

REVIEW OF LEGISLATIVE AND REGULATORY FRAMEWORKS RELATED TO THE ESTABLISHMENT AND MANAGEMENT OF WHOLESALE MARKETS IN WESTERN EUROPE

PART 1. THE CASE OF FRANCE

INTRODUCTION

As in other European countries, **the development of wholesale markets in France was promoted by active Government policies in the 60's and early 70's**. At that time, the distribution of food products through supermarket chains was not yet developed and wholesale markets were the main centres of aggregation for the supply and demand of fresh produce. In this respect, Government policies related to the establishment and management of wholesale markets had a strong impact on the efficiency of food distribution and on food prices for urban consumers. The situation is drastically different now as most food products are sold to final consumers by supermarkets that typically bypass wholesale markets¹ (while ensuring low consumer prices). However, the influence of a few large food distributors is starting to be seen as a threat to satisfactory conditions for market competition and wholesale markets are considered by public authorities as an alternative source of distribution for a range of food products.

The approach adopted in France in the 60's reflects a rather **strong involvement of the State and local public authorities** in the ownership, management and supervision of wholesale markets. This approach was justified by the fact that markets are considered as public facilities (i) where **competition needs to be regulated** (transparency of transactions) and (ii) where the fulfillment of other obligations related to sales of fresh products can be easily checked (sanitary rules, payment of taxes, etc.). The involvement of public authorities was partly **financial**, but mostly related to the establishment of **a comprehensive set of regulations**.

One important aspect related to this set of regulations was the designation of wholesale markets serving major urban centres as *Marchés d'Intérêt National*, and **the creation of exclusion zones** around these markets. The objective of these exclusion zones was **to increase the concentration of supply and demand** in major wholesale markets and, probably, to facilitate public control on hygiene, taxes, transaction transparency, etc. As the creation of these zones disrupted the operations of a number of traders by forcing them to relocate, **compensation was provided for**.

In some other European countries, in particular in the UK, the legislative/regulatory framework related to wholesale markets is less comprehensive and reflects a milder form of public intervention in the establishment and management of markets. As a result, market management and ownership structure takes more diverse forms². However, the majority of British wholesale markets are operated by local public (municipal) authorities. They have been established for many years under Royal Charters or Local Acts, dating back centuries. Recent legislation giving Local Authorities the powers to operate markets, including wholesale markets, include the Food Act 1984 which is a consolidation of earlier legislation. **Interestingly, most of the legislation surrounding (wholesale) markets is about giving protection to existing facilities to stop rival markets operating.**

¹ Some French wholesale markets (*e.g.* in Nantes) managed to attract supermarket chains on their premises by setting up special platforms for them.

² The situation is comparable in the USA, where market management takes a multiplicity of forms (Cf. Models of Market Ownership, USDA, Debra Tropp, Elizabeth Gray, Richard Overheim, April 1994).

One of the limitations of the existing legislation in France is related to the ownership rights of market users on the facilities that they have installed on the trading space from where they operate (which remains public property). A new text, referring to *Droits Réels*, has been prepared and is waiting for Parliament approval¹.

I.1 REGULATIONS

The main text **regulating** the establishment and management of the main French wholesale markets is an edict (*ordonnance*) dating back to 1967. This text asserts the “national interest” of a number of major wholesale markets and orders their designation as “*Marché d’Intérêt National*” (MIN). A summary of this text and related decrees is presented thereafter.

I.1.1 Edict (*Ordonnance*) 67-808, 22/9/67

This edict acknowledges the “national interest” of major wholesale markets and designates them as *Marchés d’Intérêt National*. These markets can be existing or new facilities. The designation of existing markets as MINs, or the creation of new MINs, will be promulgated by State Council decrees (*Décret du Conseil d’Etat*), following a joint request of the ministries in charge (i.e. Agriculture, Interior, Economy and Finance) and after consultation of local public authorities and relevant interest groups (producers, etc.). The main points covered by the edict are:

Market Management. A MIN can be managed either (i) *en régie*, i.e. by a local public authority or a group of local public authorities, (ii) by a “*société d’économie mixte*” (semi-public company), or (iii) any other entity created for this purpose by decree .

Market Revenues. Rental fees are determined by market management and approved by the relevant prefect (*préfet*). Market management is responsible for establishing provisional budget for the market. If a financial loss is foreseen, local public authorities are entitled to change rental fees, create new revenues, decrease expenses, or take any other measure to ensure the financial viability of the market.

Exclusion Zones (*périmètres de protection*). An Exclusion Zone (EZ) can be created around a MIN (articles 4 to 8). **Within the EZ, the extension, relocation or creation of establishments carrying out sales² in bulk of the products traded at the MIN can be banned.** The list of products traded at the MIN is decided by decree. **Within the EZ, the activities of existing establishments engaged in the sales in bulk of the products traded at the MIN can also be terminated.** The above provisions do not apply to the operations of producers or groups of producers if they are related to products originating from the EZ.

