

Decree No 2023-837 of 30 August 2023 establishing the list of products for which sale in bulk is prohibited for public health reasons

Last update of the data in this text: 01 September 2023

NOR: ECOC2317237D

JORF No 0201 of 31 August 2023

The Prime Minister,

On the report of the Minister of the Economy, Finance, and Industrial and Digital Sovereignty,
Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003, as amended, on additives for use in animal nutrition;

Having regard to Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents;

Having regard to Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004, as amended, on the hygiene of foodstuffs;

Having regard to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin;

Having regard to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008, as amended, on classification, labelling and packaging of substances and mixtures, as amended, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006;

Having regard to Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009, as amended, 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;

Having regard to Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009, as amended, laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002;

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009, as amended, concerning the placing of plant protection products on the market and repealing Directives 79/117/EEC and 91/414/EEC;

Having regard to the amended Regulation (EC) No 1223/2009 of the European Parliament and of the Council, as amended, on cosmetic products;

Having regard to Commission Regulation (EU) No 142/2011 of 25 February 2011, as amended, 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;

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012, as amended, concerning the making available on the market and use of biocidal products;

Having regard to Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013, as amended, on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC

of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009;

Having regard to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015, as amended, laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, and in particular Notification No 2022/0818/F;

Having regard to the Consumer Code, in particular Article L. 120-1 thereof, as amended by Article 41 of Act No 020-105 of 10 February 2020 on combating waste and on the circular economy;

Having regard to the Environmental Code, in particular Article R. 557-6-1 thereof;

Having regard to the Rural and Maritime Fishing Code, in particular Articles L. 253-1 and R. 253-43 thereof;

Having regard to Decree No 64-949 of 9 September 1964 implementing Article L. 214-1 of the Consumer Code for frozen products;

Having regard to Decree No 91-827 of 29 August 1991 on foods intended for particular nutritional uses;

Having regard to Decree No 2006-352 of 20 March 2006 on food supplements;

Having regard to the scientific and technical support note of the National Agency for Food, Environmental and Occupational Health & Safety of 15 November 2021,

Decrees:

Article 1

Amended the following provisions

- Created the Consumer Code - Chapter I A: Encouraged business practices... (V)
- Created the Consumer Code - Single Section: Sale of unpackaged products... (V)
- Created the Consumer Code - Subsection 1: Definitions (V)
- Created the Consumer Code - Subsection 2: Products of which wholesale... (V)
- Created the Consumer Code - Subsection 3: Products of which wholesale... (V)
- Created the Consumer Code - Subsection 4: Specific conditions for... (V)
- Created the Consumer Code - Article D120-1 (V)
- Created the Consumer Code - Article D120-2 (V)
- Created the Consumer Code - Article D120-3 (V)
- Created the Consumer Code - Article D120-4 (V)
- Created the Consumer Code - Article D120-5 (V)
- Created the Consumer Code - Article D120-6 (V)
- Created the Consumer Code - Article D120-7 (V)
- Created the Consumer Code - Article D120-8 (V)

Article 2

The Minister for the Economy, Finance, and Industrial & Digital Sovereignty, the Minister for Agriculture and Food Sovereignty, the Minister for the Ecological Transition and Territorial Cohesion, and the Minister for Health and Prevention are responsible, each with regard to their competences, for the implementation of this Decree, which shall be published in the Official Journal of the French Republic.

Done on 30 August 2023.

Élisabeth Borne
By the Prime Minister:

The Minister for the Economy, Finance, and Industrial and Digital Sovereignty,
Bruno Le Maire

The Minister of Agriculture and Food Sovereignty
Marc Fesneau

The Minister for the Ecological Transition and Territorial Cohesion
Christophe Béchu

The Minister for Health and Prevention
Aurélien Rousseau

Decree No 2023-837 of 30 August 2023 establishing the list of products for which sale in bulk is prohibited for public health reasons

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JORF No 0201 of 31 August 2023

Text No 6

Target audience: consumer-friendly retail outlets that are likely to sell in bulk, including distance selling and mobile points-of-sale.

Purpose: the list of products for which sale in bulk is authorised under certain conditions or is prohibited for public health reasons

Entry into force: the Decree shall enter into force on the day after its publication.

Notice: the Decree sets out, with a view to clarifying the standard and for the legibility thereof, a number of definitions. It provides for a list of products for which sale in bulk is permitted only under certain conditions or prohibited for safety or public health reasons, taking into account the legislation in force prohibiting sale in bulk, the provisions of Union law, in particular on hygiene, making it impossible to sell in bulk, as well as the recommendations of the National Agency for Food, Environmental and Occupational Health & Safety in its scientific and technical support note of 15 November 2021.

