

No 511530

FRENCH REPUBLIC

CHAMBRE SYNDICALE DES
IMPORTATEURS FRANÇAIS
DE FRUITS ET LEGUMES (FRENCH
TRADE ASSOCIATION OF FRUIT AND
VEGETABLE IMPORTERS)

ON BEHALF OF THE FRENCH PEOPLE

The Conseil d'État, ruling as the Supreme Administrative
Court
(Litigation Section, 9th and 10th Chambers combined)

Mr Julien Barel
Reporting Judge (Rapporteur)

Based on the report of the 9th Chamber
of the Litigation Section

Ms Céline Guibé
Consultant Judge (Rapporteure publique)

Session of 15 April 2026
Decision of 13 May 2026

Having regard to the following proceedings:

By an application and a memorandum in reply, registered on 13 January and 13 April 2026 with the Litigation Secretariat of the Conseil d'État, the French Trade Association of Fruit and Vegetable Importers (Chambre syndicale des importateurs français de fruits et légumes) requested that the Conseil d'État:

(1) quash as ultra vires the order issued by the Minister for Small and Medium-sized Enterprises, Trade, Crafts, Tourism and Purchasing Power, and the Minister for Agriculture, Agri-Food and Food Sovereignty, dated 5 January 2026, suspending the importation, introduction and placing on the market, whether free of charge or for consideration, in France, of foodstuffs originating from countries outside the European Union containing residues of certain active plant protection substances whose use is prohibited in the European Union;

(2) order the State to pay the sum of €5,000 under Article L. 761-1 of the French Code of Administrative Justice.

(3) order the Minister for Small and Medium-sized Enterprises, Trade, Crafts, Tourism and Purchasing Power, and the Minister for Agriculture, the Agri-Food Sector and Food Sovereignty, to publish in the Official Journal of the French Republic the decision to be issued,

within seven days of that decision, subject to a penalty for non-performance of €1,000 per day of delay;

(4) order, first, the Minister for Small and Medium-sized Enterprises, Trade, Crafts, Tourism and Purchasing Power, and the Minister for Agriculture, Agri-Food and Food Sovereignty, and second, the European Commission, to notify the decision to be issued so that all the requisite publication or implementing measures may be taken with the World Trade Organisation and the Food and Agriculture Organization of the United Nations, within seven days of that decision, subject to a penalty for non-performance of €1,000 per day of delay.

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Having regard to the other evidence adduced;

Having regard to:

- the Treaty on the Functioning of the European Union;
- the Charter of Fundamental Rights of the European Union;
- Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002;
- Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005;
- Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009;
- Implementing Regulation (EU) No 540/2011 of the Commission of 25 May 2011;
- the French Consumer Code;
- the French Rural and Maritime Fishing Code;
- the French Code of Administrative Justice;

Having heard, in open court:

- the report by Mr Julien Barel, Master of Petitions in extraordinary service,
- the legal opinions of Ms Céline Guibé, Consultant Judge;

SCP Melka-Prigent-Drusch, counsel for the French Trade Association of Fruit and Vegetable Importers having addressed the court after the legal opinions;

Having regard to the post-hearing memorandum registered on 17 April 2026, submitted by the French Trade Association of Fruit and Vegetable Importers;

Whereas:

Concerning the legal framework of the dispute:

With regard to European Union law:

1. Under Regulation (EC) no 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, and Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council, as regards the list of approved active substances, the placing on the market and the use of the active plant protection substances carbendazim, benomyl, glufosinate, thiophanate-methyl and mancozeb have been prohibited in the European Union for several years. However, the importation into the European Union of products containing residues of these active substances used in plant protection, as well as their placing on the market, remains authorised under EU law provided that, for each combination of substance and product, the maximum residue limits (MRLs) set under Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC are complied with.

