may be either required by law (e.g. a perishable food which must not be placed on the Union market past its 'use by' date, due to being unsafe for human consumption), or be the decision of the responsible food business operator. A decision taken to remove a product from the food supply chain intended for human consumption is irreversible.

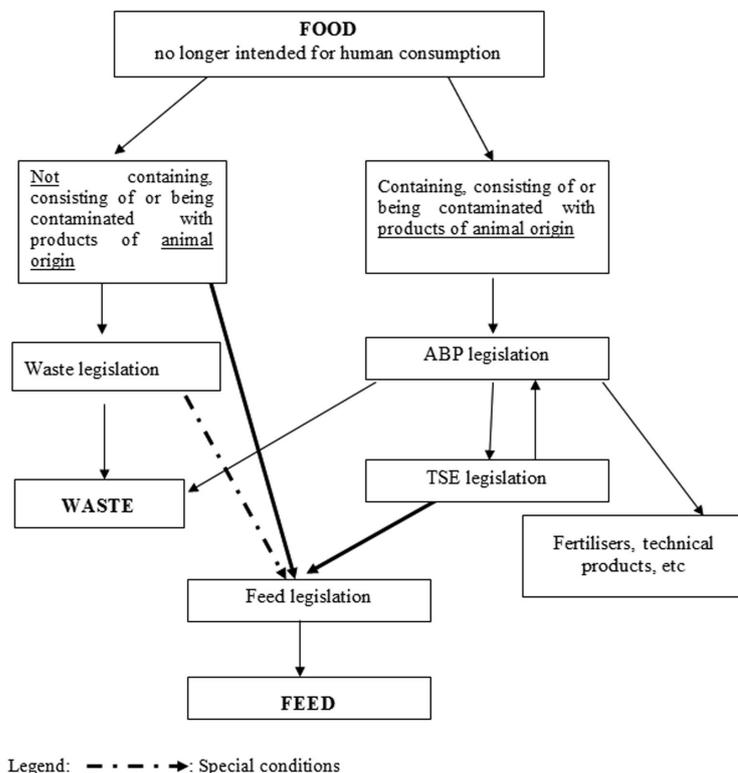
If the food consists of, contains or is contaminated with products of animal origin, it is directly subject to the rules set out in the animal by-products Regulation. Therefore, food of animal origin which is no longer intended for human consumption becomes first an animal by-product and, subject to the rules laid down in the animal by-product Regulation and in the transmissible spongiform encephalopathies Regulation (Regulation (EC) No 999/2001 of the European Parliament and of the Council ⁽²⁾), can become feed; this is addressed in Chapter 4 of this Notice.

⁽¹⁾ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

⁽²⁾ Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ L 147, 31.5.2001, p. 1).

If the labelling of a certain batch of a product declares that it is not intended for feed use, this declaration may not be subsequently altered by an operator at a later stage of the chain. These products cannot enter the feed chain later on (Annex II to Regulation (EC) No 183/2005).

Figure
Flow chart from food to feed



CHAPTER 2

GENERAL RULES

Article 15 of Regulation (EC) No 178/2002 prohibits the placing on the market of feed or the feeding of food-producing animals with feed which is unsafe. Article 4 of Regulation (EC) No 767/2009 expands that principle to all animals.

In accordance with Article 17(1) of Regulation (EC) No 178/2002, it is the primary responsibility of the feed business operators at all stages of production, processing and distribution within the businesses under their control to ensure that feeds satisfy the requirements of food law which are relevant to their activities and to verify that such requirements are met.

Determining the facts and circumstances which may render an operator liable to criminal penalties and/or civil liability is a matter which depends on the structure of the different national legal systems. Further information concerning the meaning and impact of Article 17(1) of Regulation (EC) No 178/2002 in relation to the allocation of responsibilities in the agro-food chain can be found in the guidance on the implementation of General Food Law ⁽¹⁾.

According Article 18 of Regulation (EC) No 178/2002, food and feed business operators shall be able to identify any person from whom they have been supplied with a food, a feed, a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food or feed. This traceability principle ensures the integrity of the entire food chain.

⁽¹⁾ Guidance on the implementation of Articles 11, 12, 14, 17, 18, 19 and 20 of Regulation (EC) No 178/2002 on General Food Law (https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_req_implementation-guidance_en.pdf p. 12).