Finally, the Decree provides that an order of the Minister for Consumer Affairs may, where necessary, specify the arrangements for the sale in bulk of certain products, in particular for safety reasons.

References: the Consumer Code, as amended by decree, may be consulted on the Légifrance website (<https://www.legifrance.gouv.fr>).

The Prime Minister,

On the report of the Minister of the Economy, Finance, and Industrial and Digital Sovereignty,
Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003, as amended, on additives for use in animal nutrition;

Having regard to Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents;

Having regard to Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004, as amended, on the hygiene of foodstuffs;

Having regard to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin;

Having regard to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008, as amended, on classification, labelling and packaging of substances and mixtures, as amended, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006;

Having regard to Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009, as amended, 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;

Having regard to Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009, as amended, laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002;

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009, as amended, concerning the placing of plant protection products on the market and repealing Directives 79/117/EEC and 91/414/EEC;

Having regard to the amended Regulation (EC) No 1223/2009 of the European Parliament and of the Council, as amended, on cosmetic products;

Having regard to Commission Regulation (EU) No 142/2011 of 25 February 2011, as amended, 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;

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012, as amended, concerning the making available on the market and use of biocidal products;

Having regard to Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013, as amended, on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009;

Having regard to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015, as amended, laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, and in particular Notification No 2022/0818/F;

Having regard to the Consumer Code, in particular Article L. 120-1 thereof, as amended by Article 41 of Act No 020-105 of 10 February 2020 on combating waste and on the circular economy;

Having regard to the Environmental Code, in particular Article R. 557-6-1 thereof;

Having regard to the Rural and Maritime Fishing Code, in particular Articles L. 253-1 and R. 253-43 thereof;

Having regard to Decree No 64-949 of 9 September 1964 implementing Article L. 214-1 of the Consumer Code for frozen products;

Having regard to Decree No 91-827 of 29 August 1991 on foods intended for particular nutritional uses;

Having regard to Decree No 2006-352 of 20 March 2006 on food supplements;

Having regard to the scientific and technical support note of the National Agency for Food, Environmental and Occupational Health & Safety of 15 November 2021,

Decrees:

Article 1

Before Chapter 1 of Title II of Book 1 of the Consumer Code, Chapter I A shall be inserted as follows:

‘Chapter I A

‘ Encouraged business practices

‘ Single Section

‘ Sale of unpackaged products

“ Subsection 1

‘ Definitions

‘ Article D. 120-1.-Everyday consumer products, within the meaning of Article L. 120-1, are consumer goods as referred to in Article D. 441-1 of the Commercial Code.

‘ Article D. 120-2.-Assisted service, within the meaning of Article L. 120-1, is a method of sale in which the packaging of the product and the immediate delivery thereof to the consumer are carried out by an operator at the point of sale.

‘ Where the product is likely to present a risk to the consumer, the assisted service must ensure sufficient protection of consumers against the risks specific to the product.

‘Article D. 120-3. – A suitable distribution method is one which, having regard to the characteristics of the product, makes it possible to preserve its integrity, to ensure its preservation, to meet the specific requirements relating to its safety and to comply with the hygiene and safety requirements of the sales area.

'Where the product is likely to present a risk to the consumer, the suitable distribution method must ensure sufficient protection of consumers against the risks specific to the product.

' Article D. 120-4.-The self-service sale of take away food for immediate consumption shall not be regarded as a means of sale in bulk within the meaning of Article L. 120-1.

' Subsection 2

' Products which may be sold in bulk only under certain conditions

'Article D. 120-5. – The provisions of this subsection on the authorisation, under certain conditions, of the sale in bulk of products, are without prejudice to the application of the specific rules applicable to products, in particular those which require traders marketing such products to comply with obligations to inform consumers about the essential characteristics of the products, the precautions to be taken for their consumption or use, their danger and the risks they may incur.