2. Article 35 of the latter Regulation, entitled “Emergency measures”, provides as follows: “Articles 53 and 54 of Regulation (EC) No 178/2002 shall apply where, as a result of new information or of a reassessment of existing information, pesticide residues or MRLs covered by this Regulation may endanger human or animal health, requiring immediate action. The time limit within which the Commission must take its decision shall be reduced to seven days in the case of fresh produce”. Under Article 53 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002, entitled “Emergency measures applicable to food and feed of Community origin or imported from a third country”: “1. Where it is evident that food or feed originating in the Community or imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned, the Commission, acting in accordance with the procedure provided for in Article 58(2) on its own initiative or at the request of a Member State, shall immediately adopt one or more of the following measures, depending on the gravity of the situation: / (a) in the case of food or feed of Community origin: / (i) suspension of the placing on the market or use of the food in question; / (ii) suspension of the placing on the market or use of the feed in question; / (iii) laying down of specific conditions for the food or feed in question; / (iv) any other appropriate interim measure; / b) in the case of food or feed imported from a third country: / (i) suspension of imports of the food or feed in question from all or part of the third country concerned and, where applicable, from the third country of transit; / (ii) laying down special conditions for the food or feed in question from all or part of the third country concerned; / (iii) any other appropriate interim measure. / 2. However, in emergencies, the Commission may provisionally adopt the measures referred to in paragraph 1 after consulting the Member State(s) concerned and informing the other Member States. / As soon as possible, and at most within 10 working days, the measures taken shall be confirmed, amended, revoked or extended in accordance with the procedure referred to in Article 58(2), and the reasons for the Commission's decision shall be made public without delay.” Under Article 54 of the same Regulation, entitled “Other emergency measures”: “1. Where a Member State officially informs the Commission of the need to take emergency measures, and where the Commission has not acted in accordance with Article 53, the Member State may adopt interim protective measures. In this event, it shall immediately inform the other Member States and the Commission. / 2. Within 10 working days, the Commission shall put the matter before the Committee set up in Article 58(1) in accordance

with the procedure provided for in Article 58(2) with a view to the extension, amendment or abrogation of the national interim protective measures. / 3. The Member State may maintain its national interim protective measures until the Community measures have been adopted.”

3. Article 35 of Regulation No 396/2005 and the procedure established by Articles 53 and 54 of Regulation No 178/2002, cited in point 2, are intended to enable the European Commission or, failing that, a Member State, to adopt emergency measures where such measures appear necessary to protect, in particular, human health, on the basis of evidence underpinned by reliable scientific data. The fact that Member States other than the one which adopted the emergency measures have not adopted comparable measures is not sufficient to establish the absence of risks. It also follows from the case law of the Court of Justice of the European Union, in particular its judgment of 8 September 2011, *Monsanto SAS and Others* (C-58/10 to C-68/10), that the official notification of the European Commission by a Member State, provided for by Article 54 of Regulation No 178/2002, may be given, at the latest, at the same time as the adoption by the Member State of the emergency measures.

As regards national law:

4. Article L. 521-17 of the French Consumer Code provides as follows: *“In the event of grave or imminent danger, the Minister for Consumer Affairs and the minister(s) concerned may, by joint order, suspend for a period not exceeding one year, the manufacture, importation, exportation, or placing on the market, whether free of charge or for consideration, of a product, and order its withdrawal from all locations where it is found, or its destruction where this is the only means of eliminating the danger. They may also order the dissemination of warnings or precautions for use, as well as a recall with a view to an exchange, a modification or a full or partial refund. / Such products may be placed back on the market once they have been found to comply with the regulations in force. / The Minister for Consumer Affairs and, where applicable, the relevant minister(s) shall consult the professionals concerned without delay and no later than fifteen days after a suspension decision has been taken. They shall also consult with accredited national consumer organisations. / Such orders shall specify the conditions under which the costs relating to the safety measures to be taken pursuant to this article shall be borne by manufacturers, importers and distributors. / Such orders may be renewed, in accordance with the same procedure, for further periods, each not exceeding one year.”*

5. The third paragraph of Article L. 236-1 A of the French Rural and Maritime Fishing Code provides as follows: *“The Ministers for Agriculture and Consumer Affairs may, in compliance with Articles 53 and 54 of 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, take interim measures in order to suspend or impose specific conditions on the introduction, importation and placing on the market in France of foodstuffs,”* for which plant protection products not authorised under European regulations have been used.