CHAPTER 3

FOOD NOT CONTAINING PRODUCTS OF ANIMAL ORIGIN WHICH IS NO LONGER INTENDED FOR HUMAN CONSUMPTION**3.1. Food not consisting of, containing or being contaminated with products of animal origin, and waste legislation**

If products from food manufacturing and food are not consisting of, containing or being contaminated with products of animal origin and if they are no longer intended for human consumption, i.e. discarded food, they may become waste or be used as feed. Four cases have to be distinguished, as set out in the following points (a) and (b):

(a) Products arising from the food manufacturing process, other than final products:

Numerous sectors of the food industry generate by-products in their production process that can be used as feed, e.g.

Sunflower seed crushing generates sunflower seed expeller,

Flour milling generates wheat germ,

Sugar production generates sugar beet molasses,

Starch production generates starch hydrolysates cake,

Bakery and pastry production not containing animal products generates by-products from the bakery and pasta industry.

Those by-products from the food industry do not have a 'use by' or 'best before' date as referred to in Section 5.1 but the approach concerning 'materials fallen on the floor in food establishments' as referred to in Section 5.2 applies. The by-products are not considered waste if they meet the cumulative criteria established in Article 5 of the Waste Framework Directive⁽¹⁾. The burden to prove to the competent authority, that the criteria for a non-waste classification of a specific product are met, is on the respective food business operator.

Some national waste authorities require from the food industry a specific certificate containing a detailed justification that a specific product which they supply for feed use meets the criteria set out in the Waste Framework Directive for a non-waste classification. This certificate can be considered superfluous since a food business establishment, e.g. a brewery, from which yeast is dispatched as feed material must be registered as a feed business establishment and is therefore under the full control of the feed authorities.

(b) Final food products at food manufacturing level and at wholesale or retail level:

A food business operator may decide that final food products at food manufacturing level (e.g. sugar, sunflower oil, broken or misshapen biscuits) and food which have been placed on the market and reached the wholesale and retail level (e.g. bread in bakeries or supermarkets) should no longer be intended for human consumption but rather be destined for feed use. Such products do not meet the by-product criteria in the Waste Framework Directive, even if they are intended to be used as feed. Consequently, many Member States' authorities strictly apply the requirements of the Waste Framework Directive to such foods and consider the food business operator's decision to remove them from the food supply chain as discarding the food. A good example of this practice is that trucks carrying food of non-animal origin and no longer intended for

⁽¹⁾ By-product criteria for products not to be considered waste (explanatory note in the Annex to this Notice):

- Production as an integral part of a production process
- Possibility for direct use without any further processing other than normal industrial practice
- The further use as animal feed is certain: it is not just a possibility but guaranteed that the material will be used in compliance with feed safety legislation
- The further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health-protection requirements for the specific use.

human consumption but intended to enter the feed chain (e.g. packaged biscuits crossing the borders between Member States) can be fined for not complying with the requirements of the Waste Framework Directive because the receiving Member State considers the consignment as waste.

The requirement to comply with Union waste legislation before food of non-animal origin can become a feed is a significant burden for operators that are considering to supply them into the feed chain. That requirement can raise obstacles to the free movement of such products in the internal market as some Member States require the application of transport rules based on Union waste legislation, while others apply food law. The Waste Framework Directive is currently being revised and the proposal of the Commission ⁽¹⁾ foresees an exclusion of materials of non-animal origin destined as feed from its scope.

The approaches concerning the 'use by' or 'best before' date as referred to in Section 5.1 and concerning 'materials fallen on the floor in food establishments' as referred to in Section 5.2 apply to final products as referred to in this Section.

Section summary

1. *By-products of non-animal origin from the food industry, as referred to in point (a) of this Section, should not be automatically considered waste and may fall directly under the feed legislation.*
2. *It is up to food business operators to prove that a by-product of non-animal origin as referred to in point (a) of this Section, which they place as feed on the market is not waste. However, the general requirement of a certificate as non-waste should be dispensable considering food business operators which place such by-products as feed on the market are also registered as feed business operators.*
3. *Subject to a future exclusion of materials of non-animal origin destined for feed from the scope of the Waste Framework Directive, the direct feed use of final food products as referred to in point (b) of this Section without being subject first to waste legislation will be allowed.*
4. *Pending the adoption and implementation of the revised Waste Framework Directive, final food products no longer intended for human consumption, as referred to in point (b) of this Section may be subject to Union and national waste legislation before they may be used as feed.*

3.2. Requirements for food business operators supplying food of non-animal origin to the feed chain

Establishments in the food chain ⁽²⁾ which are involved in production, distribution, wholesale and retail of food of non-animal origin are to be registered or approved according to the Food Hygiene Regulation (EC) No 852/2004 ⁽³⁾. A complete list of approved Union food establishments in the different Member States can be found here:

http://ec.europa.eu/food/safety/biosafety/food_hygiene/eu_food_establishments_en

The lists of food establishments which do not require approval but only registration are completely managed by the competent authorities in the Member States.