' Article D. 120-6.-I.-The provisions of this Article shall apply to the following products:

'1. Single-use materials and articles intended to come into contact with foodstuffs which cannot be washed before use;

'2. Single-use baby nappies and, among single-use intimate hygiene protection products: sanitary towels;

'3. Toilet paper, household towels, paper towels, paper handkerchiefs, absorbent cotton and other cotton articles or articles made of other single-use plants fibres intended for washing or wiping the face and body, single-use cotton buds;

'4. Perishable foodstuffs which, after a short period of time, may pose a danger to human health;

'5. Foodstuffs, other than those mentioned in point 8 of Article D. 120-7, which are kept at a temperature of -12 °C or lower when sold to consumers;

'6. Cosmetic products for which a preservation challenge test and microbiological controls on the finished product are required pursuant to the Commission Implementing Decision of 25 November 2013 on guidelines on Annex I to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products;

'7. Products which meet the following cumulative conditions:

'a) are substances or mixtures subject to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures and products covered by Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents;

'b) do not fall under any of the product categories referred to in points 9 and 10 of Article D. 120-7.

'II. The products referred to in I may be sold in bulk only when sold under the following conditions, taking into account the specific risks associated with their characteristics:

'1. Either in assisted service;

'2. Or by means of a suitable distribution method for self-service sale in bulk.

" Subsection 3

' Products for which sale in bulk is prohibited

'Article D. 120-7. – Any form of sale in bulk is prohibited for the following products:

- '1. Heat-treated liquid dairy products, in accordance with the provisions of Chapter III of Section IX of Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin;
- '2. Raw milk, except where it is delivered in bulk directly to the final consumer by the operator carrying out the packaging in the sight of the consumer or through an automatic liquid dispenser, in accordance with Article 7 of the Decree of 13 July 2012 on the conditions for the production and placing on the market of raw bovine milk, small ruminants and domestic solipeds handed over to the final consumer;
- '3. Infant formulae and follow-on formulae, cereal-based formulae and baby food, food for special medical purposes, total daily diet substitutes for weight control, in accordance with Article 4 of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control on food intended for infants and young children, food for special medical purposes and total daily diet substitutes for weight control, and food for particular nutritional uses in accordance with the provisions of Article 6 of Decree No 91-827 of 29 August 1991 on food for particular nutritional uses;
- '4. Feed materials and compound feed, with the exception of feed listed in paragraph 2 of Article 23 of 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, placed on the market under conditions satisfying the requirements of Annex II to Regulation (EC) No 183/2005 laying down requirements for feed hygiene, and without prejudice to point 5;
- '5. Raw pet food as defined in Annex I to 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, in accordance with the provisions of point 1 of Chapter II of Annex XIII to that Regulation, except in retail shops where cutting and storage are carried out exclusively with a view to direct sale on the spot to the consumer, in accordance with paragraph 2(i) of Article 2 of 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 without prejudice to point 4;
- '6. Additives and premixtures for use in animal nutrition, in accordance with the provisions of Article 16(5) of Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition;
- '7. Food supplements, in accordance with Article 1 of Decree No 2006-352 of 20 March 2006 on food supplements;
- '8. Frozen products, in accordance with the provisions of Article 4 of Decree No 64-949 of 9 September 1964 implementing Article L. 214-1 of the Consumer Code for frozen products;
- '9. Biocidal products, as defined in Article 3 of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products, if the bulk sale is not explicitly provided for in the marketing authorisation, as well as biocidal products benefiting from the transitional measures provided for in Article 89 of Regulation (EU) No 528/2012;
- '10. Substances or mixtures whose packaging is fitted with a child-resistant closure or which bears a touch-detectable hazard indication pursuant to Article 35 of Regulation (EC) No 1272/2008, as well as liquid textile detergents intended for consumers and packaged in soluble single-use packaging pursuant to that Article;

'11. Electric batteries and accumulators;

'12. Among the personal hygiene protection products for single use: tampons;

'13) Any product whose sale in bulk is incompatible with the public health obligations provided for by the regulations and directives adopted in accordance with the Treaty on the Functioning of the European Union.

" Subsection 4

' Special conditions for sale in bulk

'Article D. 120-8. – The special conditions, in particular with regard to safety, to which the sale in bulk of certain products is subject shall be specified, where necessary, by a joint order of the Minister of Consumer Affairs and the Minister responsible for the products concerned.'

Article 2

The Minister for the Economy, Finance, and Industrial & Digital Sovereignty, the Minister for Agriculture and Food Sovereignty, the Minister for the Ecological Transition and Territorial Cohesion, and the Minister for Health and Prevention are responsible, each with regard to their competences, for the implementation of this Decree, which shall be published in the Official Journal of the French Republic.

Done on 30 August 2023.

Élisabeth Borne

By the Prime Minister:

The Minister of the Economy, Finance, and Industrial and Digital Sovereignty,
Bruno Le Maire

The Minister of Agriculture and Food Sovereignty
Marc Fesneau

The Minister for the Ecological Transition and Territorial Cohesion
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