On the emergency measures at issue:

6. The evidence shows that, by a note dated 23 December 2025, the French authorities officially informed the European Commission of the need to take emergency measures pursuant to Article 53 of Regulation No 178/2002, in respect of the importation of food or feed containing residues of several active plant-protection substances, including carbendazim, benomyl, glufosinate, thiophanate-methyl and mancozeb. This note states that the maximum

residue levels (MRLs) for those substances were set at a time when their placing on the market and use within the European Union were still authorised, and that they have not been revised since those substances were banned within the European Union, even though these MRLs exceed the toxicological reference values now in use and therefore pose a risk to human health in the event of dietary exposure.

7. Noting the absence of any emergency measures taken by the European Commission pursuant to Article 53 following this official notification, and having regard to “the scientific data highlighting the possibility of a serious risk to human health in the event of exposure, via various foods” to the active plant protection substances referred to in point 6, the Minister for Small and Medium-sized Enterprises, Trade, Crafts, Tourism and Purchasing Power, and the Minister for Agriculture, the Agri-Food Sector and Food Sovereignty, by the Order of 5 January 2026 published in the Official Journal on the following 7 January and adopted under the provisions of Article 54 of Regulation No 178/2002, decided, in Article 1 of that Order, to suspend the importation, introduction and placing on the market, whether free of charge or for consideration, in France, of certain foodstuffs, mainly fruit and vegetables, in particular exotic fruit, citrus fruits and potatoes, as well as cereals, originating from countries outside the European Union, where they contain “quantifiable residues” of one or more of the five active plant-protection substances listed in point 6, in accordance with the combinations set out in the annex to the Order. Article 2 of the Order requires food-sector and animal-feed-sector operators to exercise due diligence to ensure that the foodstuffs they import, bring into France or place on the market in France comply with the requirements of Article 1 of the Order. Article 3 of the same Order stipulates that it does not apply to foodstuffs purchased no later than one month after its entry into force, i.e. up to 8 February 2026. Finally, under Article 4, this Order shall cease to have effect as soon as appropriate measures adopted by the European Commission enter into force or, failing that, one year after its entry into force.

On the grounds relating to the jurisdiction of the French authorities and the error of assessment alleged to vitiate the challenged order:

With regard to the competence of the signatories to the challenged order:

8. On the one hand, contrary to the submission of the French Trade Association of Fruit and Vegetable Importers, the competence of the European Union institutions does not preclude a Member State from adopting interim emergency measures to protect human health, as provided for in Article 35 of Regulation No. 396/2005 of the European Parliament and of the Council of 23 February 2005 and Articles 53 and 54 of Regulation No 178/2002 of the European Parliament and of the Council of 28 January 2002, cited above. The fact that the period between the official notification, sent on 23 December 2025 to the European Commission by the French authorities pursuant to Article 54 of Regulation No 178/2002, and the challenged order was two weeks – including, according to the applicant, a period of reduced availability of Commission staff, has no bearing on the conformity of the order with the provisions of Article 54, since that article, which governs an emergency procedure, does not provide for any minimum period and, in any event, as stated in point 3, the official information which it provides for may be issued at the same time as the adoption of the measures by the Member State.

9. Furthermore, as the Minister for Agriculture, Agri-Food and Food Sovereignty submitted in defence, the Ministers responsible for agriculture and consumer affairs had the power to adopt the measures set out in the challenged order under the provisions of the third paragraph of Article L. 236-1 A of the French Rural and Maritime Fishing Code, cited in point 5 above, which do not in themselves infringe EU law. It follows that the applicant cannot

effectively argue that the signature of the Minister for Overseas France was required under the provisions of Article L. 521-17 of the French Consumer Code, since the fact that the order applies throughout the territory of the Republic does not, moreover, have the effect of making the Minister for Overseas France a “minister concerned” within the meaning of those provisions.