3.2.1. Requirements for operators providing products as feed or waste for recovery

In principle an operator may provide food no longer intended for human consumption as

— feed (by-products referred to in point 3.1(a) and, after the adoption and implementation of the revised Waste Framework Directive, also products referred to in point 3.1(b)),

⁽¹⁾ Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015PC0595>

⁽²⁾ Regulation (EC) No 178/2002 stipulates that the feed sector is integral part of the food chain.

⁽³⁾ Article 6 of Regulation (EC) No 852/2004 requires each establishment of a food business operator to be registered with the competent authority. The purpose of registration is to allow the competent authorities in the Member States to know where establishments are situated and what their activities are so as to enable official controls to be carried out whenever judged necessary.

— waste for recovery (final products referred to in point 3.1(b)).

(a) Products provided as feed

Regulation (EC) No 183/2005 establishes the scope of feed business operators that are subject to registration according to its Article 9. A feed business operator must ensure that all relevant provisions of feed legislation, such as feed hygiene rules, residue limits of contaminants or labelling, are complied with. Feed business operators not covered by Article 5(1) of Regulation (EC) No 183/2005 (primary producers) have to apply Annex II of that Regulation including establishing an HACCP plan. Generally ⁽¹⁾, an operator placing a feed on the market must be registered as feed business operator.

Food operators placing by-products arising from the food manufacturing process as referred to in part 3.1(a) on the Union market qualify as a feed business operator and must ensure compliance with the requirements of the feed legislation, including its registration as feed business operator.

(b) Products provided as waste for recovery

Final food products of non-animal origin no longer intended for human consumption as mentioned in part 3.1(b) could have, pending the adoption and implementation of the revised Waste Framework Directive, the status of 'waste for recovery'. Thus, the food operator would have to follow the national regime for the supply of these products into the feed chain. Once food of non-animal origin intended to be used as feed is exempted from the scope of Union and national Waste legislation, the food could directly enter the feed chain. This is exemplified for stale, packaged ⁽²⁾ bread from supermarkets: If the supermarket places such bread as non-compliant (see part 6.2) feed (i.e. former food in line with the definition mentioned in Section 1.2) with the denomination 'Product from the bakery and pasta industry' (entry 13.1.1 in the Catalogue of feed materials) on the market, the supermarket qualifies as a feed business operator and must ensure compliance with the requirements of the feed legislation, including its registration as feed business operator.

3.2.2. *Measures to increase the feed use of food no longer intended for human consumption*

The requirement for an already registered food business operator, who intends to supply a food to the feed chain, to register also as feed business operator, thus being responsible for all feed safety requirements, might prevent, e.g. small food retailers from doing so. In view of the objective to increase the feed use of food no longer intended for human consumption, there are two possibilities to reduce the burden for such food business operators:

(a) Support for food business operator to comply with feed law:

As established in Article 22 of the Feed Hygiene Regulation, guidelines could be developed for food retailers who dispatch food no longer intended for human consumption as feed; those guidelines would support them to cope with the feed law (safety measures, labelling, limits for contaminants). Moreover, assistance for the food retailers to develop a simplified, tailor made HACCP system as feed business operators could be provided by stakeholder associations.

⁽¹⁾ The Commission launched a project for guidance addressing, amongst others, the issue of the start of the feed chain. This document intends to develop a system at the borderline between food and feed which avoids superfluous administrative burden while simultaneously guaranteeing the integrity of the feed chain (Guidance document on the implementation of certain provisions of Regulation (EC) No 183/2005 laying down requirements for feed hygiene).

⁽²⁾ Annex III to Regulation (EC) No 767/2009 lists 'Packaging from the use of products from the agri-food industry, and parts thereof' as materials whose placing on the market or use for animal nutritional purposes is prohibited.

