

No 498453

FRENCH REPUBLIC

**ACT - ALLIANCE CONTRE LE TABAC
ASSOCIATION**

ON BEHALF OF THE FRENCH PEOPLE

Ms Isabelle Tison
Reporting Judge (Rapporteure)

The Conseil d'État, ruling as the Supreme Administrative
Court
(Litigation Section, 1st and 4th Chambers combined)

Mr Thomas Janicot
Consultant Judge (Rapporteur public)

Based on the report of the 1st Chamber
of the Litigation Section

Session of 08 September 2025
Decision of 1st October 2025

Having regard to the following proceedings:

By an application and a memorandum in reply, registered on 16 October 2024 and 8 August 2025 with the Litigation Secretariat of the Conseil d'État, the Act - Alliance contre le tabac Association requested that the Conseil d'État:

1°) quash as ultra vires the implied decisions by which the French Prime Minister, the Minister of the Economy, Finance and Industrial and Digital Sovereignty, the Minister of the Interior and Overseas Territories and the Minister of Labour, Health and Solidarity rejected its request to take all appropriate measures to put an end to the breach of the prohibition on the sale or free supply to minors of tobacco and vaping products, as well as certain ingredients;

2°) order the State to take all appropriate measures liable to ensure compliance with these obligations, and in particular to strengthen, both quantitatively and qualitatively (using the “mystery customer” methodology), the inspection measures for tobacco retailers and to set quantitative targets therefor, but also to provide for more frequent and dissuasive sanctions, up to and including withdrawal of the licence, in the event of failure to comply with the prohibition on the sale or free supply to minors of tobacco and vaping products, as well as certain ingredients, to ensure the publication and transparency of the inspection measures and sanctions imposed, notably by requiring the display, in public view, on the premises, of sanctioned tobacco retailers, of the penalty to which they have been subject, and to raise awareness among all participants in the tobacco retailer inspection chain;

3°) order the State to pay the sum of €6,000 under Article L. 761-1 of the French Code of Administrative Justice.

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Having regard to the other evidence adduced;

Having regard to:

- the French Code Governing the Relationship between Citizens and the Administrative Authorities;
- the French Public Health Code;
- French Law no 2003-715 of 31 July 2003;
- Decree no 2010-720 of 28 June 2010;
- Decree no 2025-582 of 27 June 2025;
- the French Code of Administrative Justice;

Having heard, in open court:

- the report by Ms Isabelle Tison, State Councillor,
- the legal opinion of Mr Thomas Janicot, Consultant Judge;

Whereas:

1. The evidence submitted shows that, by a letter of 11 August 2024, the Act - Alliance contre le tabac association requested that the French Prime Minister, the Minister for the Economy, Finance and Industrial and Digital Sovereignty, the Minister for the Interior and Overseas Territories, and the Minister for Labour, Health and Solidarity take all appropriate measures to put an end to the breach of the prohibition on the sale or free supply to minors of tobacco and vaping products, as well as certain ingredients. It has asked the Conseil d'État to quash as ultra vires the implicit decisions rejecting its requests and to order the State to take all appropriate measures liable to ensure compliance with these obligations.

On the role and powers of administrative tribunals and courts:

2. Where the administrative tribunals and courts are seised of an application seeking the quashing of the government's refusal to take measures to put an end to the infringement of a legal obligation incumbent upon it, it falls to the administrative tribunals and courts, within the limits of their jurisdiction, to assess whether the government's refusal to take such measures is vitiated by illegality and, if so, to order the government to take the necessary measure(s). However, and in any event, it is not for the administrative tribunals and courts, in

carrying out this function, to take the place of the public authorities in determining public policy or to order them to do so.