With regard to the alleged errors of assessment:

10. Firstly, it is apparent from the challenged order and the evidence submitted that in order to justify the adoption of the emergency measures at issue, the French authorities relied on the risks to human health posed by exposure to foodstuffs containing quantifiable residues of the active plant protection substances concerned, on the grounds that the MRLs for these products, as laid down in Regulation No 396/2005 are obsolete and that dietary exposure resulted in the reference toxicological values being exceeded.

11. The evidence shows that the French authorities relied, first, on scientific studies by the European Food Safety Authority (EFSA) establishing the risks to human health posed by the five active plant protection substances concerned, which are classified as toxic to reproduction and, in some cases, as endocrine disruptors and mutagens, and, second, on several scientific studies, opinions and decisions concerning the MRLs for these substances. These elements include, firstly, EFSA’s legal opinions and the European Commission Implementing Regulations relating to the five plant protection substances covered by the challenged order; secondly, an EFSA study published on 17 May 2023 on MRLs for the dithiocarbamate family, to which mancozeb belongs, proposing a reduction in the MRLs; thirdly, an updated opinion from EFSA published on 10 January 2024 proposing new MRLs for carbendazim, benomyl and thiophanate-methyl; fourthly, the decision of the 48th session of the Codex Alimentarius Commission – the joint programme of the Food and Agriculture Organization of the United Nations and the World Health Organization on International Food Standards – held from 10 to 14 November 2025, to revoke the *Codex Alimentarius* MRLs for several foodstuff-substance combinations, including carbendazim; and lastly, an updated assessment based on the legal opinions of EFSA and the *Codex Alimentarius* establishing, in the case of glufosinate, that the MRL for this substance in potatoes – the only foodstuff associated with that substance in the challenged order – exceeds the toxicity threshold. It is also apparent both from the draft Regulation presented by the European Commission in July 2024, seeking to reduce the MRLs for benomyl, carbendazim and thiophanate-methyl in the light of EFSA studies, and from the Resolution of 18 September 2024, in which the European Parliament opposed the adoption of this draft Regulation, considering it necessary to abolish all MRLs so as to no longer permit the importation into the European Union, below such MRLs, of foodstuffs containing residues of active substances that are not authorised in the Union, that the European institutions share the concerns of the French authorities in this regard.

12. It follows from these measures, studies and documents that, in adopting the challenged Order of 5 January 2026, the Ministers for Agriculture and Consumer Affairs relied on reliable scientific data post-dating the determination currently laid down by Regulation No 396/2005 of the MRLs for the substances concerned and, contrary to the applicant's submissions, recent and sufficiently precise data. Furthermore, as stated in point 3 above, the fact that no other Member State has adopted legislation comparable to that in dispute has no bearing on the assessment of the risk to human health.

13. It follows from the foregoing that, in the circumstances of this case and having regard to the scientific data relied upon and the risks to human health identified by that data, and in view of the absence of measures adopted at European Union level, the Ministers for

Agriculture and Consumer Affairs were entitled, without committing a manifest error of assessment, to decide to adopt, by means of the challenged order, provisional emergency measures for the purpose of protecting human health.

14. Secondly, the French Trade Association of Fruit and Vegetable Importers submitted that the measures provided for in the challenged order are manifestly disproportionate and, in some cases, unenforceable, and that other, less restrictive measures to protect human health could have been adopted, such as specific labelling advising consumers to wash the foodstuffs in question before consumption, providing information to consumers, or reducing the MRLs for the five active plant protection substances in question to a level remaining above the limit of quantification.

15. However, having regard, firstly, to the risks to human health arising from the consumption of foodstuffs containing residues of one or more of these substances; secondly, to the difficulty of identifying, with sufficient certainty given the current state of scientific knowledge, an MRL other than the limit of quantification adopted by the challenged order which would present an acceptable level of risk, and lastly, to the insufficient level of protection for human health that other measures would have provided, notably the labelling of the foodstuffs in question or the provision of information to consumers, the authors of the challenged order, by deciding to suspend the importation, introduction and placing on the market, whether free of charge or for consideration, of foodstuffs containing quantifiable residues of carbendazim, benomyl, glufosinate, thiophanate-methyl and mancozeb, did not adopt measures were disproportionate.