- (b) Food business operator places the relevant products as ‘food’ on the market:

The food retailer, registered or approved according to Regulation (EC) No 852/2004, places the food as such, in compliance with the provisions of the food law, on the market to a feed business operator who collects the food for transformation into feed or directly transforms it into feed ⁽¹⁾. The feed chain starts with the operator receiving the food. This feed business operator is responsible for the compliance with the feed law. In the example above, the supermarket would supply stale bread to a feed manufacturer. The food business operator would not need to be registered under Regulation (EC) No 183/2005 because the product he supplies is still food as such (i.e. rules for food apply) and not yet a feed. Moreover, it cannot be directly delivered to farmers to be fed to animals because it is not eligible for oral feeding without further processing.

Section summary

5. *Pending the adoption and implementation of the revised Waste Framework Directive, food of non-animal origin no longer intended for human consumption may enter the feed chain as ‘waste for recovery’ under the Union and national legislation governing such waste.*
6. *Guidelines for food business operators delivering food of non-animal origin no longer intended for human consumption as feed could alleviate their burden to cope with the rules of the feed law.*
7. *Food retailers delivering the relevant product as food to a feed business operator who transforms it into feed need not to be registered as a feed business operator.*

CHAPTER 4

FOOD CONTAINING PRODUCTS OF ANIMAL ORIGIN WHICH IS NO LONGER INTENDED FOR HUMAN CONSUMPTION

4.1. Food consisting of, containing or being contaminated with products of animal origin

Food consisting of, containing or being contaminated with products of animal origin may not be directly used in the manufacturing of feed. It must be firstly always subject to the provisions of the animal by-product Regulation. This Regulation clearly distinguishes food of animal origin which is no longer intended for human consumption for commercial reasons or due to problems of manufacturing or packaging defects or other defects (i.e. discarded food) from catering waste. Due to the absence of a defined minimum content of materials of animal origin, all such food consisting of, containing any quantity of or being contaminated with products of animal origin is subject to the animal by-product legislation.

A food business operator who decides to supply such food of animal origin for feed use is excluded from the scope of the Waste Framework Directive (Article 2(2)(b)) and subject to the controls set out in the animal by-product legislation.

Animal by-products contaminated with waste ⁽²⁾ that is subject to the controls under the Waste Framework Directive, shall be declared Category 2 or 1 material under the animal by-product Regulation and may not enter the feed chain at any later stage.

In accordance with Article 10(e) of the animal by-product Regulation, animal by-products arising from the production of products intended for human consumption, including degreased bones, greaves and centrifuge or separator sludge from milk processing is to be categorised as a Category 3 material (feed use), as referred to in that Regulation.

⁽¹⁾ This food is different from former food as defined in Section 1.2 because the operator responsible for the placing on the market does not guarantee that it ‘does not present any health risks when used as feed’.

⁽²⁾ With respect to presence or residues of packaging materials, Section 6.2 applies.

In accordance with Article 10(f) of the animal by-product Regulation, foodstuffs containing products of animal origin, which are no longer intended for human consumption for commercial reasons or due to problems of manufacturing or packaging defects or other defects from which no risk to public or animal health arise, are to be categorised as a Category 3 material. Category 3 materials referred to in Article 10(f) of the animal by-product Regulation are normally delivered to an animal by-product processing plant jointly with or mixed with wrapping and packaging, which both constitute waste material. Wrapping and packaging is segregated from animal by-products only in the Category 3 animal by-product processing plant. The mix of waste and animal by-products does not a priori need to be classified as Category 2 or even Category 1 material.

Food of animal origin no longer intended for human consumption destined for feed use is subject to specific processing requirements and use restrictions as set out in Section 4.3 of this Notice.

4.2. **Registration of food business operators supplying food of animal origin no longer intended for human consumption**

All operators which are active at any stage of the generation, transport, handling, processing, storage, placing on the market, distribution, use or disposal of animal by-products and derived products must be registered in accordance with Article 23 of the animal by-product Regulation unless they have already been approved in accordance with Article 24 thereof. The list of operators, plants or establishments registered or approved in accordance with the animal by-product Regulation is published at the following link:

http://ec.europa.eu/food/safety/animal-by-products/approved-establishments_en

Pursuant to Article 23(4) of the animal by-product Regulation, no registration is required for establishments generating animal by-products and which have already been approved or registered in accordance with Regulation (EC) No 852/2004 and Regulation (EC) No 853/2004 of the European Parliament and of the Council⁽¹⁾. However, that derogation does not exempt operators from the obligation to be approved under the animal by-product Regulation if they carry out activities described in Article 24 of that Regulation.