Compensation. The edict (article 11) makes provision for compensation. In particular, **compensation may take the form (or include) a trading space within the MIN.** Additional monetary compensation is also provided for in the edict. Articles 13 and 14 are related to the utilisation of premises released as a result of the creation of the EZ (i.e. the release of trading areas outside the MIN). Cessation of leases, changes in the utilisation of premises are facilitated by the edict.

Special provisions are also set forward for ports located within the EZ of a MIN. (cf. article 7).

¹ So far, the examination of this text by the Parliament has been on hold.

² or commercial operations associated with these sales

The edict also specifies the coercive measures designed to ensure that the restrictions related to EZs are respected (article 10).

Market Rules and Regulations. The edict states that the general content of market rules and regulations will be defined by decree (article 15). The local prefect has police powers within the MIN and is in charge of making sure that market rules and regulations are enforced within the MIN (article 16).

Government Supervision. MINs are under the joint supervision of the Ministries of Agriculture, Economy and Finance and Interior (article 17). A Government commissioner is nominated for each MIN (article 18).

I.1.2 Other Texts Regulating the Establishment and Management of MINs

Decree reference – date	Summary of content
68-659 - 10/7/68	<p>General Organisation of <i>Marchés d'Intérêt National</i></p> <p><u>A. General Organisation of Markets</u></p> <p><u>Chapter 1: Generalities.</u> Definition of basic services (water, electricity, sewage, parking spaces, removal of garbage, etc.) and additional facilities provided by market management (charged separately to market users), e.g. temperature control, forklift rentals, etc.</p> <p><u>Chapter 2: Market Management.</u></p> <ul style="list-style-type: none"> • Section 1: <i>Sociétés d'Economie Mixte</i> The latter (semi public/private companies) can be created by decree for the management of a MIN. The majority of shares must be detained by public shareholders. Provision is made for two types of shares. “A” shares are detained by public shareholders while “B” shares can be disposed of only according to the provisions set in the company statutes. • Section 2: <i>Régies</i> MINs can also be managed by a municipality, a <i>département</i> (district), other local public authority, or a group of the latter. • Section 3: Others <p><u>Chapter 3: Market Supervision.</u> MINs are under the supervision of the Ministries of Economy and Finance, Agriculture, and Interior. By default, the Government commissioner to the MIN is the local prefect. The commissioner attends the meetings of the Board. His prerogatives are described in the decree. Accounts/budgets must be prepared according to a specific pattern and must be submitted to the Ministry of Economy and Finance for approval. A Consultative Technical Committee (CTC) is created for each MIN. It comprises 25 members, including representatives of public administrations, producers, traders/market users, transport companies.</p>

	<p><u>B. Users of <i>Marchés d'Intérêt National</i></u></p> <p>These are (i) traders (buyers/sellers) and, to the extent allowed in the statutes, brokers and (ii) other users (service providers, etc.). Producers are also allowed to operate within the market, but need to justify their status of producers and can only sell their own produce. The decree further sets forward a series of restrictions regarding the nature of users, the establishment of waiting lists, and legal requirements in terms of accounting documents requested from traders and brokers to support transactions.</p> <p><u>C. Authorization of Utilisation of Market Facilities</u></p> <p>Three types of authorizations are distinguished:</p> <ul style="list-style-type: none"> - Utilisation of a trading space with facilities on a private basis (<i>usage privatif</i>) - Utilisation of a plot of land on a private basis (<i>usage privatif</i>) - Common (<i>usage non privatif</i>) utilisation of market areas <p>Market users that wish to use market land and facilities on a private basis need to obtain a concession and pay a concession access fee (<i>droit de première accession</i>).</p>
68-660 - 10/07/68	Dispensations to the Restrictions Applied to the Exclusion Zones of <i>Marchés d'Intérêt National</i>
68-661 - 10/07/68	Compensation Mechanisms for Individuals and Companies Affected by the Restrictions Applied to the Exclusion Zones of <i>Marchés d'Intérêt National</i>
71-23 - 06/01/71	Conditions of Implementation of the Restrictions Applied to the Exclusion Zones of <i>Marchés d'Intérêt National</i>
<i>Arrêté du 14/03/69</i>	<p>Standard Internal Rules and Regulations of MINs</p> <p>Each MIN needs its own rules and regulations. If these are consistent with the proposed standard rules and regulations, they are approved by the relevant prefect. If they divert from the standard rules, they must be approved by the MIN Supervision Committee (cf. below).</p> <p><u>Annex: Standard Internal Rules and Regulations of MINs</u></p> <p><u>A. General Clauses</u></p> <ol style="list-style-type: none"> 1. Sphere of enforcement 2. Market administration and management <p>Designation of the entity managing the market (the “management”). The management is in charge of enforcing internal rules and</p>

regulations. On technical matters, it is assisted by the Consultative Technical Committee.

3. Consultative Technical Committee (CTC)

Designation of the members.

4. Rules of functioning of the CTC

B. Market Users

1. Definition (traders, other market users)

2. Conditions of admission of traders

3. Admission of other users

C. Market Spaces

1. Authorization to use common areas

2. Authorization to use market areas for private use

The latter can be granted for the utilisation of market areas already equipped with facilities or simple plots of land. The type of contract between market users and management for the utilisation of market areas on a private basis is a concession.

