



Paris, 8 November 2024

[Legal decision]

## The Conseil d'État annuls the implementing decree banning plastic-packed fruit and vegetables

**In response to a case brought by two trade unions, the Conseil d'État today ruled that the French government did not have the right to issue a decree in June 2023 that set out the terms of the ban on plastic-packed fruit and vegetables. The European Commission had, in fact, told France to wait until December 2023, as a new European regulation restricting certain types of unnecessary packaging was under negotiation.**

The French law on reducing waste and the circular economy (known as the AGEC law), enacted on 10 February 2020, banned the sale of plastic-packed fresh fruit and vegetables in quantities of less than 1.5 kg, from 1 January 2022, with the exception of those that spoil quickly if sold loose. It tasked the government to establish the list of exempt products. At the end of 2022, the Conseil d'État annulled the initial implementing decree because it did not respect the scope of the ban prescribed by law. The government then issued a new decree in June 2023. Two trade unions appealed to the Conseil d'État to have this decree annulled.

In December 2022, the government notified the European Commission of its draft decree, as required for any new 'technical regulation' relating to a ban on the use of specific products. In accordance with European law (Directive 2015/1535 of 9 September 2015), the Commission asked the government to postpone the adoption of this decree until December 2023, because a European regulation was being drawn up to specifically restrict the use of certain types of unnecessary packaging, including single-use packaging for fresh fruit and vegetables weighing less than 1.5 kg. However, despite the Commission's request for a postponement, the Government adopted its decree on 20 June 2023.

Given that compliance with this postponement was mandatory, as the government did not invoke any of the exceptions provided for in the Directive, the Conseil d'État annulled the decree of 20 June 2023 on plastic-packed fruit and vegetables. If the French government wishes to issue a new implementing decree, it will have to give the Commission advance notice of the draft decree and respect the timeframe imposed by European Union law for its adoption.

*Decision Nos. 475669 and 488759, 8 November 2024*

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