Processed animal by-products for feed use may only be supplied to feed business operators registered or approved in accordance with Regulation (EC) No 183/2005.

4.3. **Processing requirements and use restrictions of food of animal origin no longer intended for human consumption**

The animal by-product Regulation and the transmissible spongiform encephalopathies Regulation establish strict rules limiting the possible feed uses of food no longer intended for human consumption consisting of, containing or contaminated with animal material depending on the types of animal material contained in it. For example, foodstuffs containing ruminant proteins other than milk/milk products or rendered fats must be excluded as feed for farmed animals, except for animals. As another example, foodstuffs containing fish may not be used directly as feed but may be further treated into fishmeal, and the fishmeal may not be fed to ruminant animals other than un-weaned ruminants. Thus, processors of the food must separate flows of food containing animal materials into food no longer intended for human consumption eligible/not eligible for the feed chain, or eligible for some species only, and must implement proper treatment and labelling to ensure an end use that is safe for human and animal health and complies with the animal by-product Regulation and the transmissible spongiform encephalopathies Regulation.

The animal by-product Regulation and the transmissible spongiform encephalopathies Regulation include processing requirements and restrictions on the feed use of food of animal origin no longer intended for human consumption, in order to protect animal health. A number of products of animal origin may be safe for human consumption, but not safe for animal health, e.g. because it may contain pathogens causing foot-and-mouth disease, classical swine fever or African swine fever. Furthermore, the transmissible spongiform encephalopathies Regulation includes a 'total feed ban', which prohibits the feeding of processed animal protein to farmed animals, with a few limited derogations, in order to prevent that BSE is recycled via the feed chain. Thus, a number of animal products which are eligible for human consumption are not eligible without further processing for feed use, or must be partly excluded from the feed chain.

⁽¹⁾ Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

Food no longer intended for human consumption containing protein of ruminant origin, other than dairy products, may not be fed to any farmed animals, except fur animals. For that reason, feed for fur animals and pet food are the only allowed feed uses of disposed food containing ruminant protein other than dairy products. However, food no longer intended for human consumption processed into ruminant rendered fat, in accordance with the animal by-products legislation, and containing no more than 0,15 % insoluble impurities by weight, may be fed to farmed animals.

Requirements for processing and placing on the market of discarded food of animal origin are laid down in Annex X to Commission Regulation (EU) No 142/2011 ⁽¹⁾.

Category 3 materials referred to in Article 10(a) to (m) of the animal by-product Regulation may be used for the manufacturing of feed for farmed animals after processing into processed animal protein or rendered fats in accordance with Annex X to Regulation (EU) No 142/2011.

Raw meat may be used for the manufacturing of pet food, to be placed on the market in accordance with Article 35 of the animal by-product Regulation and requirements laid down in Annex XIII to Regulation (EU) No 142/2011.

Former food may be used for the manufacturing of feed for fur animals, to be placed on the market in accordance with Article 36 of the animal by-product Regulation.

Certain Category 3 materials listed in Section 10 of Annex X to Regulation (EU) No 142/2011 may be placed on the market for feeding to farmed animals, without further treatment, provided that the material:

- is of the Union origin,
- has undergone processing as defined in Article 2(1)(m) of Regulation (EC) No 852/2004 or in accordance with Regulation (EU) No 142/2011,
- has not been in contact with any other Category 3 materials, and
- all necessary precautions have been taken to prevent the contamination of that material.

In accordance with Part II of Section 4 of Chapter II of Annex X to Regulation (EU) No 142/2011, the competent authority may authorise the processing, use and storage of milk, milk-based products and milk-derived products excluding centrifuge or separator sludge, which are Category 3 material, as referred to in Article 10(e) of the animal by-product Regulation, and milk, milk-based products and milk-derived products referred to in Article 10(f) and (h) of that Regulation. For example, the competent authority may allow the direct distribution of milk-based products to certain livestock farmers.