3. Obligations of users

Authorized wholesalers must use conceded premises under their own responsibility. They cannot ask a third party to carry out commercial transactions on their behalf (dispensations can be provided for subsidiary companies).

4. Fitting-out of market areas used on a private basis

5. Works carried out by management

6. Maintenance

7. Reduction of activity

The Consultative Technical Committee determines, for each category of products, a minimum level of activity (tonnage, turnover) to be conducted on each space. If, during three consecutive years, the market user's activity is less than the requirement, (i) his area can be reduced, (ii) his area can be replaced by a smaller area, or (iii) his concession can be cancelled.

8. Change of allocated areas for the interest of market operations

This can be decided by the CTC. Provision is made for compensation.

9. Insurance of market users

D. Market Operations

1. Days and hours of opening

2. Supply of goods

All goods entering the market must be accompanied by a document certifying *inter alia* (i) the owner of the goods and (ii) the nature, quantity and quality of the product (plus its category for standardized products)

3. Sales

These must be carried out in specific areas. Each batch of goods sold must be accompanied by an invoice, on which the identification of the seller appears.

4. Forbidden operations

Regrate is forbidden.
5. Minimum size of batches
This must be determined by the market director, after consultation of the CTC.
6. Removal of goods

E. Accounting Obligations, Book and Document Keeping

1. Brokers-traders
They must keep separate accounts for goods sold on their own behalf and goods sold on behalf of others.
2. Sale reports
3. Book and document keeping
4. *Mecanographie*
5. Archiving of books and documents

F. Access and Circulation within the Market

G. Fees and Deposits

1. Concession access fee (*droit de première accession*)
To obtain a concession on a market area for private use, a *droit de première accession* must be paid.
2. Fees
3. Deposits
4. Utilisation of the deposit

H. Quotes, Control, Statistics

1. Establishment of price lists
2. Utilisation by the market director of accounting data for statistic purpose
3. Intervention of various authorities
These include the police to maintain order and security, if required. Other public authorities entitled to carry out control operations within the market include: customs, veterinary services, plant protection services, quality control services and fraud squad, data collection services, etc.

I. Services

1. Utilities and other services
These include sewage, water, electricity, gas, etc. for which fees are charged depending on the utilisation of each user.
2. Extra settings, common services
These include trading areas, workshops for the preparation of products, cold rooms, drying areas, etc. Fees are borne by the users of these services only.
3. Cleaning of common areas and areas used on a private basis

	<p><u>J. Market Discipline</u></p> <ol style="list-style-type: none"> 1. General Market users can be subject to disciplinary measures. All infractions recorded by the police must be brought to the market director's attention. 2. Disciplinary sanctions 3. Disciplinary committee 4. Implementation of disciplinary measures
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I.2 FINANCING AND SUPERVISION

Further decrees are related to the financing and supervision of MINs.

<p>Decree 63-990 – <i>01/10/63</i></p>	<p>Financing of MINs</p> <p>The creation of a MIN can be accepted by the Ministry of Economy and Finance only if there is a formal agreement between the State, local public authorities and other participating entities on the financing conditions of the MIN (construction and indemnification of parties affected by the establishment of the exclusion zone).</p>
<p>Decree 66-585 – <i>27/07/66</i></p>	<p>Organisation of the Supervision of MINs</p> <p>A Supervision Committee is created by the Ministries of Trade, Economy and Finance, Agriculture and Interior. For each ministry, a permanent representative is nominated and seats at the Supervision Committee. The committee takes and proposes measures to ensure the implementation of edict 67-808. It is also in charge of studying all matters related to the distribution of agricultural and food products of interest for the MINs. In particular, it (i) gives instructions for the creation, financing and management of MINs, (ii) approves programmes for each individual MIN, (iii) prepares decrees for the classification of markets as MIN and other legislative and regulatory matters related to MINs, (iv) controls the realisation and management of each market, by instructing the Government commissioners nominated for each MIN, in particular in terms of financial matters, (v) approves each MIN's internal rules and regulations, (vi) represents the State in any potential Court case related to MINs.</p> <p>The Supervision Committee has a president, jointly nominated by the above-mentioned ministries, and six members, representing them.</p>

<i>Avis du 16/05/69</i>	<p>Delegation of Authority</p> <p>The Supervision Committee delegates its authority to local prefects for dispensations to the restrictions related to the establishment of exclusion zones.</p>
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I.3 COMPLEMENTARY TEXTS OF A GENERAL NATURE

Law 66-1069 - 31/12/66	<p>Urban Communities</p> <p>The prerogatives and responsibilities of municipalities in terms of, <i>inter alia</i>, MINs are transferred to urban communities.</p>
Decree 58-560 - 28/06/58	<p>Auction Sales</p> <p>In specific circumstances, auction sales can be allowed by decree in a MIN. Auctions are conducted by agents selected by market management and operating under their responsibility.</p>

I.4 COMPLEMENTARY TEXTS OF A SPECIFIC NATURE

Other decrees relate to (i) the creation and designation of specific markets as MINs and (ii) the list of products for which sales are allowed on each specific MIN.

ANNEX Legislative and regulatory texts relative to wholesale markets (in French).