On the other grounds of the appeal:

16. Firstly, the French Trade Association of Fruit and Vegetable Importers contends that the challenged order is imprecise, on the grounds that the concept of “quantifiable residues” on which it is based is not defined, that the reasonable steps provided for in Article 2 are not specified, and that the concept of “foodstuffs acquired” provided for in Article 3, pursuant to which the order does not apply to foodstuffs acquired up to 8 February 2026, does not make it possible to ascertain the meaning and scope of that provision. However, the concept of “quantifiable residues”, which is, moreover, used by EFSA, is clear and unambiguous, as is the terminology adopted in the annex to the challenged order to designate the foodstuffs, which also corresponds to that laid down in Regulation No 396/2005. Similarly, the due diligence referred to in Article 2 of the order clearly corresponds to the obligations imposed on food business operators set out in Articles 17, to which Article 2 expressly refers, to 19 of Regulation No 178/2002. Finally, the term “foodstuffs acquired” refers to foods which, on 8 February 2026, were under the control of food business operators within the meaning of Article 19 of the Regulation, and does not include plants prior to harvesting, as is apparent from the definition of foodstuffs set out in Article 2 of that Regulation.

17. Secondly, the evidence does not show that the measures provided for in the challenged order would be inapplicable. In this regard, the fact that certain analytical laboratories may not be able to isolate mancozeb where dithiocarbamate residues are detected has no bearing on the lawfulness of the order, provided that proof of the absence of quantifiable residues of that substance can be provided by other means, notably by documents capable of establishing that the foodstuffs have not been treated with that substance.

18. Thirdly, the French Trade Association of Fruit and Vegetable Importers cannot validly refer to a failure to comply with the obligation of public participation applicable

to public decisions having an impact on the environment, since the purpose of the challenged order – which, moreover, was issued in an emergency context – is to pursue a public health objective, and it has not been argued, or even alleged, that it would have direct and significant effects on the environment. As regards the plea alleging an infringement of Article 41 of the Charter of Fundamental Rights of the European Union, concerning the right to good administration, this is unfounded, since it follows from the case law of the Court of Justice of the European Union that this article applies not to Member States but solely to the institutions, bodies and agencies of the European Union. While the applicant further alleges a breach of the general principle of EU law enshrining the right to good administration, which requires reasons to be given for any decision implementing EU law, the challenged order, whose recitals and preamble specify the provisions it implements and the studies containing the scientific data on which it is based, is sufficiently reasoned. Finally, the applicant cannot validly claim that the challenged order infringes the Treaty on the Functioning of the European Union and the provisions of Regulations No 178/2002 and No 396/2005, since that order, as stated in point 8 above, was adopted pursuant to Articles 53 and 54 of Regulation No 178/2002, Article 54 constituting a safeguard clause within the meaning of Article 114(10) of the Treaty.

19. Finally, the alleged misuse of power has not been established.

20. It follows from all of the foregoing that the French Trade Association of Fruit and Vegetable Importers is not entitled to seek the quashing as ultra vires of the order it is challenging. Its application must therefore be dismissed, including its claims for an injunction and those made under Article L. 761-1 of the French Code of Administrative Justice.

OPERATIVE PROVISIONS:

Article 1: The application of the French Trade Association of Fruit and Vegetable Importers is dismissed.

Article 2: This decision shall be notified to the French Trade Association of Fruit and Vegetable Importers and to the Minister for Agriculture, the Agri-Food Industry and Food Sovereignty.

A copy shall be sent to the French Prime Minister, the French Minister of the Economy, Finance and Industrial Sovereignty, Energy and Digital Affairs, the French Minister for Small and Medium-sized Enterprises, Trade, Crafts, Tourism and Purchasing Power, the French Minister for Europe and Foreign Affairs, and the French Minister of Public Action and Accounts.