Moreover, the competent authority may in accordance with Article 18 of the animal by-product Regulation authorise for its own territory the collection and use of Category 2 and Category 3 material for feeding to zoo animals, circus animals, reptiles and birds of prey other than zoo or circus animals, fur animals, wild animals, dogs from recognised kennels or packs of hounds, dogs and cats in shelters or maggots and worms for fishing bait.

The following Table ⁽²⁾ summarises the authorised feed uses and required treatment of food no longer intended for human consumption and containing materials of animal origin, according to the animal by-product Regulation and the transmissible spongiform encephalopathies Regulation (as in force on 1.10.2017)

⁽¹⁾ Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

⁽²⁾ The table should be read from left to right as follows: the products in the first column may be used, without further treatment, for the manufacturing of pet food and feed for fur animals (Yes/No in the second column), and must be further processed in accordance with the ABP legislation to be used in feed for farmed animals other than fur animals (Yes/No in the third column) or in pet food (where the second column indicates 'No') and the fourth column indicates if there are restrictions to feed them to farmed animals other than fur-producing animals. With respect to the layout of the boxes: the darker the background, the more restrictive is the use.

Food no longer intended for human consumption consisting of, containing or contaminated with ⁽¹⁾ :	May be used without further treatment for pet food or feed for fur-producing animals:	Must be further processed in accordance with the ABP legislation in order to be used as feed for farmed animals other than fur-producing animals:	Allowed as feed for the following animals
<ul style="list-style-type: none"> — milk, milk-based products, milk-derived products, — eggs, egg products, — honey, — rendered fats, — non-ruminant gelatine/collagen, provided that the material of animal origin: <ul style="list-style-type: none"> — is of Union origin, — has undergone processing according to the food hygiene legislation. 	YES	NO	all animals
<ul style="list-style-type: none"> — milk, milk-based products, milk-derived products, — eggs, egg products, — honey, — rendered fats, — non-ruminant gelatine/collagen, if the material of animal origin has NOT undergone processing (e.g. table eggs, raw milk, honey, tiramisu containing raw eggs, etc.) or if it originates from third countries.	NO	YES	all animals
Fish or fishery products	NO	YES	non-ruminant animals including aquaculture animals, pets and fur animals
Non-ruminant meat	YES	YES	aquaculture animals, pets and fur animals
Meat products or blood products of non-ruminants	YES under certain conditions	YES	aquaculture animals, pets and fur animals

⁽¹⁾ If the discarded food contains or is contaminated with several categories of animal products indicated in the table, the stricter rule applies.

Food no longer intended for human consumption consisting of, containing or contaminated with ⁽¹⁾ :	May be used without further treatment for pet food or feed for fur-producing animals:	Must be further processed in accordance with the ABP legislation in order to be used as feed for farmed animals other than fur-producing animals:	Allowed as feed for the following animals
Gelatine, collagen or meat of ruminants	YES	Not applicable	pets and fur animals
Ruminant meat products	NO	Not applicable	pets and fur animals

4.4. Transport

Pursuant to a combined reading of Regulations (EC) No 178/2002 and (EC) No 852/2004, the transport of food must be separated from the transport of animal by-products and carried out in different, dedicated containers/trucks. Animal by-products must be transported in means of transport approved or registered in accordance with the animal by-product Regulation and accompanied by a commercial document.

Chapter summary

8. *Food no longer intended for human consumption and consisting of, containing or being contaminated with products of animal origin may not be directly used in the manufacturing of feed but is always subject first to the provisions of the animal by-product Regulation.*
9. *In principle, all operators which are active at any stage of the generation, transport, handling, processing, storage, placing on the market, distribution, use or disposal of animal by-products and derived products must be registered in accordance with the animal by-product Regulation.*
10. *Food consisting of, containing or being contaminated with products of animal origin of animal origin no longer intended for human consumption but destined for feed use is subject to specific processing requirements and use restrictions.*

CHAPTER 5

CONSIDERATIONS ON FOOD PAST THE 'USE BY' AND 'BEST BEFORE' DATES AND MATERIALS FALLEN ON THE FLOOR IN FOOD ESTABLISHMENTS

5.1. Food past the 'use by' and 'best before' dates

The date marking of food is established in Regulation (EU) No 1169/2011 of the European Parliament and of the Council ⁽²⁾. According to its Article 24(1), highly perishable food has a 'use by' date. It is under the responsibility

⁽¹⁾ If the discarded food contains or is contaminated with several categories of animal products indicated in the table, the stricter rule applies.