3. It is incumbent upon the administration to carry out its tasks in compliance with the applicable legal rules. To that end, it must remove from the legal order any provisions that are contrary to those rules and that fall within its competence. It is also responsible for taking any administrative measures of a legal, financial, technical or organisational nature that it deems necessary to ensure compliance with the law or to have it ensured. Where the administrative tribunal or court finds, notably having regard to the seriousness or recurrence of the identified failures, a manifest breach of a legal rule by the administration in the performance of its missions, and where certain administrative measures would be, in a direct, certain and appropriate manner, liable to prevent the continuation or repetition of that breach, it falls to the tribunal or court, within the limits of its jurisdiction and subject to the reservation mentioned in point 2, to assess whether the administration's refusal to take such measures is vitiated by illegality. That illegality can only be regarded as established if it appears to the tribunal or court that in view of the scope of the obligation incumbent on the administration, the measures already taken, the inherent difficulties in fulfilling this obligation, the constraints linked to the performance of the tasks for which it is responsible and the resources at its disposal or, having regard to the scope of the obligation, which it ought to acquire, the administration is obliged to implement additional measures.

4. Where the illegality of the administration's refusal to take action has been established, the tribunal or court, upon receiving submissions to that effect, shall order it to put an end to the situation by taking all appropriate measures. It is normally for the competent authorities to determine which of those measures are best suited to ensuring compliance with the rules of law applicable to them. However, the tribunal or court may restrict the scope of its injunction to specific areas in which the case work has revealed the existence of measures that would be liable to prevent the occurrence of the identified illegalities, with the respondent retaining the possibility of proving, within the time limit set, the adoption of measures within a different area but having at least an equivalent effect. Lastly, in the event that the enactment of a specific measure proves, in any event, to be indispensable for compliance with the legal rule that has been breached and where the competent authority's failure to take that measure would therefore preclude compliance therewith, it falls to the court to order the administration to take the measure in question.

Formal legality:

5. Article L. 232-4 of the French Code governing the Relationship between Citizens and the Administrative Authorities provides as follows: *“An implied decision made in cases where the explicit decision should have been reasoned is not illegal solely because it is not accompanied by such reasoning. However, at the request of the person concerned, made within the time limits for bringing an appeal, the reasons for any implied rejection decision must be communicated to that person within one month of the request. (...)”* The evidence submitted does not show, nor is it alleged by the applicant association, that it requested the reasons for the implied decisions it is challenging. Consequently, and in any event, it cannot effectively argue that they are illegal for want of reasons.

Substantive legality:

6. With a view to countering tobacco consumption for health protection reasons, several provisions have been specifically aimed at restricting tobacco consumption among young people since the Law of 31 July 2003, notably through the prohibition on the sale of tobacco to minors. Articles L. 3512-12 and L. 3513-5 of the French Public Health Code respectively prohibit the sale or free supply, in tobacco shops and all commercial premises or public places, of tobacco or vaping products to minors under the age of eighteen, and Articles L. 3512-12 and L. 3513-5 of the same code authorise persons supplying tobacco and vaping products to require their customers to provide proof that they are over 18 years of age. Failure to comply with these prohibitions is subject, under Articles R. 3515-5 and R. 3515-6 of the same Code, to the fine prescribed for fifth-class contraventions.

7. Accordingly, the submissions of the applicant association seeking the quashing of the implied refusal by the Prime Minister and the other ministers consulted, to take all appropriate measures with a view to ensuring compliance with the prohibition on the sale of tobacco and vaping products to minors, notably by reinforcing the supervision of tobacco retailers and the sanctions that may be imposed on them, by ensuring the publication of these sanctions and by raising awareness of the issue of sales to minors among all stakeholders responsible for monitoring tobacco retailers, cannot, contrary to the submissions of the Minister of Labour, Health, Solidarity and Families, be regarded as seeking to have the administrative court substitute itself for the public authorities in determining a public policy.

8. The evidence submitted also shows, and it is not contested by the respondent, that, as established by several studies, conducted in particular by the French Monitoring Centre for Drugs and Drug Addiction (Observatoire français des drogues et des toxicomanies) and presented in the context of the “National Tobacco Control Programme 2023-2027” promoted by the Government, compliance with the prohibitions referred to in point 6 above is, at present, largely insufficient. According to a study conducted in 2021, nearly half of the pupils who smoke in their third year of secondary education thus reported having previously purchased a packet of cigarettes from a tobacconist. Similarly, surveys conducted in the same year indicated that more than three quarters of young persons aged seventeen most frequently cited purchasing from a tobacconist as their means of procuring tobacco, and that more than half of tobacco retailers still agreed to sell tobacco to minors.