⁽²⁾ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

of food business operators to determine the 'use by' or 'best before' date, i.e. the length of shelf-life, taking into account safety, quality and marketing considerations. Some foods are exempt from the obligation of 'best before' labelling such as fresh fruit and non-perishable foods such as salt, sugar, vinegar. The only category of food for which date marking is prescribed by EU legislation is table eggs ⁽¹⁾.

A problem for an increased use of food past the 'best before' date as feed is that in certain Member States, competent authorities categorise such food automatically as:

- Category 2 material according to Article 9 of the animal by-product Regulation, if they contain products of animal origin, which excludes their use as feed, or,
- waste, if they do not contain products of animal origin, which excludes them as feed or at least has to be handled in compliance with waste legislation before it can be transformed to feed.

The 'best before' date is rather a quality than a safety standard. On a case by case consideration, the responsible feed business operator should check based on the HACCP principles if there is a public or animal health risk. If not the respective food could be used as feed.

The notion 'use by' date is addressed in Article 24(1) of Regulation (EU) No 1169/2011:

- 'In the case of foods which, from a microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability "best before" is replaced by the "use by" date. After the "use by" date a food shall be deemed to be unsafe in accordance with Article 14(2) to (5) of Regulation (EC) No 178/2002.'
- The aim of that provision is to clarify that a given food with an expired 'use by' date must not be placed on the Union food market due to its being unsafe for human consumption. Because Article 24(1) of Regulation (EU) No 1169/2011 refers to Article 14 of Regulation (EC) No 178/2002, which establishes general food safety requirements, and not to Article 15 of that Regulation (feed safety requirements), food which is no longer fit for human consumption may still be destined for the production of feed for farmed animals.
- As a prerequisite, food no longer intended for human consumption containing animal products must comply with the animal by-product Regulation. Article 14(d) of that Regulation specifically excludes from the use of feeding purposes Category 3 material which has changed through decomposition or spoilage so as to present an unacceptable risk to public or animal health through that product. Article 15 of Regulation (EC) No 178/2002 prohibits the placing on the market or the feeding of food-producing animal with feed which is unsafe. Article 4 of Regulation (EC) No 767/2009 expands this rule to all animals.
- In accordance with Article 17(1) of Regulation (EC) No 178/2002, it is the primary responsibility of the feed business operator at all stages of production, processing and distribution within the businesses under their control to ensure that feeds satisfy the requirements of food law which are relevant to their activities and to verify that such requirements are met. If operators cannot guarantee compliance with Article 10(f) of the animal by-product Regulation ('... no risk to public or animal health arise') or ensure collection and processing of Category 3 material into feed without contamination with Category 2 material as referred to in Article 9(g) of the animal by-product Regulation, the whole consignment should be categorised as a Category 2 material (no feed use).

⁽¹⁾ The 'best before' date is applicable to eggs marketed as class 'A/Fresh' (table eggs) and is laid down in Commission Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs. (OJ L 163, 24.6.2008, p. 6) (Article 12). Regulation (EC) No 853/2004, laying down specific hygiene rules for food of animal origin (point 3 of Chapter 1 of Section X, Annex III), further specifies that eggs must be delivered to the consumer within a maximum time limit of 21 days of laying.

5.2. Materials fallen on the floor in food establishments

Some food processors report that food is automatically considered to be waste (discarded) after it has fallen on the floor at the food establishments. This may make sense with respect to human consumption but not for animal nutrition. The contact with the floor as such should not exclude the feed use of the material fallen down as long as the producer has in place the following measures:

- a protocol to keep the floor clean,
- measures to prevent microbiological, chemical or physical contamination, and
- adequate equipment for collecting the food from the floor.

Those measures must be identified, assessed and adequate and should, as part of the business operator's mandatory HACCP system, address in particular the feed use of these materials at a later stage of the chain. However, food of animal origin which has been declared unfit for human consumption due to the presence of foreign bodies in those products is to be categorised as Category 2 materials which may not be fed to farmed animals, other than fur animals. The feed business operators placing feed on the market shall of course still ensure that the feed is sound, genuine, unadulterated, fit for its purpose and of merchantable quality.

Chapter summary

11. *Food past the 'best before' date may be used as feed provided that it meets the safety requirements in accordance with the feed legislation and, in case of food containing products of animal origin, complies with the provisions laid down in the animal by-product Regulation.*
12. *Food past the 'use by' date should not automatically be excluded from use as feed. If the feed business operator can guarantee that the food past the 'use by' date does not present a risk for animal and public health, it should be allowed to enter the feed chain.*
13. *Subject to certain conditions, materials falling on the floor in food establishments should not be automatically discarded and may be used as feed, provided a risk for animal and public health does not arise.*

CHAPTER 6

PLACING ON THE MARKET OF FEED

In accordance with Regulation (EC) No 767/2009, the following rules apply to the food no longer intended for human consumption intended for feed, in addition to the requirements for Category 3 material established in the animal-by-product legislation:

6.1. Labelling and packaging

The provisions in Chapter 4 of Regulation (EC) No 767/2009 concerning presentation, labelling and packaging apply for the placing on the market of former food, due to their status as feed materials. For bulk consignments of feed materials, the labelling particulars can be given on accompanying documents. The information to be provided in those accompanying documents consists of the respective feed labelling particulars and not of the data which may be still present on the food labels.

Whereas Article 8(8) of Regulation (EU) No 1169/2011 provides for an exemption from the general labelling requirements for deliveries between food business operators, Regulation (EC) No 767/2009 does not establish a derogation for deliveries for a feed business operator to another feed business operator which is not the final user (animal keeper).

6.2. Restrictions of use

Former food with packaging material (Annex III to Regulation (EC) No 767/2009) and with excessive chemical contamination (Directive 2002/32/EC of the European Parliament and of the Council ⁽¹⁾) or microbiological contamination ⁽²⁾ is prohibited from direct use as feed. Such feed materials are considered non-compliant feed. According to Article 20 of Regulation (EC) No 767/2009, the labelling of such products must clearly indicate that they cannot be used as feed without processing or decontamination. The labelling must according to Annex VIII to that Regulation also indicate the respective processing, such as removal of the packaging material or decontamination, necessary to be eligible for feed.

Chapter summary

14. *The general feed labelling requirements apply to former foodstuffs. Information which may still be present on the food labels does not ensure compliance with those requirements and is irrelevant to that purpose.*
15. *The labelling of food no longer intended for human consumption which does not comply with feed safety legislation (i.e. non-compliant feed) must clearly indicate that it can be only used as feed after adequate processing.*

⁽¹⁾ Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed (OJ L 140, 30.5.2002, p. 10).

⁽²⁾ Animal by-products categorised as Category 1 or Category 2 materials cannot change their category after a decontamination or detoxification process.

ANNEX

Explanatory note on the application of the by-products criteria in Article 5 of the Waste Framework Directive to products from the food industry not containing, consisting of or being contaminated with products of animal origin intended for feed (based on Commission Communication COM(2007) 59 final):

1. *Further use of the substance or object is certain;*

The intention to produce feed out of these substances makes them, subject to the condition that they meet certain characteristics which enable their feed use, a feed material and thus integrates them into the traceability system of the food chain.

2. *The substance or object can be used directly without any further processing other than normal industrial practice;*

Normal industrial practice includes all steps which a producer would take for a product, such as:

- filtering, washing or drying of materials,
- adding materials necessary for further use, or
- carrying out quality control.

However, treatments usually considered as a recovery operation may not, in principle, be considered as normal industrial practice in this sense. Some of such processing tasks may be carried out on the production site of the manufacturer, some on the site of the next user, and some by intermediaries, as long as they also meet the criterion of being 'produced as an integral part of a production process'. Processors of food no longer intended for human consumption must apply processes listed in the Catalogue of Feed Materials, which are widely recognised and accepted industrial practices.

3. *The substance or object is produced as an integral part of a production process;*

With increasing specialisation of industrial processes, activities carried out away from the production site of the manufacturer (such as drying, refining, washing) do not prevent material from being considered as a by-product. The use of food no longer intended for human consumption to manufacture compound feed does not require an additional recovery process. Processors of food no longer intended for human consumption (feed business operators) collect the material, which is treated as a raw material for feed purposes, and ensure a dedicated manufacturing process.

4. *Further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts;*

Further use of food no longer intended for human consumption in animal feed is subject to Union legislation on feed, in particular the Feed Hygiene Regulation, which includes the obligation of feed business operators to implement a full HACCP plan, as well as the Feed Marketing Regulation and the General Food Law.