9. However, the evidence submitted, notably from that same “National Tobacco Control Programme 2023-2027” and from the Inter-Ministerial Strategy for Action to Counter Addictive Behaviour covering the years 2023 to 2027, shows that substantial efforts are being made by the public authorities to inform and raise awareness among tobacco retailers about the implementation of and compliance with the prohibition on sales to minors, and that new measures are being taken, for the current period and the years ahead, with a view to reinforcing inspections and sanctions against tobacco retailers and vaping product vendors.

10. For instance, in addition to the reform of the mandatory training schemes for tobacconists covering their obligations, and public health issues emphasising the legal prohibitions on sales to minors, an inter-ministerial approach to inspections was launched at the beginning of 2025. With a view to improving the effectiveness of inspections, this included the forthcoming formalisation of a system of continuous and dissuasive monitoring, based on a protocol involving the various ministerial departments concerned. Regarding sanctions, a memorandum of understanding on support for the tobacconist network over the 2023 to 2027

period, signed by the Minister of Public Accounts and the president of the tobaccoists' confederation on 19 January 2023, and whose implementation was cited by the 2023-2027 Inter-Ministerial Strategy for Action to Counter Addictive Behaviour as one of its “flagship measures”, emphasised that tobaccoists must strictly comply with the prohibitions on sales to minors and that, in the event of non-compliance, the retailer, who will automatically be subject to the disciplinary proceedings provided for in Title VI of the Decree of 28 June 2010 on the exercise of the monopoly on the retail sale of manufactured tobacco products, shall, if sanctioned, no longer be eligible for the financial assistance provided for under that memorandum of understanding. Finally, the Decree of 27 June 2025 on smoke-free areas and countering sales to minors of tobacco and vaping products increased the fine incurred in the event of failure to comply with the prohibition from the fourth to the fifth class.

11. Accordingly, having regard to the scope of the obligation incumbent upon the administration in the present case, which consists in ensuring compliance by tobacco retailers with a prohibition that is binding upon them, the inherent difficulties of performing that mission and notably the specific difficulty presented by monitoring compliance with the prohibition on sales to minors, breaches of which can only be established in flagrante delicto, and in light of what may reasonably be expected, as at the date of this decision, from the recent strengthening of the measures already adopted and from all the actions that have begun to be implemented, referred to in the preceding point, the evidence submitted does not show that a manifest failure by the administration to discharge its responsibilities in relation to the sale of tobacco and vaping products to minors has been established, as at the date of this decision and having regard to the means available to the administration.

12. Consequently, the applicant cannot seek the quashing of the challenged decisions.

13. It follows from the foregoing that the application of the Act - Alliance contre le tabac association must be dismissed, including its conclusions submitted under Article L. 761-1 of the French Code of Administrative Justice.

OPERATIVE PROVISIONS:

Article 1: The application of the ACT - Alliance contre le tabac association is dismissed.

Article 2: This decision shall be notified to the Act - Alliance contre le tabac association, the Prime Minister, the Minister of Labour, Health, Solidarity and Families, the Minister of the Budget and Public Accounts and the Senior Minister, Minister of the Interior.

Decision made following deliberations at the session held on 8 September 2025 at which sat: Mr Denis Piveteau, Deputy President of the Litigation Section, presiding; Ms Gaëlle Dumortier and Ms Anne Courrèges, Chamber Presidents; Mr Jean-Luc Nevache, Mr Édouard Geffray, Ms Marie-Astrid Nicolazo de Barmon, Mr Raphaël Chambon, Mr Jean-Dominique Langlais, State Councillors, and Ms Ariane Piana-Rogez, State Councillor-Reporting Judge.

Decision of 1st October 2025.

The Presiding Judge:
Signed: Mr Denis Piveteau

The Reporting Judge:
Signed: Ms Isabelle Tison

The Secretary:
Signed: Mr Hervé Herber